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Contents

Federal Register

Vol. 76, No. 48

Friday, March 11, 2011

Administrative Conference of the United States
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13338

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13410–13413

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13338–13339

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 13413–13415

Centers for Medicare & Medicaid Services
RULES
Medicare Program:
Changes to the Hospital Outpatient Prospective Payment System, etc.; Correction, 13292–13295
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13415–13418
Meetings:
Medicare Evidence Development and Coverage Advisory Committee, 13418–13420

Coast Guard
RULES
Drawbridge Operation Regulations:
Hackensack River, Secaucus, NJ, 13288–13289
Intracoastal Waterway, Inside Thorofare, Ventnor City, NJ, 13288
Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, Hempstead, NY, 13289
PROPOSED RULES
Drawbridge Operation Regulations:
Fox River, Oshkosh, WI; Withdrawal, 13312
NOTICES
Lower Mississippi River Waterway Safety Advisory Committee; Vacancies, 13422–13423

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Fiscal Years 2011–2016 Strategic Plan, 13353–13354

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 13361–13362
Procurement List; Proposed Additions and Deletions, 13362–13363

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 13363

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement; Technical Amendments, 13297
PROPOSED RULES
Defense Federal Acquisition Regulation Supplements:
Display of DoD Inspector General Fraud Hotline Posters, 13327–13329

Defense Department
See Defense Acquisition Regulations System
See Engineers Corps

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Fiscal Year 2011 Funding Availability:
Credit Enhancement for Charter School Facilities Program, 13365–13371
Personnel Development to Improve Services and Results for Children with Disabilities:
Paraprofessional Preservice Program Improvement Grants, 13371–13377

Election Assistance Commission
NOTICES
Publication of State Plan Pursuant to the Help America Vote Act, 13377–13396

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
PROPOSED RULES
Procedures for Submitting Trade Secrets and Privileged or Confidential Commercial or Financial Information, 13300–13304
NOTICES
Environmental Impact Statements; Availability, etc.:
Mountaineer Commercial Scale Carbon Capture and Storage Project, Mason County, WV, 13396–13397
Pulse Jet Mixing at the Waste Treatment and Immobilization Plant, 13397–13398

Energy Efficiency and Renewable Energy Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13398

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Port of Gulfport Expansion Project, Harrison County, MS, 13363–13365

Environmental Protection Agency
RULES
Baltimore Moderate Nonattainment Area:
Approval of One–Year Extension for Attaining the 1997 8-Hour Ozone Standard, 13289–13292
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 13401–13402
Literature Searches for Integrated Risk Information System Assessments, 13402–13403

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13403–13404

Federal Communications Commission
RULES
Rules and Procedures Governing the Provisions of International Telecommunications Service, 13295–13297

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 13404

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 13404

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 13398–13401
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
Vectren Retail, LLC, 13401

Fish and Wildlife Service
PROPOSED RULES
Incidental Take During Specified Activities:
Marine Mammals, 13454–13493
NOTICES
Comprehensive Conservation Plans:
Ellicott Slough National Wildlife Refuge, Santa Cruz County, CA, 13427–13428

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Child and Adult Care Food Program Improper Payments Meal Claims Assessment, 13339–13340
National School Lunch Program Direct Certification Improvement Study, 13342–13344
WIC Breastfeeding Peer Counseling Study, 13340–13342

Foreign-Trade Zones Board
NOTICES
Applications for Subzones:
Foreign-Trade Zone 266, Dane County, WI, 13354–13355
Foreign-Trade Zone 229, Charleston, WV, 13354

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Beaver Creek Landscape Management Project, Custer National Forest, Powder River County, MT, 13344
Meetings:
Eastern Idaho Resource Advisory Committee, 13345
North Mt. Baker–Snoqualmie Resource Advisory Committee, 13345
Ontonagon Resource Advisory Committee, 13344–13345

General Services Administration
PROPOSED RULES
Reinstatement of Coverage Pertaining to Final Coverage Pertaining to Final Payment Under Construction and Building Services, 13329–13330

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Cancer Therapy Evaluation Program Intellectual Property Option to Collaborator, 13404–13410

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13420–13421

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contractors Requisition – Project Mortgages, 13423–13424
Requisition for Disbursement of Sections 202 and 811 Capital Advance/Loan Funds, 13424–13425
Section 3 Program Implementation and Coordination Grant, 13423
Federal Property Suitable as Facilities to Assist the Homeless, 13425–13426
Funding Availabilities:
Fiscal Year 2010 Section 202 Supportive Housing for the Elderly Program, 13427

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Office of Natural Resources Revenue

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13447–13450

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Discharge of Liens, 13450–13451

International Trade Administration
NOTICES
Amended Final Results of Administrative Review Pursuant to Court Decision:
Magnesium Metal from the Russian Federation, 13355–13356
Continuation of Antidumping Duty Order:
Magnesium Metal from the People's Republic of China, 13356–13357
Final Results of Antidumping Duty Administrative Review:
Stainless Steel Sheet and Strip in Coils from Mexico; Correction, 13357
Postponement of Preliminary Determination of Antidumping Duty Investigations:
Multilayered Wood Flooring from the People's Republic of China, 13357–13358
Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review:
Persulfates from the People's Republic of China, 13358–13360

International Trade Commission
NOTICES
Investigations:
Certain Display Devices, Including Digital Televisions and Monitors II, 13432–13433
Certain MEMS Devices and Products Containing Same, 13433–13434
Terminations of Investigations:
Certain Devices Having Elastomeric Gel and Components Thereof, 13434–13435

Justice Department
See Justice Programs Office
RULES
Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Corrections, 13286–13288
Nondiscrimination on the Basis of Disability in State and Local Government Services; Corrections, 13285–13286
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Department Annual Progress Report, 13435

Justice Programs Office
NOTICES
Request for Comments on Draft Vehicular Digital Multimedia Evidence Recording System Certification, etc., 13436

Labor Department
NOTICES
Charter Reestablishment:
National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements, 13436

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 13428–13429
Environmental Impact Statements; Availability, etc.:
Proposed Blackfoot Bridge Mine, Caribou County, ID, 13429–13430
Meetings:
California Desert District Advisory Council, 13430–13431
Proposed Reinstatement of Terminated Oil and Gas Lease WYW160470, Wyoming, 13431

Merit Systems Protection Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13436–13437

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
National Council on the Arts, 13437

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 13421–13422

National Oceanic and Atmospheric Administration
RULES
Western Pacific Pelagic Fisheries:
Hawaii-based Shallow-set Longline Fishery; Court Order, 13297–13299
PROPOSED RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Revisions to Pacific Cod Fishing in the Parallel Fishery in the Bering Sea and Aleutian Islands Management Area, 13331–13337
Western Pacific Pelagic Fisheries:
Prohibiting Purse Seine Fishing in the U.S. EEZ Around Guam and the Northern Mariana Islands, etc., 13330–13331
NOTICES
Meetings:
New England Fishery Management Council, 13361
North Pacific Fishery Management Council, 13360–13361

Nuclear Regulatory Commission
NOTICES
Meetings:
ACRS Subcommittee Meeting on Reliability and Probabilistic Risk Assessment, 13437

Office of Natural Resources Revenue
NOTICES
Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production, 13431–13432

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Amended Columbia River Basin Fish and Wildlife Program, 13438

Pension Benefit Guaranty Corporation
PROPOSED RULES
Benefits Payable in Terminated Single-Employer Plans:
Limitations on Guaranteed Benefits, 13304–13312

Pipeline and Hazardous Materials Safety Administration
PROPOSED RULES
Hazardous Materials:
Cargo Tank Motor Vehicle Loading and Unloading Operations, 13313–13327

Postal Service
NOTICES
Meetings; Sunshine Act, 13438

Presidential Documents
EXECUTIVE ORDERS
International Organizations Immunities Act; Extension of Provisions (EO 13568), 13495–13497
ADMINISTRATIVE ORDERS
Government Agencies and Employees:
National Intelligence, Office of the Director of; Designation of Officers (Memorandum of March 8, 2011), 13499–13500

Rural Business-Cooperative Service
NOTICES
Contract Proposal for Payments to Eligible Advanced Biofuel Producers, 13345–13349
Funding Availabilities:
Biorefinery Assistance Program, 13351–13353
Repowering Assistance Payments to Eligible Biorefineries, 13349–13351

Rural Utilities Service
NOTICES
Contract Proposal for Payments to Eligible Advanced Biofuel Producers, 13345–13349
Funding Availabilities:
Biorefinery Assistance Program, 13351–13353
Repowering Assistance Payments to Eligible Biorefineries, 13349–13351

Securities and Exchange Commission
NOTICES
Order of Suspension of Trading:
AccessTel, Inc., et al., 13438–13439
AdAl Group, Inc., Com/Tech Communications Technologies, Inc., Dialog Group, Inc., Eurogas, Inc., et al., 13438
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Inc., et al., 13442
Depository Trust Co., 13439–13440
NYSE Arca, Inc., 13440–13442

Small Business Administration
NOTICES
Disaster Declarations:
California, 13443
Connecticut, 13443

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13443–13444
Charter Renewal:
Advisory Committee on Historical Diplomatic Documentation, 13444

Surface Transportation Board
NOTICES
Operation Exemptions:
Juniata Valley Railroad Co., and SEDA–COG Joint Rail Authority, 13446
Lycoming Valley Railroad Co., and SEDA–COG Joint Rail Authority, 13445
Nittany Bald and Eagle Railroad Co., and SEDA–COG Joint Rail Authority, 13446–13447
North Shore Railroad Co., and SEDA–COG Joint Rail Authority, 13445–13446
Release of Waybill Data, 13447

Transportation Department
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits, 13444
Aviation Proceedings and Agreements, 13444–13445

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 13454–13493

Part III
Presidential Documents, 13495–13497, 13499–13500

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

13568 13497

Administrative Orders:

Memorandums:

Memorandum of March 8, 2011 13499

10 CFR

Proposed Rules:

600 13300
603 13300
609 13300
611 13300

28 CFR

35 13285
36 13286

29 CFR

Proposed Rules:

4022 13304

33 CFR

117 (3 documents) 13288, 13289

Proposed Rules:

117 13312

39 CFR

Proposed Rules:

172 13313
177 13313

40 CFR

81 13289

42 CFR

410 13292
416 13292
419 13292

47 CFR

1 (2 documents) 13295, 13296
63 (2 documents) 13295, 13296

48 CFR

215 13297

Proposed Rules:

203 13327
252 13327
532 13329

50 CFR

665 13297

Proposed Rules:

18 13454
665 13330
679 13331

Rules and Regulations

Federal Register
Vol. 76, No. 48
Friday, March 11, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF JUSTICE

28 CFR Part 35

[CRT Docket No. 105; AG Order No. 3180–2010]

RIN 1190–AA46

Nondiscrimination on the Basis of Disability in State and Local Government Services; Corrections

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** of Wednesday, September 15, 2010, at 75 FR 56164, relating to nondiscrimination on the basis of disability in State and local government services. This document will correct typographical errors and one substantive error reflected in certain sections of the rule relating to service animals.

DATES: *Effective Date:* March 15, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara J. Elkin, Attorney Advisor, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections revises the Department of Justice regulations implementing title II of the Americans with Disabilities Act (ADA), which adopt enforceable accessibility standards under the ADA that are consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board (Access Board), and update or amend certain provisions of the title II regulation so that they comport with the Department's legal and practical experiences in enforcing the ADA since 1991.

I. Need for Correction

A. Typographical Errors

As published, the final rule contains typographical errors that may cause confusion and therefore are in need of clarification. On page 56178, in § 35.136 ("Service animals"), paragraph 35.136(i)(C) ("Other requirements") is incorrectly designated in the hierarchal outline. Paragraph 35.136(i)(C) needs to be redesignated as paragraph 35.136(i)(3). Additionally, on page 56182, in § 35.151(c) ("Accessibility standards and compliance date"), there is a superfluous "the" in the first sentence, which reads as follows: "If physical construction or alterations commence after July 26, 1992, but prior to *the* September 15, 2010, then new construction and alterations subject to this section must comply with either UFAS or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply" (emphasis added). The word "the" before "September 15, 2010" needs to be removed. Finally, in the section-by-section analysis contained in Appendix A to part 35, on page 56214, under the heading Section 35.151(e) ("Social service center establishments"), there are two errors in the following language: "* * * the Department proposed adding a provision that would require certain social service center establishments that provide sleeping rooms with more than 25 beds to ensure that a minimum of 5 percent of the beds have clear floor space in accordance with section 806.2.3 or 3004 ADAAG" (emphasis added). The words "or 3004" need to be changed to "of the 2004".

B. Substantive Error

As published, the final rule contains an error in wording that may cause confusion over the interpretation of the rule. Specifically, in § 35.104 ("Definitions"), the "service animal" definition states as follows: "The work or tasks performed by a service animal must be directly related to the handler's disability." Because a service animal is not always controlled by the individual with a disability, the service animal's "handler" is not necessarily the individual with a disability. To clear up any confusion, the word "handler's" should be replaced with the word "individual's" in that sentence. Similar use of the word "handler" in the section-by-section analysis contained in Appendix A to part 35 also needs to be changed to "individual" so it is clear that the individual with a disability does not necessarily need to be the animal's handler in order to be covered by the rule's provisions.

II. Corrections

In the final rule FR Doc. 2010–21821, beginning on page 56164 in the **Federal Register** of Wednesday, September 15, 2010, 75 FR 56164, make the following corrections:

§ 35.104 [Corrected]

■ 1. On page 56177, in the third column, starting on line 30, in § 35.104, in the definition of "Service animal," correct the third sentence of the definition to read as follows: "The work or tasks performed by a service animal must be directly related to the individual's disability."

§ 35.136 [Corrected]

■ 2. On page 56178, in the third column, in § 35.136, paragraph (i)(C) is redesignated as paragraph (i)(3).

§ 35.151 [Corrected]

■ 3. On page 56182, in the first column, in line 15, in paragraph (c)(1) of § 35.151, remove the word "the" preceding "September 15, 2010".

Appendix A to Part 35 [Corrected]

■ 4. On page 56192, in the first column, beginning on line 13, remove the following sentence: "The work or tasks performed by a service animal must be directly related to the handler's disability" and add in its place the corrected sentence to read as follows: "The work or tasks performed by a service animal must be directly related to the individual's disability."

■ 5. On page 56192, in the second column, starting on line 53, remove the following sentence: "Other commenters identified non-violent behavioral tasks that could be construed as minimally protective, such as interrupting self-mutilation, providing safety checks and room searches, reminding the handler to take medications, and protecting the

handler from injury resulting from seizures or unconsciousness" and add in its place the corrected sentence to read as follows: "Other commenters identified non-violent behavioral tasks that could be construed as minimally protective, such as interrupting self-mutilation, providing safety checks and room searches, reminding the individual to take medications, and protecting the individual from injury resulting from seizures or unconsciousness."

■ 6. On page 56192, in the third column, starting on line 7, remove the following sentence: "While many individuals with PTSD may benefit by using a service animal, the work or tasks performed appropriately by such an animal would not involve unprovoked aggression but could include actively cuing the handler by nudging or pawing the handler to alert to the onset of an episode and removing the individual from the anxiety-provoking environment" and add in its place the corrected sentence to read as follows: "While many individuals with PTSD may benefit by using a service animal, the work or tasks performed appropriately by such an animal would not involve unprovoked aggression but could include actively cuing the individual by nudging or pawing the individual to alert to the onset of an episode and removing the individual from the anxiety-provoking environment."

■ 7. On page 56193, in the first column, starting on line 42, remove the following sentence: "A pet or support animal may be able to discern that the handler is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal" and add in its place the corrected sentence to read as follows: "A pet or support animal may be able to discern that the individual is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal."

■ 8. On page 56195, in the second column, starting on line 2, remove the following sentence: "Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations" and add in its place the corrected sentence to read as follows: "Tasks performed by psychiatric service animals may include reminding individuals to take medicine, providing safety checks or room searches for individuals with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations."

■ 9. On page 56197, in the second column, starting on line 69, remove the following sentence: "The Department has moved the requirement that the work or tasks performed by the service animal must be related directly to the handler's disability to the definition of 'service animal' in § 35.104" and add in its place the corrected sentence to read as follows: "The Department has moved the requirement that the work or tasks performed by the service animal must be related directly to the individual's disability to the definition of 'service animal' in § 35.104."

■ 10. On page 56214, in the second column, in the fourth line from the bottom, remove the words "or 3004" and add in lieu thereof the words "of the 2004".

Dated: March 7, 2011.

Rosemary Hart,

Special Counsel.

[FR Doc. 2011–5580 Filed 3–10–11; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 36

[CRT Docket No. 106; AG Order No. 3181–2010]

RIN 1190–AA44

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Corrections

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** of Wednesday, September 15, 2010, at 75 FR 56236, relating to nondiscrimination on the basis of disability by public accommodations and in commercial facilities. This document will correct an inadvertent error in an instruction, the omission of some language in the rule, and an error reflected in certain sections of the rule relating to service animals.

DATES: *Effective Date:* March 15, 2011.

FOR FURTHER INFORMATION CONTACT: Christina Galindo-Walsh, Attorney Advisor, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections revises the Department of Justice regulations implementing title III of the Americans with Disabilities Act (ADA), which adopt enforceable accessibility standards under the ADA that are consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board (Access Board), and update or amend certain provisions of the title III regulation so that they comport with the Department's legal and practical experiences in enforcing the ADA since 1991.

I. Need for Corrections

As published, an instruction in the final rule has the unintended effect of deleting several paragraphs currently in the Code of Federal Regulations. Specifically, on page 56250, § 36.104 is amended by revising the definition of "place of public accommodation." However, only the introductory text of that definition, and paragraph (1) and its subparagraphs, are set out below the instruction and were meant to be amended. The Code of Federal Regulations also currently includes paragraphs (2) through (12) to that definition, and, as the instruction is written, those paragraphs will drop out of the Code of Federal Regulations as of the effective date of the final rule, March 15, 2011. This problem can be avoided by revising the instruction. Where the instruction currently reads "* * * revising the definitions of place of public accommodation, qualified interpreter, and service animal * * *" it should be corrected to read as follows: "* * * revising the introductory text and paragraph (1) of the definition of place of public accommodation, and revising the definitions of qualified interpreter and service animal * * *."

Additionally, the final rule contains an error in wording that may cause confusion over the interpretation of the rule. Specifically, on page 56250, in § 36.104 ("Definitions"), the "service animal" definition includes the following language: "The work or tasks performed by a service animal must be directly related to the handler's disability." Because a service animal is not always controlled by the individual with a disability, the service animal's "handler" is not necessarily the individual with a disability. To clear up any confusion, the word "handler's" should be replaced with the word "individual's" in that sentence. Similar

use of the word "handler" in the section-by-section analysis contained in Appendix A to part 36 also needs to be changed to "individual" so it is clear that the individual with a disability does not necessarily need to be the animal's handler in order to be covered by the rule's provisions.

Finally, the final rule inadvertently omitted some language that may cause confusion over the interpretation of the rule. Specifically, on page 56251, § 36.302(e)(1) reads as follows: "A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by telephone, in-person, or through a third party * * *." The intention was not to limit reservation policies to only those made in those three scenarios. In the NPRM, these items were included as examples, and the Department gave no indication it intended to revise the broad language to limit the application to only those three situations. The language indicating that those three scenarios operated as examples was inadvertently deleted. The language should be revised to read as follows: "A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party * * *."

II. Corrections

In the final rule FR Doc. 2010–21824, beginning on page 56236 in the **Federal Register** of Wednesday, September 15, 2010, 75 FR 56236, make the following corrections:

■ 1. On page 56250, in the first column, starting on line 54, under Subpart A—General, paragraph 2, remove the following language from the instruction: "Amend § 36.104 by adding the following definitions of *1991 Standards, 2004 ADAAG, 2010 Standards, direct threat, existing facility, housing at a place of education, other power-driven mobility device, qualified reader, video remote interpreting (VRI) service,* and *wheelchair* in alphabetical order and revising the definitions of *place of public accommodation, qualified interpreter,* and *service animal* to read as follows" and add in its place corrected language to read as follows: "Amend § 36.104 by adding the following definitions of *1991 Standards, 2004 ADAAG, 2010 Standards, direct threat, existing facility, housing at a place of education, other power-driven mobility device, qualified reader, video remote interpreting (VRI) service,* and *wheelchair* in alphabetical order, revising the introductory text and paragraph (1) of the definition of *place of public accommodation,* and revising the definitions of *qualified interpreter* and *service animal* to read as follows:".

§ 36.104 [Corrected]

■ 2. On page 56250, in the third column, starting on line 41, in § 36.104, in the definition of "Service animal" correct the third sentence of the definition to read as follows: "The work or tasks performed by a service animal must be directly related to the individual's disability."

§ 36.302 [Corrected]

■ 3. On page 56251, in the third column, starting on line 48, in § 36.302(e)(1), correct the sentence following the italic heading in the introductory text to read as follows: "A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party—"

Appendix A to Part 36 [Corrected]

■ 4. On page 56266, in the first column, starting on line 15, remove the following sentence: "The work or tasks performed by a service animal must be directly related to the handler's disability" and add in its place the corrected sentence to read as follows: "The work or tasks performed by a service animal must be directly related to the individual's disability."

■ 5. On page 56266, in the second column, starting on line 50, remove the following sentence: "Other commenters identified non-violent behavioral tasks that could be construed as minimally protective, such as interrupting self-mutilation, providing safety checks and room searches, reminding the handler to take medications, and protecting the handler from injury resulting from seizures or unconsciousness" and add in its place the corrected sentence to read as follows: "Other commenters identified non-violent behavioral tasks that could be construed as minimally protective, such as interrupting self-mutilation, providing safety checks and room searches, reminding the individual to take medications, and protecting the individual from injury resulting from seizures or unconsciousness."

■ 6. On page 56266, in the third column, starting on line 4, remove the sentence that reads: "While many individuals with PTSD may benefit by using a service animal, the work or tasks performed appropriately by such an animal would not involve unprovoked aggression but could include actively cuing the handler by nudging or pawing the handler to alert to the onset of an episode and removing the individual from the anxiety-provoking environment" and add in its place the corrected sentence to read as follows: "While many individuals with PTSD may benefit by using a service animal, the work or tasks performed appropriately by such an animal would not involve unprovoked aggression, but could include actively cuing the individual by nudging or pawing the individual to alert to the onset of an episode and removing the individual from the anxiety-provoking environment."

■ 7. On page 56267, in the first column, starting on line 40, remove the following sentence: "A pet or support animal may be able to discern that the handler is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal" and add in its place the corrected sentence to read as follows: "A pet or support animal may be able to discern that the individual is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal."

■ 8. On page 56269, in the second column, starting on line 20, remove the following sentence: "Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations" and add in its place the corrected sentence to read as follows: "Tasks performed by psychiatric service animals may include reminding individuals to take medicine, providing safety checks or room searches for individuals with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations."

■ 9. On page 56271, in the second column, starting on line 65, remove the following sentence: "The Department has moved the requirement that the work or tasks performed by the service animal must be related directly to the handler's disability to the definition of 'service animal' in § 36.104" and add in its place the corrected sentence to read as follows: "The Department has moved the requirement that the work or tasks performed by the service animal must be related directly to the individual's disability to the definition of 'service animal' in § 36.104."

Dated: March 7, 2011.

Rosemary Hart,

Special Counsel.

[FR Doc. 2011–5581 Filed 3–10–11; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0107]

Drawbridge Operation Regulation; Intracoastal Waterway (ICW), Inside Thorofare, Ventnor City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Dorset Avenue Bridge, across Inside Thorofare, mile 72.1, at Ventnor City. The deviation is necessary to facilitate cleaning and painting operations of the double-leaf bascule drawbridge. This deviation allows restriction of the operation of the draw span.

DATES: This deviation is effective from 7 a.m. on March 8, 2011 until 11:59 p.m. on May 27, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0107 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0107 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Waverly W. Gregory, Jr., Bridge Administrator, Fifth District; Coast Guard; telephone 757–398–6222, e-mail *Waverly.W.Gregory@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Dorset Avenue Bridge has a vertical clearance in the closed position of 9 feet above mean high water and 12 feet above mean low water.

The drawbridge opens on signal except that from June 1 through September 30, from 9:15 a.m. to 9:15 p.m., the draw need only open at 15 and 45 minutes after the hour, as required by 33 CFR 117.733(g).

A.P. Construction, Inc., on behalf of Atlantic County who owns and operates this double-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.733(g), to facilitate cleaning and painting of the lift spans.

Under this temporary deviation, the drawbridge will provide a partial opening of the lift spans for vessels. The cleaning and painting require immobilizing half of the draw span to single-leaf operation beginning at 7 a.m. on Tuesday, March 8, 2011, until and including 11:59 p.m. on Friday, May 27, 2011.

Consequently, passage under the bridge will be limited to a 25-foot width for the duration of the project.

The single-bascule leaf not under repair will continue to open for vessels. Prior to an opening of this single-bascule leaf, a work boat occupying the channel underneath this span will also be moved. Finally, the drawbridge will open in the event of an emergency.

Bridge opening data, supplied by Atlantic County and reviewed by the U.S. Coast Guard, revealed vessel openings of the draw span from March 2010 through May 2010. Specifically, the bridge opened for vessels 8, 17, and 85 times during the months of March 2010 through May 2010, respectively. Vessels that can pass under the bridge without a full bridge opening may continue to do so at anytime. Mariners requiring the full opening of the lift spans will be directed to use the Atlantic Ocean as the alternate route.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation. In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 18, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–5663 Filed 3–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0093]

Drawbridge Operation Regulations; Hackensack River, Secaucus, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Upper Hack Bridge at mile 6.9, across the Hackensack River, at Secaucus, New Jersey. The deviation is necessary to facilitate electrical repairs. This deviation will allow the bridge to remain in the closed position for two days.

DATES: This deviation is effective from 4 a.m. on March 10, 2011 through 11 p.m. on March 11, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0093 and are available online at *http://www.regulations.gov*, inserting USCG–2011–0093 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Upper Hack Bridge, across the Hackensack River at mile 6.9 has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(d).

The waterway has commercial vessels of various sizes.

The owner of the bridge, New Jersey Transit, requested a temporary deviation to facilitate electrical system rehabilitation at the bridge.

Under this temporary deviation the Upper Hack Bridge, mile 6.9, across the Hackensack River may remain in the

closed position from 4 a.m. on March 10, 2011 through 11 p.m. on March 11, 2011. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: February 28, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–5671 Filed 3–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2011–0099]

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Meadowbrook State Parkway Bridge across the Sloop Channel, mile 12.8, at Hempstead, New York. The deviation is necessary to install new link arms at the bridge. This deviation allows the bridge to remain in the closed position.

DATES: This deviation is effective from 7 a.m. on March 14, 2011 through 3 p.m. on March 25, 2011.

DATES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0099 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0099 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The Meadowbrook State Parkway Bridge has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(h).

The waterway has seasonal recreational vessels and fishing vessels of various sizes. We contacted the commercial fishermen and no objections were received.

The New York Department of Transportation, requested a temporary deviation to facilitate installation of new link arms.

Under this temporary deviation the Meadowbrook State Parkway Bridge at mile 12.8, across Sloop Channel, may remain in the closed position between 7 a.m. and 3 p.m., Monday through Friday, from March 14, 2011 through March 25, 2011. Vessels that can pass under the bridge during the closed periods without a bridge opening may do so at all times.

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

Dated: February 28, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–5666 Filed 3–10–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2010–0431; FRL–9278–8]

Approval of One-Year Extension for Attaining the 1997 8-Hour Ozone Standard in the Baltimore Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the extension of the attainment date from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area, which is classified as moderate for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This extension is based on the air quality data for the 4th highest daily 8-hour monitored value during the 2009 ozone season. Accordingly, EPA is revising the table concerning the 8-hour ozone attainment dates in the State of Maryland. EPA is approving the extension of the attainment date for the Baltimore moderate ozone nonattainment area in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on April 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0431. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 23, 2010 (75 FR 43114), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the attainment date extension from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area. The Maryland Department of the Environment (MDE) formally requested the extension on March 12, 2010.

II. Summary

Section 172(a)(2)(C) of subpart 1 of the CAA provides for EPA to extend the attainment date for an area by one year if the State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan and no more than a minimal number of exceedances of the NAAQS has occurred in the attainment

year. Section 181(a)(5) of subpart 2 contains a similar provision for the ozone NAAQS. It also requires that an area seeking an extension must have met all applicable requirements and commitments pertaining to the area in the applicable State Implementation Plan. However, instead of providing for an extension where there has been a "minimal" number of exceedances, it allows an extension only if there is no more than one exceedance of the NAAQS in the year proceeding the extension year. The language in Section 181(a)(5) reflects the form of the 1-hour ozone NAAQS and not the 1997 form of the 8-hour ozone NAAQS. To address this, EPA interpreted this provision for purposes of implementing the 1997 8-hour ozone standard, as set forth at 40 CFR 51.907. Under 40 CFR 51.907, an area will meet the requirement addressing "exceedances" of the standard if:

(a) For the first one-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 parts per million (ppm) or less.

(b) For the second one-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the 4th highest daily 8-hour average of all the monitors that represent that area.

The State of Maryland submitted the monitoring data for the Baltimore moderate 8-hour ozone nonattainment area. EPA's review of the actual ozone air quality data in the Air Quality System shows that the 4th highest daily average 8-hour ozone concentration for the 2009 attainment year ozone season, for all monitors in the Baltimore moderate ozone nonattainment area measured at 0.084 ppm or less, as required by 40 CFR 51.907(a). EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) The State of Maryland has complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan; and

(2) The Baltimore nonattainment area's 4th highest daily 8-hour monitored value during the 2009 ozone season is 0.084 ppm or less.

On July 23, 2010, EPA received adverse comments from the Gwynns Falls Watershed Association and on August 23, 2010, EPA received adverse comments from the Environmental Integrity Project and the Baltimore Harbor Waterkeep on the NPR. A summary of the comments submitted and EPA's response is provided in Section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: The two adverse comments received were substantially similar in regards to the proposed one-year extension for attaining the 1997 8-hour ozone standard in the Baltimore nonattainment area. The commenters are concerned that the extension of the attainment date extension from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area will only lead to further health issues. The commenters also are concerned about the precision of the instrumentation used to collect the fourth highest daily 8-hour average of 0.083 parts per million (ppm) and the standard error of the measurement for the Harford County site in 2009.

Response: In response to the commenters first concern, the CAA and our regulations address the health issues by ensuring that ambient levels for the attainment year are at or below the level of the NAAQS. The requirement that primary standards include an adequate margin of safety is a requisite to protect the public health and intended to provide a reasonable degree of protection against hazards that research has not yet identified. In response to the commenters second concern about the precision of the instrumentation and the standard error of the measurement, Appendix A to part 58 of Title 40 of the Code of Federal Regulations (Appendix A) provides the quality assurance requirements for air monitoring. The appendix specifies the minimum quality system requirements applicable to air monitoring data for ozone submitted to EPA. Additional guidance for the requirements in Appendix A can be found in the "Quality Assurance Handbook for Air Pollution Measurement Systems," volume II, part I. Appendix A requires States to perform precision checks on all monitors to assess data quality and consistency with the established acceptance criteria. Section 3.2.1 of Appendix A requires States to perform a one-point quality control (QC) check at least once every 2 weeks to measure ozone. Section 4.1.2 of Appendix A provides the method for calculating the precision of the data measurements. The precision estimate is used to assess the one-point QC checks for all monitors. The ozone precision acceptance criterion is met for the 90 percent Confidence Level of coefficient of variation when the calculated value is less than or equal to 7 percent. The commenters correctly note that the Harford County site measured at 0.083 ppm in 2009. EPA's review of the data showed that MDE performed the required amount of one-point QC checks in 2009 for the Harford County ozone monitor. Results of these one-point QC checks were all less than 7 percent, consistent with the established acceptance criteria. The 2009 one-point QC check results for the Harford County ozone monitor were used to calculate the 90 percent Confidence Level of coefficient of variation. Using the precision calculation detailed in Section 4.1.2, the results showed that the Harford County ozone monitor was below the less than or equal to 7 percent precision ozone acceptance criteria for a 90 percent Confidence Limit of coefficient of variation. Therefore, the area satisfied the measurement quality requirements according to Appendix A for data compliance.

IV. Final Action

EPA is approving the attainment date extension from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area, which is classified as moderate for the 1997 8-hour ozone NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

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 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), nor will it 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), because it merely determines that each of two areas has attained a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rulemaking does not affect the level of protection provided to human health or the environment because extending the attainment date does not alter the emission reduction measures that are required to be implemented in the Baltimore Area, which is classified as moderate nonattainment for the 1997 8-hour ozone standard. *See,* 69 FR at 23909 (April 30, 2004). Additionally, if the Baltimore Area were not granted an extension of its attainment date, EPA's recourse would be to initiate a reclassification of the Baltimore Area from its current classification of moderate nonattainment to serious nonattainment, pursuant to section 181(b)(2) of the CAA. Because the Baltimore area was formerly a severe nonattainment area under the revoked 1-hour ozone standard (*see,* 56 FR at 56773, November 6, 1991), it is required to continue to implement severe area requirements pursuant to EPA's interpretation of "anti-backsliding" provision of section 172(e) of the CAA. *See* 69 FR at 23973, April 30, 2004, *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), *modified and rehearing den.,* 489 F.3d 1245 (DC Cir. 2007). The severe area requirements are more stringent than both the moderate and serious area requirements set forth in Title I, part D, subpart 2 of the CAA. Therefore, even if EPA were to not grant the attainment date extension and instead move to reclassify the area to serious nonattainment, no additional emission reduction measures would be required to be implemented in the Baltimore area through a 181(b)(2) reclassification. The extension of the attainment deadline for the 1997 8-hour ozone NAAQS does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 May 10, 2011. 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 1-year attainment date extension for the 1997 8-hour ozone NAAQS for the Baltimore Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 1, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.321, the table entitled "Maryland—Ozone (8-Hour Standard)" is amended by revising the entry for Baltimore, MD (Anne Arundel County, City of Baltimore, Baltimore County, Carroll County, Harford County, and Howard County) and adding footnote 4 to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE

[8-Hour standard]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baltimore, MD:				
Anne Arundel County		Nonattainment		Subpart 2/Moderate. [4]
City of Baltimore		Nonattainment		Subpart 2/Moderate. [4]
Baltimore County		Nonattainment		Subpart 2/Moderate. [4]
Carroll County		Nonattainment		Subpart 2/Moderate. [4]
Harford County		Nonattainment		Subpart 2/Moderate. [4]
Howard County		Nonattainment		Subpart 2/Moderate. [4]
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
* * * *
[4] Attainment date extended to June 15, 2011.

* * * * *

[FR Doc. 2011–5631 Filed 3–10–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 416, and 419

[CMS–1504–CN]

RIN 0938–AP41

Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2011 Payment Rates; Changes to Payments to Hospitals for Graduate Medical Education Costs; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published on November 24, 2010, entitled "Medicare Program: Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates; Ambulatory Surgical Center Payment System and CY 2011 Payment Rates; Payments to Hospitals for Graduate Medical Education Costs; Physician Self-Referral Rules and Related Changes to Provider Agreement Regulations; Payment for Certified Registered Nurse Anesthetist Services Furnished in Rural Hospitals and Critical Access Hospitals."

DATES: *Effective Date:* This document is effective on January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Division of Outpatient Care, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–27926 of November 24, 2010 (75 FR 71800) (hereinafter referred to as the CY 2011 OPPS/ASC final rule), there were several technical and typographic errors that we describe in the "Summary of Errors" section and correct in the "Correction of Errors" section below. In addition to correcting errors in the preamble and Addendum B, this correction notice corrects errors in Addenda AA and BB to the CY 2011 OPPS/ASC final rule. Most of the changes to these Addenda are based on changes to the practice expense (PE) relative value units (RVUs) and the conversion factor (CF) for the Medicare Physician Fee Schedule (MPFS) for CY 2011. In the January 11, 2011 CY 2011 MPFS correction notice (76 FR 1670), we corrected errors in the November 29, 2010 Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011 final rule with comment period (hereinafter referred to as the CY 2011 MPFS final rule) to the PE RVUs and the CF for the CY 2011 MPFS (75 FR 73170). The revised ASC payment system uses the PE RVUs and the CF for the MPFS as part of the office-based and ancillary radiology payment methodology. This correction notice updates the CY 2011 OPPS/ASC final rule to include these corrections.

The provisions in this correction document are effective as if they had been included in the CY 2011 OPPS/ASC final rule appearing in the CY 2011 OPPS/ASC final rule. Accordingly, the corrections are effective January 1, 2011.

II. Summary of Errors

A. Errors in the November 24, 2010 Final Rule

In the CY 2011 OPPS/ASC final rule, we have identified a number of technical and typographic errors. Specifically, on page 71913, we are correcting the inadvertent inclusion of the word "stated" and deleting this word from the description of the public comment in the preamble section entitled "Revision/Removal of Neurostimulator Electrodes (APC 0687)." On pages 71915 and 71916, we incorrectly stated the number of single and total claims used in the ratesetting process for APCs 0664 and 0667, in the "Proton Beam Therapy (APCs 0664 and 0667)" section of the preamble. Specifically, on page 71915 we incorrectly stated that 11,963 single claims out of 12,995 total claims were used in the ratesetting process for APC 0664. On page 71916, we also incorrectly stated that 2,799 single claims out of 3,081 total claims were used in the ratesetting process for APC 0667. We are changing this section to correctly state that we used 10,943 single claims out of 11,895 total claims in the ratesetting process for APC 0664 and that we used 2,569 single claims out of 2,831 total claims in the ratesetting

process for APC 0667. Also, on page 71916 in the "Proton Beam Therapy (APCs 0664 and 0667)" section of the preamble, we incorrectly stated that there were modest declines in the final CY 2011 payment rates for proton therapy compared to the CY 2010 rates. The statement should have indicated that there were modest increases in the final CY 2011 payment rates for proton therapy compared to the CY 2010 rates. Therefore, we are correcting the statement. Furthermore, we are correcting a typographical error on page 71949 that mistakenly listed A0542 instead of A9542 in our response to public comment in the "Packaging of Payment for Diagnostic Radiopharmaceuticals, Contrast Agents, and Implantable Biologicals (Policy—Packaged Drugs and Devices)" section of preamble. On page 72019, we are correcting our inadvertent omission of HCPCS code G0010 and the information associated with it from Table 48B, which is located in the "Payment for Preventive Services" section of preamble. Specifically, with respect to service Hepatitis B vaccine, we are adding HCPCS code G0010 in Table 48B, column two, which is titled "CY 2011 CPT/HCPCS code." We are also adding in Table 48B, column three, titled "Long descriptor," the long descriptor for HCPCS code G0010 which is "Administration of hepatitis B vaccine." We are also adding in Table 48B, column four, titled "USPSTF," a series of periods which are used to indicate that HCPCS code G0010 has a USPSTF rating of A. In addition, in Table 48B, column five, entitled "CY 2010 coinsurance deductible," we are adding language for HCPCS code G0010 which is used to indicate that the coinsurance and deductible are not waived for CY 2010. Finally, in Table 48B, column six, entitled "CY 2011 coinsurance deductible," we are adding language for HCPCS code G0010 which is used to indicate that the coinsurance and deductible are waived for CY 2011. On page 72060, we are correcting the typographical error that mistakenly listed CY 2008 instead of CY 2009 in the "Calculation of the ASC Conversion Factor and ASC Payment Rates" section of preamble. On pages 72125 and 72126, we are correcting the inadvertent numbering error of 3 title headings in the "Effects of OPPS Changes in This Final Rule With Comment Period" section of the rule. Specifically, we are revising the numbering of the following title headings: "Estimated Effect of This Final Rule With Comment Period on Beneficiaries; Conclusion; and Accounting Statement".

On page 72481, we are also correcting the status indicator assignment for HCPCS code G0010 in Addendum B and the information associated with this code. Specifically, on page 72481, we are changing the status indicator of HCPCS code G0010 from "B" to "S" and are indicating that it is assigned to APC 0436 with a relative weight of 0.3826, that is has a payment rate of $26.35, and that it has a minimum unadjusted copayment of $5.27.

In addition, in the CY 2011 OPPS/ASC final rule, we published Addendum AA on pages 72279 through 72331 and Addendum BB on pages 72518 through 72541. As required under § 416.171(d), the revised ASC payment system limits payment for office-based procedures and covered ancillary radiology services to the lesser of the ASC rate calculated under the ASC standard ratesetting methodology or the amount calculated by multiplying the nonfacility PE RVUs for the service by the CF under the MPFS. However, the MPFS CF and PE RVUs listed for some CPT/HCPCS codes in Addendum B to the CY 2011 MPFS final rule (75 FR 73630) were incorrect due to certain technical errors and, consequently, have been corrected in a January 11, 2011 correction notice to the CY 2011 MPFS final rule (76 FR 1670). Since the ASC payment amounts for office-based procedures and covered ancillary radiology services are determined using the amounts in the MPFS final rule, we must correct the CY 2011 payment amounts for ASC procedures and services using the corrected MPFS amounts. Additionally, we are correcting an inadvertent error that mistakenly listed a Payment Indicator (PI) of "A2" instead of "G2" for certain surgical codes in Addenda AA. Specifically, we are revising CPT codes 20005 (Incision and drainage of soft tissue abscess, subfascial (that is, involves the soft tissue below the deep fascia)) on page 72286, 49421 (Insertion of tunneled intraperitoneal catheter for dialysis, open) on page 72315; 64708 (Neuroplasty, major peripheral nerve, arm or leg, open; other than specified) on page 72325; 64712 (Neuroplasty, major peripheral nerve, arm or leg, open; sciatic nerve) on page 72325; 64713 (Neuroplasty, major peripheral nerve, arm or leg, open; brachial plexus) on page 72325; 64714 (Neuroplasty, major peripheral nerve, arm or leg, open; lumbar plexus) on page 72325; and 69801 (Labyrinthotomy, with perfusion of vestibuloactive drug(s); transcanal) on page 72330 to reflect a PI of "G2". The correct PIs are reflected in revised Addendum AA to this correction notice and are posted on the CMS Web site at: *http://www.cms.gov/ASCPayment.*

We are making several corrections to the graduate medical education (GME) payments. Specifically, on page 72165 and page 72223, respectively, we are making insertions for words that were inadvertently omitted and deletions for words that were inadvertently included. On page 72230, we are making 5 corrections to the table titled "LIST OF TEACHING HOSPITALS THAT HAVE CLOSED ON OR AFTER MARCH 23, 2008 AND BEFORE AUGUST 3, 2010". These changes include changing Muhlenberg Regional Medical Center's CBSA from 35620 to 35084, adding Cherry Hospital and attending information to the table, as depicted below, changing the IME cap for Touro Rehabilitation Center from "2.99" to "0.00", and changing the IME cap for Mid-Missouri Mental Health Center from "1.25" to "0.00".

In addition, on page 72331, Addendum AA should have included footnotes containing two notes and an explanation of the single and double asterisks at the end of a HCPCS code. Specifically, the footnotes should have indicated that—(1) the amount of beneficiary coinsurance associated with the ASC payment system is 20 percent of the total payment amount and the coinsurance and deductible are waived for most preventive services; (2) the assignment of a PI for an office-based procedure ("P2" or "P3") is based on a comparison of the final rates according to the ASC standard ratesetting methodology and the MPFS for the same service and a statement that, at the time the information was compiled, the current law required a negative update to the CY 2011 MPFS payment rates; (3) the single asterisk at the end of a HCPCS code means that the office-based designation is temporary because there is insufficient claims data but that this designation will be reconsidered when new claims data become available; and (4) the double asterisks at the end of a HCPCS code indicate that the coinsurance and deductible are waived for this preventive service.

On page 72541, Addendum BB should have included footnotes containing two notes and an explanation of the double asterisk at the end of a HCPCS code. Specifically, the footnotes should have indicated that—(1) the amount of beneficiary coinsurance associated with the ASC payment system is 20 percent of the total payment amount and the coinsurance and deductible are waived for most preventive services; (2) the assignment of a PI for a radiology service ("Z2" or "Z3") is based on a

comparison of the final rates according to the ASC standard ratesetting methodology and for the same service the MPFS and a statement that, at the time the information was compiled, the current law required a negative update to the CY 2011 MPFS payment rates; and (3) the double asterisks at the end of a HCPCS code indicate that the coinsurance and deductible are waived for this preventive service. These changes are reflected in the revised Addenda.

The payment rates presented in this correction notice in Addenda AA and BB will not be used for payment because these payment rates do not reflect the statutory change which occurred after publication of the CY 2011 OPPS/ASC and MPFS final rules, namely section 101 of the Medicare and Medicaid Extenders Act of 2010, signed into law December 15, 2010 (Pub. L. 111–309), provided for a zero percent update to the Physician Fee Schedule.

III. Correction of Errors in the November 24, 2010 Final Rule

In FR Doc. 2010–27926 we are making the following corrections:

1. On page 71913, in the second column, in line 24, the word "stated" is removed.

2. On page 71915, in the third column, fourth full paragraph in—

a. Line 16, the number "11,963" is corrected to read "10,943".

b. Line 17, the number "12,995" is corrected to read "11,895".

3. On page 71916, in the first column, first partial paragraph in—

a. Line 1, the number "2,799" is corrected to read "2,569".

b. Line 2, the number "3,081" is corrected to read "2,831".

4. On page 71916, in the first column, first full paragraph, in line 6, the word "declines" is corrected to read "increases".

5. On page 71949, in the second column, in line 18 from the bottom of the page, the code "A0542" is corrected to read "A9542".

6. On page 72019 in Table 48B, under service "Hepatitis B Vaccine" is corrected to include the following table insertion after CY 2011 CPT/HCPCS code "90747.":

G0010	Administration of hepatitis B vaccine	.....	Not Waived	Waived

7. On page 72060, in the first column, first partial paragraph in line 14, the year "CY 2008" is corrected to read "CY 2009".

8. On page 72125, in the first column, the title of the heading, "Estimated Effect of This Final Rule With Comment Period on Beneficiaries" is renumbered from "6" to "5".

9. On page 72125, in the third column, title of the heading, "Conclusion" is renumbered from "7" to "6".

10. On page 72126, in the first column, title of the heading, "Accounting Statement" is renumbered from "8" to "7".

11. On page 72165, in the first column, in the first full paragraph, in lines 1 through 17, the first sentence is corrected to read as follows:

"In response to the commenter who asked for clarification as to whether, if a hospital received FTE cap slots through participation in a Medicare GME affiliated group but was training below its cap adjusted under the Medicare GME affiliation agreement during its reference cost reporting period would it face a cap reduction, we are clarifying that the hospital that received the cap slots, not the hospital that loaned the cap slots, would receive a cap reduction, that is, the hospital that received the slots but is training below its adjusted cap would receive a cap reduction".

12. On page 72223, in the first column, in the first full paragraph, in lines 14 through 23 the sentence starting with the word "Therefore," is corrected as follows:

"Therefore, because applications under section 5506 are program-specific, we believe that a hospital that is applying for slots for use in a geriatrics program should not be precluded from also applying for slots for other programs (although the requests for those other programs, even other primary care or surgery programs, would fall under other Ranking Criteria)."

13. On page 72230, the table titled "LIST OF TEACHING HOSPITALS THAT HAVE CLOSED ON OR AFTER MARCH 23, 2008 AND BEFORE AUGUST 3, 2010" is being republished to read as follows:

LIST OF TEACHING HOSPITALS THAT HAVE CLOSED ON OR AFTER MARCH 23, 2008 AND BEFORE AUGUST 3, 2010

Provider No.	Provider name	Terminating date	DGME cap	IME cap	Sec. 422 Increase/ decrease DGME	Sec. 422 Increase/ decrease IME	CBSA
01–0064	Physicians Carraway Medical Ctr	11/01/2008	65.08	65.08	−4.5	−4.5	13820
03–0017	Mesa General Hospital	05/31/2008	20.52	13.33	0.00	0.00	38060
14–0075	Michael Reese Hospital	06/11/2009	199.52	200.82	0.00	0.00	16974
15–0029	St. Joseph Hospital Mishawaka	07/01/2008	13.43	7.68	−3.79	−1.23	43780
19–3034	Touro Rehabilitation Center	12/31/2009	3.20	0.00	0.00	0.00	35380
26–4011	Mid-Missouri Mental Health Center	06/30/2009	5.33	0.00	0.00	0.00	17860
31–0063	Muhlenberg Regional Medical Center	08/13/2008	30.17	30.17	0.00	0.00	35084
31–0088	William B Kessler Memorial Hospital	03/12/2009	2.00	2.00	0.00	0.00	12100
33–0133	Cabrini Medical Center	06/16/2008	134.01	124.1	−21.36	−23.83	35644
33–0357	Caritas Health Care, Inc.	03/06/2009	190.23	190.23	−9.40	−9.40	35644
33–0390	North General Hospital	07/10/2010	57.17	54.29	−6.23	−4.08	35644
34–4003	Cherry Hospital	09/01/2008	1.00	0.00	0.00	0.00	24140
39–0023	Temple East Hospital	06/28/2009	2.36	2.36	0.00	0.00	37964
39–0169	Geisinger South Wilkes-Barre	07/10/2009	4.00	3.33	0.98	1.67	42540
42–0006	Charleston Memorial Hospital	11/25/2008	40.88	40.83	0.00	0.00	16700

14. On page 72481, in Addendum B for HCPCS code G0010, in—

a. Column 4, the SI code "B" is corrected to read "S".

b. Column 5, the APC code "0436" is added.

c. Column 6, the relative weight "0.3826" is added.

d. Column 7, the payment rate "$26.35" is added.

e. Column 9, the minimum unadjusted copayment $5.27" is added.

Corrections to the Addenda in AA and BB

Addendum AA—Final ASC Covered Surgical Procedures for CY 2011 (Including Surgical Procedures for Which Payment is Packaged) and

Addendum BB—Final ASC Covered Ancillary Services Integral to Covered Surgical Procedures for CY 2011 (Including Ancillary Services for Which Payment is Packaged)

Changes to the MPFS impacted multiple CPT/HCPCS codes on Addenda AA and BB. Therefore, we are republishing Addenda AA and BB in their entirety to take into account the updated CY 2011 MPFS information and the corrected PIs for the seven HCPCS codes. We note that the revised rates continue to reflect the negative update to the MPFS for CY 2011 based on current law at the time of publication of the CY 2011 MPFS final rule and the corrections to the PE RVUs and CFs. See attached charts.

We also are adding the following footnotes to the conclusion of Addendum AA:

Note 1: The Medicare program payment is 80 percent of the total payment amount and beneficiary coinsurance is 20 percent of the total payment amount. Section 4104, as amended by section 10406, of the Affordable Care Act waives coinsurance and deductible for most preventive services, identified with a double asterisk (**).

Note 2: Payment indicators for "office-based" procedures (P2, P3) are based on a comparison of the final rates according to the ASC standard ratesetting methodology and the MPFS. At the time we compiled this Addendum, current law requires a negative update to the MPFS payment rates for CY 2011. For a discussion of those rates, we refer readers to the CY 2011 MPFS final rule.

*: Asterisked codes(*) indicate that the procedure's "office-based" designation is temporary because we have insufficient claims data. We will reconsider this designation when new claims data become available.

**: Double-asterisked codes(*) indicate that the coinsurance and deductible are waived under section 4104, as amended by section 10406, of the Affordable Care Act, which waives coinsurance and deductible for most preventive services.

We are adding the following footnotes to the conclusion of Addendum BB:

Note 1: The Medicare program payment is 80 percent of the total payment amount and beneficiary coinsurance is 20 percent of the total payment amount. Section 4104, as amended by section 10406, of the Affordable Care Act waives the coinsurance and deductible for most preventive services, identified with a double asterisk (**).

Note 2: Payment indicators for radiology services (Z2, Z3) are based on a comparison of the final rates according to the ASC standard ratesetting methodology and the MPFS. At the time we compiled this Addendum, current law required a negative update to the MPFS payment rates for CY 2011. For a discussion of those rates, we refer readers to the CY 2011 MPFS final rule.

**: Defined as a preventive service with no coinsurance or deductible. Section 4104, as amended by section 10406, of the Affordable Care Act waives the coinsurance and deductible for most preventive services

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedures and the 30-day delay in the effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary or contrary to the public interest to follow the notice and comment procedures or to comply with the 30-day delay in the effective date, and incorporates a statement of the findings and the reasons therefore in the notice.

Therefore, for reasons noted below, we find good cause to waive proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This notice merely provides technical corrections to the CY 2011 OPPS/ASC final rule that was effective on January 1, 2011 and does not make substantive changes to the policies or payment methodologies that were adopted in that final rule. As a result, this notice is intended to ensure that the CY 2011 OPPS/ASC final rule with comment period accurately reflects the policies adopted in the final rule. Since the provisions of the CY 2011 OPPS/ASC final rule were promulgated previously through notice and comment rulemaking and this notice merely conforms the document to the final policies of the CY 2011 OPPS/ASC final rule with comment period, we believe it is unnecessary to undergo further notice and comment procedures. In addition, we believe it is in the public interest to have the correct information and to have it as soon as possible and not delay its dissemination. For the reasons stated above, we find that both notice and comment procedures and the 30-day delay in effective date for this correction document are unnecessary and contrary to the public interest. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction document.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 4, 2011.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2011–5674 Filed 3–10–11; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[IB Docket No. 04–47; FCC 07–118]

Modifications of the Rules and Procedures Governing the Provisions of International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements international telecommunications service regulations. The information collection requirements were approved on February 18, 2011 by OMB.

DATES: The amendments to 47 CFR 63.19(a)(1) and (a)(2) and 47 CFR 63.24(c), published at 72 FR 54363, September 25, 2007, are effective on March 11, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Cathy Williams, *cathy.williams@fcc.gov* or on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on February 18, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 63.19(a)(1) and (a)(2) and 47 CFR

63.24(c). The Commission publishes this document to announce the effective date of these rule sections. See In the Matter of Amendment of Parts 1 and 63 of the Commission's Rules, IB Docket No. 04–47; FCC 07–118, 72 FR 54363, September 25, 2007.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on February 18, 2011, for the information collection requirements contained in 47 CFR 63.19(a)(1) and (a)(2) and 47 CFR 63.24(c). Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

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

The OMB Control Number is 3060–0686 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060–0686.

Title: International Section 214 Process and Tariff Requirements, 47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311.

Form No.: FCC Form 214.

OMB Approval Date: February 18, 2011.

OMB Expiration Date: February 28, 2014.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,670 respondents; 10,264 responses.

Estimated Time per Response: 0.50–16 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4(i), 4(j)11, 201–205, 211, 214, 219, 220, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 21, 201–205, 214, 219, 220, 303(r), 309, and sections 34–39.

Total Annual Burden: 34,376 hours.

Total Annual Cost: $3,625,391.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission ("Commission") received approval from the Office of Management and Budget (OMB) for the revision of OMB Control No. 3060–0686 titled, "International Section 214 Authorization Process and Tariff Requirements—47 CFR 63.10, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311." This information collection was revised to receive OMB approval for information collection requirements that were adopted in the Matter of Amendment of Parts 1 and 63 of the Commission's Rules, IB Docket No. 04–47; FCC 07–118 on June 20, 2007 (released June 22, 2007). The following information collection requirements received OMB approval on February 18, 2011:

Section 63.19(a)(1) states that the carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 30 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

Section 63.19(a)(2) states that the carrier shall file with this Commission a copy of the notification on the date on which notice has been given to all affected customers. The filing may be made by letter (sending an original and five copies to the Office of the Secretary, and a copy to the Chief, International Bureau) and shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service.

Section 63.24(c) requires that a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis. Once a carrier determines that there has been a transfer of control, it must file an application with the Commission.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–5634 Filed 3–10–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[IB Docket No. 04–47; FCC 10–187]

Modifications of the Rules and Procedures Governing the Provisions of International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements in international telecommunications service regulations. The information collection requirements were approved on February 18, 2011 by OMB.

DATES: The amendments to 47 CFR 1.767(k)(4), published at 75 FR 81488, December 28, 2010, are effective on March 11, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Cathy Williams, *cathy.williams@fcc.gov* or on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on February 18, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 1.7676(k)(4). The Commission publishes this document to announce the effective date of this rule section. See In the Matter of Amendment of Parts 1 and 63 of the Commission's Rules, IB Docket No. 04–47; FCC 10–187, 75 FR 81488, December 28, 2010.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on February 18, 2011, for the information collection requirements contained in 47 CFR 1.767(k)(4). Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

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

The OMB Control Number is 3060–0944 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060–0944.

Title: Cable Landing License Act, 47 CFR 1.767; Executive Order 10530.

OMB Approval Date: February 18, 2011.

OMB Expiration Date: February 28, 2014.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 255 respondents; 255 responses.

Estimated Time per Response: 1–16 hours (average).

Frequency of Response: On occasion reporting requirement; third party disclosure requirement and quarterly reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in the Submarine Cable Landing License Act of 1921, Executive Order 10530, 47 U.S.C. 34, 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

Total Annual Burden: 534 hours.

Total Annual Cost: $268,545.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 2, 2010, the Commission released a Recon Order titled, "In the Matter of Amendment of Parts 1 and 63 of the Commission's Rules," IB Docket No. 04–47, FCC 10–187. In this Recon Order, the Commission amended its cable landing license application rules and application procedures to require applicants to certify their compliance with the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1456. The goal of the CZMA is to preserve, protect, develop and, where possible, restore and enhance the nation's coastal resources. Therefore, 47 CFR 1.767(k)(4) states that cable landing license applicants must furnish a certification to the Commission that the applicant is not required to submit a consistency certification with any state pursuant to the Coastal Zone Management Act.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–5635 Filed 3–10–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to add text and a reference to a memorandum from the Director, Defense Procurement and Acquisition Policy.

DATES: *Effective Date:* March 11, 2011. *Applicability Date:* All solicitations for competitive, negotiated acquisitions issued after July 1, 2011, are subject to these procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS by adding a section at 215.300 with a reference to Director, Defense Procurement and Acquisition Policy memorandum dated March 4, 2011, Department of Defense Source Selection Procedures. The memorandum provides mandatory requirements for conducting competitively negotiated acquisitions under FAR part 15 and outlines a common set of principles and procedures for conducting such acquisitions.

List of Subjects in 48 CFR Part 215

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 215.300 is added to subpart 215.3 to read as follows:

215.300 Scope of subpart.

Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum dated March 4, 2011, Department of Defense Source Selection Procedures, when conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures.

[FR Doc. 2011–5601 Filed 3–10–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 100826393–1171–01]

RIN 0648–BA19

Western Pacific Pelagic Fisheries; Hawaii-Based Shallow-set Longline Fishery; Court Order

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

ACTION: Final rule.

SUMMARY: This final rule revises the annual number of allowable incidental interactions that may occur between the Hawaii-based shallow-set pelagic longline fishery and loggerhead sea turtles. The U.S. District Court for the District of Hawaii issued an Order that directs NMFS to revise the annual interaction limit for loggerhead turtles from 46 to 17. The intent of this final rule is to ensure that the regulations promulgate the revised limit as required by the Court Order.

DATES: Effective March 10, 2011.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru (Pacific Islands Region, NMFS), tel 808–944–2207.

SUPPLEMENTARY INFORMATION: Pelagic fisheries in the U.S. western Pacific are managed under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region, formerly the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). The Secretary of Commerce approved FMP Amendment 18 on June 17, 2009. The purpose of Amendment 18 was to optimize yield from the Hawaii-based pelagic shallow-set longline fishery without jeopardizing the continued existence of sea turtles and other protected resources. On December 10, 2009, the National Marine Fisheries Service (NMFS) published a final rule implementing Amendment 18 (74 FR

65460). NMFS published a technical correction to that rule on January 8, 2010 (75 FR 1023).

Section 9 of the Endangered Species Act (ESA) prohibits taking listed species without specific authorization. When a commercial fishing activity that is authorized by NMFS is consistent with Section 7(a)(2) of the ESA, and that action may incidentally take listed species, NMFS issues an incidental take statement that, in relevant parts, specifies the impact of any incidental take. The 2009 final rule, as corrected, increased the annual number of allowable incidental interactions (including hooking, entanglement, capture, and mortality, whether the turtle is brought on board the vessel or not) that may occur between the Hawaii-based pelagic shallow-set longline fishery and loggerhead sea turtles from 17 to 46. The 2009 final rule also removed the annual limit on the number of fishing gear deployments (longline sets), and made several administrative clarifications to the regulations unrelated to Amendment 18.

On December 16, 2009, Turtle Island Restoration Network, the Center for Biological Diversity, and Kahea: The Hawaiian Environmental Alliance (collectively the "Plaintiffs") filed an action in the U.S. District Court for the District of Hawaii (*Turtle Island Restoration Network, et al.,* v. *Department of Commerce, et al., and Hawaii Longline Association,* Civil No. 09–00598 DAE (D. HI)). The Plaintiffs alleged that the Department of Commerce, NMFS, and Gary Locke, in his official capacity as the Secretary of Commerce, (collectively the "Federal Defendants") failed to comply with applicable laws concerning the conservation of protected species, including the Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), Marine Mammal Protection Act (MMPA), and the Administrative Procedure Act (APA).

On January 22, 2010, the Hawaii Longline Association filed a complaint against the Federal Defendants, alleging that the Federal Defendants failed to make certain mandatory determinations required under the MMPA, ESA, and APA, to authorize the shallow-set longline fishery to incidentally take humpback whales. This action (*Hawaii Longline Association* v. *NMFS,* C.A. 10–00044 DAE–KSC (D. HI)) was consolidated with the above action, and eventually was dismissed following issuance of a three-year MMPA permit authorizing the incidental taking of the Central North Pacific stock of humpback whales by the Hawaii-based longline fisheries.

On June 24, 2010, by Order of the U.S. District Court, the Plaintiffs' complaint was dismissed without prejudice for failure to properly plead jurisdiction under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Plaintiffs then filed a first amended complaint, also on June 24, 2010. Thereafter, the Federal Defendants and Plaintiffs agreed upon terms of settlement.

The U.S. District Court for the District of Hawaii issued an Order on January 31, 2011, approving a settlement between the Plaintiffs and the Federal Defendants. The Court ordered that the portions of the regulations published at 74 FR 65460 (December 10, 2009), as corrected by 75 FR 1023 (January 8, 2010), and codified at 50 CFR 665.813(b)(1), that relate to the incidental take of loggerhead sea turtles be vacated and remanded to the Federal Defendants. Specifically, the Court Order vacates that portion of the final rule that had increased the allowable interactions with loggerhead sea turtles from 17 to 46.

The Court Order also reinstates the level of incidental take for loggerhead sea turtles established under the regulations published at 69 FR 17329 (April 2, 2004) (the "2004 Regulations"), and those portions of the associated February 23, 2004, biological opinion and incidental take statement that relate to loggerhead sea turtles. The order directs NMFS to issue a new rule revising the interaction limit back to 17. In addition, the Court Order reinstated those portions of the 2004 biological opinion and incidental take statement that relate to leatherback sea turtles. The authorized incidental take of leatherback sea turtles remains unchanged at 16.

Pursuant to the Court Order, this final rule revises the annual number of allowable incidental interactions that occur between the Hawaii-based pelagic shallow-set longline fishery and loggerhead sea turtles from 46 to 17. This final rule also removes the provision for adjusting downward the annual interactions limit the following year by the number of interactions by which the limit was exceeded, and the requirements for the Regional Administrator to publish a notice of the annual interaction limits. The fishery will be closed for the remainder of the calendar year if either the interaction limit for leatherback sea turtles or loggerhead sea turtles is reached.

All other provisions that are currently applicable to the fishery remain unchanged, including, but not limited to, limited access, vessel and gear marking requirements, vessel length restrictions, Federal catch and effort logbooks, 100-percent observer coverage, large longline restricted areas around the Hawaiian Archipelago, vessel monitoring system, annual protected species workshops, and the use of sea turtle, seabird, and marine mammal handling and mitigation gear and techniques.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the January 31, 2011, Court Order, the Magnuson-Stevens Act, the Endangered Species Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because this rulemaking is required by Court Order and prior notice and opportunity for public comment are not required under 5 U.S.C. 553, or any other law, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 603–605, do not apply to this rule. In addition, because the changes required by the Court Order that are identified in this rule are non-discretionary, the National Environmental Policy Act does not apply to this rule.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive notice and public comment on this action because it is unnecessary and contrary to the public interest, as provided by 5 U.S.C. 553(b)(B). This action is limited in scope and ensures that the regulatory text provides accurate information to the regulated public that is consistent with a Federal Court Order. NMFS does not have discretion to take other action, as there is no alternative to complying with the requirements of the Court Order.

Furthermore, the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness period, as provided by 5 U.S.C. 553(d)(3), finding that such delay would be contrary to the public interest because the measures contained in this rule are necessary to ensure that the fishery is conducted in compliance with a Federal Court Order and the ESA. If the requirements are not implemented immediately, then sea turtles will not be adequately protected from potential incidental take in excess of the Court-ordered limit.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Fisheries, Fishing, Hawaii, Sea turtles.

Dated: March 7, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.813, revise paragraph (b)(1) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(b) Limits on sea turtle interactions. (1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting. The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 16, and the annual limit for loggerhead sea turtles (*Caretta caretta*) is 17.

* * * * *

[FR Doc. 2011–5664 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 48
Friday, March 11, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 600, 603, 609, and 611

RIN 1990–AA36

Procedures for Submitting to the Department of Energy Trade Secrets and Commercial or Financial Information That Is Privileged or Confidential

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: DOE proposes to standardize across its various programs procedures for the submission and protection of trade secrets and commercial or financial information that is privileged or confidential, where such information is submitted by applicants for various forms of DOE assistance (including financial assistance such as grants, cooperative agreements, and technology investment agreements, as well as loans and loan guarantees). The procedures that would be established across DOE programs are modeled after existing procedures DOE uses to process loan applications submitted to DOE's Advanced Technology Vehicles Manufacturing Incentive Program.

DATES: Comments on these proposed procedures must be postmarked by April 11, 2011.

ADDRESSES: Interested parties may submit comments, identified by Regulation Identifier Number (RIN) 1990–AA36, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
2. *E-mail: 1990–AA36@hq.doe.gov.* Include RIN 1990–AA36 in the subject line of the message.
3. *Postal Mail:* Office of the General Counsel, U.S. Department of Energy, Room 6A–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original and include RIN 1990–AA36 on your submission.
4. *Hand Delivery/Courier:* Office of the General Counsel, U.S. Department of Energy, Room 6A–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–5281. Please submit one signed paper original and include RIN 1990–AA36 on your submission.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Assistant General Counsel for Legislation, Regulation and Energy Efficiency, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9523. E-mail: *1990-AA36@hq.doe.gov.* Include RIN 1990–AA36 in the subject line of the message.

SUPPLEMENTARY INFORMATION: DOE provides assistance to eligible applicants through a number of different programs. This assistance can take the form of financial assistance (*i.e.,* grants, cooperative agreements, and technology investment agreements), loan guarantees, and direct loans, among others. DOE has consistently sought to protect trade secrets and commercial or financial information that is privileged or confidential submitted by applicants for these forms of assistance, but the procedures required of applicants when submitting such information can vary. DOE proposes procedures for the submission to DOE of trade secrets and commercial or financial information that is privileged or confidential meant to standardize DOE's procedures for processing and handling applicant submissions containing such information. The procedures proposed in this rulemaking are modeled after existing procedures DOE uses to process loan applications submitted to DOE's Advanced Technology Vehicles Manufacturing Incentive Program.

DOE proposes minor changes to the Notice of Restriction on Disclosure and Use of Data in 10 CFR 600.15(b)(1), as well as corresponding changes to 10 CFR 600.15(a) and 600.15(b)(2) and (3). These changes are intended to allow for cross reference from other portions of subpart H (specifically, parts 609—Loan Guarantees for Projects that Employ Innovative Technologies and 611—Advanced Technology Vehicles Manufacturer Assistance Program) while recognizing that part 600 does not otherwise apply to loans and loan guarantees.

DOE proposes to amend 10 CFR 600.15(b)(1) to require a party submitting information to DOE, at the time of submission, to identify and assert a claim of exemption regarding information it considers to be trade secrets or commercial or financial information that is privileged or confidential such that the information would be exempt from disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. 552). This claim of exemption must be made by placing the following notice on the first page of the application or other document and specifying the page or pages to be restricted: "Pages [__] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source."

To further protect trade secrets and commercial or financial information that is privileged or confidential, DOE also proposes to add a requirement in section 600.15(b)(1) that each page containing such data must be specifically identified and marked with text that is similar to the following: "May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure." In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential on the page or pages on which this statement appears must be marked with brackets or other clear identification, such as highlighting.

DOE acknowledges that the marking procedures set forth above may not be feasible on unalterable forms submitted through Grants.gov. In such cases only, DOE proposes that submitters include in a cover letter or the project narrative a notice containing language substantially similar to the following: "Forms [__] may contain trade secrets or commercial or financial information that is

privileged or confidential and exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source." The cover letter or project narrative must also specify the particular information on such forms that the submitter believes to be trade secrets or commercial or financial information that is privileged or confidential.

DOE also proposes to amend 10 CFR 603.850 to require that the markings affixed to data for technology investment agreements that may contain trade secrets or commercial or financial information that is privileged or confidential conform to the marking requirements of 10 CFR 600.15.

DOE further proposes that the regulations implementing its loan guarantee program for projects that employ innovative technologies under Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514) cross-reference 10 CFR 600.15. These regulations are set forth at 10 CFR part 609. DOE proposes to establish the same marking requirements as described above for any information submitted through the Title XVII loan application process, including pre-applications, applications, and any additional information provided by loan applicants. Similarly, DOE proposes that the regulations implementing its Advanced Technology Vehicles Manufacturing (ATVM) Incentive Program at 10 CFR part 611 cross-reference 10 CFR 600.15. DOE already applies to the ATVM program procedures virtually identical to those proposed in this notice. DOE here proposes to establish the marking requirements described above in the program's implementing regulations.

Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE has reviewed today's proposed rule under the Regulatory Flexibility Act and certifies that, if adopted, the rule would not have a significant impact on a substantial number of small entities. While DOE recognizes that some applicants for assistance may be small businesses according to SBA size standards, DOE believes that the impact on such applicants of the proposed rule would not be significant. The proposed rule does not change the information applicants are required to submit to apply for the various forms of DOE assistance. It merely instructs applicants how to mark information that they believe to be trade secrets or commercial or financial information that is privileged or confidential.

C. Review Under the Paperwork Reduction Act

The information collection requirements for the various forms of assistance to which the marking requirements in this proposed rule would apply have been approved under OMB Control Numbers 1910–0400 (Financial Assistance Regulations) and 1910–5134 (Title XVII loan guarantee program).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act

In this proposed rule, DOE proposes procedures for the submission of information relating to various forms of assistance, including grants, cooperative agreements, technology investment agreements, loans, and loan guarantees. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule is a procedural rule covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that is strictly procedural in nature. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have other federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has considered today's proposed rule in accordance with Executive Order 13132 and its policy and determined that this proposed rule setting forth requirements for the marking of trade secrets and commercial or financial information that is privileged or confidential, if adopted, would not preempt State law or have any federalism impacts. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (February 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear

legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b).) UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820.) (This policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866 or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action, which would establish marking requirements for information submitted to DOE that the submitter believes to be trade secrets or commercial or financial information that is privileged or confidential, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects for the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy, issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that today's proposed rule does not contain any influential or highly influential scientific information that would be subject to the peer review requirements of the OMB Bulletin.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Parts 600, 603, 609, and 611

Accounting, Administrative practice and procedure, Colleges and universities, Confidential business information, Energy, Government contracts, Grant programs, Hospitals, Indians, Intergovernmental relations, Loan programs, Lobbying, Nonprofit organizations, Penalties, Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 7, 2011.

Steven Chu,

Secretary of Energy.

For the reasons stated in the preamble, DOE proposes to amend Subchapter H of Chapter II of Title 10, Code of Federal Regulations, to read as set forth below:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.,* unless otherwise noted.

2. Section 600.15 is revised to read as follows:

§ 600.15 Authorized uses of information.

(a) *General.* Information contained in applications shall be used only for evaluation purposes unless such information is generally available to the public or is already the property of the Government. The Trade Secrets Act, 18 U.S.C. 1905, prohibits the unauthorized disclosure by Federal employees of trade secret and confidential business information.

(b) *Treatment of application information.* (1) An application or other document, including any unsolicited information, may include technical data and other data, including trade secrets and commercial or financial information that is privileged or confidential, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation.

(i) To protect such data, the submitter must mark the cover sheet of the application or other document with the following Notice:

Notice of Restriction on Disclosure and Use of Data

Pages [__] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

(ii) (A) To further protect such data, except as otherwise provided in paragraph (b)(1)(iii) of this section, each page containing trade secrets or commercial or financial information that is privileged or confidential must be specifically identified and marked with text similar to the following:

May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.

(B) In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential must be marked with brackets or other clear identification, such as highlighting.

(iii) (A) In the case where a form for data submission is unalterable, such as certain forms submitted through Grants.gov, submitters must include in a cover letter or the project narrative a notice like the following:

Forms [__] may contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

(B) The cover letter or project narrative must also specify the particular information on such forms that the submitter believes contains trade secrets or commercial or financial information that is privileged or confidential.

(2) Unless DOE specifies otherwise, DOE shall not refuse to consider an application or other document solely on the basis that the application or other document is restrictively marked in accordance with paragraph (b)(1) of this section.

(3) Data (or abstracts of data) specifically marked in accordance with paragraph (b)(1) of this section shall be used by DOE or its designated representatives solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting assistance agreement, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) This process enables DOE to follow the provisions of 10 CFR 1004.11(d) in the event a Freedom of Information Act (5 U.S.C. 552) request is received for the data submitted, such that information not identified as subject to a claim of exemption may be released without obtaining the submitter's views under the process set forth in 10 CFR 1004.11(c)

PART 603—TECHNOLOGY INVESTMENT AGREEMENTS

3. The authority citation for part 603 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.,* unless otherwise noted.

4. Section 603.850 is revised to read as follows:

§ 603.850 Marking of data.

To protect the recipient's interests in data, the TIA should require the recipient to mark any particular data that it wishes to protect from disclosure as specified in 10 CFR 600.15(b).

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

5. The authority citation for part 609 continues to read as follows:

Authority: 42 U.S.C. 7254, 16511–16514.

6. Section 609.4 is amended by revising the introductory text to read as follows:

§ 609.4 Submission of Pre-Applications.

In response to a solicitation requesting the submission of Pre-Applications, either Project Sponsors or Applicants may submit Pre-Applications to DOE. The information submitted in or in connection with Pre-Applications will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b). Pre-Applications must meet all requirements specified in the solicitation and this part. At a minimum, each Pre-Application must contain all of the following:

* * * * *

7. Section 609.5 is amended by revising paragraph (d) to read as follows:

§ 609.5 Evaluation of Pre-Applications.

* * * * *

(d) After the evaluation described in paragraph (c) of this section, DOE will determine if there is sufficient information in the Pre-Application to assess the technical and commercial viability of the proposed project and/or the financial capability of the Project Sponsor and to assess other aspects of the Pre-Application. DOE may ask for additional information from the Project Sponsor during the review process and may request one or more meetings with the Project Sponsor. Any additional information submitted will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

* * * * *

8. Section 609.6 is amended by revising paragraph (a) to read as follows:

§ 609.6 Submission of Applications.

(a) In response to a solicitation or written invitation to submit an Application, an Applicant submitting an Application must meet all requirements and provide all information specified in the solicitation and/or invitation and this part. The information submitted in or in connection with Applications will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

* * * * *

9. Section 609.7 is amended by revising paragraph (c) to read as follows:

§ 609.7 Programmatic, technical and financial evaluation of Applications.

* * * * *

(c) During the Application review process DOE may raise issues or concerns that were not raised during the Pre-Application review process where a Pre-Application was requested in the applicable solicitation. Any additional information submitted to DOE will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

* * * * *

PART 611—ADVANCED TECHNOLOGY VEHICLES MANUFACTURER ASSISTANCE PROGRAM

10. The authority citation for part 611 continues to read as follows:

Authority: Pub.L. 110–140 (42 U.S.C. 17013), Pub. L. 110–329.

11. Section 611.101 is amended by revising the introductory text to read as follows:

§ 611.101 Application.

The information and materials submitted in or in connection with applications will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b). An application must include, at a minimum, the following information and materials:

* * * * *

12. Section 611.103 is amended by revising paragraph (a) to read as follows:

§ 611.103 Application evaluation.

(a) *Eligibility screening.* Applications will be reviewed to determine whether the applicant is eligible, the information required under § 611.101 is complete, and the proposed loan complies with applicable statutes and regulations. DOE can at any time reject an application, in whole or in part, that does not meet these requirements. Any additional information submitted to DOE will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

* * * * *

[FR Doc. 2011–5677 Filed 3–10–11; 8:45 am]

BILLING CODE 6450–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

RIN 1212–AB18

Benefits Payable in Terminated Single-Employer Plans; Limitations on Guaranteed Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans. That regulation sets forth rules on PBGC's guarantee of pension plan benefits, including rules on the phase-in of the guarantee. The amendments implement section 403 of the Pension Protection Act of 2006, which provides that the phase-in period for the guarantee of benefits that are contingent upon the occurrence of an "unpredictable contingent event," such as a plant shutdown, starts no earlier than the date of the shutdown or other unpredictable contingent event.

DATES: Comments must be received on or before May 10, 2011.

ADDRESSES: Comments should be identified by Regulation Information Number (RIN 1212–AB18), and may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

PBGC will make all comments available on its Web site, *http://www.pbgc.gov.* Copies of comments also may be obtained by writing PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director; Gail A. Sevin, Manager; or Bernard Klein, Attorney; Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4224. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4224.)

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation (PBGC) administers the single-employer pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The program covers certain private-sector, single-employer defined benefit plans, for which premiums are paid to PBGC each year.

Covered plans that are underfunded may terminate either in a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan, and becomes responsible for paying benefits in accordance with the provisions of Title IV.

Under sections 4022(b)(1) and 4022(b)(7) of ERISA and §§ 4022.24 through .26 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, 29 CFR part 4022, PBGC's guarantee of new pension benefits and benefit increases is "phased in" over a five-year period, which begins on the date the new benefit or benefit increase is adopted or effective (whichever is later).

On August 17, 2006, the Pension Protection Act of 2006, Public Law 109–280 (PPA 2006), was signed into law. Section 403 of PPA 2006 amended section 4022 of ERISA by adding a new section 4022(b)(8), which changes the start of the phase-in period for plant shutdown and other "unpredictable contingent event benefits" (UCEBs). Under new section 4022(b)(8), the phase-in rules are applied as if a plan amendment creating a UCEB was adopted on the date the unpredictable contingent event ("UCE") occurred rather than as of the actual adoption date of the amendment, which is almost always earlier. As a result of the new provision, the guarantee of benefits arising from plant shutdowns and other UCEs that occur within 5 years of plan termination (or the date the plan sponsor entered bankruptcy, if applicable under PPA 2006, as explained below) generally will be lower than under prior law. This new provision, which does not otherwise change the existing phase-in rules, applies to benefits that become payable as a result of a UCE that occurs after July 26, 2005.

This proposed rule would amend part 4022 to implement the PPA 2006 changes to the guarantee of UCEBs. With one exception, explained below under the heading "Bankruptcy filing

date treated as deemed termination date," the other provisions of PPA 2006 affecting PBGC's guarantee do not affect phase-in of the guarantee of UCEBs and thus are not addressed in this proposed rule.

Phase-in of PBGC Guarantee

Under section 4022(b)(7) of ERISA, the guarantee of benefits under a new plan or of a new benefit or benefit increase under an amendment to an existing plan (all of which are referred to in PBGC's regulations as "benefit increases") is "phased in" based on the number of full years the benefit increase is in the plan. The time period that a benefit increase has been provided under a plan is measured from the later of the adoption date of the provision creating the benefit increase or the effective date of the benefit increase. Generally, 20 percent of a benefit increase is guaranteed after one year, 40 percent after two years, *etc.,* with full phase-in of the guarantee after five years. If the amount of the monthly benefit increase is below $100, the annual rate of phase-in is $20 rather than 20 percent.

The phase-in limitation generally serves to protect the insurance program from losses caused by benefit increases that are adopted or made effective shortly before plan termination. This protection is needed because benefit increases can create large unfunded liabilities. An example is a plan amendment that significantly increases credit under the plan benefit formula for service performed prior to the amendment. Such increases generally are funded over time under the ERISA minimum funding rules. An immediate full guarantee would result in an inappropriate loss for PBGC if a plan terminated before an employer significantly funded a benefit increase. Phase-in of the guarantee allows time for some funding of new liabilities before they are fully guaranteed.

Funding of liabilities created by a benefit increase generally starts at the same time as the PBGC guarantee first applies under the phase-in rule. Under ERISA and the Internal Revenue Code ("Code"), liability created by a benefit increase must be reflected in a plan's required contribution no later than the plan year following adoption of the benefit increase. For example, a benefit increase that is adopted and effective in the 2009 plan year must be reflected in the minimum funding contribution calculations for a plan year not later than the 2010 plan year. Similarly, such a benefit increase would become partially guaranteed during the 2010 plan year.

Over the years, legislative reforms, including those in PPA 2006, have generally shortened the permitted funding period from thirty years to seven years (or less in certain cases). This closer coordination between the permitted funding period and five-year guarantee phase-in period generally enhanced the effectiveness of phase-in in protecting the PBGC insurance program against losses due to unfunded benefit increases. However, as explained below, before the PPA 2006 changes to the phase-in of UCEBs, this coordination generally failed in the case of UCEBs.

Unpredictable Contingent Event Benefits

UCEBs, described more specifically below, are benefits or benefit increases that become payable solely by reason of the occurrence of a UCE such as a plant shutdown.

UCEBs typically provide a full pension, without any reduction for age, starting well before an unreduced pension would otherwise be payable. The events most commonly giving rise to UCEBs are events relating to full or partial plant shutdowns or other reductions in force. UCEBs, which are frequently provided in pension plans in various industries such as the steel and automobile industries, are payable with respect to full or partial plant shutdowns as well as shutdowns of different kinds of facilities, such as administrative offices, warehouses, retail operations, *etc.* UCEBs are also payable, in some cases, with respect to layoffs and other workforce reductions.[1]

A typical shutdown benefit provision in the steel industry—the so-called "70/80 Rule"—generally allows participants who lose their jobs due to the complete or partial closing of a facility or a reduction-in-force and whose age plus service equals 70 (if at least age 55) or 80 (at any age) to begin receiving their full accrued pension immediately, even though they have not reached normal retirement age. Similar UCEBs are common in the automobile industry with respect to shutdowns and layoffs. The purpose of these benefits is to assist participants financially in adjusting to a permanent job loss.

Time Lag Between Start of Guarantee Phase-in and Funding of UCEBs

A UCEB provision typically has been in a plan many years before the occurrence of the event that eventually triggers the benefit, such as a plant shutdown. As a result, before PPA 2006, shutdown benefits, for example, were often fully guaranteed under the phase-in rules when a shutdown occurred. Because the benefit is contingent on the occurrence of an unpredictable event, plan sponsors typically did not make contributions to provide for advance funding of such benefits; funding of such benefits often did not begin until after the UCE had occurred. If, as often happened, plan termination occurred within a few years after a shutdown, the time lag between the start of the phase-in period and the start of funding resulted in an increased loss to the insurance program.

Treatment of UCEBs in OBRA 1987

Congress first explicitly addressed UCEBs in funding reforms contained in the Pension Protection Act of 1987, enacted as part of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987). The OBRA 1987 rules for deficit reduction contributions required employers to recognize UCEBs on an accelerated basis (generally, within five to seven years), beginning after the triggering event occurred.[2] However, the rules did not address the mismatch of the funding and guarantee phase-in periods discussed above. They also did not address the fact that UCEBs are likely to be triggered when the employer is experiencing financial difficulty, which threatens both funding and continuation of the plan. For these reasons, in the years since OBRA 1987, PBGC has assumed more than $1 billion of unfunded benefit liabilities from shutdown and similar benefits.

Treatment of UCEBs in PPA 2006

Congress further addressed UCEBs in PPA 2006. PPA 2006 affected UCEBs in two important ways.

First, PPA 2006 added new ERISA section 206(g) and parallel Code section 436(b) that restrict payment of UCEBs with respect to a UCE if the plan is less than 60 percent funded for the plan year in which the UCE occurs (or would be less than 60 percent funded taking the UCEB into account). Unless the restriction is removed during that plan year as a result of additional contributions to the plan or an actuarial certification meeting certain

[1] The Technical Explanation of PPA 2006 prepared by the Joint Committee on Taxation Staff specifies that UCEBs include benefits payable with respect to "facility shutdowns or reductions in workforce." Joint Committee on Taxation, *Technical Explanation of H.R. 4, the "Pension Protection Act of 2006," as passed by the House on July 26, 2006, and as considered by the Senate on August 3, 2006* (JCX–38–06), August 3, 2006, at 90 (hereinafter *Technical Explanation of PPA 2006*).

[2] Public Law 100–203, 10 Stat. 1330, 339–41 (codified as amended at 26 U.S.C. 412(l) (1987)); *see* S. Rep. No. 100–63 at 171–72, 175–76 (1987).

requirements, the restriction becomes permanent and, under Treas. Reg. § 1.436–1(a)(4)(iii),[3] the plan is treated as if it does not provide for those UCEBs.[4] Because PBGC guarantees only benefits that are provided under a plan, a UCEB that is treated as not provided under the plan because of this restriction is not guaranteeable by PBGC at all, and the phase-in rules that are the subject of this proposed regulation do not come into play for such a UCEB. Moreover, under Treas. Reg. § 1.436–1(a)(3)(ii), benefit limitations under ERISA section 206(g) that were in effect immediately before plan termination continue to apply after termination.

Second, PPA 2006 better aligns the starting dates of the funding and guarantee phase-in of UCEBs. Under PPA 2006, phase-in of the PBGC guarantee does not start until the UCE actually occurs. Specifically, ERISA section 4022(b)(8), added by section 403 of PPA 2006, provides: "If an unpredictable contingent event benefit (as defined in section 206(g)(1)) is payable by reason of the occurrence of any event, this section shall be applied as if a plan amendment had been adopted on the date such event occurred." The provision applies to UCEs that occur after July 26, 2005. Thus, for purposes of the phase-in limitation, the date a UCE occurs is treated as the adoption date of the plan provision that provides for the related UCEB. This statutory change provides the PBGC insurance program a greater measure of protection than prior law from losses due to unfunded UCEBs—most notably, benefits that become payable by reason of a plant shutdown or similar event such as a permanent layoff.[5]

ERISA section 206(g)(1), as added by section 103(a) of PPA 2006, defines "unpredictable contingent event benefit" as:

"any benefit payable solely by reason of —

(i) A plant shutdown (or similar event, as determined by the Secretary of the Treasury), or

(ii) An event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability."

PPA 2006 did not alter the rule that UCEBs are not guaranteed at all unless the triggering event occurred prior to the plan termination date (*see PBGC* v. *Republic Tech. Int'l, LLC,* 386 F.3d 659 (6th Cir. 2004)).

Treasury Final Regulation UCEB Definition

On October 15, 2009 (at 74 FR 53004), the Department of the Treasury (Treasury) published a final rule on Benefit Restrictions for Underfunded Pension Plans that defines UCEB for purposes of ERISA section 206(g)(1), and thus also for purposes of section 4022(b)(8). Treasury's final regulation clarifies the following points regarding UCEBs:

- UCEBs include only benefits or benefit increases to the extent such benefits or benefit increases would not be payable but for the occurrence of a UCE.
- The reference to "plant shutdown" in the statutory definition of UCEB includes a full or partial shutdown.

Treasury's final regulation also states that a UCEB includes benefits triggered by events similar to plant shutdowns. Treas. Reg. § 1.436–1(j)(9) defines a UCEB as follows:

An *unpredictable contingent event benefit* means any benefit or increase in benefits to the extent the benefit or increase would not be payable but for the occurrence of an unpredictable contingent event. For this purpose, an unpredictable contingent event means a plant shutdown (whether full or partial) or similar event, or an event (including the absence of an event) other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability. For example, if a plan provides for an unreduced early retirement benefit upon the occurrence of an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, then that unreduced early retirement benefit is an unpredictable contingent event benefit to the extent of any portion of the benefit that would not be payable but for the occurrence of the event, even if the remainder of the benefit is payable without regard to the occurrence of the event. Similarly, if a plan includes a benefit payable upon the presence (including the absence) of circumstances specified in the plan (other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability), but not upon a severance from employment that does not include those circumstances, that benefit is an unpredictable contingent event benefit.

Overview of Proposed Regulatory Changes

This proposed regulation incorporates the definition of UCEB under section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436–1(j)(9). It also provides that the guarantee of a UCEB would be phased in from the latest of the date the benefit provision is adopted, the date the benefit is effective, or the date the UCE that makes the benefit payable occurs.

Under the proposed regulation, PBGC would determine the date the UCE occurs based on the plan provisions and the relevant facts and circumstances, such as the nature and level of activity at a facility that is closing and the permanence of the event. The date of the event as conceived, planned, announced, or agreed to by the employer might be relevant but would not be controlling. Where a plan provides that a UCEB is payable only upon the occurrence of more than one UCE, the proposed regulation provides that the guarantee would be phased in from the latest date when all such UCEs have occurred. For example, if a UCEB is payable only if a participant is laid off and the layoff continues for a specified period of time, the phase-in period would begin at the end of the specified period of time. Similarly, if a UCEB is payable only if both the plant where an employee worked is permanently shut down and it is determined that the employer has no other suitable employment for the employee, the phase-in period would begin when it is determined that the employer had no other suitable employment for the employee (assuming that date was later than the shutdown date).

The proposed regulation includes eight examples that show how the UCEB phase-in rules would apply in the following situations:

- Shutdown that occurs later than the announced shutdown date.
- Sequential permanent layoffs.
- Skeleton shutdown crews.
- Permanent layoff benefit for which the participant qualifies shortly before the sponsor enters bankruptcy.
- Employer declaration during a layoff that return to work is unlikely.
- Shutdown benefit with age requirement that can be met after the shutdown.
- Retroactive UCEB.

[3] Treasury Regulations under Code sections 430 and 436 also apply for purposes of the parallel rules in ERISA sections 303 and 206(g).

[4] 74 FR 53004, 53062 (Oct. 15, 2009). Treas. Reg. § 1.436–1(a)(4)(iii) permits all or any portion of prohibited UCEBs to be restored by a plan amendment that meets the requirements of section 436(c) of the Code and Treas. Reg. § 1.436–1(c) and other applicable requirements. Such an amendment would create a "benefit increase" under § 4022.2 and therefore PBGC's guarantee of UCEBs restored by such an amendment would be phased in from the later of the adoption date of the amendment or the effective date as of which the UCEB is restored, as provided under § 4022.27(c) of the proposed regulation.

[5] In addition, Treas. Reg. § 1.430(d)–(1)(f)(6) requires that calculation of the funding target for a single-employer plan take into account, based on information as of the valuation date, the probability that UCEBs will become payable. Under that Treasury Regulation, the probability may be assumed to be zero if there is not more than a de minimis likelihood that the UCE will occur.

• Removal of IRC Section 436 restriction.[6]

Whether a UCEB phase-in determination applies on a participant-by-participant basis, as opposed to facility-wide or some other basis, would depend largely upon plan provisions. For example, a benefit triggered by a reduction-in-force would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. But a benefit payable only upon the complete shutdown of the employer's entire operations would apply plan-wide, and thus the shutdown date generally would be the date of the UCE for all participants.

Discussion

UCEBs Covered

As noted above, new ERISA section 4022(b)(8), added by section 403 of PPA 2006, changes the rules for phasing in the guarantee of UCEBs in the case of UCEs that occur after July 26, 2005. Section 4022(b)(8) covers shutdown-type benefits, including benefits payable by reason of complete shutdowns of plants, and benefits payable when participants lose their jobs or retire as a result of partial closings or reductions-in-force at all kinds of facilities, in addition to other UCEBs. Accordingly, proposed § 4022.27(a) expressly refers to benefits payable as a result of "plant shutdowns or other unpredictable contingent events * * * , such as partial facility closings and permanent layoffs."[7]

As stated above, a UCEB is defined by section 206(g)(1)(C) of ERISA to include benefits payable solely by reason of (1) a plant shutdown or similar event, or (2) an event other than an event such as attainment of a certain age or performance of service, that would trigger eligibility for a retirement benefit. The proposed regulation provides that PBGC would determine whether a benefit is a UCEB based on the facts and circumstances; the substance of the benefit, not what it is called, determines whether the benefit would be a UCEB covered by the new phase-in rule. Accordingly, under proposed § 4022.27(b), the guarantee of any benefit that PBGC determines, based on plan provisions and facts and circumstances, is a shutdown benefit or is otherwise a UCEB would be phased in as a UCEB.

The proposed definition of UCEB under § 4022.2 provides that a benefit does not cease to be a UCEB for phase-in purposes merely because the UCE has already occurred or its occurrence has become reasonably predictable. This interpretation is supported by the plain language of ERISA section 4022(b)(8), which incorporates ERISA section 206(g)(1)(C). Section 206(g)(1)(C) expressly defines a UCEB *not* in terms of degree of predictability, but rather whether a benefit is "payable solely by reason of a shutdown or similar event * * * or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability." In other words, section 206(g)(1)(C) provides that a UCEB remains a UCEB after the UCE occurs. Because many events that are not reliably and reasonably predictable become predictable immediately before they occur, and the concept of predictability does not apply to events after they have occurred, PBGC interprets ERISA section 4022(b)(8) to apply to benefits such as shutdown benefits regardless of whether the events triggering those benefits have already occurred or have become predictable.

Date Phase-in of PBGC Guarantee Begins

ERISA sections 4022(b)(1) and 4022(b)(7) provide that PBGC's guarantee of a benefit increase is phased in from the date the benefit increase is "in effect," *i.e.,* from the later of the adoption date or effective date of the increase. ERISA section 4022(b)(8) (added by PPA 2006) provides that, for phase-in purposes, shutdown benefits and other UCEBs are deemed to be "adopted on the date * * * [the UCE] occurs." Thus ERISA section 4022(b)(8) protects PBGC in the typical situation where a shutdown or permanent layoff occurs long after a shutdown benefit provision was originally adopted.

Section 4022(b)(8) could be read to produce an incongruous result in an unusual situation—where the UCE occurs first and a UCEB is adopted later, effective retroactive to the UCE. Because the date of the UCE would be treated under section 4022(b)(8) as the adoption date of the UCEB, in this situation the phase-in arguably would begin on the date of the UCE (the later of the adoption date or effective date of the UCEB), rather than on the actual adoption date of the plan amendment, as under pre-PPA 2006 law. The result would be a more generous—and more costly—guarantee of UCEBs than under pre-PPA 2006 law. To avoid this incongruous result, proposed § 4022.27(c) provides that a benefit increase due solely to a UCEB would be "in effect" as of the latest of the adoption date of the plan provision that provides for the UCEB, the effective date of the UCEB, or the date the UCE occurs.

Finally, if a UCEB becomes payable because a restriction under IRC section 436 is removed after, for example, an adequate funding contribution is made, the effective date of the UCEB for phase-in purposes is determined without regard to the restriction.

Allocation of Assets

When PBGC becomes trustee of a pension plan that terminates without sufficient assets to provide all benefits, it allocates plan assets to plan benefits in accordance with the statutory priority categories in section 4044 of ERISA. The category to which a particular benefit is assigned in the asset allocation can affect insurance program costs and the extent to which participants receive nonguaranteed benefits.

Priority category 3 in the asset allocation is particularly important, because it often includes benefits that, depending on the level of the plan assets, may be paid by PBGC even though not guaranteed. Priority category 3 contains only those benefits that were in pay status at least three years before the termination date of the plan (or that would have been in pay status if the participant had retired before that three-year period). An individual's benefit amount in priority category 3 is based on the plan provisions in effect during the five-year period preceding plan termination under which the benefit amount would be the least. Thus priority category 3 does not include benefit increases that were adopted or became effective in the five years before plan termination or, in some cases as discussed below, the bankruptcy filing date.

PBGC considered whether the UCEBs that are not guaranteed under the PPA 2006 changes should be excluded from priority category 3. Under that approach, plan assets would go farther to pay for other benefits, especially guaranteed benefits, and participants would be less likely to receive UCEBs that are not guaranteed. Alternatively, if UCEBs that are not guaranteed under the PPA 2006 changes were included in priority category 3—as they are under pre-PPA law and PBGC's current regulation on Allocation of Assets (part

[6] The examples in proposed § 4022.7 are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definition, as further delineated in Treasury Regulations.

[7] As explained in Technical Explanation of PPA 2006, supra note 1, "layoff benefits," as that term is used in Treasury Regulation § 1.401–1(b)(1)(i), are *severance* benefits that may not be included in tax-qualified pension plans. In contrast, the benefits covered in this proposed regulation are *retirement benefits* payable in the event of certain workforce reductions. These retirement benefits—generally subsidized early retirement benefits—may be provided in tax-qualified plans insured by PBGC.

4044)—plan assets would be less likely to reach other benefits, especially guaranteed benefits, and participants would be more likely to receive UCEBs that are not guaranteed.

Because section 403 of PPA 2006 does not make any reference to section 4044,[8] PBGC concluded that the latter interpretation is the better one, and thus the proposed regulation does not amend part 4044.

Bankruptcy Filing Date Treated as Deemed Termination Date

On July 1, 2008 (73 FR 37390), PBGC published a proposed rule, "Bankruptcy Filing Date Treated as Plan Termination Date for Certain Purposes; Guaranteed Benefits; Allocation of Plan Assets; Pension Protection Act of 2006," to implement section 404 of PPA 2006, which added a new section 4022(g) to ERISA. This section provides that when an underfunded plan terminates while its contributing sponsor is in bankruptcy, the amount of guaranteed benefits under section 4022 will be determined as of the date the sponsor entered bankruptcy (the "bankruptcy filing date") rather than as of the termination date. The provision applies to plans terminating while the sponsor is in bankruptcy, if the bankruptcy filing date is on or after September 16, 2006.[9]

Section 4022(g) applies to all types of plan benefits, including UCEBs. Under this provision, if a permanent shutdown (or other UCE) occurs after the bankruptcy filing date, UCEBs arising from the UCE are not guaranteed because the benefits are not nonforfeitable as of the bankruptcy filing date. Similarly, if the shutdown (or other UCE) occurs before the bankruptcy filing date, the five-year phase-in period for any resulting UCEBs is measured from the date of the UCE to the bankruptcy filing date, rather than to the plan termination date. For example, if a permanent shutdown occurs three years before the bankruptcy filing date, the guarantee of any resulting UCEBs will be only 60 percent phased in, even if the shutdown was more than five years before the plan's termination date. This rule is illustrated by Examples 4 and 5 in the proposed regulation.

PBGC considered whether UCEBs could be excepted from the section 4022(g) bankruptcy provision on the ground that the general phase-in rule in section 4022(g) is superseded by the specific section 4022(b)(8) phase-in rule for UCEBs. However, PBGC concluded that the language of the bankruptcy and UCEB statutory provisions does not allow for any such exception. The UCEB provision alters the starting date for phase-in of UCEBs, while the bankruptcy provision alters the date beyond which no further phase-in is allowed for any benefit increase, including a UCEB. PBGC sees no conflict in applying both provisions to UCEBs.

Estimated Guaranteed Benefits

ERISA section 4041(c)(3)(D)(ii)(IV) requires administrators of plans terminating in a distress termination to limit payment of benefits to estimated guaranteed benefits and estimated non-guaranteed benefits funded under section 4044, beginning on the proposed termination date. Section 4022.62 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans contains rules for computing estimated guaranteed benefits, including provisions for estimating guaranteed benefits when a new benefit or benefit increase was added to the plan within five years before plan termination. The proposed regulation would amend § 4022.62 to provide that the date the UCE occurs is treated as the date the UCEB was adopted, *i.e.,* the date the plan was amended to include the UCEB.

Applicability

The regulatory changes made by this rule, like section 403 of PPA 2006, would apply to UCEBs that become payable as a result of a UCE that occurs after July 26, 2005.

Compliance With Regulatory Guidelines

Executive Order 12866

PBGC has determined that this proposed rule is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget has therefore reviewed the proposed rule under Executive Order 12866.

Under Section 3(f)(1) of Executive Order 12866, a regulatory action is economically significant if "it is likely to result in a rule that may * * * [h]ave 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." The PBGC has determined that this proposed rule does not cross the $100 million threshold for economic significance and is not otherwise economically significant.

The economic effect of the proposed rule is entirely attributable to the economic effect of section 403 of PPA 2006. Three factors tend to reduce the economic impact of section 403.

First, before section 403 went into effect, PBGC often involuntarily terminated plans with shutdown liabilities before company-wide shutdowns, under the "long-run loss" provision in section 4042(a)(4) of ERISA. That provision allows PBGC to initiate termination proceedings if its long-run loss "may reasonably be expected to increase unreasonably if the plan is not terminated." A sudden increase in PBGC's liabilities resulting from a shutdown could create just such an unreasonable increase in long-run loss. Section 403 avoids the need for PBGC to make case-by-case decisions whether to initiate such "pre-emptive" terminations. Although it is difficult to make assumptions about PBGC's ability and intent to pursue such terminations if section 403 had not gone into effect, this factor tends to reduce its economic impact.

Second, another PPA 2006 amendment provides that if a plan terminates while the sponsor is in bankruptcy, the amount of benefits guaranteed by PBGC is fixed at the date of the bankruptcy filing rather than at the plan termination date. Because of that provision, if a plant shutdown or other UCE occurred between the bankruptcy filing date and the termination date, the resulting UCEB would not be guaranteed at all, and thus section 403 would have no economic effect.

Third—and perhaps most important—as also discussed above, other PPA 2006 provisions restrict payment of UCEBs if a plan is less than 60 percent funded. If, because of those restrictions, a UCEB was not payable at all, section 403 again would have no economic effect.

As stated above in Applicability, section 403 applies to any UCEB that becomes payable as a result of a UCE that occurs after July 26, 2005. PBGC estimates that, to date, the total effect of section 403—in terms of lower benefits paid to participants and associated savings for PBGC—is less than $4 million. Although PBGC cannot predict with certainty which plans with UCEBs will terminate, the funding level of such plans, or what benefits will be affected by the guarantee limits, given the relatively low estimate of the effect of the statutory provision to date, PBGC has determined that the annual effect of

[8] By contrast, three other provisions of PPA 2006 that changed PBGC's guarantee of benefits specifically provide changes to the asset allocation scheme under section 4044. *See* PPA 2006 sections 404 (treatment of bankruptcy filing date as deemed termination date), 402(g)(2)(A) (special termination rules for commercial airlines), and 407 (relating to majority owners), enacting respectively sections 4044(e), 4022(h), and 4044(b)(3) of ERISA.

[9] *See* definition of "PPA 2006 bankruptcy termination" in § 4001.2.

the proposed rule will be less than $100 million.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this proposed rule would not have a significant economic impact on a substantial number of small entities. The amendments implement and in some cases clarify statutory changes made in PPA 2006; they do not impose new burdens on entities of any size. Virtually all of the statutory changes affect only PBGC and persons who receive benefits from PBGC. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, PBGC proposes to amend 29 CFR part 4022 as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

2. In § 4022.2:

a. Amend the definition of "benefit increase" by removing the final "and" in the second sentence and adding in its place, "an unpredictable contingent event benefit, and"; and

b Add in alphabetical order definitions for *unpredictable contingent event (UCE)* and *unpredictable contingent event benefit (UCEB)* to read as follows:

§ 4022.2 Definitions.

* * * * *

Unpredictable contingent event (UCE) has the same meaning as unpredictable contingent event in section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436–1(j)(9). It includes a plant shutdown (full or partial) or a similar event (such as a full or partial closing of another type of facility, or a layoff or other workforce reduction), or any event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

Unpredictable contingent event benefit (UCEB) has the same meaning as unpredictable contingent event benefit in section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436–1(j)(9). Thus, a UCEB is any benefit or benefit increase to the extent that it would not be payable but for the occurrence of a UCE. A benefit or benefit increase that is conditioned upon the occurrence of a UCE does not cease to be a UCEB as a result of the contingent event having occurred or its occurrence having become reasonably predictable.

3. § 4022.24(e) is revised to read as follows:

§ 4022.24 Benefit Increases.

* * * * *

(e) Except as provided in § 4022.27(c), for the purposes of §§ 4022.22 through 4022.28, a benefit increase is deemed to be in effect commencing on the later of its adoption date or its effective date.

§ 4022.27 [Redesignated as § 4022.28]

4. Section 4022.27 is redesignated as § 4022.28.

5. New § 4022.27 is added to read as follows:

§ 4022.27 Phase-in of guarantee of unpredictable contingent event benefits.

(a) *Scope.* This section applies to a benefit increase, as defined in § 4022.2 of this part, that is an unpredictable contingent event benefit (UCEB) and that is payable with respect to an unpredictable contingent event (UCE) that occurs after July 26, 2005.

(1) Examples of benefit increases within the scope of this section include unreduced early retirement benefits or other early retirement subsidies, or other benefits to the extent that such benefits would not be payable but for the occurrence of one or more UCEs.

(2) Examples of UCEs within the scope of this section include full and partial closings of plants or other facilities, and permanent workforce reductions, such as permanent layoffs. Permanent layoffs include layoffs during which an idled employee continues to earn credited service ("creep-type" layoff) for a period of time at the end of which the layoff is deemed to be permanent. Permanent layoffs also include layoffs that become permanent upon the occurrence of an additional event such as a declaration by the employer that the participant's return to work is unlikely or a failure by the employer to offer the employee suitable work in a specified area.

(3) The examples in this section are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definitions, as further delineated in Treasury Regulations.

(b) *Facts and circumstances.* If PBGC determines that a benefit is a shutdown benefit or other type of UCEB, the benefit will be treated as a UCEB for purposes of this subpart. PBGC will make such determinations based on the facts and circumstances, consistent with these regulations; how a benefit is characterized by the employer or other parties may be relevant but is not determinative.

(c) *Date phase-in begins.* (1) The date the phase-in of PBGC's guarantee of a UCEB begins is determined in accordance with subpart B of this part. For purposes of this subpart, a UCEB is deemed to be in effect as of the latest of—

(i) The adoption date of the plan provision that provides for the UCEB,

(ii) The effective date of the UCEB, or

(iii) The date the UCE occurs.

(2) The date the phase-in of PBGC's guarantee of a UCEB begins is not affected by any delay that may occur in placing participants in pay status due to removal of a restriction under section 436(b)of the Code. *See* the example in paragraph (e)(8) of this section.

(d) *Date UCE occurs.* For purposes of this section, PBGC will determine the date the UCE occurs based on the plan provisions and the relevant facts and circumstances, such as the nature and level of activity at a facility that is closing and the permanence of the event; the date of the event as conceived, planned, announced, or agreed to by the employer may be relevant but is not determinative.

(1) The date a UCE occurs is determined on a participant-by-participant basis, or on a different basis, such as a facility-wide or company-wide basis, depending upon plan provisions and the facts and circumstances. For example, a benefit triggered by a permanent layoff of a participant would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. In contrast, a benefit payable only upon a complete plant shutdown would apply facility-wide, and generally the shutdown date would be the date of the UCE for all participants who work at that plant. Similarly, a benefit payable only upon the complete shutdown of the employer's entire operations would apply plan-wide, and thus the shutdown date of company operations generally would be the date of the UCE for all participants.

(2) For purposes of paragraph (c)(3) of this section, if a benefit is contingent upon more than one UCE, PBGC will apply the rule under Treas. Reg. § 1.436–1(b)(3)(ii) (*i.e.,* the date the UCE occurs is the date of the latest UCE).

(e) *Examples.* The following examples illustrate the operation of the rules in this section. Except as provided in Example 8, no benefit limitation under

Code section 436 applies in any of these examples.

(1) *Date of UCE.* (i) *Facts:* On January 1, 2000, a Company adopts a plan that provides an unreduced early retirement benefit for participants with specified age and service whose continuous service is broken by a permanent plant closing or permanent layoff that occurs on or after January 1, 2001. On January 1, 2007, the Company informally and without announcement decides to close Facility A within a two-year period. On January 1, 2008, the Company's Board of Directors passes a resolution directing the Company's officers to close Facility A on or before September 1, 2008. On June 1, 2008, the Company issues a notice pursuant to the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. section 2101, *et seq.,* that Facility A will close, and all employees will be permanently laid off, on or about August 1, 2008. The Company and the Union representing the employees enter into collective bargaining concerning the closing of Facility A and on July 1, 2008, they jointly agree and announce that Facility A will close and employees who work there will be permanently laid off as of November 1, 2008. However, due to unanticipated business conditions, Facility A continues to operate until December 31, 2008, when operations cease and all employees are permanently laid off. The plan terminates as of December 1, 2009.

(ii) *Conclusion:* PBGC would determine that the UCE is the facility closing and permanent layoff that occurred on December 31, 2008. Because the date that the UCE occurred (December 31, 2008) is later than both the date the plan provision that established the UCEB was adopted (January 1, 2000) and the date the UCEB became effective (January 1, 2001), December 31, 2008, would be the date the phase-in period under ERISA section 4022 begins. In light of the plan termination date of December 1, 2009, the guarantee of the UCEBs of participants laid off on December 31, 2008, would be 0 percent phased in.

(2) *Sequential layoffs.* (i) *Facts:* The same facts as Example 1, with these exceptions: Not all employees are laid off on December 31, 2008. The Company and Union agree to and subsequently implement a shutdown in which employees are permanently laid off in stages—one-third of the employees are laid off on October 31, 2008, another third are laid off on November 30, 2008, and the remaining one-third are laid off on December 31, 2008.

(ii) *Conclusion:* Because the plan provides that a UCEB is payable in the event of either a permanent layoff or a plant shutdown, PBGC would determine that phase-in begins on the date of the UCE applicable to each of the three groups of employees. Because the first two groups of employees were permanently laid off before the plant closed, October 31, 2008, and November 30, 2008, are the dates that the phase-in period under ERISA section 4022 begins for those groups. Because the third group was permanently laid off on December 31, 2008, the same date the plant closed, the phase-in period would begin on that date for that group. Based on the plan termination date of December 1, 2009, participants laid off on October 31, 2008, and November 30, 2008, would have 20 percent of the UCEBs (or $20 per month, if greater) guaranteed under the phase-in rule. The guarantee of the UCEBs of participants laid off on December 31, 2008, would be 0 percent phased in.

(3) *Skeleton shutdown crews.* (i) *Facts:* The same facts as Example 1, with these exceptions: The plan provides for an unreduced early retirement benefit for age-service qualified participants only in the event of a break in continuous service due to a permanent and complete plant closing. A minimal skeleton crew remains to perform primarily security and basic maintenance functions until March 31, 2009, when skeleton crew members are permanently laid off and the facility is sold to an unrelated investment group that does not assume the plan or resume business operations at the facility. The plan has no specific provision or past practice governing benefits of skeleton shutdown crews. The plan terminates as of January 1, 2009.

(ii) *Conclusion:* Because the continued employment of the skeleton crew does not effectively continue operations of the facility, PBGC would determine that there is a permanent and complete plant closing (for purposes of the plan's plant closing provision) as of December 31, 2008, which is the date the phase-in period under ERISA section 4022 begins with respect to employees who incurred a break in continuous service at that time. The UCEB of those participants would be a nonforfeitable benefit as of the plan termination date, but PBGC's guarantee of the UCEB would be 0 percent phased in. In the case of the skeleton crew members, such participants would not be eligible for the UCEB because they did not incur a break in continuous service until after the plan termination date. (If the plan had a provision that there is no shutdown until all employees, including any skeleton crew are terminated, or if the plan were reasonably interpreted to so provide in light of past practice, PBGC would determine that the date that the UCE occurred was after the plan termination date. Thus the UCEB would not be a nonforfeitable benefit as of the plan termination date and therefore would not be guaranteeable.)

(4) *Creep-type layoff benefit/bankruptcy of contributing sponsor.* (i) *Facts:* A plan provides that participants who are at least age 55 and whose age plus years of continuous service equal at least 80 are entitled to an unreduced early retirement benefit if their continuous service is broken due to a permanent layoff. The plan further provides that a participant's continuous service is broken due to a permanent layoff when the participant is terminated due to the permanent shutdown of a facility, or the participant has been on layoff status for two years. These provisions were adopted and effective in 1986. Participant A is 56 years old and has 25 years of continuous service when he is laid off in a reduction-in-force on May 15, 2008. He is not recalled to employment, and on May 15, 2010, under the terms of the plan, his continuous service is broken due to the layoff. He goes into pay status on June 1, 2010, with an unreduced early retirement benefit. The contributing sponsor of Participant A's plan files a bankruptcy petition under Chapter 11 of the U.S. Bankruptcy Code on September 1, 2011, and the plan terminates during the bankruptcy proceedings with a termination date of October 1, 2012. Under section 4022(g) of ERISA, because the plan terminated while the contributing sponsor was in bankruptcy, the five-year phase-in period ended on the bankruptcy filing date.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on May 15, 2010, the date of the later of the two UCEs necessary to make this benefit payable (*i.e.,* the first UCE is the initial layoff and the second UCE is the expiration of the two-year period without rehire). Since that date is more than one year (but less than two years) before the September 1, 2011, bankruptcy filing date, 20 percent of Participant A's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

(5) *Creep-type layoff benefit with provision for declaration that return to work unlikely.* (i) *Facts:* A plan provides that participants who are at least age 60 and have at least 20 years of continuous service are entitled to an unreduced early retirement benefit if their

continuous service is broken by a permanent layoff. The plan further provides that a participant's continuous service is broken by a permanent layoff if the participant is laid off and the employer declares that the participant's return to work is unlikely. Participants may earn up to 2 years of credited service while on layoff. The plan was adopted and effective in 1990. On March 1, 2009, Participant B, who is age 60 and has 20 years of service, is laid off. On June 15, 2009, the employer declares that Participant B's return to work is unlikely. Participant B retires and goes into pay status as of July 1, 2009. The employer files for bankruptcy on September 1, 2011.

(ii) *Conclusion:* PBGC would determine that the phase-in period of the guarantee of the UCEB would begin on June 15, 2009—the later of the two UCEs necessary to make the benefit payable (*i.e.,* the first UCE is the initial layoff and the second UCE is the employer's declaration that it is unlikely that Participant B will return to work). The phase-in period would end on September 1, 2011, the date of the bankruptcy filing. Thus 40 percent of Participant B's UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

(6) *Shutdown benefit with special post-employment eligibility provision.* (i) *Facts:* A plan provides that, in the event of a permanent shutdown of a plant, a participant age 60 or older who terminates employment due to the shutdown and who has at least 20 years of service is entitled to an unreduced early retirement benefit. The plan also provides that a participant with at least 20 years of service who terminates employment due to a plant shutdown at a time when the participant is under age 60 also will be entitled to an unreduced early retirement benefit, provided the participant's commencement of benefits is on or after attainment of age 60 and the time required to attain age 60 does not exceed the participant's years of service with the plan sponsor. The plan imposes no other conditions on receipt of the benefit. Plan provisions were adopted and effective in 1991. On January 1, 2006, Participant C's plant is permanently shut down. At the time of the shutdown, Participant C had 20 years of service and was age 58. On June 1, 2007, Participant C reaches age 60 and retires. The plan terminates as of September 1, 2007.

(ii) *Conclusion:* PBGC would determine that the guarantee of the shutdown benefit is phased in from January 1, 2006, which is the date of the only UCE (the permanent shutdown of the plant) necessary to make the benefit payable. Thus 20 percent of Participant C's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

(7) *Phase-in of retroactive UCEB.* (i) *Facts:* As the result of a settlement in a class-action lawsuit, a plan provision is adopted on September 1, 2011, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring after January 1, 2008. Benefits under the provision are payable prospectively only, beginning March 1, 2012. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on January 1, 2009, and therefore he is scheduled to be placed in pay status as of March 1, 2012. The plan is a calendar year plan. The unreduced early retirement benefit is paid to Participant A beginning on March 1, 2012. The plan terminates as of February 1, 2014. The termination is not a PPA 2006 bankruptcy termination.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on March 1, 2012. This is the date the benefit was effective (since it was the first date on which the new benefit was payable), and it is later than the adoption date of the plan provision (September 1, 2011) and the date of the UCE (January 1, 2009). The guarantee of the unreduced early retirement benefit is 20% phased in.

(8) *Removal of IRC section 436 restriction.* (i) *Facts:* A plan provision was adopted on September 1, 1989, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring after January 1, 1990. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on April 1, 2011. The plan is a calendar year plan. Under the rules of Code section 436 (ERISA section 206(g)) and Treasury regulations thereunder, a plan cannot provide a UCEB payable with respect to an unpredictable contingent event, if the event occurs during a plan year in which the plan's adjusted funding target attainment percentage is less than 60%. On January 30, 2011, the plan's enrolled actuary issued a certification stating that the plan's adjusted funding target attainment percentage for 2011 is 58%. Therefore, the plan restricts payment of the unreduced early retirement benefit payable with respect to the shutdown on April 1, 2011. On August 15, 2011, the plan sponsor makes an additional contribution to the plan that is designated as a contribution under Code section 436(b)(2) to eliminate the restriction on payment of the shutdown benefits. On September 15, 2011, the plan's enrolled actuary issues a certification stating that, due to the additional section 436(b)(2) contribution, the plan's adjusted funding target attainment percentage for 2011 is 60%. On October 1, 2011, Participant A is placed in pay status for the unreduced early retirement benefit and, as required under Code section 436 and Treasury regulations thereunder, is in addition paid retroactively the unreduced benefit for the period May 1, 2011 (the date the unreduced early retirements would have become payable) through September 1, 2011. The plan terminates as of February 1, 2014. The termination is not a PPA 2006 bankruptcy termination.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on April 1, 2011, the date the UCE occurred. Because April 1, 2011, is later than both the date the plan provision that established the UCEB was adopted (September 1, 1989) and the date the UCEB became effective (January 1, 1990), it would be the date the phase-in period under ERISA section 4022 begins. Commencement of the phase-in period is not affected by the delay in providing the unreduced early retirement benefit to Participant A due to the operation of the rules of Code section 436 and the Treasury regulations thereunder. The guarantee of the unreduced early retirement benefit is 40% phased in.

6. In § 4022.62(c)(2)(i), add a sentence after the third sentence to read as follows:

§ 4022.62 Estimated guaranteed benefit.

* * * * *

(c) * * *

(2) * * *

(i) * * * "New benefits" also result from increases that become payable by reason of the occurrence of an unpredictable contingent event (provided the event occurred after July 26, 2005), to the extent the increase would not be payable but for the occurrence of the event; in the case of such new benefits, the date of the occurrence of the unpredictable contingent event is treated as the amendment date for purposes of Table I. * * *

* * * * *

Issued in Washington, DC, this 3rd day of March, 2011.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–5696 Filed 3–10–11; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1029]

RIN 1625–AA09

Drawbridge Operation Regulations; Fox River, Oshkosh, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking (NPRM) concerning the establishment of remote drawbridge operating procedures for the Canadian National Railway Bridge across the Fox River at Mile 55.72 at Oshkosh, Wisconsin. After careful consideration of the comments from all parties it was determined to be in the best interest of navigation to withdraw the NPRM.

DATES: The notice of proposed rulemaking published December 8, 2010, at 75 FR 76322, is withdrawn on March 11, 2011.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–1029 in the "Keyword" box and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard; telephone 216–902–6085, e-mail *lee.d.soule@uscg.mil,* or fax 216–902–6088. If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2010, we published an NPRM entitled Drawbridge Operation Regulation; Fox River, Oshkosh, WI. in the **Federal Register** (75 FR 76322). The rulemaking concerned the request by the drawbridge owner, Canadian National Railway (CN RR), for the District Commander to approve remote operation of the drawbridge in accordance with 33 CFR 117.42. The drawbridge has been remotely operated without specific authorization from the District Commander for approximately 3–4 years, and is currently required to open on signal year round. Vessel operators have recently informed the Coast Guard that the drawbridge was formerly left in the open-to-navigation position and only closed when a train was crossing, but this practice was no longer used and vessels were reporting unreasonable delays, including no response from the remote bridge operator to signals for openings, and difficulties establishing communications with the remote operator. During the summer of 2010 the U.S. Coast Guard met with CN RR officials and developed the operating regulation proposed in the NPRM, including a set of visual warning signals to provide adequate warning to vessels that the railroad bridge was about to move from the open-to-navigation position to the closed-to-navigation position. Between April 15 and October 15 each year, the proposed regulation would require the bridge to remain in the open-to-navigation position unless train traffic is crossing, then reopen once train traffic has passed. The proposed light and sound signals would provide vessels with a method of warning when the bridge is expected to either close for train traffic or reopen for vessel traffic without having to establish direct communication with the remote bridge operator. The bridge would also be required to maintain and operate a marine radiotelephone, along with the equipment to visually monitor the waterway and communicate with vessels using all signaling methods described in 33 CFR 117.15. The proposed regulation also would have established a permanent winter operating schedule by requiring vessels to provide at least 12 hours advance notice for a bridge opening during winter, or during the traditional non-boating season, between approximately October 16 and April 14 each year.

Withdrawal

The Coast Guard received four comments regarding the NPRM, two that were successfully received by the Docket Management Facility that were negative and two received by direct emails that were positive.

Both negative comments characterized the proposed 10-minute advance visual warning method to vessel operators as a required 10-minute delay for trains, resulting in slowed or stopped trains, blockages of City of Oshkosh streets, and impacts to emergency response providers. The two negative comments also suggested a 2-minute warning method for vessels. The NPRM never suggested or implied any change to train operations, or that trains must change speed or stop and wait 10 minutes on either bridge approach, or on City streets. Among the positive comments to the NPRM the local marine law enforcement entity stated it is not uncommon for ten to twenty vessels to be waiting for a bridge opening on weekends and holidays. For public safety reasons the area around the bridge is a county regulated slow no-wake speed zone for all vessels and the suggested 2-minute warning would not provide adequate warning before the span transitioned between the open and closed positions.

The Coast Guard is responsible for enforcement of the federal drawbridge regulations in 33 CFR part 117. Any decision by the Coast Guard to authorize remote operations or promulgate a drawbridge operation regulation must ensure that the proposed action provides for the safety and reasonable needs of navigation. After careful consideration of the comments from all parties it is determined to be in the best interest of navigation to withdraw the proposed rule. The bridge will be required to be manned by drawtenders and to conform to the general requirements and regulations found in Subpart A of Part 117 of Title 33 of the Code of Federal Regulations.

Authority

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: February 8, 2011.

M.N. Parks,

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

[FR Doc. 2011–5662 Filed 3–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

39 CFR Parts 172 and 177

[Docket Number PHMSA–2007–28119 (HM–247)]

RIN 2137–AE37

Hazardous Materials: Cargo Tank Motor Vehicle Loading and Unloading Operations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this NPRM, PHMSA is proposing to amend the Hazardous Materials Regulations to require each person (*i.e.,* carrier or facility) who engages in cargo tank loading or unloading operations to perform a risk assessment of the loading and unloading operation and develop and implement safe operating procedures based upon the results of the risk assessment. The proposed operational procedures include requirements to address several aspects of loading and unloading, including provisions for facilities to develop maintenance testing programs for transfer equipment (*i.e.,* hose maintenance programs) used to load or unload cargo tank motor vehicles (CTMVs). In addition, PHMSA is proposing to require each employee who engages in cargo tank loading or unloading operations to receive training and be evaluated on the employee's qualifications to perform loading or unloading functions. PHMSA is proposing these amendments to reduce the risk associated with the loading and unloading of cargo tank motor vehicles that contain hazardous materials.

DATES: Submit comments by May 10, 2011. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2007–28119) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (*see* **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of 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) or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kurt Eichenlaub or Dirk Der Kinderen, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This NPRM proposes requirements for each person (*i.e.,* carrier or facility) who loads, unloads, or provides transfer equipment [1] to load or unload a hazardous material to or from a cargo tank motor vehicle in accordance with part 177. The proposal addresses safety concerns raised by National Transportation Safety Board (NTSB) and Chemical and Safety Hazard Investigation Board (CSB) investigations, and PHMSA's internal review of hazardous material incident data. The proposal aims to reduce the overall number of hazardous material incidents caused by human error and equipment failures during cargo tank loading and unloading operations. As discussed in more detail throughout this document, the NPRM proposes the following requirements:

Affected entities	Proposal
Cargo tank carriers, and facilities that engage in part 177 loading or unloading operations.	• Assess the risks of loading and unloading operations and develop written operating procedures. • Train hazmat employees in the relevant aspects of the operational procedures. • Annually qualify hazmat employees who perform loading and unloading operations.
Facilities providing transfer equipment for cargo tank loading and unloading operations under part 177.	• Develop and implement a periodic maintenance schedule to prevent deterioration of equipment and conduct periodic operational tests to ensure that the equipment functions as intended. • Ensure that the equipment meets the performance standards in part 178 for specification cargo tanks.

The overall costs and benefits of the proposed regulations are dependent on the level of existing pre-compliance and the overall effectiveness of the proposed regulations (reduction in loading/unloading incidents). To monetize the costs and benefits PHMSA used a number of assumptions to develop a base case.[2] In aggregate, PHMSA estimates the mean present value of the total monetizable costs of these proposals (over 20 years, 7% discount

[1] The phrase "transfer equipment" includes any device in the loading and unloading system that is designed specifically to transfer product between the internal valve on the cargo tank and the first permanent valve on the supply or receiving equipment (*e.g.,* pumps, piping, hoses, connections, *etc.*).

[2] PHMSA's assumptions used to develop the base case are described in detail in the preliminary regulatory impact assessment, which is available for review in the docket for this rulemaking.

rate [3]) to be $18.5 million and total monetizable benefits (over 20 years, 7% discount rate) to be $18.3 million. A summary of the expected annual costs and benefits is provided in the table below.

BASE CASE BENEFITS AND COSTS

Year	Annual benefit	Discount factor (7%)	PV benefit (7%)	Annual cost	PV cost (7%)
2012	$1,729,971	1.07	$1,616,795	$ 1,744,861	$ 1,630,711
2013	1,729,971	1.14	1,511,023	1,744,861	1,524,029
2014	1,729,971	1.23	1,412,171	1,744,861	1,424,326
2015	1,729,971	1.31	1,319,786	1,744,861	1,331,146
2016	1,729,971	1.40	1,233,445	1,744,861	1,244,061
2017	1,729,971	1.50	1,152,752	1,744,861	1,162,674
2018	1,729,971	1.61	1,077,339	1,744,861	1,086,611
2019	1,729,971	1.72	1,006,859	1,744,861	1,015,525
2020	1,729,971	1.84	940,989	1,744,861	949,089
2021	1,729,971	1.97	879,429	1,744,861	886,999
2022	1,729,971	2.10	821,897	1,744,861	828,971
2023	1,729,971	2.25	768,128	1,744,861	774,739
2024	1,729,971	2.41	717,876	1,744,861	724,055
2025	1,729,971	2.58	670,912	1,744,861	676,687
2026	1,729,971	2.76	627,021	1,744,861	632,418
2027	1,729,971	2.95	586,001	1,744,861	591,045
2028	1,729,971	3.16	547,664	1,744,861	552,378
2029	1,729,971	3.38	511,836	1,744,861	516,241
2030	1,729,971	3.62	478,351	1,744,861	482,468
2031	1,729,971	3.87	447,057	1,744,861	450,905
			18,327,332	.....	18,485,077

PHMSA requests comments on the analysis underlying these estimates, as well as possible approaches to reduce the costs of this rule while maintaining or increasing the benefits. While PHMSA has concluded that the aggregate benefits justify the aggregate costs, under some scenarios, the monetizable benefits may fall short of the monetizable costs. PHMSA seeks comments on possible changes or flexibilities that might improve the rule.

II. Background

On January 4, 2008, PHMSA published a notice (73 FR 916) to solicit comments and information on a set of recommended practices for loading and unloading operations involving bulk packagings used to transport hazardous materials. In that notice, PHMSA summarized incident data related to bulk loading and unloading operations, discussed recommendations issued by the NTSB and CSB, provided an overview of current Federal regulations applicable to bulk loading and unloading operations, summarized the results of a public workshop PHMSA hosted in June 2007, and set forth proposed recommended practices for bulk loading and unloading operations. PHMSA indicated its intention to consider strategies for enhancing the safety of bulk loading and unloading operations, including whether additional regulatory requirements may be necessary. In addition, PHMSA solicited comments on whether there are existing gaps or overlaps in regulations promulgated by PHMSA, the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the United States Coast Guard (USCG) that adversely affect the safety of these operations, and how any identified gaps or overlaps in Federal regulations should be addressed.

The proposed recommended practices set forth in the notice suggested that an offeror, carrier, or facility operator should conduct a thorough, orderly, systematic analysis to identify, evaluate, and control the hazards associated with specific loading and unloading operations and develop a step-by-step guide to loading and unloading that is clear, concise, and appropriate to the level of training and knowledge of its employees. PHMSA recommended that operating procedures address specific pre-loading/pre-unloading operations, loading/unloading operations, and post-loading/post-unloading operations and the procedures should be reviewed as often as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and equipment. In addition, PHMSA suggested that the operating procedures should identify and implement emergency procedures (including training and drills), maintenance and testing of equipment, and training in the operational procedures.

In this NPRM, PHMSA is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to require persons who load a hazardous material into, or unload a hazardous material from, a CTMV to develop and implement safety procedures governing such operations. PHMSA's review of transportation incident data and the findings of several NTSB and CSB accident investigations involving bulk hazardous materials loading and unloading operations suggest there may be opportunities to enhance the safety of such operations. (*See* Section II of this notice for detailed discussion). Several comments PHMSA received in response to our January 2008 notice generally support this view. PHMSA has identified a broad range of highway- and rail-specific loading and unloading safety issues that should be addressed through rulemaking. PHMSA plans to address the identified safety issues through separate rulemakings. PHMSA is evaluating the safety issues associated with rail tank car loading and unloading operations and may propose regulatory changes if our safety analysis concludes that such action is warranted.

[3] Ordinarily, one important area for sensitivity analysis is the discount rate used for converting future values into present values; OMB's guidance is to use a 3-percent rate as a sensitivity case to the standard 7-percent rate. In this case, costs and benefits accrue evenly across time (*i.e.,* at the same levels for each year in the 20-year analysis period) and thus the choice of discount rate does not affect the nature of the results.

III. Analysis of the Problem

A. Review of Incident Data

In an effort to develop data to help identify and target risks associated with bulk loading and unloading of hazardous materials transported by highway and rail, PHMSA reviewed incident data submitted in accordance with the reporting criteria specified in § 171.16 of the HMR. A report, "A Summary Evaluation of Risk Associated with Bulk Loading/Unloading of Hazmat" (February 8, 2007), is available in the docket for this rulemaking. PHMSA conducted a detailed review of hazardous materials transportation incidents occurring over a three-year period (2004–06). An overarching conclusion of the review is that addressing risks associated with bulk loading and unloading operations for highway and rail transport provides an opportunity to enhance the safety of such operations and reduce the overall risk of serious incidents.

Based on indications from the initial review of incident data, and following a review of comments received in response to our January 4, 2008 notice, PHMSA conducted an additional review of serious incident data involving bulk loading and unloading of hazardous materials transported by highway and rail occurring over a five-year period (2003–07) (PHMSA has since updated the review to include incident data through 2009).[4] PHMSA reviewed serious incidents involving hazardous materials in quantities of 3,000 liters or greater to identify the causes of the incidents and to identify common issues or problems that should be addressed. The analysis of the incident data suggests that human error is the greatest single primary cause of incidents during loading and unloading operations, accounting for 33% of serious incidents that reported a failure cause (26% of all incident reports reviewed). [Note that the analysis reflects failure causes reported on incident reports. Not all incident reports reported a failure cause and PHMSA did not make an assumption on the failure cause for those incidents where a failure cause was not indicated on the report; approximately 39% of the incident reports did not include a failure cause] During our review of incident data we noted that human error generally was a result of inattention to detail when performing a loading or unloading function; examples include failure to attend or monitor the operation, leaving valves in the wrong position, or improperly connecting hoses and other equipment. Overfilling of packagings or receiving tanks accounted for 25% of the incidents. Defective or deteriorating devices or components (*e.g.,* valve failure, gasket leak) as the primary cause accounted for approximately 16% of serious incidents, and a variety of other causes (*e.g.,* freezing temperatures, lading plugs in piping, lading/vessel incompatibility) accounted for the remainder. Further, a comparison of the serious incidents shows that the overwhelming majority involved CTMVs by highway; approximately 90% (615 of 680) of the serious incidents occurred during highway loading or unloading operations, and approximately 75% of those incidents involved CTMVs.

The general conclusion of the review is that the safety of bulk loading and unloading operations can be enhanced through targeted requirements such as more comprehensive training for hazmat employees performing a bulk loading or unloading function or more detailed procedures for conducting such operations. (*See* Section V *Section-by-Section Review* for detailed descriptions of the proposed amendments in this notice). PHMSA seeks comments or data relevant to the accuracy of the conclusion that human error is the leading causal factor in CTMV loading and unloading incidents.

PHMSA is proposing additional training and qualification requirements as a means to increase hazmat employee awareness and accountability while reducing on-the-job complacency. As a result, PHMSA expects a reduction in the number of loading and unloading incidents caused by human error. Significant reductions to human error have been recognized using similar methods in the transportation and medicine fields. A discussion of these findings is available in the Preliminary Regulatory Impact Assessment, which is available in the docket for this rulemaking. Further, the incident analysis suggests that specific safety regulations targeting the loading and unloading of CTMVs used for highway transportation would address the majority of serious loading and unloading incidents. All data used for the report and our additional review are available from the Hazardous Materials Information System (HMIS; *http://phmsa.dot.gov/hazmat/library/data-stats/incidents*). PHMSA is seeking comments on whether the estimated costs and benefits, detailed in the Preliminary Regulatory Impact Assessment for these proposals, provide an accurate representation of the expected costs and benefits of the proposed regulations. Further, do commenters agree that documentation of operational procedures along with additional hazmat employee training and qualification is the best way to reduce the overall number of loading and unloading incidents caused by human error? If not, what are some more effective approaches, both regulatory and non-regulatory, to reduce the overall number of loading and unloading incidents caused by human error?

B. NTSB Accident Investigations

NTSB has investigated several serious accidents related to bulk loading and unloading operations:

On July 14, 2001, in Riverview, Michigan, methyl mercaptan was released from a rail tank car during unloading, when a pipe attached to a fitting on the unloading line fractured and separated. The methyl mercaptan ignited, engulfing the tank car in flames. Fire damage to cargo transfer hoses on an adjacent tank car resulted in the release of chlorine. Three plant employees were killed in the accident, and about 2,000 people in the surrounding neighborhood were evacuated from their homes. The fractured piping used for the unloading operation exhibited significant corrosion damage. As a result of this investigation, NTSB issued the following recommendations to DOT:

- I–02–1: Develop, with the assistance of the Environmental Protection Agency and Occupational Safety and Health Administration, safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.
- I–02–2: Implement, after the adoption of safety requirements developed in response to Safety Recommendation I–02–1, an oversight program to ensure compliance with these requirements.

On September 13, 2002, in Freeport, Texas, a tank car containing about 6,500 gallons of hazardous waste ruptured at a transfer station. The car had been steam-heated to permit the transfer of the waste to a CTMV for subsequent disposal. As a result of the accident, 28 people received minor injuries, and residents living within one mile of the

[4] PHMSA analyzed incident report data contained in the Hazardous Materials Information System (HMIS; *http://phmsa.dot.gov/hazmat/incident-report*). An excel spreadsheet containing the data used for this analysis and a PowerPoint presentation that summarizes the results of the review are available in the docket for this rulemaking.

accident site had to shelter-in-place for 5½ hours. The tank car, highway cargo tank, and transfer station were destroyed. The force of the explosion propelled a 300-pound tank car dome housing about ⅓ mile away from the tank car. Two storage tanks near the transfer station were damaged; they released about 660 gallons of the hazardous material oleum (fuming sulfuric acid and sulfur trioxide). As a result of its investigation, NTSB issued the following recommendation to PHMSA:

○ R–04–10: In cooperation with the Occupational Safety and Health Administration and the Environmental Protection Agency, develop regulations that require safe operating procedures to be established before hazardous materials are heated in a railroad tank car for unloading; at a minimum, the procedures should include the monitoring of internal tank pressure and cargo temperature.

C. CSB Accident Investigations

CSB has investigated two incidents in which chlorine was released during rail tank car unloading operations:

On August 14, 2002, in Festus, Missouri, approximately 24 tons of chlorine were released during a three-hour period following the rupture of an unloading hose. The magnitude of the incident was exacerbated because the emergency shutdown system failed to operate properly. Three residents were admitted to the hospital, and hundreds of residents were evacuated or asked to shelter-in-place.

On August 11, 2005, in Baton Rouge, Louisiana, a chlorine transfer hose ruptured. However, the emergency shutdown system operated properly, and the release ended in under a minute. The successful activation of the emergency shutdown system prevented a major release and off-site impact. As a result of its investigations, CSB issued recommendation 2006–06–I–LA–RI to DOT to:

> Expand the scope of DOT regulatory coverage to include chlorine rail car unloading operations. Ensure the regulations specifically require remotely operated emergency isolation devices that will quickly isolate a leak in any of the flexible hoses (or piping components) used to unload a chlorine rail car. The shutdown system must be capable of stopping a chlorine release from both the rail car and the facility chlorine receiving equipment. Require the emergency isolation system be periodically maintained and operationally tested to ensure it will function in the event of an unloading system chlorine leak.

Other accidents illustrate that loading and unloading operations involving CTMVs can also have catastrophic consequences. For example, on October 6, 2007, at a foundry in Tacoma, Washington, a delivery driver took an improperly repaired fill hose and began to unload the gas from his 8,000-gallon tanker truck. In less than a minute, the hose detached from its connection to the truck's tank, which allowed propane gas to rapidly flow from the open valve and fill the air with the explosive gas; the liquefied petroleum (LP) gas ignited and the first explosion engulfed the truck and fill area. Eight minutes later, the heated tanker truck exploded in a huge fireball witnessed by hundreds of people in the area and heard up to a mile away. The truck driver was fatally injured. The accident investigation found that workers had improperly repaired the foundry's damaged LP-gas fill hose, attaching the fill nozzle using fasteners that were not designed to withstand pressurized gas. The Washington State Department of Labor and Industries cited the company for three serious violations of workplace safety and health regulations that contributed to the explosion.

IV. Comments on January 2008 Notice and Measures Being Considered for Adoption

In response to PHMSA's January 4, 2008 notice, PHMSA received comments from the following organizations and individuals:

- ACCU CHEM Conversion, Inc. (Accu Chem)
- American Chemistry Council (ACC)
- American Gas Association (AGA)
- American Petroleum Institute (API)
- American Trucking Associations (ATA)
- Arkema, Inc.
- Association of American Railroads (AAR)
- Daniel Roe
- Dangerous Goods Advisory Council (DGAC)
- Distrigas of Massachusetts LLC (Distrigas)
- DuPont Global Logistics (DuPont)
- Independent Liquid Terminals Association (ILTA)
- Institute of Makers of Explosives (IME)
- National Association of SARA Title III Program Officials (NASTTPO)
- National Association of Chemical Distributors (NACD)
- National Association of State Fire Marshals (NASFM)
- National Grid
- National Propane Gas Association (NPGA)
- National Tank Truck Carriers, Inc. (NTTC)
- National Transportation Safety Board (NTSB)
- New York State Department of Environmental Conservation (NYSDEC)
- Oklahoma Hazardous Materials Emergency Response Commission (OHMERC)
- The Chlorine Institute, Inc. (CI)
- The Dow Chemical Company (Dow)
- U.S. Chemical Safety and Hazard Investigation Board (CSB)
- Utility Solid Waste Activities Group (USWAG)

Some of the comments are discussed as they relate to the measures PHMSA is considering in this NPRM to enhance the safety of loading and unloading bulk packagings.

A. Operating Procedures

Most commenters support adoption in the HMR of procedures governing loading and unloading of bulk packagings as the best way to enhance the safety of such operations. ACC states, "[s]uccessfully enhancing safety depends on there being an enforceable Federal rule on the loading and unloading of bulk hazmat shipments in the truck and rail modes." NTSB supports incorporation of the recommended practices into the HMR:

> [T]he proposed recommended practices for the bulk loading and unloading of hazardous materials are comprehensive and satisfactorily address [safety deficiencies]. Implementation of and compliance with the proposed recommended practices by carriers, shippers, and consignees of hazardous materials transported in tank cars, cargo tanks, and other bulk containers will significantly improve the safety of loading and unloading of hazardous materials transported in bulk.

ACC, Arkema, DGAC, DuPont, and IME support regulatory requirements governing loading and unloading of bulk packagings, but recommend the adoption of a set of operating procedures proposed by the Interested Parties for Hazardous Materials Transportation (Interested Parties) and submitted to PHMSA as a petition for rulemaking by DGAC. IME states, "[w]e do not believe that the 'recommended practices' published in the [January 4, 2008 notice] are as comprehensive as those developed by the Interested Parties * * * PHMSA's recommended practices do not address, for example, incidental storage or security."

PHMSA agrees with commenters on the need to implement regulations governing the loading and unloading of bulk transport tanks. PHMSA's review of incident data involving tanks with a capacity of 3,000 liters or greater revealed that 90% of the incidents occur by highway, and nearly all of those incidents involve cargo tank motor

vehicles. PHMSA also notes that there are unique operational differences between loading and unloading operations conducted by highway and rail (types of equipment, operating environments, techniques, access, training, *etc.*). Therefore, PHMSA is limiting the scope of the proposals in this rulemaking to CTMVs. Safety issues related to loading and unloading by rail continue to be evaluated and may be addressed in a future rulemaking action. PHMSA believes a regulatory approach that targets the primary causes of loading and unloading incidents involving cargo tank motor vehicles is the most cost beneficial approach. Security and incidental storage of bulk transport tanks are beyond the scope of this rulemaking action.

Two commenters oppose adoption of regulations governing loading and unloading of bulk packagings. ILTA suggests that "it is unnecessary to either proceed with issuing the proposal as a recommended practice or to move forward with a rulemaking. Our position is based on: (1) Existing regulations that presently address each [recommended practice]; (2) jurisdictional conflict * * * ; and (3) cost-benefit considerations." ILTA suggests that other Federal agencies, particularly EPA, currently regulate loading and unloading operations and that adoption by PHMSA of its proposed recommended practices would result in "redundancy of enforcement authority with regard to loading operations that is neither necessary nor warranted." ILTA also suggests that "the benefits of implementing [the recommended practices] would be minimal." Accu Chem states that most hazardous materials facilities have implemented procedures governing loading and unloading operations and that the real problem is inadequate training. "It is [Accu Chem's] opinion that the best way to minimize complacency in the work place is by constant bombardment of wide[ly] accepted industry practices. By this [we] mean new hire training, monthly safety meetings, and yearly refresher training."

PHMSA disagrees with the commenter's assertion that rulemaking is unnecessary. PHMSA's incident analysis indicates that there are loading and unloading safety risks that could be reduced by implementing additional loading and unloading regulations.

PHMSA does agree with the commenter that additional training is necessary to reduce the safety risks associated with CTMV loading and unloading. PHMSA has modified its approach to addressing loading and unloading safety issues. In this NPRM, PHMSA is proposing targeted requirements to address safety issues identified through the incident analysis discussed earlier in this notice. PHMSA is proposing additional training and qualification requirements for hazmat employees who engage in CTMV loading and unloading operations. The proposal includes a requirement for annual qualification for hazmat employees who perform CTMV loading and unloading operations. PHMSA coordinated this proposal with EPA and does not believe that any of the proposals in this notice would create redundant enforcement authority or conflict with existing EPA regulations.

API, NACD, and NPGA express concern that both the recommended practices set forth in our January 4, 2008 notice and the operational procedures proposed by the Interested Parties may be too prescriptive. These commenters recommend that PHMSA develop a broad performance standard that accommodates existing standards and regulations already in widespread use by the regulated community. NACD suggests the adoption of a rule that establishes hazard level-based performance standards rather than prescriptive requirements. For example, NACD expresses concern that the elements outlined in the DGAC November 17, 2007 petition for rulemaking "are too prescriptive and would not be appropriate for all situations. In addition, requirements that are too prescriptive might not recognize that many elements are already covered by other existing laws and regulations."

PHMSA has modified its approach to addressing loading and unloading safety issues in this rulemaking action. The proposals in this notice are intended to be performance based and flexible to allow persons to develop operational procedures unique to their industry and operating environment. Further, PHMSA recognizes that existing industry standards may address many of the proposals in this notice. Therefore, existing standards and procedures may be used to comply with the regulations proposed in this notice.

ATA and NTTC contend that the adoption of regulations governing loading and unloading of bulk packagings "has the potential to create additional liability for motor carriers and to erode the regulatory uniformity necessary for carrier[s] to operate in compliance with the HMR." These commenters note that a typical truck driver serves dozens or even hundreds of facilities each year, and requiring motor carriers to train drivers on each facility's loading and unloading practices is impractical. ATA states that, "[i]t is critically important that PHMSA not choose a path forward that allows each facility to enact unique operating requirements *and* simultaneously holds motor carriers legally responsible for mastering the nuances contained in each facility's operating procedures." (Emphasis in original.)

PHMSA understands the concerns presented by the commenters. In this notice, PHMSA is proposing requirements that would apply to operators of facilities that actively engage in loading and unloading operations (*e.g.,* provide equipment such as hoses to the carrier for loading or unloading) in addition to the motor carriers. Further, PHMSA recognizes that many carriers may not be trained in the operational procedures unique to certain facilities. Therefore, PHMSA is proposing that the facility operators take on responsibility for communicating any unique operating requirements to the carrier prior to loading or unloading. In addition, if the facility operator provides employees or equipment to the carrier for loading or unloading operations, then it is PHMSA's intent that the facility operator share responsibility for the safety of the loading or unloading operation.

B. Procedures Recommended by the Interested Parties

ACC, DGAC, DuPont, IME, and NACD advocate incorporating into the HMR operating procedures proposed by the Interested Parties, an informal association of shippers, carriers, and industrial package organizations. DGAC submitted a petition, on behalf of the Interested Parties, to incorporate the procedures into the HMR. Their procedures address the loading, unloading, and incidental storage of hazardous materials in bulk packagings having a capacity greater than 3,000 liters. The scope of their procedures is limited to bulk packagings with capacities greater than 3,000 liters on the basis that: (1) PHMSA already uses this capacity as an upper limit for intermediate bulk containers; (2) packagings up to 3,000 liters are handled very much like non-bulk packagings in that they are not loaded or unloaded in the same manner or locations as rail tank cars and CTMVs; and (3) the 3,000 liter capacity threshold is sufficient to ensure that the bulk packagings of primary concern to PHMSA and NTSB (*e.g.,* rail tank cars, CTMVs, portable tanks) are covered.

The operating procedures developed and proposed by the Interested Parties specify information and processes that offerors, consignees, or transloading

facility operators must address. Some key elements include procedures applicable to pre-transfer operations (*e.g.,* securement of the transport vehicle against movement), transfer operations (*e.g.,* monitoring the temperature of the lading), post-transfer operations (*e.g.,* evacuation of the transfer system and depressurization of the containment vessel), storage incidental to movement (*e.g.,* monitoring for leaks and releases), and emergency procedures (*e.g.,* use of emergency shutdown systems). However, other commenters, including NACD, suggest that the operating procedures proposed by the Interested Parties "are too prescriptive and would not be appropriate for all situations." These commenters support adoption of risk-based performance standards rather than prescriptive requirements.

PHMSA commends the Interested Parties for their efforts to develop consensus-based loading and unloading procedures. However, at present, PHMSA finds more persuasive the view of those commenters who suggest that those procedures may not be appropriate for all companies and all situations. Accordingly, PHMSA's approach is to consider measures that are mode-specific to account for operating differences in the highway and rail modes. Safety of rail loading and unloading operations may be addressed in a separate future rulemaking action. In addition, in this notice, PHMSA is considering a more flexible regulatory regime than that proposed by the interested parties to permit companies to adapt operating procedures to site-specific and material-specific safety concerns. Note that PHMSA used the operating procedures proposed by the Interested Parties as a baseline in developing the amendments proposed in this NPRM. These proposed amendments cover most of the areas specified in their proposal. However, PHMSA has modified the proposal to target specific loading and unloading safety risks identified through the incident analysis discussed earlier in this notice.

V. Proposal

Based on comments received in response to the January 2008 notice and analysis of the safety risks posed by bulk loading and unloading operations involving CTMVs, in this NPRM, PHMSA proposes to require persons who load or unload cargo tanks to develop and implement operating procedures governing these operations. PHMSA agrees with those commenters who suggest that a regulatory requirement for the development and implementation of operating procedures will be more effective in reducing risks than issuance of a set of recommended practices or procedures. PHMSA believes that a regulatory approach would establish a uniform safety standard that ensures safety and accountability of all persons who engage in CTMV loading and unloading operations. As a result, PHMSA expects a reduction in the overall number of loading and unloading incidents, particularly for those companies who do not already implement the safety practices proposed in this notice. PHMSA is seeking comments on whether there are better alternatives, regulatory or non-regulatory, that would adequately address the loading and unloading safety issues identified in this notice.

Currently, the HMR require each hazmat employee to receive function-specific training at least once every three years. Function-specific training includes training in the specific job functions that the hazmat employee is responsible for performing, including regulations applicable to loading and unloading. In this NPRM, PHMSA proposes to require each hazmat employer who loads or unloads hazardous materials from a cargo tank to ensure that the hazmat employees conducting such operations are trained and qualified. PHMSA is proposing to require operators to develop and implement a qualification program that provides ongoing year-round training, including practice sessions, drills, supervisor observation, and other mechanisms to identify and correct problems or errors that could lead to an incident. Under this proposal, at minimum, persons who engage in loading and unloading operations would have to be qualified by their employer at least once each year. Hazmat employers would be required to document that each hazmat employee has been trained and qualified on an annual basis. The costs and benefits of this proposed requirement are discussed in detail in the Preliminary Regulatory Impact Assessment, which is available in the docket for this rulemaking. PHMSA is seeking comment on the accuracy of the estimated costs and benefits of such a training and qualification program, and whether commenters agree that this type of qualification program would effectively reduce the overall number of loading and unloading incidents caused by human error.

VI. Section-by-Section Review

Part 172

Training and Qualification

The proposed recommended practices in PHMSA's January 2008 notice included a section on training, emphasizing that personnel involved in loading and unloading and emergency response operations need to know and understand their specific responsibilities during loading and unloading operations, including attendance or monitoring responsibilities. Several commenters (NPGA, IME, DGAC) suggest that the recommended training requirements are unnecessary because training for hazardous materials employees is already addressed in Subpart H of Part 172 of the HMR. Two commenters (Dow, Accu Chem) support the training provisions. "It only makes sense to make DOT refresher training a yearly requirement in step with EPA and OSHA * * * [T]he best way to minimize complacency in the workplace is by constant bombardment of widely excepted [sic] industry practices." (Accu Chem)

As discussed in detail above, PHMSA's analysis of loading and unloading accidents suggests that human error is a significant causal factor. PHMSA agrees with Accu Chem that "constant bombardment" may help to change the safety culture and eliminate complacency in a way that periodic training requirements cannot. Therefore, in this NPRM, PHMSA proposes a new approach to training and qualification. PHMSA is proposing to require companies subject to the requirements in this NPRM to develop a training plan and a qualification program that provide ongoing training, reinforcement of that training, and periodic evaluation of employees who perform loading and unloading tasks. The training and qualification program should include routine practice sessions, drills, supervisor observation, quality control groups, and other mechanisms to identify and correct problems or errors that could lead to incidents. In particular, such programs should include mandatory refresher training and evaluation after releases or "close-calls"—events that could have led to a release of a hazardous material. Under the proposed amendments, the employer would be responsible for developing and implementing the training and qualification program. The employer would be required to maintain training records and provide recurrent training for each of its employees, at least once every three years, in

accordance with the training requirements in Part 172, Subpart H. In addition, the employer must annually evaluate and certify that employees who engage in loading, unloading, or transloading operations are satisfactorily qualified to do so. An employer may not certify that an employee is qualified until that person demonstrates that they can successfully perform the loading or unloading operation in accordance with the employer's operational procedures. Certification must be documented in the employee's training record along with the date of certification. PHMSA is seeking comment on the additional training and qualification requirements proposed herein. More specifically, PHMSA is asking commenters to provide input as to what should be included in the additional training and qualification requirements, and the associated costs and benefits of the proposed training and qualification requirements. In addition, PHMSA is seeking information on how many hazmat employers are currently practicing annual qualification programs that include similar elements to those proposed in this notice.

The use of formalized and documented procedures, safety checklists, and additional training will reduce loading/unloading errors, resulting in a reduction in the number and severity of incidents of these types. The magnitude of the impact will vary from industry to industry and from firm to firm. An example from Great Britain is the public-private Safer Port Initiative, which achieved a 22 percent overall reduction in serious accidents at maritime freight facilities through the use of standardized guidance and safety audits.[5] (Other fields, such as medicine, have seen even more dramatic results, with relatively simple interventions such as written checklists leading to reductions in human error of 66 percent or more.[6]) Numerous industry associations in the U.S. have also promoted the use of standardized procedures and checklists in hazardous materials transportation. For example, the Chlorine Institute requires its member companies to use a standardized checklist for bulk handling of chlorine.[7] Although these practices are believed to yield safety benefits, no quantitative estimates of their effects in the cargo tank loading/unloading context are available. PHMSA is seeking comments on the overall effectiveness of safety training and employee qualification programs in the hazardous materials transportation industry. More specifically, PHMSA is seeking data and information that could be used to better estimate the amount of human error reduction that could be expected from implementing the additional training and qualification requirements proposed in this notice.

Section 177.831

A. General Applicability

In this NPRM, PHMSA proposes to add a new section (§ 177.831) to Subpart B of Part 177 to address loading and unloading procedures for cargo tanks. Based on comments received in response to PHMSA's January 4, 2008, notice and analysis of the safety risks associated with loading and unloading of bulk packagings, PHMSA is proposing requirements for each person (facility or carrier) who loads or unloads cargo tanks to perform a risk assessment and develop and implement operating procedures, based upon the results of the risk assessment, governing these operations. Due to distinct differences in loading and unloading operations conducted by rail and highway, PHMSA is planning to address rail loading and unloading operations in a separate rulemaking.

The proposed cargo tank loading and unloading procedures are based on the proposed recommended practices published in PHMSA's January 2008 notice. PHMSA's intention is to establish a performance standard for assessing safety risks and implementing measures to address those risks, allowing sufficient flexibility to accommodate unique or site-specific operating conditions.

The proposed requirements in the new § 173.831 would apply to facilities that conduct loading operations or provide transfer equipment to the motor carrier for loading and unloading, and motor carriers who conduct loading and unloading operations. As one commenter suggests, "Unlike an employee at a fixed facility that can be trained on the detailed operations of that facility, the typical truck driver services dozens or even hundreds of different facilities each year. * * * [F]or non-standardized chemical deliveries, the facility operator must play an active role in helping to ensure that the facility's operating procedures are followed." (ATA) PHMSA agrees. To address the issues highlighted in the ATA and NTTC comments, PHMSA is proposing adoption of operating procedures that would differentiate between operating procedures for the loading and unloading of CTMVs conducted at facilities and assisted by facility personnel and those conducted by motor carrier personnel. The proposed regulations in this notice would require facilities that have unique operating procedures to communicate those procedures to the motor carrier through direct supervision, written instruction, or training programs designed to provide the motor carrier with sufficient knowledge and experience to perform the loading or unloading operation in accordance with the facility's operating procedures. PHMSA notes that, in many cases, motor carriers and facilities share responsibility for loading or unloading hazardous materials (*e.g.,* a motor carrier uses a hose provided by a facility to unload the contents of a cargo tank into the facility's storage tanks). Therefore, motor carriers and facility operators should work together to ensure that loading or unloading procedures and equipment are safe and compatible.

The proposed requirements in the new § 172.831 also address cargo tank loading and unloading operations conducted solely by motor carrier personnel. As indicated above, for loading and unloading operations conducted at facilities, the facility operator has primary responsibility for compliance with the operating procedure requirements proposed in this NPRM. Frequently, however, a motor carrier will deliver and unload hazardous materials at a residence, business, or other venue where primary responsibility for the safety of the transfer operation belongs to the motor carrier. Examples include deliveries of fuel oil or propane to residences or businesses, or gasoline to local gas stations. As proposed in this NPRM, a motor carrier's responsibility for developing loading and unloading procedures extends to the CTMV and associated equipment, attachments, and appurtenances. Thus, for a loading or unloading operation that takes place at a facility and is supervised by facility personnel, the motor carrier must conduct a risk assessment and develop operating procedures that are specific to the cargo tank involved in the transfer operation. A similar proposal in this notice applies for loading or unloading operations at locations where the motor carrier is primarily responsible for the safety of the transfer operation, such as at a business or residence. For example,

[5] Safer Ports Initiative, *http://www.saferports.org.uk/spi_1.*

[6] Pronovost, Peter, Dale Needham, Sean Berenholtz, David Sinopoli, Haitao Chu, Sara Cosgrove, Bryan Sexton, Robert Hyzy, Gary Roth, Joseph Bander, John Kepros, and Christine Goeschel. "An Intervention to Decrease Catheter-Related Bloodstream Infections in the ICU." *New England Journal of Medicine* 355.26 (2006): 2725.

[7] Chlorine Institute, Inc., "Dear Chlorine User" letter, July 22, 2008.

a motor carrier that delivers and unloads propane at a residence must conduct a risk assessment for such operations. The motor carrier need not conduct a separate risk assessment of each residence or retail outlet (*i.e.,* gas station) to which it delivers propane or gasoline, but may instead assess the overall risk of such operations and develop operating procedures that apply generally to such operations.

PHMSA is not proposing requirements for other bulk packagings such as portable tanks or intermediate bulk containers (IBCs) in this rulemaking. PHMSA agrees with the comment submitted by NACD, which states, "[t]he data on the most serious loading and unloading incidents seems to implicate packagings over 3,000 liters. * * * The Hazardous Materials Interested Parties Working Group chose a limit of 3,000 liters based upon the fact that most packagings smaller than that are not loaded and unloaded using pumping equipment and are not loaded while on the transport vehicle." The agency's assessment of the safety risks associated with loading and unloading operations suggests that loading and unloading operations involving large-capacity containers (*e.g.,* cargo tanks) pose more significant risks, based on the quantity of material being handled and the potential consequences of a release, than smaller packages and containers.

B. Risk Assessment and Operating Procedures

PHMSA agrees with commenters who suggest that a regulatory requirement for the development and implementation of operating procedures will be more effective in reducing risks than the issuance of a set of recommended practices or procedures. A regulatory approach provides a uniform set of safety requirements, provides a mechanism for accountability through compliance inspections, and levels the competitive playing field by requiring all companies engaged in hazmat loading and unloading operations to meet the same minimum set of safety regulations.

The operating procedures would be based on a systematic assessment of the risks associated with the specific loading or unloading procedure and would, at a minimum, consider: the characteristics and hazards of the material to be loaded or unloaded; measures necessary to ensure safe handling of the material; and conditions that could affect the safety of the operation, including access control, lighting, ignition sources, physical obstructions, and weather conditions. The operating procedures would address pre-loading or pre-unloading procedures, loading or unloading procedures, emergency management, post-loading or post-unloading procedures, and maintenance and testing of equipment. These measures would include general requirements for an operating procedure's components, rather than a prescriptive list of specific items that should be included, resulting in a performance standard that would provide operators with the flexibility necessary to develop operating procedures addressing their individual situations and operations. Accordingly, each operating procedure would be different because it would be based on an operator's individualized assessment of the safety risks associated with the specific hazardous materials it ships or transports and its own circumstances and operational environment. PHMSA is seeking comments on whether the general components of an operational procedure proposed in this notice would adequately address safety risks while providing enough flexibility to address individual situations and environments.

PHMSA is proposing to require facilities that perform loading or unloading operations or provide transfer equipment to the motor carrier for loading or unloading operations to ensure that the carrier is either (a) supervised or assisted by a facility employee who is trained on the operating procedures, or (b) provided with written instructions on how to conduct the loading or unloading operation in accordance with the facility's unique operating procedures. To provide flexibility, a facility need not provide supervision or written instructions if the motor carrier has sufficient knowledge to perform the loading or unloading operation in accordance with the facility's operating procedures. "Sufficient knowledge" may include formal or on-the-job training in the operating procedures of a particular facility, or significant experience performing loading or unloading operations in accordance with the operating procedures of a particular facility. The term "transfer equipment" includes any device in the loading and unloading system that is designed specifically to transfer product between the internal valve on the cargo tank and the first permanent valve on the supply or receiving equipment (*e.g.,* pumps, piping, hoses, connections, *etc.*). As proposed in this notice, by providing "transfer equipment" for a loading or unloading operation, the facility would share responsibility with the carrier for ensuring the integrity of the equipment, that it is compatible with the tank and the material, and that the carrier has sufficient knowledge to perform the loading or unloading operation in accordance with facility operating procedures. PHMSA is seeking comment on whether this requirement would facilitate better communication between facility operators and carrier personnel, thus reducing the overall risk of an incident during loading or unloading operations. Further, PHMSA is seeking comments and information on the overall number of facilities that actually provide equipment, such as hoses, personnel, or instruction to carriers for loading or unloading operations performed at those facilities. Should PHMSA implement regulations applicable to facility operators that provide transfer equipment, or actively engage in CTMV loading or unloading operations?

PHMSA is proposing to require the risk assessment and operating procedures to be in writing and a copy maintained on the motor vehicle, or for facilities the principal place of business (*i.e.,* office at the facility where loading and unloading operations are conducted), for as long as the operating procedures remain in effect.

The operating procedures must be accessible at or through the principal place of business and must be made available, upon request, to an authorized official of a Federal, state, or local government agency at reasonable times and locations. At a minimum, the proposed operating procedures must cover:

(1) Pre-loading or -unloading procedures to ensure the integrity of the cargo tank and associated transfer equipment, prepare the cargo tank and equipment for the transfer operation, and verify the vessel into which the material is to be transferred;

(2) Loading or unloading procedures for monitoring the transfer operation;

(3) Procedures for handling emergencies;

(4) Post-loading or -unloading procedures to ensure that all transfer equipment is disconnected and all valves and closures are secured;

(5) Facility oversight of carrier personnel; and

(6) Design, maintenance, and testing of equipment.

PHMSA is soliciting comments on the proposed documentation requirements for the operational procedures. Should facilities be required to document their loading and unloading operating procedures? If so, are the minimum requirements for documenting risk assessments and operational procedures appropriate and flexible enough to

apply to all types of loading and unloading operations? Would documented loading and unloading procedures ensure compliance and improve the overall safety of loading and unloading operations? Would regulated entities incur documentation costs to develop and maintain risk assessments and operational procedures? If so, what is a fair estimate of the potential costs?

For each component of the operating procedures, PHMSA is proposing that the procedures include measures to address particular risks to safety. For example, pre-loading and -unloading procedures must include measures to ensure that the cargo tank and transfer equipment are free of defects, leaks, or other unsafe conditions; secure the tank; and verify that the material is being transferred into the appropriate packagings or containment vessels. Similarly, loading and unloading procedures must include measures to initiate and control lading flow; monitor the temperature of the material being transferred and the pressures of the vessels involved in the process; monitor filling limits; and terminate lading flow.

PHMSA has a particular concern for cargo tank loading and unloading operations that utilize a hose provided by the facility at which the operation takes place rather than the hose that is carried on a cargo tank motor vehicle. The HMR require operators of MC 330, MC 331, and non-specification cargo tanks used for the transportation of liquefied compressed gases to implement a comprehensive hose maintenance program that includes monthly visual inspections, annual leakage tests, and pressure testing of new and repaired hose assemblies (*see* § 180.416). Further, the HMR require the operator to visually inspect the hose prior to initiating the unloading operation and after the operation is complete. The operator may not use a hose found to have any of the following conditions: (1) Damage to the hose cover that exposes the reinforcement; (2) wire braid reinforcement that has been kinked or flattened so as to permanently deform the wire braid; (3) soft spots when not under pressure, bulging under pressure, or loose outer covering; (4) damaged, slipping, or excessively worn hose couplings; or (5) loose or missing bolts or fastenings on bolted hose coupling assemblies.

PHMSA is concerned that facility hoses may not be maintained to the standard established under the HMR (see piping and hose requirements in §§ 173.345–9, 178.337–9, and 180.416). The 2007 accident in Tacoma, Washington, described above, demonstrates the serious safety problems that can result from the use of a damaged or improperly repaired hose for unloading operations. Therefore, in this NPRM, PHMSA is proposing to require facilities that provide transfer equipment that is connected directly to CTMVs and used to load or unload product from the tank, to implement maintenance and inspection programs consistent with existing standards for hoses carried aboard CTMVs. At a minimum, the operational procedure must include a hose maintenance program. Further, PHMSA is proposing to require the operator of the CTMV to conduct a visual examination of the facility equipment being used for the loading or unloading operation to identify any obvious defects that could substantially impact the safety of the loading or unloading operation, because the vehicle operator must not commence a loading or unloading operation using equipment that is found to have any readily apparent defect. Note that the operator of the motor vehicle is not expected to use instruments or take extraordinary actions to check components not readily visible. The operator of the transport vehicle may rely on information provided by the facility to determine that the transfer equipment meets the appropriate specifications, is of sound quality, has been properly tested and maintained, and is compatible with the material.

C. Relationship to Other Federal, State, or Industry Standards

PHMSA is proposing a paragraph § 177.831(c) to address the relationship of the proposed requirements for loading and unloading risk assessments and operating procedures to other Federal or state regulatory requirements. As discussed above, both OSHA and EPA regulate operations involving the handling of hazardous materials at fixed facilities.

For example, OSHA's Process Safety Management (PSM) standard (29 CFR 1910.119) contains requirements for processes that use, store, manufacture, handle, or transport particular chemicals on-site. Bulk loading and unloading operations involving PSM-covered chemicals are subject to the requirements of the PSM standard. The PSM standard requires employers to compile process safety information (PSI) to enable employers and employees to identify and understand the hazards of the process. The PSI must include: (1) Physical and reactivity data of the highly hazardous chemicals in the process; (2) safe upper and lower limits of the process such as temperatures, pressures, flows and compositions; and (3) an evaluation of the consequences of deviation. Using the PSI, employers must perform a process hazard analysis to systematically identify, evaluate, and control the hazards of the process. After an employer completes a process hazard analysis, the employer must develop and implement written operating procedures providing clear, written instructions for safe operations of a process, including loading and unloading operations to or from bulk containers (*see* 29 CFR 1910.119(f)). After the procedures are developed, each employee (including contract employees) involved in loading and off-loading operations must be trained in accordance with 29 CFR 1910.119(g) in an overview of the process and the procedures required.

The OSHA standards also include requirements for the handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. For example, the OSHA standard at 29 CFR 1910.106, Flammable and combustible liquids, contains requirements for storage of these liquids, including among others, requirements for grounding and bonding during transfer operations and controlling ignition sources, such as static electricity. Specifically, 29 CFR 1910.106(f), Bulk plants, contains requirements for workplaces that receive flammable and combustible liquids by rail tank car and cargo tank motor vehicle. These bulk plants store or blend the flammable and combustible liquids for subsequent distribution by various modes of transportation, including rail tank cars. The standard at 29 CFR 1910.106(f) also contains specific provisions for loading and unloading facilities. Additionally, the OSHA standard at 29 CFR 1910.120, Hazardous waste operations and emergency response, establishes requirements for emergency response operations. When there is a release of a hazardous substance, or a substantial threat of a release, then emergency response operations must comply with 29 CFR 1910.120(q).

In situations where an operation or a material is not covered by the PSM standard or the other OSHA standards, employers are obligated under Section 5(a)(1)—"the General Duty Clause"—of the Occupational Safety and Health Act of 1970 to protect employees from serious "recognized" hazards.

EPA regulations also establish a general duty for facility owners or operators to identify hazards associated with the accidental releases of

extremely hazardous substances, design and maintain a safe facility as needed to prevent such releases, and minimize the consequences of releases. In addition, stationary sources with more than a threshold quantity of a regulated substance in a process are subject to EPA's accident prevention regulations, including the requirement to develop risk management plans (40 CFR part 68). EPA's risk management plan requirements are virtually identical to the OSHA PSM standards. Facilities must develop and implement risk management plans that contain three main elements: (1) A hazard assessment; (2) a prevention program; and (3) an emergency response program.

EPA's Spill Prevention, Control, and Countermeasure (SPCC) program (40 CFR part 112) for non-transportation-related facilities is designed to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or onto the navigable waters of the United States or adjoining shorelines." SPCC regulations apply to the following facilities: (1) Oil storage facilities, including all related equipment and appurtenances and bulk plant storage; (2) terminal oil storage; (3) pumps and drainage systems used in the storage of oil, except for in-line or breakout tanks needed for the continuous operation of a pipeline system; and (4) any terminal facility, unit, or process integrally associated with the transfer of oil in bulk to or from a vessel. The SPCC regulations include several requirements for facility rail tank car and cargo tank motor vehicle loading and unloading racks, such as a secondary containment system and lights or barriers to prevent the vehicle from departing the facility prior to disconnecting transfer lines. Loading racks, transfer hoses, loading arms, and other equipment that is appurtenant to a non-transportation-related facility or terminal and that is used to transfer oil in bulk to or from highway vehicles or rail cars are also subject to regulation under the SPCC program. Facility owners and operators should be aware that the regulation of equipment or operations by PHMSA does not preclude EPA from regulating the same equipment or operations. Additionally, DOT jurisdiction does not define the limits of EPA jurisdiction and in certain cases there may be overlapping regulations. However, today's action may allow compliance with the SPCC rule to satisfy the new PHMSA requirements. Further, the proposals in this NPRM do not affect the scope of EPA's authority or regulations promulgated under CAA Section 112(r) or the Oil Pollution Act.

States may also have adopted standards or regulations applicable to the handling, including loading and unloading, of hazardous materials at fixed facilities. For example, all states have adopted the National Fire Protection Association (NFPA) Standard 58, LP-Gas Code. NFPA 58 is a nationally recognized consensus document used throughout the United States as the primary standard for installing systems used to store, handle, transport, and use liquefied petroleum gases. NFPA 58 requires written operating procedures for loading and unloading that address, among other items, transfer hoses, chocks, fire extinguishers, sources of ignition, personnel, containers, signage, security and access, and fire response. The standard also requires written maintenance procedures that address corrosion control, physical protection, hoses, piping, appurtenances, containers, and fire protection equipment.

In addition, as noted in the January 2008 notice, PHMSA is aware of a variety of existing national consensus standards that address bulk loading and unloading operations. For example, the American Petroleum Institute (API) has issued Recommended Practices for Loading and Unloading MC 306/DOT 406 cargo tank motor vehicles (RP # 1007). The American Chemistry Council has developed the Responsible Care® management system, which establishes an integrated, structured approach to drive results in seven key areas: (1) Community awareness and emergency response; (2) security; (3) distribution; (4) employee health and safety; (5) pollution prevention; (6) process safety; and (7) product stewardship.

Several commenters (API, ILTA) express concern that the adoption of PHMSA regulations applicable to loading and unloading operations would complicate jurisdictional boundaries between DOT and EPA. "Implementation of the [recommended practices] would result in redundancy of enforcement authority with regard to loading operations that is neither necessary nor warranted. Further simplification of these jurisdictional boundaries should be an objective for future action rather than confusion through the implementation of competing or duplicative regulation." (ILTA) Commenters suggest that it "would be appropriate for PHMSA to acknowledge that [proposed requirements for loading and unloading procedures] would not apply to facilities already covered by SPCC, or to state that other Federal agency regulations provide sufficient documentation for the [PHMSA regulations]." (API)

Similarly, one commenter is concerned "over the potential for confusion or conflict for those who already comply with the requirements of NFPA 58 if the proposed recommended practices were to be adopted as regulation by PHMSA." (NPGA) This commenter recommends that "for any action PHMSA chooses to take with regard to the proposed recommended practices, the agency should defer to any industry consensus standards pertaining to the loading and unloading process that are already adopted as regulation."

PHMSA agrees with commenters that HMR requirements applicable to loading and unloading operations should not conflict with regulations or standards already in widespread use by hazardous materials shippers, carriers, and consignees. Therefore, PHMSA is proposing that regulations, protocols, guidelines, or standards developed by other Federal agencies, state agencies, international organizations, or industry may be used to satisfy the requirements in the NPRM provided such regulations or guidelines cover the risk assessment and operating procedure components specified in the NPRM.

VII. Regulatory Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking is considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of significant public interest. A regulatory evaluation is available for review in the public docket for this rulemaking, and PHMSA seeks comments on the methodology, assumptions, and calculations contained within it.

Executive Orders 12866 and 13563 require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." In this NPRM we propose to amend the Hazardous Materials Regulations to require each person (*i.e.,* carrier or facility) who engages in cargo tank loading or unloading operations to perform a risk assessment of the loading and unloading operation and develop and implement safe operating procedures based upon

the results of the risk assessment. Many firms are part of industry associations with voluntary codes of safe practice, and these practices may be sufficient for compliance with the rule as long as all of the relevant safety areas are addressed and documented. PHMSA assumes that for firms in these categories, the proposed rule requires little or no change to existing practice or behavior and incremental compliance costs will thus be close to zero. At the same time, the potential for additional safety benefits is also very limited in these cases, as existing practice and operations are already minimizing the number of incidents. Therefore, the benefit and cost figures discussed below should be viewed as *upper bounds,* both of which will be reduced by the extent of current practice. Although comments in the docket provided some information on current practices, the share of firms for which the changes will be minimal cannot be estimated. As such, this evaluation uses a breakeven analysis to assess the cost-effectiveness of the rule at *any given level* of current practice. PHMSA asks that commenters provide data, information, or professional estimates on how many companies are currently performing the safety elements proposed in this notice.

PHMSA estimates the upper bound of total compliance costs for documentation and training is $3.5 million per year. This reflects the total costs that would be incurred if none of the relevant hazmat carriers were currently subject to voluntary practices or non-DOT regulations that are similar to the proposed rule. There were 3,501 relevant incidents during the ten-year study period, including those that related to errors in loading or unloading and those that occurred during transportation but that were ultimately caused by errors in loading. Together, these incidents resulted in four hazmat-related fatalities, 157 hazmat-related injuries, and a total societal cost of $69.2 million over ten years, or an annual average of $6.9 million.

Based on the assumptions and estimates described above, the breakeven point for this rule—that is, the point at which benefits and costs are approximately equal—occurs at an incident-reduction effectiveness level of approximately 40 percent for affected firms. For this analysis, based on available literature and expert judgment, we believe that an effectiveness level of 40 percent is a reasonable assumption for this group of safety interventions, particularly since the subject incidents have been defined narrowly as those in which (largely preventable) human error occurs during the loading or unloading phase, such as overfilling, over-pressurizing, or loading incompatible materials. The table below summarizes the annual benefits and costs of the proposed rule. (*See* the Regulatory Impact Assessment, which is available in the docket for this rulemaking). The benefit-cost ratio is roughly 1.0. These benefit and cost figures depend on the assumptions that have been made, particularly on the extent of current compliance and the effectiveness of the interventions.

BASE CASE BENEFITS AND COSTS

Year	Annual benefit	Discount factor (7%)	PV benefit (7%)	Annual cost	PV cost (7%)
2012	$1,729,971	1.07	$1,616,795	$1,744,861	$1,630,711
2013	1,729,971	1.14	1,511,023	1,744,861	1,524,029
2014	1,729,971	1.23	1,412,171	1,744,861	1,424,326
2015	1,729,971	1.31	1,319,786	1,744,861	1,331,146
2016	1,729,971	1.40	1,233,445	1,744,861	1,244,061
2017	1,729,971	1.50	1,152,752	1,744,861	1,162,674
2018	1,729,971	1.61	1,077,339	1,744,861	1,086,611
2019	1,729,971	1.72	1,006,859	1,744,861	1,015,525
2020	1,729,971	1.84	940,989	1,744,861	949,089
2021	1,729,971	1.97	879,429	1,744,861	886,999
2022	1,729,971	2.10	821,897	1,744,861	828,971
2023	1,729,971	2.25	768,128	1,744,861	774,739
2024	1,729,971	2.41	717,876	1,744,861	724,055
2025	1,729,971	2.58	670,912	1,744,861	676,687
2026	1,729,971	2.76	627,021	1,744,861	632,418
2027	1,729,971	2.95	586,001	1,744,861	591,045
2028	1,729,971	3.16	547,664	1,744,861	552,378
2029	1,729,971	3.38	511,836	1,744,861	516,241
2030	1,729,971	3.62	478,351	1,744,861	482,468
2031	1,729,971	3.87	447,057	1,744,861	450,905
			18,327,332		18,485,077

B. Executive Order 13132

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice would preempt state, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.,* contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified

for use in transporting hazardous material.

This proposed rule addresses subject area (2), above. If adopted as final, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes that the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The primary costs to small entities include developing and updating a risk assessment, developing and updating operating procedures, and additional training for hazmat employees who perform loading and unloading operations.

PHMSA expects the impacts of this rule will be quite limited for many small entities due to their compliance with other, existing Federal regulations or their participation in industry-wide initiatives. For example, many hazmat shippers and carriers already document their loading/unloading safety practices to comply with Occupational Safety and Health Administration (OSHA) rules on workplace safety, Environmental Protection Agency (EPA) regulations on environmental protection, or state and local requirements. PHMSA's proposed rule also explicitly acknowledges that many firms are part of industry associations with voluntary codes of safe practice, and that these may be sufficient for compliance with the rule as long as all of the relevant safety areas are addressed and documented. For firms in these categories, the proposed rule requires little or no change to existing practice or behavior and incremental compliance costs will thus be close to zero. Therefore, the benefit and cost figures discussed below should be viewed as *upper bounds,* both of which will be reduced by the extent of current practice.

PHMSA estimates that there are 5,427 potentially affected small entities. The annualized documentation cost for developing and updating the risk assessment and the operating procedures is estimated to be $250/small entity. The annualized cost of additional training for affected employees, primarily drivers of cargo tank motor vehicles, is estimated to be approximately $22/employee. Further, PHMSA estimates that approximately 50% of small businesses are already implementing procedures which would be compliant with the proposals in this notice. Based upon the above estimates and assumptions, PHMSA certifies that the proposals in this NPRM would not have a significant economic impact on a substantial number of small entities. Further information on the estimates and assumptions used to evaluate the potential impacts to small entities is available in the Regulatory Impact Assessment that has been placed in the public docket for this rulemaking. In this notice, PHMSA is soliciting comments on the preliminary conclusion that the proposals in this NPRM would not cause a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control No. 2137–0034, "Hazardous Materials Shipping Papers and Emergency Response Information," expiring on May 31, 2011. We estimate an additional increase in burden as a result of this proposed rulemaking.

Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies proposed new requirements regarding cargo tank motor vehicles to the current information collections under OMB Control No. 2137–0034. Under OMB Control No. 2137–0034, we anticipate an increase in burden resulting from proposals to require persons who engage in cargo tank loading or unloading operations to perform a risk assessment of their loading and unloading operation, and to develop and implement safe operating procedures based upon the results of the risk assessment. In addition, PHMSA is proposing to require persons who engage in cargo tank loading or unloading operations to develop and implement a training and qualification program for employees who perform loading or unloading functions. PHMSA will submit revised information collections to the Office of Management and Budget (OMB) for approval based on the requirements in this proposed rule. We estimate that the additional information collection burden as proposed under this rulemaking is as follows:

OMB Control No. 2137–0034: Hazardous Materials Shipping Papers and Emergency Response Information.

Additional Annual Number of Respondents: 6,538.

Additional Annual Responses: 6,538.

Additional Annual Burden Hours: 65,380.

Additional Annual Burden Cost: $1,438,360.

PHMSA specifically requests comments on the information collection and recordkeeping burden associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule with any revisions, PHMSA will resubmit any revised information collection and recordkeeping requirements to the OMB for re-approval.

Please direct your requests for a copy of this proposed revised information collection to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., 2nd Floor, Washington, DC 20590–0001.

F. Regulation Identifier Number (RIN)

A regulation identifier number (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.

G. Unfunded Mandates Reform Act

This notice does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $140.8 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. PHMSA has preliminarily concluded that there are no significant environmental impacts associated with this NPRM. In fact, PHMSA believes that the proposed regulations will have a positive impact on the environment by reducing the number of incidents involving the release of a hazardous material; and, in the case of a release, minimizing the quantity of hazardous material released to the environment.

As discussed in Section II of this document, PHMSA performed an analysis of incident data to identify and target risks associated with bulk loading and unloading of hazardous materials transported by highway and rail. PHMSA's review of transportation incident data and the findings of several NTSB and CSB accident investigations involving bulk hazardous material loading and unloading operations suggest there may be opportunities to enhance the safety of such operations, thereby reducing the overall impact to the environment of hazardous material releases during CTMV loading and unloading.

PHMSA considered three separate alternatives for addressing the identified loading and unloading safety problem: (1) Do nothing; (2) propose operating procedures developed by the Interested Parties working group for the loading and unloading of both highway and rail transport tanks with a capacity of more than 3,000 liters; and (3) propose performance-based loading and unloading requirements specifically involving CTMVs, using the Interested Parties proposal as a baseline. Alternative (1) was not chosen because it would neglect a safety problem identified by PHMSA, NTSB, CSB, and the Interested Parties. Alternative (2) was not chosen because some of the requirements proposed by the Interested Parties may not be appropriate for all companies and all situations. In particular, PHMSA believes that operational differences between the highway and rail modes should be handled separately. Alternative (3) was selected because PHMSA believes that a risk-based performance standard provides the necessary flexibility for affected persons to develop operating procedures that are appropriate for their unique operating conditions. In addition, it minimizes the overall compliance burden to companies who have already implemented operating procedures in accordance with existing industry standards or with other Federal or state requirements.

In this NPRM, PHMSA is proposing to require persons who load or unload CTMVs to perform a "risk assessment" of the CTMV transfer operations and to develop "operating procedures" based upon the risk assessment. The operating procedures must include mechanisms to ensure that transfer equipment is appropriate for the material being transferred and has been properly maintained and tested. Further, the operating procedures must address "emergency management," including mechanisms to monitor for leaks and releases, and to immediately stop the flow of product when a release is detected. PHMSA is also proposing additional training and qualification requirements for persons who load and unload CTMVs. The proposed regulations are intended to improve safety by significantly reducing human error and minimizing the number of equipment failures during loading and unloading operations. As a result, PHMSA expects that the proposed regulations could significantly reduce the number of incidents involving a release of a hazardous material to the environment during CTMV loading and unloading.

PHMSA is soliciting comments on the preliminary conclusion that the proposals in this NPRM would not cause significant impacts to the environment.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Training.

49 CFR Part 177

Hazardous materials transportation, Motor Carriers, Radioactive Materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is proposing to amend Title 49, Subtitle B, Chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

2. In § 172.704, paragraphs (a)(2)(iii) and (d)(6) are added to read as follows:

§ 172.704 Training requirements.

(a) * * *

(2) * * *

(iii) Function-specific training for hazmat employees who perform duties related to loading, unloading, or transloading of hazardous materials to or from a cargo tank motor vehicle must be designed to ensure that the employees understand and implement the training they have received in accordance with this paragraph and are capable of performing the activities necessary to complete their assigned duties safely. Evaluation of the employee's qualifications must be performed at least annually for each covered employee and must include observation and feedback by the hazmat employer of the hazmat employee's performance of covered functions. Mechanisms to evaluate hazmat employees include, but are not limited to, regular and routine performance of covered duties or specific practice sessions and drills designed to assess employee performance. At a minimum, the qualification program must include provisions to:

(A) Identify covered tasks and employees;

(B) Observe and evaluate each covered employee's performance of covered tasks;

(C) Provide feedback to covered employees regarding performance of covered tasks;

(D) Establish a performance improvement process for employees;

(E) Initiate an employee evaluation under the program if the hazmat employer has reason to believe that the employee is no longer qualified to safely perform a covered task or if an

employee's performance contributed to an unintentional release of a hazardous material.

* * * * *

(d) * * *

(6) Certification, including the date, that the employee is qualified to perform loading, unloading, or transloading operations in accordance with the qualification program developed by the hazmat employer in accordance with paragraph (a)(2)(iii) of this section, as applicable. The hazmat employer may not certify that the employee is qualified until the employee successfully performs the job function in accordance with the documented operating procedures.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

4. In Subpart B, § 172.831 is added to read as follows:

§ 177.831 Cargo tank loading and unloading.

(a) *Risk assessment.* Each person who loads, unloads, or provides transfer equipment to load or unload a hazardous material to or from a cargo tank motor vehicle (including any device in the loading and unloading system that is designed specifically to transfer product between the internal valve on the cargo tank and the first permanent valve on the supply or receiving equipment (*e.g.,* pumps, piping, hoses, connections, etc.) must conduct a systematic analysis to identify and evaluate the hazards associated with the specific loading or unloading operation. This analysis must:

(1) Clearly identify the loading or unloading activities for which the facility personnel or the operator of a cargo tank motor vehicle is responsible.

(2) Assess current procedures utilized to ensure the safety of loading or unloading operations and identify any areas where those procedures could be improved. The analysis must be appropriate to the complexity of the process and the materials involved in the operation, including—

(i) The characteristics and hazards of the material to be loaded or unloaded;

(ii) Measures necessary to ensure safe handling of the material, such as temperature or pressure controls; and

(iii) Conditions that could affect the safety of the loading or unloading operation, including access control, lighting, ignition sources, and physical obstructions.

(3) The analysis must be in writing and must be retained with the operating procedures specified in paragraph (b) of this section.

(b) *Operating procedures.* Each person required to prepare a risk assessment in accordance with paragraph (a) of this section must develop, maintain, and adhere to an operating procedure for the specific loading or unloading operation based on the completed risk assessment. At a minimum, the operating procedure must include the following elements:

(1) *Pre-loading/pre-unloading.* Procedures to ensure the integrity of the cargo tank and associated transfer equipment, secure the cargo tank against movement, prepare the cargo tank and transfer equipment for the loading or unloading operation, and verify the vessel into which the material is to be transferred. The procedures must include measures to—

(i) Identify the piping path, equipment lineups, and operational sequencing and procedures for connecting piping, hoses, or other transfer connections;

(ii) Verify that the material is being transferred into the appropriate containment vessel and that the vessel is compatible with the lading and has sufficient capacity to retain the quantity of material to be transferred;

(iii) Check components of the transfer system, including transfer equipment such as delivery hose assemblies, piping, and connections that are readily observed, to ensure that they are of sound quality, without obvious defects detected through visual observation and audio awareness, and that connections are secure. This check must be made after the pressure in the transfer system has reached at least equilibrium with the pressure in the cargo tank. Operators need not use instruments or take extraordinary actions to check components not readily visible. Pumps, piping, hoses, and connections supplied by a facility or the motor carrier and used to load into or unload from a cargo tank must be compatible with the lading and meet performance, maintenance, and testing requirements in part 178, subpart J, and § 180.416 of this subchapter, as appropriate for the cargo tank specification. The driver of the cargo tank motor vehicle may rely on information provided by the facility operator to confirm that transfer equipment provided by the facility meets appropriate requirements. No person may load into or unload a cargo tank motor vehicle using components of the transfer system that could result in an unsafe condition, including delivery hose assemblies found to have any condition identified in § 180.416(g)(1) of this subchapter or piping systems found to have any condition identified in § 180.416(g)(2) of this subchapter.

(2) *Loading/unloading.* Procedures for monitoring the transfer operation, including measures to—

(i) Initiate and control the lading flow;

(ii) Monitor the temperature of the material being transferred and the pressures of the cargo tank into which the material is being transferred;

(iii) For materials that must be heated prior to being loaded or unloaded, ascertain and monitor the heat input to be applied and the rate at which the heat will be applied and monitor the pressure inside the vessel being heated to ensure that the heating process does not result in over-pressurization or an uncontrolled exothermic reaction;

(iv) Monitor filling limits and ensure that the quantity of hazardous material to be transferred is appropriate for the cargo tank or containment vessel;

(v) Terminate lading flow; and

(vi) Ensure that the cargo tank is attended by a qualified person at all times when it is being loaded or unloaded.

(A) Except for unloading operations subject to §§ 177.837(d), 177.840(p), 177.840(q), and 177.840(r)(2) of this subchapter, a qualified person "attends" the loading or unloading of a cargo tank if, throughout the process, the person is alert and is within 7.6 m (25 feet) of the cargo tank. The qualified person attending the cargo tank must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation.

(B) A person is "qualified" if he has been trained and satisfactorily evaluated in accordance with subpart H of part 172 of this subchapter.

(3) *Emergency management.* Procedures for handling emergencies, including —

(i) Instrumentation to monitor for leaks and releases;

(ii) Equipment to isolate leaks and releases and to take other appropriate emergency shutdown measures;

(iii) Training in the use of emergency response equipment;

(iv) Emergency shutdown systems and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner;

(v) Emergency communication and spill reporting; and

(vi) Safe startup after an emergency shutdown.

(4) *Post-loading/post-unloading.* Procedures for securing the transfer

equipment, transport vehicle or packaging, and vessel into which the material is transferred, including—

(i) Measures to evacuate the transfer system and depressurize the containment vessel;

(ii) Measures to safely disconnect the transfer equipment; and

(iii) Measures to secure fittings, valves, and closures.

(5) *Design, maintenance, and testing of transfer equipment.* Transfer equipment, used to unload cargo tanks must be compatible with the lading and meet the performance requirements in part 178, subpart J of this subchapter, as appropriate for the cargo tank specification. Transfer equipment and systems, including pumps, piping, hoses, and connections, must be properly maintained and tested (see § 180.416 for liquefied compressed gases). Each person who conducts these operations must develop and implement a periodic maintenance schedule to prevent deterioration of equipment and conduct periodic operational tests to ensure that the equipment functions as intended. Equipment and system repairs must be completed promptly and prior to any subsequent loading or unloading operation. The procedures developed in accordance with this paragraph must include a hose maintenance program.

(6) *Facility oversight of carrier personnel.* An operator of a facility required to perform a risk assessment in accordance with paragraph (a) of this section must ensure that any carrier who loads or unloads a cargo tank motor vehicle at that facility—

(i) Is supervised by trained facility personnel who are trained on the facility's loading and unloading operating procedures;

(ii) Is provided with written instructions on how to conduct the transfer operation in accordance with the facility's procedures; or

(iii) Has sufficient information to conduct the transfer operation in accordance with the facility's procedures.

(7) *Recordkeeping.* The operating procedures must be in writing and must be retained for as long as the procedures remain in effect. The operating procedures must be clearly written and easy to understand and must be reviewed annually and updated as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and equipment. Facility operating procedures must be available at the loading or unloading facility. Motor carrier operating procedures must be carried in the transport vehicle. Operating procedures must be made available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations.

(c) *Exceptions:* To avoid unnecessary duplication, risk assessments, and operating procedures that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, state agencies, international organizations, or industry organizations may be used to satisfy the requirements in this part, or portions thereof, provided such operating procedures address the requirements specified in this part. Examples include the Occupational Safety and Health Administration's Process Safety Management Standards at 29 CFR 1910.119 and the Environmental Protection Agency's Risk Management Program regulations at 40 CFR part 68 and Spill Prevention, Control and Countermeasures Program at 40 CFR part 112; state regulations or standards, such as state incorporation of National Fire Protection Association Standard 58, LP–Gas Code; or standards, protocols, or guidelines issued by industry organizations or consensus-standards organizations.

5. In § 177.834, the section heading is revised to read as follows, and paragraph (i) is removed and reserved:

§ 177.834 Additional general requirements.

* * * * *

Issued in Washington, DC, on March 1, 2011, under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–5335 Filed 3–10–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203 and 252

RIN 0750–AG98

Defense Federal Acquisition Regulation Supplement; Display of DoD Inspector General Fraud Hotline Posters (DFARS Case 2010–D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to issue a rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to display the DoD fraud hotline poster in common work areas.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 10, 2011, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2010–D026, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D026" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D026." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D026" on your attached document.

- *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D026 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Clare Zebrowski, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Clare Zebrowski, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0289; facsimile 703–602–0350. Please cite DFARS Case 2010–D026.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to implement the recommendations of the DoD Inspector General (IG), by providing a DFARS clause to use in lieu of the FAR clause 52.203–14, Display of Hotline Poster(s).

GAO Report GAO–09–591, Regarding the Display of DoD Inspector General Fraud Hotline Posters by DoD Contractors, recommended that the DoD IG determine the need for defense contractors' display of the DoD IG's fraud hotline poster, including directing a contractor to display the DoD IG hotline poster in common work areas for performance of DoD contracts.

The DoD IG determined that DoD contractors, including contractors who have an ethics and compliance program that includes a reporting mechanism such as a hotline poster, need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites.

FAR 52.203–14(c) states that "If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters, other than any required DHS posters."

The DoD IG finds that this exemption has the potential to make the DoD hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. Some contractor's posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the fraud program. The DoD IG is also revising the DoD IG fraud hotline poster to inform contractor employees of their Federal whistleblower protections.

The new DFARS clause therefore provides no exception to the use of the DoD hotline poster for contractors that have implemented a business ethics and conduct awareness program, including a reporting mechanism such as a hotline poster. The clause also provides for display of any applicable Department of Homeland Security hotline poster identified by the contracting officer.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Executive Order 13563

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public, and is consistent with requirements to report fraud, waste, and abuse under the protection of Federal whistleblower protection laws.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the requirement to display posters has minimal economic impact and the rule only applies to contracts and subcontracts that exceed $5 million in value, so many small business concerns are not impacted at all. Nevertheless, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is in response to a study by the General Accountability Office (GAO–09–591), which recommended that the DoD IG determine the need for defense contractors' display of the DoD IG's fraud hotline poster, including directing a contractor to display the DoD IG hotline poster in common work areas for performance of DoD contracts.

The DoD IG determined that DoD contractors, including contractors who have an ethics and compliance program that includes a reporting mechanism such as a hotline poster (currently exempt), need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites.

The objective of the proposed rule is to remove this exemption for contractors that post their own posters, and require all DoD contractors with contracts that exceed $5 million to post the DoD IG fraud hotline poster. The DoD IG finds that this exemption has the potential to make the DoD hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. Some contractors' posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the fraud program. The DoD IG is also revising the DoD IG fraud hotline poster to inform contractor employees of their Federal whistleblower protections. The legal basis for the rule is 41 U.S.C. 1303 and 48 CFR chapter 1.

The rule applies to all contractors with DoD contracts that exceed $5 million. Many small businesses are, therefore, not impacted at all. The FAR currently provides that "If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters, other than any required DHS posters." Therefore, even those contractors with contracts that exceed $5 million are not significantly impacted, because they are already required to post either their own fraud hotline poster or the DoD fraud hotline poster. This rule just removes the exemption for contractors that post their own fraud hotline posters.

There is no information collection requirement associated with this proposed rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule that would achieve the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D026) in correspondence.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 203 and 252 as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. In section 203.1004, revise paragraph (b)(2)(ii) to read as follows:

* * * * *

(b) Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, if the contract exceeds $5 million, use the clause at 252.203–700X, Display of Fraud Hotline Poster(s), in lieu of the clause at FAR 52.203–14, Display of Hotline Poster(s).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 252.203–700X to read as follows:

252.203–700X Display of Fraud Hotline Poster(s).

As prescribed in 203.1004(b), use the following clause:

DISPLAY OF FRAUD HOTLINE POSTER(S) (DATE)

(a) *Definition.*

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* (1) The Contractor shall display prominently in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts—

(i) DoD fraud hotline posters prepared by the DoD Office of the Inspector General. DoD fraud hotline posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

(ii) Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(2) of this clause; and

(iii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Any required DHS posters may be obtained as follows:

Poster(s)	*Obtain from*

(Contracting Officer shall insert—

(i) Title of applicable Department of Homeland Security fraud hotline poster; and

(ii) The Web site(s) or other contact information for obtaining the poster(s).)

(3) Additionally, if the Contractor maintains a company Web site as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the Web site.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that exceed $5 million except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

[FR Doc. 2011–5600 Filed 3–10–11; 8:45 am]

BILLING CODE 5001–08–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 532

[GSAR Case 2010–G509; Docket 2011–0009; Sequence 1]

RIN 3090–AJ13

Reinstatement of Coverage Pertaining to Final Payment Under Construction and Building Services

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to amend the GSAR to restore guidance on making final payments under construction and building service contracts to ensure contractors are paid in accordance with their contract requirements and not overpaid or receive improper payments for work performed. This guidance, which prescribed the use of GSA Form 1142, Release of Claims, for releases of claims under construction and building service contracts, was inadvertently deleted as part of the Rewrite of GSAR regulations on Contract Financing. GSA Contracting Officers have used this form to achieve uniformity and consistency in the release of claims process.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before May 10, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2010–G509 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "GSAR Case 2010–G509" under the heading "Enter Key Word or ID". Follow the instructions provided to "Submit a Comment". Please include your name, company name (if any), and "GSAR Case 2010–G509" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat, 1275 First Street, NE., 7th Floor, ATTN: Hada Flowers, Washington, DC 20417.

Instructions: Please submit comments only and cite GSAR Case 2010–G509 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers at (202) 501–3221, or by e-mail at *edward.chambers@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat, 7th Floor, GS Building, Washington, DC 20417, (202) 501–4755. Please cite GSAR Case 2010–G509.

SUPPLEMENTARY INFORMATION:

A. Background

A release of claims is a requirement under GSAR clause 552.232–72, Final Payment, precedent to making final payment under construction and building service contracts. Prior to deleting the form, GSA Contracting Officers relied upon GSA Form 1142 to obtain the release of claims under these contracts. However, GSAR 532.905–71 which prescribed the use of GSA Form 1142 for releases of claims under construction and building service contracts was inadvertently deleted as part of the Rewrite of GSAR Part 532, Contract Financing published in the **Federal Register** at 74 FR 54915, on October 29, 2009, GSAR Case 2006–G515. GSAR 532.905–71 also provided guidance on deductions to final payments under construction and building service contracts.

GSA Form 1142, Release of Claims, uses standard language for contractors to attest that is has no claims, or no claims except for those they may set forth where indicated on the form. The form requires a signature from the contractor and a witness. Additionally, there is a location for the firm's seal.

GSA believes that GSA Form 1142 provides great value and accountability in providing uniformity and consistency for the release of claims process. Without the GSA Form 1142, GSA Contracting Officers will be required to verify that contractor release of claims letter includes appropriate wording before final payment is made, resulting in their devotion of considerable additional resources to this process. Further, the coverage on deductions under GSAR 532.905–71 was useful in preventing overpayments to contractors consistent with the Administration Improper Payments Elimination and Recovery Act and OMB efforts to eliminate improper payments.

Consequently, GSA proposes to amend the GSAR to restore the coverage at GSAR 532.905–71. Since the referenced GSAR Rewrite of Part 532 (74 FR 54915) also deleted GSAR 532.905–70, this coverage will be restored at GSAR 532.905–70 vice GSAR 532.905–71.

B. Executive Order 12866 and 13563

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804. In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, GSA has determined that this rule is not excessively burdensome to the public, and that GSA Form 1142 which is prescribed by the rule is useful to contractors in presenting their release of claims to the Government.

C. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule requires the collection of the information that is administrative in nature. Submission of this information should not be burdensome to the contractor but should provide a consistent format that the contractor can use to report their claims information to the GSA. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Part 532 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2010–G509), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0080.

List of Subjects in 48 CFR Part 532

Government procurement.

Dated: March 7, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR part 532 as set forth below:

PART 532—CONTRACT FINANCING

1. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Add section 532.905–70 to read as follows:

532.905–70 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts:

(a) The Government shall pay the final amount due the Contractor under this contract after the documentation in FAR 52.232–5 is provided.

(b) Contracting Officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, except as provided in paragraph (c) of this section.

(c) In cases where, after 60 days from the initial attempt, the Contracting Officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel.

(d) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amount withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

[FR Doc. 2011–5502 Filed 3–10–11; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AW67

Western Pacific Pelagic Fisheries; Prohibiting Purse Seine Fishing in the U.S. EEZ Around Guam and the Northern Mariana Islands, and Prohibiting Longline Fishing Within 30 nm of the Northern Mariana Islands

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes Amendment 2 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP). If approved by the Secretary of Commerce, this amendment would create a 30-nautical mile (nm) longline prohibited area around the Commonwealth of the Northern Mariana Islands (CNMI), and prohibit purse seine fishing within the entire U.S. Exclusive Economic Zone (EEZ) around the Mariana Archipelago, including Guam and the CNMI. The area closures are intended to prevent and minimize gear conflicts and resource competition among the various fishery sectors (troll, longline and purse seine) in the Mariana Archipelago. In addition, this action is intended to facilitate the conservation of important stocks such as bigeye, yellowfin, and skipjack tuna throughout their range in the Pacific Ocean.

DATES: Comments on the amendment must be received by May 10, 2011.

ADDRESSES: Copies of Amendment 2, including an environmental assessment, are available from *http://www.regulations.gov,* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *http://www.wpcouncil.org.*

Comments on the amendment, including the environmental assessment, identified by 0648–AW67, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;* or
- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the above two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Toby Wood, NMFS PIR Sustainable Fisheries, 808–944–2234.

SUPPLEMENTARY INFORMATION: Pelagic fisheries in the U.S. western Pacific are managed under the FEP. The Council prepared Amendment 2 to address pelagic fishing concerns in the Mariana Archipelago (Guam and the CNMI). Pelagic fisheries in the Marianas consist mostly of small trolling fleets, several pelagic longline vessels, and purse seine vessels based there, but not fishing near the islands. Guam's pelagic fishery consists of 300–400 mostly small trolling boats that catch skipjack tuna, yellowfin tuna, mahimahi, wahoo, and Pacific blue marlin. Trolling is also the primary fishing method in the CNMI pelagic fishery. About 50–100 small vessels target skipjack tuna, and also catch yellowfin tuna and mahimahi.

Pelagic longline vessels in the Marianas are typically larger than 50 ft (15 m) and can fish for more than 30 days. Interest in the longline fishery has been variable; currently four Federally-permitted longline vessels are based in the CNMI and one is based in Guam. Longliners target yellowfin and bigeye tunas and retain incidental catches of albacore, blue marlin, mahimahi, skipjack tuna, and spearfish.

About 36 U.S. purse seine vessels operate in the western and central Pacific Ocean, targeting skipjack and yellowfin tuna. Vessels range from 164 to 377 ft (50 to 115 m). Fish-carrying capacities range from approximately 800 to 1,500 mt (2.2 to 3.9 million lb). The U.S. purse seine catch in the western Pacific is made on the high seas, in foreign EEZs, and in the U.S. EEZ around American Samoa and the U.S. Pacific Remote Island Areas (*i.e.,* Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll). Two U.S. purse seine vessels are based in Guam, but have not fished in the EEZ around the Mariana Archipelago. To date, limited purse seine activity has occurred adjacent to the EEZ around Guam since 1980, but no U.S. purse seine catches have been recorded within the EEZ.

The Council is concerned about the potential impacts if purse seine fishing effort shifts to areas fished by domestic troll and longline fishermen of Guam and the CNMI. Those smaller vessels could experience reduced catch rates due to localized depletion and catch competition, or would have to travel further to maintain catch rates, potentially resulting in lost revenue and possible safety-at-sea issues.

The Council is also concerned about the impact of purse seine fishing on the recruitment of juvenile bigeye tuna. While targeting skipjack tuna, purse seines may also catch juvenile yellowfin and bigeye tuna. Juvenile bigeye tuna caught by purse seines may be contributing to the overfishing status of bigeye tuna in the western and central Pacific Ocean. The impacts from an increase in juvenile catch of bigeye tuna can reduce the number of mature fish, thereby decreasing reproduction. This also decreases the future availability of adult fish for fisheries that target adult bigeye tuna, such as the longline fishery.

The Council is further concerned that any future expansion of longline fishing around the Mariana Archipelago could result in adverse impacts to the CNMI troll fishery. If the number of CNMI-based longline vessels increases and move into areas traditionally utilized by the troll fleet (typically within 30 nm (55.6 km) of shore), there is potential for gear conflicts and catch competition between the two fleets, resulting in potential gear loss, increased costs, and decreased revenues.

To address their concerns about the potential impact of purse seine fishing on the troll and longline fisheries in the Marianas, the Council recommends in Amendment 2 prohibiting U.S. purse seine vessels from fishing within the EEZ around Guam and the CNMI. Furthermore, under Amendment 2, to address their concerns about the potential impact of uncontrolled expansion in the CNMI longline fishery, the Council recommends prohibiting longline fishing within 30 nm (55.6 km) of the CNMI. The Council's recommendations are intended to reduce temporary localized fish depletion, catch competition, and gear conflicts to sustain local troll and longline fisheries, and to limit the potential impacts of purse seine fishing on recruitment of juvenile bigeye tuna.

Public comments on proposed Amendment 2 must be received by May 10, 2011 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. NMFS expects to soon publish and request public comment on a proposed rule that would implement the measures recommended in Amendment 2.

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

Dated: March 8, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–5683 Filed 3–10–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 100201056–0076–01]

RIN 0648–AY65

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Pacific Cod Fishing in the Parallel Fishery in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment that would limit access of Federally permitted pot and hook-and-line catcher/processors (C/P) to the Pacific cod fishery in State of Alaska waters adjacent to the Bering Sea and Aleutian Islands management area (BSAI). The affected fishery is commonly known as the "parallel" fishery. The parallel fishery occurs off the coast of Alaska, within 3 nautical miles of shore and is managed by the State of Alaska concurrent with the Federal pot and hook-and-line fishery for Pacific cod in the BSAI. This proposed rule would limit access to the parallel fishery for Pacific cod in three ways. First, it would require that an owner of a Federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the State of Alaska parallel fishery be issued the same endorsements on their Federal fisheries permit (FFP) or license limitation program (LLP) license as currently are required for catching Pacific cod in the Federal waters of the BSAI. Second, an operator of any Federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the parallel fishery would also be required to comply with the same seasonal closures of Pacific cod that apply in the Federal fishery. Third, an owner of a pot or hook-and-line C/P vessel who surrenders an FFP would not be reissued a new FFP within the 3-year term of the permit. These three measures are necessary to limit some C/Ps from catching a greater amount of Pacific cod in the parallel fishery than have been allocated to their sector from the BSAI Total Allowable Catch. Maintaining Pacific cod catch amounts within sector allocations would also reduce the potential for shortened Pacific cod seasons for C/Ps

in the Federal fishery. These three measures also would improve the coverage of NMFS catch accounting and monitoring requirements on vessels participating in the parallel fishery. This action is intended to promote the goals and objectives of the Fisheries Management Plan for Groundfish of the Bering Sea and Aleutians Islands Management Area, the Magnuson–Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Written comments must be received by April 11, 2011.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN number 0648–AY65, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P. O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, e-mailed to *OIRA_Submission@omb.eop.gov,* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7442.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits (TACs) for groundfish species to ensure the sustainability of the groundfish fisheries in the BSAI and to assist in the allocation of groundfish TACs among various user groups. To achieve these objectives, NMFS requires vessel operators participating in groundfish fisheries in the BSAI to comply with various restrictions, such as fishery closures to maintain catch within specified TACs and prohibited species catch limits, and associated sector and seasonal allocation apportionments. NMFS also requires various permits that authorize or limit access to the groundfish fisheries, such as a Federal fisheries permit (FFP) and a license limitation program (LLP) license. Many of the catch monitoring regulations that apply to vessels designated on an FFP or an LLP license while participating in Federal fisheries also apply to these vessels when fishing in parallel fisheries in State of Alaska (State) waters. Parallel fisheries are open concurrently with Federal fisheries, and groundfish catch in the parallel fisheries is deducted from Federal TACs and any sector and seasonal allocations of the Federal TACs. State waters fisheries that are not parallel are referred to as "non-parallel State fisheries". Targeted groundfish catch in the non-parallel State fisheries are deducted from a State guideline harvest level (GHL), rather than a Federal TAC. Currently, non-parallel State fisheries for BSAI groundfish are established only for pollock, Pacific cod, and sablefish in specified areas shoreward of the Aleutian Islands Subarea (AI).

Federal groundfish fisheries in the EEZ from 3 to 200 nm off the coast of Alaska may be opened by NMFS to directed fishing for selected groundfish species. Parallel fisheries for groundfish species in State waters (from 0 nm to 3 nm) may be opened by the Commissioner for the Alaska Department of Fish and Game (ADF&G) through emergency order under the authority of State regulations at 5 AAC 28.086. Non-parallel-State fisheries (also occurring from 0 to 3 nm) may be opened and closed by the ADF&G to fishing but during distinct seasons that generally do not overlap with the parallel and Federal groundfish seasons.

Federal Fisheries Permit Requirements

All vessels used to fish for groundfish in the Federal groundfish fisheries of the BSAI must be designated by name on an FFP. Operators of a vessel designated on an FFP must comply with NMFS observer and recordkeeping and reporting requirements in both Federal groundfish and parallel fisheries. In addition, operators of vessels designated on an FFP must comply with NMFS vessel monitoring system (VMS) reporting requirements if they participate in the directed Atka mackerel, Pacific cod, or pollock fisheries in Federal EEZ or Alaska State waters. However, a vessel used to fish exclusively in Alaska State waters is not required to be designated on an FFP, and the operator of a vessel that is not designated on an FFP is not subject to NMFS observer, VMS, or recordkeeping and reporting requirements.

An FFP is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current 3-year cycle. A person issued an FFP may surrender it at any time and have the FFP reissued at any time later in the 3-year cycle. There is no limit on the number of times an FFP may be surrendered and reissued within the 3-year permit cycle. The flexibility provided by allowing a vessel owner to surrender an FFP and have it reissued in a short period of time is intended to provide a vessel opportunities to participate in Alaska State waters fisheries, for which no FFP is required, without having to comply with all the Federal requirements associated with an FFP.

FFPs may include many endorsements, such as, type of gear (pot, hook-and-line, and trawl), vessel operation category (catcher/processor (C/P) or catcher vessel (CV)), and management area (BSAI or Gulf of Alaska (GOA)) in which a licensed vessel may fish, and in some cases a species endorsement. These endorsements are required for a vessel to participate in a particular fishery. For example, vessels used to participate in Federal fisheries for Atka mackerel, Pacific cod, or pollock must be

designated on an FFP with endorsements that indicate the use of pot, trawl, or hook-and-line gear in these fisheries. With the exception of the GOA inshore processing endorsement, an FFP may be amended to remove an endorsement any number of times during a year. While any vessel owner may apply for an FFP with a C/P or CV endorsement (or both) as well as any area, gear, or species endorsements, an FFP with a specific set of endorsements, by itself, does not authorize the operator of the vessel to participate in the Pacific cod fishery in the BSAI. In most cases, an LLP license also is required to participate in this fishery.

License Limitation Program Requirements

Most vessels deployed in a directed fishery for groundfish in the BSAI are required to be named on an LLP license. The LLP authorizes a vessel to be used in a particular directed groundfish fishery under specified vessel operation, gear, area, and (where applicable) species and operation type endorsements. For some groundfish species, such as Pacific cod, additional endorsements may be required. For example, if the operator of a pot C/P wished to participate in a directed fishery for groundfish in the AI, the C/P must be named on an LLP with endorsements for C/P vessel operation, non-trawl gear, and AI area. In addition, to engage in the AI directed fishery for Pacific cod, the vessel also must be designated on an LLP license with an endorsement for Pacific cod in the AI for a C/P using pot gear. Unlike the FFP, the endorsements on an LLP license are not severable from the license. An LLP license with its associated endorsements may be assigned to a different vessel only once per year.

There are several exceptions to the requirement for a vessel to be designated on an LLP license to fish for groundfish in the BSAI: (1) Vessels less than 32 ft length overall (LOA); (2) vessels not directed fishing for LLP groundfish species that may retain incidentally caught groundfish up to the maximum retainable amounts (including individual fishing quota halibut or sablefish); and (3) catcher vessels less than 60 ft LOA that are exempted from having a Pacific cod endorsement on their LLP license to participate in the fixed gear BSAI Pacific cod fishery. In addition, vessels fishing in the parallel fisheries are not required to be designated on an LLP license because these fisheries occur only in State waters.

Sectors and Sector Allocations

The TAC for BSAI Pacific cod is divided into sector allocations, which include allocations of separate portions of the TAC to pot C/Ps, pot CVs, hook-and-line C/Ps and hook-and-line CVs. Each sector allocation for Pacific cod is further divided into two or more seasonal allocations. These sector and seasonal allocations were implemented under Amendment 67 to the BSAI FMP (67 FR 18129, April 15, 2002) and Amendment 85 to the BSAI FMP (72 FR 50788, September 4, 2007). These two FMP amendments limited the number of vessels in each sector and implemented sector allocations of Pacific cod to vessels in each sector. These amendments limited access and reduced competition in the derby-style Pacific cod fishery that has existed throughout much of the last two decades.

Amendment 67 to the BSAI FMP was intended to limit vessel participation with hook-and-line and pot gear in the BSAI Pacific cod fishery, and thus authorized exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries. It was implemented by issuing LLP license endorsements to LLP holders demonstrating historic and recent participation, and economic dependence in the Pacific cod fishery. Of four separate Pacific cod endorsements, one was created for Pacific cod pot C/P and one for Pacific cod hook-and-line C/P.

Amendment 85 to the BSAI FMP modified previously established allocations of Pacific cod among ten fishery sectors created in Amendment 67, to better reflect the historical dependency and use of Pacific cod by each sector. Two of the industry sectors that received modified allocations under Amendment 85 were the pot C/P sector and the hook-and-line C/P sector.

There is a substantial difference in the amount of Pacific cod allocated between the pot and hook-and-line sectors. The pot C/P sector has historically caught a small amount of Pacific cod. The Amendment 85 allocation to the pot C/P sector is only 1.5 percent of the BSAI Pacific cod TAC after subtraction of the allocation to the Western Alaska Community Development Quota (CDQ) reserve. The C/P hook-and-line allocation of Pacific cod is substantially larger at 48.5 percent of the TAC after subtraction of the allocation to the CDQ reserve. The hook-and-line C/P sector recently completed a voluntary capacity reduction program, and in January 2008 the owners of vessels in this fleet began repaying a $35 million Federal loan. The hook-and-line C/P sector's ability to repay the loan is based on a secure annual allocation of Pacific cod to the sector participants who have been issued the appropriate Amendment 67 endorsed LLP licenses.

Statement of Problem

At the October 2008 Council meeting, the members of the BSAI groundfish pot and hook-and-line C/P sectors informed the Council that following the implementation of Amendment 85, Federally-permitted pot and hook-and-line C/Ps have been participating in increasing numbers in the Pacific cod parallel fishery. Owners of several of these C/Ps have not been issued FFPs and LLP licenses with the endorsements necessary to fish in the Pacific cod fishery in the BSAI EEZ. However, the catch of Pacific cod in the parallel fishery from these C/P vessels accrues against the sector allocations in the Federal fishery that were designed to be available only to vessels with the appropriate Pacific cod endorsements issued under Amendment 67.

In April 2009, information prepared for the EA/RIR/IRFA (*See* **ADDRESSES**) confirmed that several operators of hook-and-line C/Ps that have been participating in the parallel Pacific cod fishery have not been issued all the FFP and LLP licenses and endorsements that are necessary to participate in the Federal Pacific cod fishery. The EA/RIR/IRFA also confirmed that hook-and-line C/Ps that have been issued all the FFP and LLP license endorsements required to fish as C/Ps in the Federal Pacific cod fishery, also fish as C/Ps in the parallel fishery. However, if the hook-and-line C/P sector's season closes in the Federal fishery and vessels in the hook-and-line C/P sector continue to fish in the parallel fishery as hook-and-line C/Ps, NMFS continues to credit that catch in the parallel fishery to the hook-and-line C/P sector allocation. That additional amount credited to the C/P sector allocation in the current season could result in a reduction in the allocation available to the C/P sector participants during a subsequent season of that year. The Council concluded that the additional catch of Pacific cod resulting from this activity, while only a fraction of a percent of the BSAI Pacific cod allocation, may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. While the additional fishing activity had not violated Federal permit and license regulations, the Council concluded that additional fishing activity in the Pacific cod parallel fishery has reduced "or circumvented" the intended

effectiveness of Pacific cod sector allocations and the capacity reduction program.

The EA/RIR/IRFA prepared for this action (*See* **ADDRESSES**) highlighted how increased participation in BSAI C/P hook-and-line sector in recent parallel fisheries has undermined the capacity reduction program undertaken by particular members of that sector. The increased participation has eroded the opportunity of historical participants to harvest the Pacific cod allocated to the C/P sector under Amendment 85. The increased participation in the parallel fishery involved Federally-permitted C/Ps without an Amendment 67 Pacific cod endorsement, or an AI area endorsement. These vessel owners and operators are recent entrants to the Pacific cod fishery and have not demonstrated long-term economic dependence on the fishery.

An increase in recent parallel fishery participation by vessels in the pot and hook-and-line C/P sectors has correspondingly increased fishing competition in the BSAI Pacific cod fishery. This increased fishing pressure has resulted in shortened Federal seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest in State waters relative to catch in the Federal waters. The increased fishing competition and catch from these sectors in the parallel Pacific cod fishery have also increased the complexity and difficulty in managing sector allocations and seasonal apportionments. Furthermore, owners of some vessels used to fish for Pacific cod in a Federal groundfish fishery have surrendered their FFPs before fishing in a parallel fishery or in the non-parallel-State waters Pacific cod fishery to avoid NMFS observer and recordkeeping and reporting requirements. Operators of vessels designated on an FFP are subject to NMFS observer, VMS, and recordkeeping and reporting requirements while fishing in Federal and State water groundfish fisheries. Some Pacific cod C/Ps may have avoided complying with these important NMFS enforcement and recordkeeping tools while fishing in the State waters by surrendering or amending their FFP. As a consequence, these vessels may be degrading the quality of information available to NMFS to manage the Pacific cod fishery.

The Proposed Action

In consideration of the effects of these practices on the allocation of Pacific cod and data quality, the Council recommended three actions at its June 2009 meeting to further restrict participation of pot or hook-and-line C/Ps in the Pacific cod parallel fishery. These three actions would amend regulations for pot and hook-and-line C/Ps by extending FFP and LLP endorsement requirements that apply in Federal fisheries to the Pacific cod parallel fishery: placing restrictions on reissuing or amending an FFP, and requiring operators of these pot and hook-and-line C/Ps participating in the parallel fishery to comply with seasonal closures of Pacific cod in the BSAI.

Endorsements for the State Parallel Fishery

The first of three actions recommended by the Council would add requirements for additional endorsements on an FFP and LLP license. The endorsements would apply to vessels designated on an FFP that fish for Pacific cod in the parallel fishery, use pot or hook-and-line gear, and catch and process Pacific cod. The proposed rule would implement this recommendation by amending § 679.7(c)(3) to prohibit a person from using pot or hook-and-line gear from a vessel designated on an FFP to catch and process Pacific cod in the parallel fishery in the BSAI unless:

1. The FFP has a C/P vessel operation endorsement; a pot or hook-and-line gear endorsement; and a BSAI area endorsement; and

2. The LLP license has a C/P vessel operation endorsement; a non-trawl gear endorsement; an Aleutian Islands area endorsement or a Bering Sea area endorsement; and a BSAI C/P Pacific cod hook-and-line or BSAI C/P Pacific cod pot endorsement.

The prohibitions would clarify that under the authority of the Magnuson-Stevens Act, the endorsements listed in 1 and 2, and any conditions of these FFP and LLP endorsements, apply to Federally permitted pot or hook-and-line C/P vessels fishing for Pacific cod in the parallel fishery.

Reissuing and Amending an FFP

The second action recommended by the Council is to prohibit the owner of a C/P using pot or hook-and-line gear in the BSAI from surrendering his or her FFP during the 3-year term of the FFP. Rather than prohibiting surrender of an FFP, NMFS proposes to implement the Council's recommendation by not reissuing an FFP once it is surrendered. The proposed rule would add paragraph (B) at § 679.4(b)(4)(ii) to state that, once surrendered, NMFS will not reissue an FFP to the owner of a vessel with a C/P vessel operation, pot or hook-and-line gear type, and BSAI area endorsement during the remainder of the 3-year term of the original FFP.

This approach would be more efficient for NMFS to administer because it would only require NMFS to track the number of vessel owners applying for a new FFP with a pot or hook-and-line C/P endorsement who had previously surrendered an FFP rather than track whether each permit holder who submitted a request to surrender an FFP had participated as a pot or hook-and-line C/P in the BSAI within the 3-year term of the surrendered permit.

The proposed rule also would add paragraph (B) to § 679.4(b)(4)(iii) to prohibit the owner of a vessel named on an FFP with endorsements for C/P vessel operation category, pot or hook-and-line gear, and BSAI area groundfish endorsement from amending the FFP by removing the C/P operation, pot or hook-and-line gear, or BSAI area endorsements.

The proposed rule also would revise § 679.4(b)(4)(iii) to refer to the "owner" of a vessel who applied for and held an FFP rather than to the "owner or operator". The term operator would be removed because FFPs may only be issued to vessel owners.

Seasonal Closures

The third action recommended by the Council is to clarify that Pacific cod seasonal closure requirements for Federally permitted pot and hook-and-line C/Ps apply in both Federal and parallel Pacific cod fisheries. The proposed rule would implement this recommendation by adding paragraph (4) to § 679.7(c), to prohibit operators of vessels in the pot or hook-and-line C/P sector that are named on an FFP from fishing for Pacific cod in the parallel fishery once the directed fishery for Pacific cod for their sector is closed in Federal waters.

Notice; Pacific Cod Caught in Parallel Fisheries Are Deducted From the TAC

Owners of Federally permitted pot or hook-and-line C/Ps, intending to catch and process Pacific cod from the parallel fishery, would receive actual and/or constructive notice from NMFS that any Pacific cod caught by that vessel in parallel fisheries will be deducted from the Federal TAC. The notice would improve enforceability of regulations proposed under § 679.7(c)(3) and (c)(4), by clarifying that a Federally permitted pot or hook-and-line C/P would be in violation of these prohibitions for catching and processing Pacific cod in parallel fisheries without the required FFP and LLP license

endorsements or during a Pacific cod seasonal closure.

What the Amendments Accomplish

The requirements in this proposed action for pot and hook-and-line C/Ps to be issued specific permits and endorsements to fish for Pacific cod in the parallel fishery, combined with proposed restrictions on surrendering and reissuing an FFP would address the Council's problem statement by requiring that, once a vessel owner of a pot or hook-and-line C/P is issued an FFP, he or she must choose to fish for Pacific cod predominantly in the Federal fishery or surrender his or her FFP and fish in State waters for the remainder of the 3-year term of the FFP. Owners of pot or hook-and-line C/Ps eligible to participate in the Federal fisheries are unlikely to surrender their FFP and give up the opportunity to continue to fish Pacific cod in the Federal fishery, unless they are close to the end of the 3-year term of the FFP. Relying exclusively on Pacific cod catch in parallel and non-parallel State fisheries for up to 3 years would represent a significant loss in revenue for many C/Ps because most Pacific cod are located in and caught in the Federal waters of the BSAI. Although these proposed regulatory amendments would not prohibit a C/P without an FFP or LLP license from participating in the parallel fishery, it would discourage the current practice of surrendering an FFP or removing an endorsement from an FFP before participating in the parallel fishery to avoid NMFS observer, VMS, and recordkeeping and reporting requirements.

Conservation and Management

This action implements the conservation and management of Federal fisheries as provided by Amendments 67 and 85 to the BSAI FMP. Amendment 67 created exclusive pot C/P and hook-and-line C/P sectors for participating in the BSAI Pacific cod fishery through a license limitation program (LLP). The creation of sectors effectively removed some vessels that did not historically participate in these Pacific cod fisheries, and reduced competition that contributed to the race for fish. Some of the C/Ps that did not qualify for the necessary LLP endorsement in Amendment 67 continue to fish for Pacific cod in the parallel fishery off of allocations for the C/P pot and hook-and-line sectors created by Amendment 85. This proposed rule would apply the same LLP endorsements required for Federally permitted pot or hook-and-line C/Ps to participate in the BSAI Pacific cod fishery to the parallel Pacific cod fishery, limiting ability of C/Ps without an LLP or the appropriate LLP endorsements to fish off of these Pacific cod sector allocations in the parallel fishery. Thus, this proposed action would contribute to conservation and management objectives by preventing C/Ps without an LLP or the appropriate endorsements to continue to participate in parallel fishery, reducing the pool of vessels competing for limited allocations to the C/P pot and hook-and-line sectors, and limiting the race for fish in the BSAI.

The interim final rule for Steller sea lion (SSL) protection measures (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010) establish closures in critical habitat waters 0 nm to 3 nm around certain rookeries and haulouts in the Aleutian Islands subarea. The harvest of Pacific cod in the parallel fisheries was included in the action considered in the November 2010 biological opinion on the Alaska Federal groundfish fisheries. In the analysis of the action in the biological opinion, the parallel fisheries were expected to be managed with the same closures as specific for the Federal Pacific cod fisheries as shown in Table 12 to 50 CFR part 679. The interim final rule closed State waters occurring inside Steller sea lion critical habitat. On January 11, 2011, the State issued an emergency order that allows for Pacific cod harvest by hook-and-line vessels 58 ft or less and by pot vessels 60 feet or less in State waters critical habitat between 175 degrees W longitude and 178 degrees W longitude that are closed to Federally permitted vessels. NMFS has initiated an Endangered Species Act Section 7 consultation on the State's emergency order. This proposed action would discourage a pot or hook-and-line C/P from surrendering its FFP and fishing in the parallel fisheries in those areas closed in Table 12 to 50 CFR part 679 but open under State parallel management. This proposed action would facilitate implementation of the closure areas for the protection of Steller sea lion critical habitat, as provided in the interim final rule (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010) and required by the biological opinion.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the remainder of the IRFA follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

The directly regulated entities for this proposed action are the members of the commercial fishing industry that operate groundfish pot or hook-and-line C/Ps in the BSAI and State parallel waters. Under a conservative application of the Small Business Administration criterion and the best available data, there are four small entities out of a total of 44 vessels in 2008 that would be directly regulated by the proposed action. To provide these estimates, earnings from all Alaskan fisheries for 2008 were matched with the vessels that participated in the BSAI pot or hook-and-line fishery for that year.

To minimize impacts on small entities, this action would not apply to pot or hook-and-line C/Ps of less than 32 ft LOA, or to pot or hook-and-line CVs. The CVs participating in these fisheries are generally operating in non-parallel-State and parallel fisheries only, and are not required by NMFS to be designated on an LLP license or FFP to participate in these groundfish fisheries.

In addition to the proposed alternative, the Council evaluated an alternative to prohibit any vessel with a C/P endorsement on its FFP from amending the C/P endorsement, and only allow surrender or reactivation of the FFP at the end of the FFP permit cycle. That alterative was rejected because it would have applied to jig and trawl C/Ps, and was beyond the scope of the Council's problem statement and analysis.

The Council also evaluated the no action alternative, which would maintain the fishery under the status quo, but it was rejected because it would not address the problem statement.

The majority of the directly regulated entities under this action are not considered small entities, as defined under the Regulatory Flexibility

Analysis. Within the universe of small entities that are the subject of this IRFA, impacts may accrue differently (*i.e.,* some small entities would be negatively affected and others positively affected). Thus, the proposed action represents tradeoffs in terms of impacts on small entities. However, the Council deliberately sought to provide options for the smallest of the small entities under this amendment by excluding CVs from the proposed regulatory changes. The restrictions on participation in the BSAI Pacific cod parallel fishery would only apply to pot and hook-and-line C/Ps; therefore only these C/Ps are considered here.

Overall, it is unlikely that the combination of these proposed restrictions would preclude vessels with a high degree of economic dependence upon the pot or hook-and-line groundfish fisheries from participating in the Pacific cod parallel fishery. Most of the vessel owners who are highly dependent on these fisheries were issued an LLP license with pot or hook-and-line Pacific cod endorsements, in 2003 under Amendment 67 by demonstrating recent catch history in the BSAI Pacific cod fishery. Most of the vessel owners who have not been issued an LLP license with a Pacific cod endorsement, and who have fished in parallel fisheries, are recent entrants to the fishery and have not demonstrated long-term economic dependence on the fishery. These vessel owners would continue to have access to the State Pacific cod fishery after implementation of the proposed action.

Based upon the best available scientific data, and consideration of the objectives of this action, it appears that there are no alternatives to the proposed action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. The analysis did not identify any Federal rules that would duplicate, overlap, or conflict with the proposed rule. This rule requires revisions to some existing recordkeeping and reporting requirements but imposes no new requirements on the effected vessel owners or operators.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648–0206. Public reporting burden for an Application for a Federal Fisheries Permit is estimated to average 21 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. This rule also contains a collection-of-information that has been approved by OMB under OMB Control No. 0334. Total public reporting burden for the License Limitation Program is estimated at 268 hours.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 8, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

2. In § 679.4, paragraphs (b)(4)(ii) and (iii) are revised to read as follows:

§ 679.4 Permits.

(b) * * *

(4) * * *

(ii) *Surrendered permit.* (A) An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraph (b)(4)(ii)(B) of this section, if surrendered, an FFP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, at 907–586–7202 (Option #2) or toll-free at 800–304–4846 (Option #2).

(B) NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(iii) *Amended permit.* (A) An owner who applied for and received an FFP must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS Web site at *http://alaskafisheries.noaa.gov.* The owner must submit the application as instructed on the application form. Except as provided under paragraph (b)(4)(iii)(B) of this section, upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(B) NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area.

* * * * *

3. In § 679.7, paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) *Parallel fisheries.* Use a vessel designated or required to be designated on an FFP to catch and process Pacific cod from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under section 679.20(a)(7)(ii)(A)(*4*) of this part for pot gear or (a)(7)(ii)(A)(*6*) of this part for hook-and-line gear unless that vessel is designated on both:

(i) An LLP license issued under section 679.4(k) of this part with the following endorsements:

(A) A catcher/processor endorsement;

(B) A BSAI catcher/processor Pacific cod hook-and-line, or a BSAI catcher/processor Pacific cod pot endorsement;

(C) An Aleutian Islands area endorsement or Bering Sea area endorsement; and

(D) A non-trawl endorsement; and

(ii) An FFP issued under section 679.4(b) of this part with the following endorsements:

(A) A catcher/processor endorsement;

(B) A BSAI endorsement; and

(C) A pot or hook-and-line gear type endorsement.

(4) *Parallel fishery closures.* (i) Use a vessel designated or required to be designated on an FFP to catch and process Pacific cod with pot gear from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under section 679.20(a)(7)(ii)(A)(*4*) of this part for pot gear if the BSAI is open to directed fishing for Pacific cod but is not open to directed fishing for Pacific cod by a catcher/processor using pot gear.

(ii) Use a vessel designated or required to be designated on an FFP, to catch and process Pacific cod with hook-and-line gear from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under section 679.20(a)(7)(ii)(A)(*6*) of this part for hook-and-line gear, if the BSAI is open to directed fishing for Pacific cod but is not open to directed fishing for Pacific cod by a catcher/processor using hook-and-line gear.

* * * * *

[FR Doc. 2011–5667 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 48

Friday, March 11, 2011

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Administrative Conference of the United States.

ACTION: 30-Day notice of submission of information collection for approval by the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process of seeking feedback from the public on service delivery, the Administrative Conference of the United States ("ACUS" or "the Conference") has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted by April 11, 2011.

ADDRESSES: Submit your comments, identified by the title "ACUS Generic Information Collection," (1) either by e-mail to OIRA using *ServiceDelivery Comments@omb.eop.gov*, or by fax to 202–395–7245, Attn: ACUS Desk Officer; and (2) either by e-mail to ACUS using *dpritzker@acus.gov*, or by mail to ACUS, 1120 20th Street, NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: David Pritzker, Deputy General Counsel, Administrative Conference of the United States, 1120 20th Street, NW., Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** on December 22, 2010 (75 FR 80542).

Below we provide the Conference's projected average estimates for the next three years:[1]

Current Action: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average expected annual number of activities: 6.

Average number of respondents per activity: 110.

Annual responses: 660.

Frequency of response: Once per request.

Average minutes per response: 6–60.

Burden hours: 210–285.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: March 8, 2011.

Shawne McGibbon,

General Counsel.

[FR Doc. 2011–5622 Filed 3–10–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

[1] The 60-day notice included the following estimate of the aggregate burden hours for all agencies combined under this generic clearance:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Rural Housing Service

Title: Rural Rental Housing Program, 7 CFR part 3560.

OMB Control Number: 0575–0189.

Summary of Collection: The programs covered by 7 CFR part 3560 provide financing to support the development of adequate, affordable housing and rental units for very low-, low-, and moderate-income households, and farm workers. Rural Housing Service (RHS) is authorized to collect the information needed to administer these various programs under Title V of the Housing Act of 1949, Section 515 Rural Rental Housing, Sections 514 and 516 Farm Labor Housing loans and grants, and Section 521 Rental Assistance.

Need and Use of the Information: The information collected by RHS is used to plan, manage, evaluate and account for Government resources. The reports are required to ensure the proper and judicious use of public funds. The purpose of the Multi-Family Housing programs is to provide adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households and farm workers in rural areas.

Description of Respondents: Business or other for profit: Individual or households; Farms; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 500,000.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Monthly, Annually.

Total Burden Hours: 1,091,785.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–5582 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Child and Adult Care Food Program Improper Payments Meal Claims Assessment

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other public agencies to comment on this proposed information collection. This is a new information collection that is designed to conduct a feasibility test of a parent-recall interview method, on a national basis, to assess the accuracy of meal claims submitted for reimbursement by family day care home providers for meals served to children who attend the Child and Adult Care Food Program (CACFP) day care homes. The assessment is tasked with developing nationally representative improper payment estimates and rates (percentage) of improper payments (in total and by meal type) due to sponsor reimbursement of invalid meal claims submitted by family day care homes (FDCHs) during FY 2011.

DATES: Written comments on this notice must be received on or before May 10, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steve Carlson, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014B, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steve Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@FNS.USDA.GOV.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Fred Lesnett at 703–605–0811.

SUPPLEMENTARY INFORMATION:

Title: Child and Adult Care Food Program Improper Payments Meal Claims Assessment

OMB Number: Not Yet Assigned.

Expiration Date: Not yet determined.

Type of Request: New collection of information.

Abstract: The *Improper Payments Information Act of 2002 (Act)* (Pub. L. 107–300) requires the Department of Agriculture (USDA) to identify and reduce significant improper over- and under-payments in various programs, including the Child and Adult Care Food Program (CACFP). Therefore, the Food and Nutrition Service (FNS), on behalf of the Secretary of Agriculture, is conducting a feasibility evaluation of the parent-recall data collection methodology for validating the number and type of meals claimed for reimbursement by family day care homes (FDCHs) in the CACFP. The feasibility evaluation is scheduled to collect data covering the time period of September 2010 through August 2011. Data collection is to be conducted in sixteen States to evaluate whether a parent-recall data collection methodology under evaluation can:

• Validate the meal reimbursement claims submitted by FDCHs for the number of children who are CACFP eligible and present in the FDCHs during the time period(s) for which the meals/snacks were claimed.

• Generate the data required for developing an estimate of improper payments, based on the meals claimed for reimbursement by FDCHs, that meet the requirements of the Improper Payments Information Act of 2002.

• Be implemented nationwide in an efficient and cost effective method.

A feasibility evaluation will be conducted of the parent-recall data collection methodology in validating meal claims submitted for reimbursement by FDCH providers. Observations conducted on-site in the homes of FDCH providers will be used in the feasibility evaluation. The methodology compares meal reimbursement claims submitted by FDCHs to their sponsors and data collected through each of the following two data collection methodologies:

• Recollections of parents/guardians on their children's attendance at the FDCHs during the days and times of the claims.

• Observations made during on site visits to FDCHs during scheduled meal times.

Based on the findings from the feasibility evaluation, FNS will determine the reliability of using parent-recall information in evaluating meal claims submitted by FDCH providers. If determined to be reliable, the parent-recall method of data collection shall be tested at a national level, and FNS will evaluate the feasibility of implementing it nationwide to validate the meals claimed for reimbursement.

Affected Public: 1,024 Individual/Households; 16 State, Local & Tribal Government and Business-for-profit (64 CACFP Sponsors and 256 FDCH providers).

Respondent type identified: Parent/guardian of each of the sampled children attending a sample of FDCHs will be contacted by telephone. Request for child enrollment, sponsor agreement and meal claim information will be requested of the sampled CACFP sponsors and providers. In addition, observations will be conducted in the homes of the FDCH providers.

Estimated Number of Respondents: The estimated number of respondents included in the survey of parents is 1,024. Sixty-four sponsors in 16 States and 256 FDCH providers will be sampled and requested to provide supporting program information.

Estimated Number of Responses per Respondent: The number of responses per set of parents/guardians for a sampled child attending a FDCH is one. The number of responses per State, sponsor and FDCH provider is one.

Estimated Time per Response: The estimated average time to respond to the parent/guardian survey is 10.2 minutes (.17/Hour). The estimated average times for a State, sponsor and FDCH provider to respond are 45 minutes (.75/Hour), 390 minutes (6.50/Hour), and 75 minutes (1.25/Hour) respectively. Non-responses or attempted interviews are estimated to take 6 minutes (0.10/hour).

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total annual hours of response burden
SFA Directors					
States:					
Completed interviews	16	1.00	16	0.7500	12.00000
Attempted interviews	0	1.00	0	0.1000	.00000
Sponsors:					
Completed interviews	64	1.00	64	6.5000	416.00000
Attempted interviews	5	1.00	5	0.1000	0.50000
FDCH Provider					
Completed interviews	256	1.00	256	1.25	320.00000
Attempted interviews	13	1.00	13	0.1000	1.30000
Parents:					
Completed interviews	1,024	1.00	1,024	0.1700	174.08000
Attempted interviews	102	1.00	102	0.1000	10.20000
Total Responding burden	1,480	.....	1,480	.....	934.08000

Estimated Total Annual Burden on Respondents: 934.08000 hours.

Dated: March 4, 2011.

Julia Paradis,

Administrator.

[FR Doc. 2011–5620 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Breastfeeding Peer Counseling Study

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection of data for the second phase of the WIC Breastfeeding Peer Counseling Study. The first phase of this study examined the implementation of the *Loving Support* peer counseling program in State and local WIC agencies across the country; the final report on this first phase of the study may be downloaded from *http://www.fns.usda.gov/ora/* (*see* "*WIC studies*"). This second phase is a revision of a currently approved collection which will assess the impact of including in-person peer counseling as part of the *Loving Support* program on breastfeeding outcomes for WIC participants.

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steve Carlson, Director, Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steve Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at, 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302. All electronic comments can be viewed through *http://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steve Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: WIC Breastfeeding Peer Counseling Study.

OMB Approval Number: 0584–0548.

Expiration Date: 7/31/2011.

Type Of Request: Revision of a currently approved collection.

Abstract: Beginning in Fiscal Year (FY) 2004 and continuing through to the present, Congress appropriated about $15 million per year for States to support breastfeeding peer counseling in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); in FY2010 Congress increased this amount to $80 million per year. Prior research has suggested that peer counseling may increase breastfeeding duration rates and is associated with positive outcomes in groups that have proven difficult for WIC to support in the initiation and continuation of breastfeeding. The first phase of the WIC Breastfeeding Peer Counseling study, published in spring 2010, developed a comprehensive and detailed picture of how the *Loving Support* Peer Counseling Program was implemented in States and local WIC agencies (LWAs) throughout the country. One important finding of this first phase was that there is variation in the implementation of the *Loving Support* peer counseling program in local WIC agencies, particularly variation in the frequency, timing and location of in-person peer counseling offered to WIC participants pre- and post-partum. The proposed second phase of the study will examine how specific variations in implementing peer counseling using the *Loving Support* model affect breastfeeding outcomes. Up to eight local WIC agencies will be invited to participate in this phase of the study. From these eight local WIC agencies, approximately 1,800 first-time expectant mothers who certify for WIC benefits and sign-up to receive peer counseling will be randomly assigned to one of two conditions: a control group of 900 will receive their local WIC agency's regular *Loving Support* peer counseling services; a treatment group of 900 will be offered *Loving Support* peer counseling services that more strongly emphasizes in-person contact with peer counselors than the agency's regular *Loving Support* program. In particular, women in the treatment group will be offered in-person peer counseling during the first ten days after giving birth.

Affected Public: Individual/Household, State, Local and Tribal Government. The proposed data collection activities will require two types of respondent groups: staff at the participating local WIC agencies; and individual WIC participants who consent to participate in the study. Multiple respondents from the participating local WIC agencies may be required to complete each data collection instrument to be used with local WIC agency staff. These respondents will include the local WIC director, breastfeeding and peer counseling coordinators, peer counselors, and the local WIC agency database manager, as well as individual WIC participants who consent to participate in the study.

Estimated Number of Respondents: The maximum total estimated number of respondents is 2,110. This total includes eight local WIC Peer Counseling Coordinators who will participate in two interviews and complete ten progress reporting forms, one per month for ten months. The Coordinators will be assisted by eight local WIC directors, eight local WIC breastfeeding coordinators, and eight local WIC database managers. Up to 64 Peer Counselors (roughly eight per participating local WIC agency) will complete a background questionnaire and participate in an individual interview (or will complete the interview as part of a focus group). Finally, assuming a 100% response rate, 1,800 WIC participants will participate in two telephone-administered questionnaires.

Number of Responses per Respondent: The local WIC Peer Counseling Coordinators at each participating WIC agency will participate in two interviews, assisted by their local WIC agency's director, breastfeeding coordinator, and database manager. Each local WIC Peer Counseling Coordinator will provide ten responses on a progress reporting form with the assistance of their local WIC agency's database manager. Up to 64 Peer Counselors (roughly eight per local WIC site) will complete a background questionnaire and participate in an interview. Each WIC participant will respond to two telephone-administered questionnaires.

Estimated Total Annual Responses per Respondent: 3,958.

Estimated Total Annual Burden on Respondents: 1,648 hours.

Estimated Time per Response: 0.42 of an hour or 25 minutes.

FNS estimates that a total reporting and recordkeeping burden of 1,655 hours will result from activities to implement the data collection instruments. The estimated average response time is 0.42 of an hour or 25 minutes. See Table 1 below for the estimated total burden for each type of respondent by instrument type.

TABLE 1

Affected public	Respondent type	Instrument	Number respondents	Avg. number responses per respondent	Total annual responses	Hours per response	Total burden
State, Local and Tribal Government.	Local WIC Agency Director	Interview	8	2.00	16.00	0.50	8.00
	(non-response)	*Pre-screening*	2	1.00	2.00	0.0835	0.17
	Local WIC Breastfeeding Coordinator.	Interview	8	2.00	16.00	1.00	16.00
	(non-response)	Interview	2	1.00	2.00	0.0835	0.17
	Local Peer Counseling Coordinator.	Interview	8	2.00	16.00	2.00	32.00
	(non-response)	*Pre-screening*	2	1.00	2.00	0.0835	0.17
	Local Peer Counseling Coordinator.	Progress Reporting Form.	8	10.00	80.00	3.00	240.00
	Local WIC Agency Database Manager.	Interview	8	1.00	8.00	0.50	4.00
	(non-response)	*Pre-screening*	2	1.00	2.00	0.0835	0.17
	Local WIC Agency Database Manager.	Progress Reporting Form.	8	10.00	80.00	0.50	40.00
	Peer Counselor	Interview	64	1.00	64.00	1.50	96.00
	(non-response)	*Pre-screening*	6	1.00	6.00	0.0835	0.50
	Peer Counselor	Questionnaire	64	1.00	64.00	0.25	16.00
Total SA Reporting burden			110	3.25	358.00	1.22	436.67
Individual/Household	WIC Participant	Questionnaire	1,800	2.00	3,600.00	0.334	1,202.40
	(non-response)	*Pre-screening*	200	1.00	200.00	0.0835	16.70
Total I/H Burden			2,000.00	1.90	3,800.00	0.32	1,219.10
Total burden			2,110.00	1.88	3,958.00	0.42	1,655.77

Dated: March 4, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–5624 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—National School Lunch Program (NSLP) Direct Certification Improvement Study

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection for "National School Lunch Program Direct Certification Improvement Study" is a reinstatement with change of a previously approved data collection for "Feasibility of Computer Matching in the National School Lunch Program." It builds on the data collection for "Feasibility of Computer Matching in the National School Lunch Program." This study will collect information from State child nutrition (CN) and education agencies, as well as local education agencies (LEAs). The information collection will build on existing knowledge by examining current methods of direct certification used by State and local agencies and the challenges facing States and LEAs in attaining high matching rates.

DATES: Written comments must be received on or before May 10, 2011.

ADDRESSES: Comments are invited on (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and (3) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Steven Carlson, Associate Administrator, Office of Research, Analysis, Communications, and Strategic Support, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steve Carlson at 703–305–2020 or via e-mail to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service (FNS) during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Sheku Kamara at 703–305–2130.

SUPPLEMENTARY INFORMATION:

Title: National School Lunch Program Direct Certification Improvement Study, which is an update to a previously approved data collection for "Feasibility of Computer Matching in the National School Lunch Program."

OMB Number: 0584–0529.

Form Number: N/A.

Expiration Date: Not yet determined.

Type of Request: Reinstatement with change of previously approved data collection.

Abstract: Direct certification was required of States and LEAs in the Child Nutrition and WIC Reauthorization Act of 2004. Direct certification enables

children in households that receive Supplemental Nutrition Assistance Program (SNAP) or other public assistance program benefits to be certified to receive school lunches without application. Use of direct certification has increased since the 2004 reauthorization but is still not universal, despite the mandate. In school year (SY) 2009–2010, 83 percent of National School Lunch Program (NSLP) districts directly certified children in SNAP households; these districts included 97 percent of all students in NSLP schools. Most States also now employ computer data-matching techniques—in which electronic files containing names and other identifying information of children from SNAP (or other programs) are matched against a student enrollment file containing the names and other identifying information, in order to directly certify categorically eligible students.

The core aims of the study are to describe current direct certification processes and procedures employed by States and LEAs; explore the relationship between these methods and overall direct certification performance measures; and identify steps for continuous improvement in data-matching techniques and tools to increase matching rates.

This project has 11 study objectives: (1) Update national information on current practice used by States and LEAs to conduct direct certification; (2) describe State information systems (IS) and databases that are used to conduct direct certification and what analyses are conducted to determine the efficiency of the data matching, and correlate State system and database characteristics with State performance measures, including those based on the agency's direct certification reporting; (3) develop a comprehensive, up-to-date reference library of data-matching algorithms and computer code used for NSLP direct certification at the State and local levels, including a library of the data elements, formats, and definitions for all variables used in the matching; (4) examine relationships between direct certification implementation procedures, information systems and databases, and State performance measures of direct certification; (5) determine what barriers exist in the use of data matching in direct certification in NSLP in different States and LEAs; (6) determine what States have been doing with direct certification grants awarded by Food and Nutrition Services (FNS), in terms of improvements made and their effects; (7) identify "best practices" that could be used to provide technical assistance to those States developing continuous improvement plans to reach higher rates of data matching; (8) examine the current plans for improvement of the direct certification process in the future and the capability to adopt any potential changes that may be required in the subsequent legislation; (9) explore the records of unmatched SNAP households with school-age children and of categorically eligible SNAP children (as determined by NSLP application) to determine how direct certification could be further improved; (10) to estimate the "national" direct certification matching rates under various scenarios (Optional Task); (11) to develop model continuous improvement plans for States using State-level matching and for States using local-level matching (Optional Task).

To address the study objectives, three key data collection tasks will be performed: (1) A national survey of direct certification practices of all 50 States, the District of Columbia, five territories, and of LEAs in those States where direct certification data matching is conducted at the district-level; (2) in-depth case studies in seven States and selected LEAs, which will include site visits to interview program and technical staff involved in direct certification at the State and LEA levels; and (3) an exploration of unmatched SNAP participant records and NSLP applications from a sample of districts within the seven case study States, which will form the basis for an analysis of the accuracy of the matches and provide insight into how data matching could be improved.

Taken together, the information collected will help FNS, State CN directors, and LEAs recognize promising trends, understand new approaches, and provide technical assistance for continuous improvement of their direct certification efforts.

Affected Public: State, Local or Tribal Government. Respondent groups identified include: (1) CN staff at the State level; (2) education staff at the State level; (3) State SNAP, Medicaid, and/or Temporary Assistance for Needy Families (TANF) program staff; and (4) staff from LEAs.

Estimated Number of Respondents: The study will collect data from a total of 7,949 respondents across all States. There are three categories of data collection: Web-based, national survey (States and LEAs); in-depth interviews during site-visits; and collection of unmatched SNAP participant records and NSLP applications. The Web-based, national survey will be conducted with 57 State (and territory) CN program directors and approximately 7,700 LEAs (2,500 LEAs will receive a long version of the survey; 5,200 LEAs will receive a short version). In-depth interviews during site visits will be conducted with 7 State CN agency officials; 7 State education staff; 7 State SNAP officials; 7 State Medicaid agency officials; 7 State TANF officials; 14 (2 per State) State IS staff; 18 LEA staff and 18 LEA IS staff. Records of unmatched SNAP participant records will be collected by 7 State staff and NSLP applications will be collected by 100 LEA staff.

Number of Responses per Respondent: 1.

Estimated Time per Response: For the Web-based, national survey, the burden estimate is 1.25 hours (75 minutes) for State CN staff and is inclusive of the respondents' time to prepare for and complete the survey; the burden estimate is 1.0 hour (60 minutes) for LEA staff completing a long version of the survey; and, 0.33 hours (20 minutes) for LEA staff completing the short version of the survey. For all persons who decline to participate in the survey, the burden estimate is 0.10 hours (6 minutes) and includes the respondents' time to read a letter and/or respond to a telephone call. For all respondents interviewed during the site visits, the burden estimate is 1.33 hours (80 minutes) and includes respondents' time to read an introductory letter, receive a reminder letter, and prepare for and participate in the visit. The burden for gathering unmatched SNAP records is 4.0 hours; the burden for LEA staff to gather NSLP applications is 4.0 hours.

Estimated Total Annual Burden on Respondents and Nonresponders: Total of 4,132.42 hours, including: State CN staff, 73.68 hours (includes Web-based survey and in-depth interviews); LEA staff, 3,950.80 hours (includes Web-based survey, in-depth interviews, and collection of NSLP applications); State education staff, 9.33 hours; State SNAP staff, 9.33 hours; State Medicaid staff, 9.33 hours; State TANF staff, 9.33 hours; State IS staff, 18.62 hours; LEA IS staff, 24 hours; and State staff, 28 hours.

TABLE 1—ESTIMATED BURDEN PER RESPONDENT

Affected public	Respondent type	Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
State, Local and Tribal Agencies.	Web Based Survey					
	State CN staff (long survey) *Complete*.	51	1	51	1.25	63.75
	State CN staff (long survey) *Attempted*.	6	1	6	.10	.60
	LEA staff (long survey) *Complete*.	2,000	1	2,000	1.00	2,000
	LEA staff (long survey) *Attempted*.	500	1	500	.10	50
	LEA staff (short survey) *Complete*.	4,160	1	4,160	.33	1,372.8
	LEA staff (short survey) *Attempted*.	1,040	1	1,040	.10	104
	Site Visits					
	State CN staff	7	1	7	1.33	9.33
	State education staff	7	1	7	1.33	9.33
	State SNAP staff	7	1	7	1.33	9.33
	State Medicaid staff	7	1	7	1.33	9.33
	State TANF staff	7	1	7	1.33	9.33
	State IS staff	14	1	14	1.33	18.62
	LEA staff	18	1	18	1.33	24
	LEA IS staff	18	1	18	1.33	24
	Unmatched SNAP Records and NSLP Applications					
	State staff (SNAP unmatched records).	7	1	7	4	28
	LEA staff (NSLP applications).	100	1	100	4	400
Total		7,949		7,949		4,132.42

Dated: March 4, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–5627 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver Creek Landscape Management Project, Ashland Ranger District, Custer National Forest; Powder River County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of change of responsible official.

SUMMARY: On April 2, 2010 the Forest Service announced its notice of intent (NOT) to prepare an Environmental Impact Statement for the Beaver Creek Landscape Management Project in the **Federal Register** (75 FR 16728). The notice of availability (NOA) of the Draft Environmental Impact Statement for the Beaver Creek Landscape Management Project was published in the **Federal Register** on October 15, 2010 (75 FR 63470, EIS No. 20100405, Draft EIS, USFS, MT).

Responsible Official

In the NOI the Forest Supervisor, Mary Erickson, was identified as the Responsible Official. Pursuant to Forest Service Manual (FSM) 2404.13 the District Ranger has the authority to be the Responsible Official for this project. Therefore, this is notice that Ashland District Ranger, Walt Allen, is the Responsible Official for the Beaver Creek Landscape Management Project.

DATES: The Final Environmental Impact Statement is planned to be released in April 2011.

ADDRESSES: No comments are being sought at this time. However, Walt Allen can be contacted at the Ashland Ranger District, P.O. Box 168, Ashland, MT 59003 or by phone at 406–784–2344.

FOR FURTHER INFORMATION CONTACT: Amy Waring, Project Coordinator, at (406) 657–6205 extension 210.

Dated: March 4, 2011.

Chris Worth,

Deputy Forest Supervisor.

[FR Doc. 2011–5476 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ontonagon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ontonagon Resource Advisory Committee will meet in Rockland, Michigan. The Committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review and make recommendations on Title II Projects submitted by the public.

DATES: The meeting will be held on April 8, 2011, and will begin at 9 a.m. (EST).

ADDRESSES: The meeting will be held at the Rockland Township Office, National Ave., Rockland, Michigan. Written comments should be sent to Lisa Klaus, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938. Comments may also be sent via e-mail to *lklaus@fs.fed.us* or via facsimile to 906–932–0122.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, RAC coordinator, USDA, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI, (906) 932–1330, ext. 328; e-mail *lklaus@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. The following business will be conducted: (1) Review and approval of previous meeting minutes. (2) Review and make recommendations for Title II Projects previously submitted by the public. (3) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: March 7, 2011.

Keith B. Lannom,

Acting Designated Federal Official.

[FR Doc. 2011–5597 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie (MBS) Resource Advisory Committee (RAC) will meet in Sedro Woolley, Washington on April 13, 2011. The committee is meeting to review and rank 2012 Title II RAC proposals.

DATES: The meeting will be held on Thursday, April 13, 2011 from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Mt. Baker Ranger District office located at 810 State Route 20, Sedro Woolley, Washington 98284.

FOR FURTHER INFORMATION CONTACT: Jon Vanderheyden, District Ranger, Mt. Baker Ranger District, phone (360) 854–2601, e-mail *jvanderheyden@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. More information will be posted on the Mt. Baker-Snoqualmie National Forest Web site at *http://www.fs.fed.us/r6/mbs/projects/rac.shtml.*

Comments may be sent via e-mail to *jvanderheyden@fs.fed.us* or via facsimile to (360) 856–1934. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mt. Baker Ranger District office at 810 State Route 20, Sedro-Woolley, Washington, during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

Dated: March 4, 2011.

Y. Robert Iwamoto,

Forest Supervisor.

[FR Doc. 2011–5638 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Friday, March 25, 2011 in Idaho Falls, Idaho for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on March 25, 2011, from 9 a.m. until finished.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Brent Larson, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on March 25, 2011, begins at 9 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include approving projects for 2010–3rd year and 2011–4th year funding.

Dated: March 7, 2011.

Brent L. Larson,

Caribou-Targhee Forest Supervisor.

[FR Doc. 2011–5636 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Contract Proposal (NOCP) for Payments to Eligible Advanced Biofuel Producers

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the acceptance of applications to enter into Contracts to make payments to eligible advanced biofuel producers under the Bioenergy Program for Advanced Biofuels to support and ensure an expanding production of advanced biofuels. To be eligible for payments, advanced biofuels must be produced from renewable biomass, excluding corn kernel starch, in a biofuel facility located in a State. The Notice announces the availability of up to $85 million to make payments to advanced biofuel producers for the production of eligible advanced biofuels in Fiscal Year 2011.

DATES: Applications for participating in the Advanced Biofuel Payment Program for Fiscal Year 2011 will be accepted from March 11, 2011 through May 10, 2011. Applications received after May 10, 2011, regardless of their postmark, will not be considered for Fiscal Year 2011 funds. If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** for addresses concerning applications for the Advanced Biofuel Payment Program for Fiscal Year 2011 funds.

FOR FURTHER INFORMATION CONTACT: For information about the Fiscal Year 2011 applications and for Advanced Biofuel Payment Program assistance, please contact a USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice, or Diane Berger, USDA Rural Development, 1400 Independence Avenue, SW, Room 6865, STOP 3225, Washington, DC 20250. Telephone: (202) 260–1508. Fax: (202) 720–2213. E-mail: *diane.berger@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Fiscal Year 2011 Applications for the Advanced Biofuel Payment Program

Application materials may be obtained by contacting one of Rural Development's Energy Coordinators. An applicant (unless the applicant is an individual) must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Submit completed applications to the Rural Development State Office in the State in which the applicant's principal place of business is located.

Rural Development Energy Coordinators

Note: Telephone numbers listed are not toll-free.

Alabama

Quinton Harris, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623, *Quinton.Harris@al.usda.gov.*

Alaska

Chad Stovall, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7718, *chad.stovall@ak.usda.gov.*

American Samoa (See Hawaii)

Arizona

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769, *Alan.Watt@az.usda.gov.*

Arkansas

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280, *Tim.Smith@ar.usda.gov.*

California

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792–5811, *Phil.brown@ca.usda.gov.*

Colorado

Jerry Tamlin, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2907, *Jerry.Tamlin@co.usda.gov.*

Commonwealth of the Northern Marianas Islands—CNMI (See Hawaii)

Connecticut (See Massachusetts)

Delaware/Maryland

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3626, *Bruce.Weaver@de.usda.gov.*

Federated States of Micronesia (See Hawaii)

Florida/Virgin Islands

Matthew Wooten, USDA Rural Development, 4440 NW., 25th Place, Gainesville, FL 32606, (352) 338–3486, *Matthew.wooten@fl.usda.gov.*

Georgia

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, Phone 770–267–1413 ext. 113, *craig.scroggs@ga.usda.gov.*

Guam (See Hawaii)

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/American Samoa/Commonwealth of the Northern Marianas Islands—CNMI

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313, *Tim.Oconnell@hi.usda.gov.*

Idaho

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623, *Brian.Buch@id.usda.gov.*

Illinois

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6210, *Molly.Hammond@il.usda.gov.*

Indiana

Jerry Hay, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (812) 873–1100, *Jerry.Hay@in.usda.gov.*

Iowa

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447, *teresa.bomhoff@ia.usda.gov.*

Kansas

David Kramer, USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, *david.kramer@ks.usda.gov.*

Kentucky

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435, *scott.maas@ky.usda.gov.*

Louisiana

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601, Ext. 133, *Kevin.Boone@la.usda.gov.*

Maine

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168, *john.sheehan@me.usda.gov.*

Maryland (See Delaware)

Massachusetts/Rhode Island/Connecticut

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (401) 826–0842 X 306, *Charles.Dubuc@ma.usda.gov.*

Michigan

Traci J. Smith, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157, *Traci.Smith@mi.usda.gov.*

Minnesota

Lisa L. Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007, (507) 373–7960 Ext. 120, *lisa.noty@mn.usda.gov.*

Mississippi

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457, *george.jones@ms.usda.gov.*

Missouri

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321, *matt.moore@mo.usda.gov.*

Montana

Michael Drewiske, USDA Rural Development, 900 Technology Blvd.,

Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2554, *Michael.drewiske@mt.usda.gov.*

Nebraska

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554, *Debra.Yocum@ne.usda.gov.*

Nevada

Mark Williams, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222, *mark.williams@nv.usda.gov.*

New Hampshire (See Vermont)

New Jersey

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7752, *Victoria.Fekete@nj.usda.gov.*

New Mexico

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952, *Jesse.bopp@nm.usda.gov.*

New York

Scott Collins, USDA Rural Development, 9025 River Road, Marcy, NY 13403, (315) 736–3316 Ext. 4, *scott.collins@ny.usda.gov.*

North Carolina

David Thigpen, USDA Rural Development, 4405 Bland Rd., Suite 260, Raleigh, N.C. 27609, 919–873–2065, *David.Thigpen@nc.usda.gov.*

North Dakota

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2068, *Dennis.Rodin@nd.usda.gov.*

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424, *Randy.Monhemius@oh.usda.gov.*

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036, *Jody.harris@ok.usda.gov.*

Oregon

Don Hollis, USDA Rural Development, 200 SE Hailey Ave, Suite 105, Pendleton, OR 97801, (541) 278–8049, Ext. 129, *Don.Hollis@or.usda.gov.*

Pennsylvania

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182, *Bernard.Linn@pa.usda.gov.*

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251, *Luis.Garcia@pr.usda.gov.*

Republic of Palau (See Hawaii)

Republic of the Marshall Islands (See Hawaii)

Rhode Island (See Massachusetts)

South Carolina

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3150, *Shannon.Legree@sc.usda.gov.*

South Dakota

Dana Kleinsasser, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1157, *dana.kleinsasser@sd.usda.gov.*

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350, *will.dodson@tn.usda.gov.*

Texas

Billy Curb, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9775, *billy.curb@tx.usda.gov.*

Utah

Roger Koon, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4301, *Roger.Koon@ut.usda.gov.*

Vermont/New Hampshire

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602, 802–828–6083, *cheryl.ducharme@vt.usda.gov.*

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *Laurette.Tucker@va.usda.gov.*

Virgin Islands (See Florida)

Washington

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7762, *Mary.Traxler@wa.usda.gov.*

West Virginia

Richard E. Satterfield, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4874, *Richard.Satterfield@wv.usda.gov.*

Wisconsin

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 139, *Brenda.Heinen@wi.usda.gov.*

Wyoming

Jon Crabtree, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602, (307) 233–6719, *Jon.Crabtree@wy.usda.gov.*

Paperwork Reduction Act

The information collection requirements contained in the Notice of Contract Proposal for the Section 9005 Advanced Biofuel Payments Program published on June 12, 2009, were approved by the Office of Management and Budget (OMB) under emergency clearance procedures and assigned OMB Control Number 0570–0057. As noted in the June 12, 2009 notice, the Agency sought emergency clearance to comply with the time frames mandated by a Presidential Memorandum in order to implement the Program as quickly as possible, having determined that providing for public comment under the normal procedure would unduly delay the provision of benefits associated with this Program and be contrary to the public interest. Now, however, in accordance with the Paperwork Reduction Act of 1995, the Agency is seeking standard OMB approval of the reporting and recordkeeping requirements contained in the interim rule. In the publication of the proposed rule on April 16, 2010, the Agency solicited comments on the estimated burden. The Agency received no comments in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a notice in the **Federal Register**.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an agency of the United States Department of Agriculture in the Rural Development mission area).

Contract Proposal Title: Advanced Biofuel Payment Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number. The CFDA number for this Notice is 10.867.

Dates: The Advanced Biofuels Program sign-up period for Fiscal Year 2011 is March 11, 2011 to May 10, 2011.

Availability of Notice and Rule. This Notice and the interim rule for the Advanced Biofuel Payment Program are available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/BCP_Biofuels.html* and at *http://www.rurdev.usda.gov/rbs/busp/9005Biofuels.htm.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to support and ensure an expanding production of advanced biofuels by providing payments to eligible advanced biofuel producers. Implementing this program not only promotes the Agency's mission of promoting sustainable economic development in rural America, but is an important part of achieving the Administration's goals for increased biofuel production and use by providing economic incentives for the production of advanced biofuels.

B. *Statutory Authority.* This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234).

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4288.102.

II. Award Information

A. *Available funds:* The Agency is authorizing up to $85 million for this program in Fiscal Year 2011.

The Agency made available up to $80 million in budgetary authority for Fiscal Year 2010 for advanced biofuel produced in Fiscal Year 2010. Information on Fiscal Year 2010 funding was contained in the publication of the interim rule for the Advanced Biofuel Payment Program, which can be found at 76 FR 7936 (February 11, 2011).

B. *Approximate number of awards:* The number of awards will depend on the number of participating advanced biofuel producers.

C. *Range of amounts of each payment:* There is no minimum or maximum payment amount that an individual producer can receive. The amount that each producer receives will depend on the number of eligible advanced biofuel producers participating in the program for Fiscal Year 2011, the amount of advanced biofuels being produced by such advanced biofuel producers, and the amount of funds available.

D. *Contract period.* For producers participating in this program for Fiscal Year 2011, the contract period will continue indefinitely until terminated as provided for in 7 CFR 4288.121(d).

E. *Production period.* Payments to participating advanced biofuel producers under this Notice will be made on actual eligible advanced biofuels produced from October 1, 2010 through September 30, 2011.

F. *Type of instrument.* Payment.

III. Eligibility Information

A. *Eligible applicants.* To be eligible for this program, an applicant must meet the eligibility requirements specified in 7 CFR 4288.110.

B. *Biofuel eligibility.* To be eligible for payment, an advanced biofuel must meet the eligibility requirements specified in 7 CFR 4288.111.

C. *Payment eligibility.* To be eligible for program payments, an advanced biofuel producer must maintain the records specified in 7 CFR 4288.113.

IV. Fiscal Year 2011 Application and Submission Information

A. *Address to request applications.* Annual Application, Contract, and Payment Request forms are available from the USDA, Rural Development State Office, Rural Development Energy Coordinator. The list of Rural Development Energy Coordinators is provided in the **SUPPLEMENTARY INFORMATION** section of this Notice.

B. *Content and form of submission.* The enrollment provisions, including application content and form of submission, are specified in 7 CFR 4288.120 and 4288.121.

C. *Submission dates and times.*

(1) *Enrollment.* Advanced biofuel producers who expect to produce eligible advanced biofuel at any time during Fiscal Year 2011 must enroll in the program by May 10, 2011. Applications received after this date, regardless of their postmark, will not be considered by the Agency for Fiscal Year 2011 funds. Producers who participated in this Program in Fiscal Year 2009 and/or Fiscal Year 2010 must submit a new application under this Notice to be considered for Fiscal Year 2011 funds.

(2) *Payment applications.* Advanced biofuel producers must submit Form RD 4288–3, "Advanced Biofuel Payment Program—Payment Request," for each of the first three quarters (i.e., three forms are required) of Fiscal Year 2011 by 4:30 p.m. on August 1, 2011, and for the final quarter of Fiscal Year 2011 by 4:30 p.m. on October 31, 2011. Neither complete nor incomplete payment applications received after such dates and times will be considered, regardless of the postmark on the application.

D. *Funding restrictions.* For Fiscal Year 2011, not more than five percent of the funds will be made available to eligible producers with a refining capacity (as determined for the prior fiscal year) exceeding 150,000,000 gallons of a liquid advanced biofuel per year or exceeding 15,900,000 million BTUs of biogas and solid advanced biofuel per year. (In calculating whether a producer meets either of these capacities, production of all advanced biofuel facilities in which the producer has 50 percent or more ownership will be totaled.) The remaining funds will be made available to all other producers.

E. *Payment provisions.* Fiscal Year 2011 payments will be made according to the provisions specified in 7 CFR 4288.130 through 4288.137.

V. Administration Information

A. *Notice of eligibility.* The provisions of 7 CFR 4288.112 apply to this Notice. These provisions include notifying an applicant determined to be eligible for participation and assigning such applicant a Contract number and notifying an applicant determined to be ineligible, including the reason(s) the applicant was rejected and providing such applicant appeal rights as specified in 7 CFR 4288.103.

B. *Administrative and National Policy requirements.*

(1) *Review or appeal rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division as provided in 7 CFR 4288.103.

(2) *Compliance with other laws and regulations.* The provisions of 7 CFR 4288.104 apply to this Notice, which includes requiring advanced biofuel producers to be in compliance with other applicable Federal, State, and local laws.

(3) *Oversight and monitoring.* The provisions of 7 CFR 4288.105 apply to this Notice, which includes the right of the Agency to verify all payment applications and subsequent payments and the requirement that each eligible advanced biofuel producer make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement

sheets, invoices, written price quotations, and other documents related to the program that are within the control of such advanced biofuel producer for not less than three years from each Program payment date.

(4) *Exception authority.* The provisions of 7 CFR 4288.107 apply to this Notice.

C. *Environmental review.* Rural Development's compliance with the National Environmental Policy Act of 1969 (NEPA) is implemented in its regulations at 7 CFR part 1940, subpart G. The Agency has reviewed the circumstances under which financial assistance may be provided under this Program and has determined that proposals that do not involve additional facility construction fall within the categorical exclusion from NEPA reviews provided for in 7 CFR 1940.310(c)(1). Applicants whose proposal involves additional facility construction should provide Form RD 1940–20, "Request for Environmental Information," as part of their application. Rural Development will then determine whether the proposal is categorically excluded under 7 CFR 1940.310(c)(1) or whether additional actions are necessary to comply with 7 CFR part 1940, subpart G.

VI. Agency Contacts

For assistance on this payment program, please contact a USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice, or Diane Berger, USDA Rural Development, 1400 Independence Avenue, SW., Room 6865, STOP 3225, Washington, DC 20250. Telephone: (202) 260–1508. Fax: (202) 720–2213. Email: *diane.berger@wdc.usda.gov.*

VII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: March 7, 2011.

Cheryl L. Cook,

Acting Under Secretary, Rural Development.

[FR Doc. 2011–5573 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Funding Availability (NOFA) for Repowering Assistance Payments to Eligible Biorefineries

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the acceptance of applications for payments to eligible biorefineries to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of these eligible biorefineries. To be eligible for payments, biorefineries must have been in existence on June 18, 2008. The Notice announces the availability of at least $25 million to make payments to eligible biorefineries in Fiscal Year 2011, in addition to any carry-over funds from Fiscal Year 2010.

DATES: Applications for participating in this program for Fiscal Year 2011 will be accepted from March 11, 2011 through June 9, 2011. Applications received after June 9, 2011, regardless of their postmark, will not be considered for Fiscal Year 2011 payments. If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

ADDRESSES: Application materials may be obtained by contacting USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

Submit applications to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

FOR FURTHER INFORMATION CONTACT: For further information on this payment program, please contact Fred Petok, USDA, Rural Development, Business Programs Energy Division, 1400 Independence Avenue, SW., Room 6870, STOP 3225, Washington, DC 20250–3225. Telephone: 202–720–1400. E-mail: *frederick.petok@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the Notice of Funds Availability for the Section 9004 Repowering Assistance Payments to Eligible Biorefineries program published on June 12, 2009, were approved by the Office of Management and Budget (OMB) under emergency clearance procedures and assigned OMB Control Number 0570–0058. As noted in the June 12, 2009 notice, the Agency sought emergency clearance to comply with the time frames mandated by a Presidential Memorandum in order to implement the Program as quickly as possible, having determined that providing for public comment under the normal procedure would unduly delay the provision of benefits associated with this Program and be contrary to the public interest. Now, however, in accordance with the Paperwork Reduction Act of 1995, the Agency is seeking standard OMB approval of the reporting and recordkeeping requirements contained in the interim rule. In the publication of the proposed rule on April 16, 2010, the Agency solicited comments on the estimated burden. The Agency received no comments in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a notice in the **Federal Register**.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an agency of the United States Department of Agriculture in the Rural Development mission area).

Payment Proposal Title: Repowering Assistance Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number. The CFDA number for this Notice is 10.866.

DATES: The Repowering Assistance Program application period for Fiscal Year 2011 is March 11, 2011 to June 9, 2011.

Availability of Notice and Rule. This Notice and the interim rule for the Repowering Assistance Program are available on the USDA Rural

Development Web site at *http://www.rurdev.usda.gov/bcp_repoweringassistance.html* and at *http://www.rurdev.usda.gov/rbs/busp/bprogs.htm.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

B. *Statutory Authority.* This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4288.2.

II. Award Information

A. *Available funds.* The Agency is authorizing at least $25 million for this program in Fiscal Year 2011, in addition to any carry-over funds from Fiscal Year 2010.

B. *Number of payments.* The number of payments will depend on the number of participating biorefineries.

C. *Amount of payments.* The Agency will determine the amount of payments to be made to a biorefinery taking into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing) and the cost and cost-effectiveness of the renewable biomass system.

D. *Payment limitations.* There is no minimum payment amount that an individual biorefinery can receive. The maximum amount an individual biorefinery can receive under this Notice is 50 percent of total eligible project costs up to a maximum of $5 million.

E. *Project costs.* Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees. Any project costs incurred by the applicant prior to application for payment assistance under this Notice will be ineligible for payment assistance.

F. *Type of instrument.* Payment agreement.

III. Eligibility Information

A. *Eligible applicants.* To be eligible for this program, an applicant must be a biorefinery that has been in existence on June 18, 2008, utilizing only renewable biomass for replacement fuel.

B. *Ineligible projects.* A project is not eligible under this Notice if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

C. *Other eligibility requirements.*

Multiple submissions. Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

Cost Effectiveness. To be eligible, the project must have a simple payback period of no more than 10 years (*i.e.,* must be awarded at least 5 points for cost-effectiveness under 7 CFR 4288.21(b)(1)).

Percentage of reduction of fossil fuel use. To be eligible, the applicant must demonstrate that the repowering project has an anticipated annual reduction in fossil fuel use of at least 40 percent (*i.e.,* the application must be awarded at least 5 points for percentage of reduction of fossil fuel use under 7 CFR 4288.21(b)(2)).

Full project financing. The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

IV. Fiscal Year 2011 Application and Submission Information

A. *To request applications.* Application materials, including application forms, regulations, instructions, and other materials related to this program, are available from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov/BCP_RepoweringAssistance.html.*

B. *Content and form of submission.* Applicants must submit a signed original and one copy of an application containing all the information specified in 7 CFR 4288.20(b) and (c).

C. *Submission dates and times.* Applications to participate in this program for Fiscal Year 2011 must be submitted between March 11, 2011 and June 9, 2011. Applications received after 4:30 pm June 9, 2011, regardless of their postmark, will not be considered by the Agency for Fiscal Year 2011 payments.

D. *Payment provisions.* Fiscal Year 2011 payments will be made according to the provisions specified in 7 CFR 4288.13(b) and (c) and in 7 CFR 4288.24.

V. Application Review and Selection Information

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

A. *Review.* The Agency will review applications submitted under this Notice in accordance with 7 CFR 4288.21(a).

B. *Scoring.* The Agency will score applications submitted under this Notice in accordance with 7 CFR 4288.21(b).

C. *Ranking and selecting applications.* All scored applications will be ranked by the Agency as soon after June 9, 2011 as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments. Using the application scoring criteria point values specified in 7 CFR 4288.21, the Agency will select applications for payments.

D. *Availability of funds.* As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

VI. Administration Information

A. *Notice of eligibility.* The provisions of 7 CFR 4288.23 apply to this Notice. These provisions include notifying an applicant determined to be eligible for participation and notifying an applicant

determined to be ineligible, including their application score and ranking and the score necessary to qualify for payments.

B. *Administrative and National Policy requirements.*

(1) *Review or appeal rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division as provided in 7 CFR 4288.3.

(2) *Compliance with other laws and regulations.* The provisions of 7 CFR 4288.4 apply to this Notice, which includes requiring participating biorefineries to be in compliance with other applicable Federal, State, and local laws.

(3) *Oversight and monitoring.* The provisions of 7 CFR 4288.5(a) and (b) apply to this Notice, which includes the right of the Agency to verify all payment applications and subsequent payments and the requirement that each biorefinery must make available, at one place at all reasonable times for examination by the Agency, all books, documents, papers, receipts, payroll records, and bills of sale adequate to identify the purposes for which, and the manner in which, funds were expended for all eligible project costs for a period of not less than 3 years from the final payment date.

(4) *Reporting.* Upon completion of the repowering project funded under this Notice, the biorefinery must submit a report, in accordance with 7 CFR 4288.5(c), to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year.

(5) *Exception authority.* The provisions of 7 CFR 4288.7 apply to this Notice.

(6) *Succession and control of facilities and production.* The provisions of 7 CFR 4288.25 apply to this Notice.

C. *Environmental review.* All recipients under this Notice are subject to the requirements of 7 CFR Part 1940, subpart G.

D. *Fiscal Year 2009 and Fiscal Year 2010 applications.* Any entity that submitted to the Agency an application for payment under this program prior to the effective date of 7 CFR 4288, subpart A, will have their payments made and serviced in accordance with the provisions specified in 7 CFR 4288, subpart A.

VII. Agency Contacts

For further information about this Notice, please contact Fred Petok, USDA, Rural Development, Business Programs Energy Division, 1400 Independence Avenue, SW., Room 6870, STOP 3225, Washington, DC 20250–3225. Telephone: 202–720–1400. E-mail: *frederick.petok@wdc.usda.gov.*

VIII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: March 7, 2011.

Cheryl L. Cook,

Acting Under Secretary, Rural Development.

[FR Doc. 2011–5574 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Funds Availability (NOFA) Inviting Applications for the Biorefinery Assistance Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Notice on funding availability.

SUMMARY: This notice announces the acceptance of applications for funds available under the Biorefinery Assistance Program (the "Program") to provide guaranteed loans for the development and construction of commercial-scale biorefineries or for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. For Fiscal Year 2011, there is only one round of competition. Applications must be received by May 10, 2011 to compete for Fiscal Year 2011 program funds. The Notice announces the availability of approximately $129 million in mandatory budget authority to support guaranteed loans under this Program in Fiscal Year 2011, in addition to any carry-over funds from Fiscal Year 2010. This budget authority represents approximately $463 million in program funds.

DATES: Applications must be received in the USDA Rural Development National Office no later than 4:30 p.m. local time on May 10, 2011, to compete for Fiscal Year 2011 program funds. Any application received after 4:30 p.m. local time on May 10, 2011, regardless of the application's postmark, will not be considered for Fiscal Year 2011 program funds. If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

ADDRESSES: Applications and forms may be obtained from:

- U.S. Department of Agriculture, Rural Development, Energy Branch, *Attention:* BioRefinery Assistance Program, 1400 Independence Avenue, SW., STOP 3225, Washington, DC 20250–3225.
- *Agency Web site: http://www.rurdev.usda.gov/BCP_Biorefinery.html.* Follow instructions for obtaining the application and forms.

Submit an original completed application with two copies to USDA's Rural Development National Office: Energy Branch, *Attention:* BioRefinery Assistance Program, 1400 Independence Avenue, SW., STOP 3225, Washington, DC 20250–3225.

FOR FURTHER INFORMATION CONTACT: Kelley Oehler, Energy Branch, Biorefinery Assistance Program, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Mail Stop 3225, Washington, DC 20250–3225. *Telephone:* 202–720–6819. *E-mail: kelley.oehler@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the Notice of Funding Availability for the Section 9003 Biorefinery Assistance Guaranteed Loan Program published on November 28, 2008, were approved by the Office of Management Budget (OMB) under emergency clearance procedures and assigned OMB Control Number 0570–0055. As noted in the November 28, 2008 notice, the Agency sought emergency clearance to comply with the time frames mandated by a Presidential Memorandum in order to implement the Program as quickly as possible, and that providing for public comment under the normal procedure would unduly delay the provision of benefits associated with

this Program and be contrary to the public interest. Now, however, in accordance with the Paperwork Reduction Act of 1995, the Agency is seeking standard OMB approval of the reporting and recordkeeping requirements contained in the interim rule. In the publication of the proposed rule on April 16, 2010, the Agency solicited comments on the estimated burden. The Agency received one comment in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a notice in the **Federal Register**.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an agency of the United States Department of Agriculture in the Rural Development mission area).

Solicitation Opportunity Title: Biorefinery Assistance Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number. The CFDA number for this Notice is 10.865.

Dates: Complete applications must be received in the USDA Rural Development National Office no later than 4:30 p.m. local time on May 10, 2011, in order to be considered for Fiscal Year 2011 program funds. Any application received after 4:30 p.m. local time on May 10, 2011, regardless of the application's postmark, will not be considered for Fiscal Year 2011 program funds.

Availability of Notice and Rule. This Notice and the interim rule for the Biorefinery Assistance Program are available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/BCP_Biorefinery.html.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this Program is to assist in the development and construction of commercial-scale biorefineries and the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. The Agency will make guarantees available on loans for eligible projects that will provide for the development, construction, and/or retrofitting of commercial biorefineries using eligible technology, as defined in 7 CFR 4279.202(a).

B. *Statutory Authority.* This Program is authorized under Section 9003 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (as amended by Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)). Regulations are contained in 7 CFR Part 4279, subpart C and in 7 CFR Part 4287, subpart D.

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4279.202(a) and 7 CFR 4287.302.

For the purposes of this Notice, a local owner is defined as "An individual who owns any portion of an eligible advanced biofuel biorefinery and whose primary residence is located within 50 miles of the biorefinery."

II. Award Information

A. *Type of Award:* Guaranteed loan.

B. *Fiscal Year Funds:* FY 2011.

C. *Funding Availability:* This Notice provides approximately $129 million in mandatory budget authority for this Program in Fiscal Year 2011 to support loan guarantees, in addition to any carry-over funds from Fiscal Year 2010. This budget authority represents approximately $463 million in program funds, subject to the loan characteristics of the loan applications received.

D. *Approximate Number of Awards:* 4–5.

E. *Guaranteed loan funding:* The provisions of 7 CFR part 4279.229 apply to this Notice. The borrower needs to provide the remaining funds from other non-Federal sources to complete the project.

F. *Guarantee and annual renewal fees.* The guarantee and annual renewal fees specified in 7 CFR 4279.226 are applicable to this Notice.

G. *Anticipated Award Date:* September 30, 2011.

III. Eligibility Information

A. *Eligible lenders.* To be eligible for this Program, lenders must meet the eligibility requirements in 7 CFR 4279.202(c).

B. *Eligible borrowers.* To be eligible for this Program, borrowers must meet the eligibility requirements in 7 CFR 4279.227.

C. *Eligible projects.* To be eligible for this Program, projects must meet the eligibility requirements in 7 CFR 4279.228.

D. *Application completeness.* Incomplete applications will be rejected. Lenders will be informed of the elements that made the application incomplete. If a resubmitted application is received in the USDA Rural Development's National Office by 4:30 p.m. May 10, 2011, the Agency will reconsider the application for Fiscal Year 2011 program funds.

IV. Fiscal Year 2011 Application and Submission Information

A. *Application submittal.* The lender must submit a separate application for each project for which a loan guarantee is sought under this Notice. It is recommended that applicants refer to the application guide for this program ("Instructions for Application for Loan Guarantee—Section 9003 BioRefinery Assistance Loan Guarantees"), which can be found on the Agency's Web site at *http://www.rurdev.usda.gov/BCP_Biorefinery.html.*

B. *Content and form of submission.* Approved lenders must submit an Agency-approved application form for each loan guarantee sought under this Notice. Loan guarantee applications from approved lenders must contain the information specified in 7 CFR 4279.261(a) through (n), organized pursuant to a table of contents in a chapter format, and in 7 CFR 4279.261(o) as applicable.

C. *Submission dates and times.* The original complete application must be received by the USDA Rural Development National Office no later than 4:30 p.m. local time by May 10, 2011, regardless of the postmark date, in order to be considered for Fiscal Year 2011 program funds. If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

D. *Application withdrawal.* During the period between the submission of an application under this Notice and the execution of documents, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower is no longer requesting financial assistance for the project. When the lender so notifies the Agency, the selection will be rescinded or the application withdrawn.

V. General Program Information

A. *Loan origination.* Lenders seeking a loan guarantee under this Notice must comply with the provisions found in 7 CFR 4279.202.

B. *Loan processing.* The Agency will process loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4279.224 through 4279.290.

For Fiscal Year 2011, refinancing, according to the provisions of 7 CFR 4279.228(g), is an eligible project cost under 7 CFR 4279.229(e).

C. *Evaluation of applications and awards.* Awards under this Notice will be made on a competitive basis; submission of an application neither reserves funding nor ensures funding.

The Agency will evaluate each complete application received in the USDA Rural Development National Office and will make awards using the provisions specified in 7 CFR 4279.265(a) through (f).

A ranked application that is competed, but is not funded, will be carried forward to Fiscal Year 2012 to compete in the first competition in Fiscal Year 2012.

In all instances in which a ranked application is not funded, the Agency will notify the lender in writing. If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the lender of what information is needed, including a timeframe for the lender to provide the information. If the lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the lender.

D. *Guaranteed loan servicing.* The Agency will service loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4287.301 through 4287.307.

E. *Transfers and assumptions.* The transfer fee rate for all transfers and assumptions that occur during Fiscal Year 2011 is 1 percent. The transfer fee will be equal to the transfer fee rate multiplied by the outstanding principal loan balance as of the date of the transfer multiplied by the percent of guarantee.

VI. Administration Information

A. *Notifications.* The Agency will notify, in writing, lenders whose applications have been selected for funding. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

B. *Administrative and National Policy requirements.*

1. *Review or appeal rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4279.16.

2. *Exception authority.* The provisions specified in 7 CFR 4279.202(b) and 7 CFR 4287.303 apply to this Notice.

C. *Environmental review.* The Agency has reviewed the types of applicant proposals that may qualify for assistance under this section and has determined, in accordance with 7 CFR Part 1940–G, that all proposals shall be reviewed as a Class II Environmental Assessment (EA) as the development of new and emerging technologies would not meet the classification of a Categorical Exclusion (CE) in accordance with 7 CFR 1940.310 or a Class I EA in accordance with 7 CFR 1940.311. Furthermore, if after Agency review of proposals the Agency has determined that the proposal could result in significant environmental impacts on the quality of the human environment, an Environmental Impact Statement may be required pursuant to 7 CFR 1940.313.

VII. Agency Contacts

For general questions about this Notice, please contact Kelley Oehler, Energy Branch, Biorefinery Assistance Program, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Mail Stop 3225, Washington, DC, 20250–3225. *Telephone:* 202–720–6819. *E-mail: kelley.oehler@wdc.usda.gov.*

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and, where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: March 7, 2011.

Cheryl L. Cook,

Acting Under Secretary, Rural Development.

[FR Doc. 2011–5575 Filed 3–10–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

[Docket No. 110228173–1173–01]

RIN 0605–XA34

Department of Commerce FY 2011–2016 Strategic Plan

AGENCY: Department of Commerce.

ACTION: Request for comment.

SUMMARY: The Department of Commerce (Department) is updating its current FY 2007–2012 Strategic Plan. As part of this process, the Department is inviting comments on its draft FY 2011–2016 Strategic Plan to comply with the *Government Performance and Results Act* of 1993 (GPRA), as well as the recently enacted *GPRA Modernization Act.*

DATES: Public comments on the draft Strategic Plan must be entered through the Federal eRulemaking Portal or received at the appropriate mailing or e-mail address (*see* **ADDRESSES**) no later than April 11, 2011.

ADDRESSES: Please submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Attachments to electronic comments may be submitted in Microsoft Word, Excel, or Adobe PDF formats. Commenters who do not have access to the Internet may mail comments to Mr. Stephen Shapiro, Office of the Deputy Secretary, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 5312, Washington, DC 20230. While on-line submission is preferred, comments may also be submitted via e-mail to *sshapiro@doc.gov.* Comments that are mailed or e-mailed also become part of the public record and will generally be posted to *http://www.regulations.gov/* with all identifying information (name, address, affiliation) that is voluntarily submitted. Anonymous comments may be submitted on-line by entering "N/A" in identification fields. Please do not submit proprietary or other sensitive information you do not want made public.

The Department's current and draft Strategic Plans are posted at *http://www.osec.doc.gov/bmi/budget/.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shapiro, phone 202–482–3700, fax 202–482–2903, e-mail *sshapiro@doc.gov.*

SUPPLEMENTARY INFORMATION: Under the *Government Performance and Results Act* of 1993 (GPRA), as well as the recently enacted *GPRA Modernization Act,* each Federal agency must develop a strategic plan describing the agency's mission and strategic goals, and the means and strategies that will be used to achieve them. The plan must describe the relationship between annual performance goals and the agency's strategic goal framework. Annual performance plans for implementing the strategic plan are documented as elements of the Department's budget justifications. A key part of the statutory

process for developing or updating a strategic plan includes consultation with Congress and other interested and potentially affected parties.

The structure of the draft strategic plan has changed from that of the previous plan, and incorporates the structure of the Department's new balanced scorecard. A balanced scorecard "balances" or equally emphasizes programmatic and management objectives, and contains measures that are tracked by senior leaders to support their day-to-day management activities. During the spring of 2010, Secretary Locke engaged with a broad cross-section of the Department's senior leadership to develop a balanced scorecard to deploy and execute this Strategic Plan. The Secretary directed a balanced scorecard approach to establish and maintain focus on the Department's top priorities, to institutionalize quarterly data-driven reviews with heads of operating units to monitor and ensure attainment of these priorities, and to emphasize that Customer Service, Organizational Excellence, and Workforce Excellence are prerequisites to the short and long-term achievement of the Department's programmatic goals.

The balanced scorecard approach monitors the Department's internal management processes and focuses its operating programs on priorities. This approach recognizes that follow-up and follow-through are critical to both the short and long-term success and sustainability of high-performing programs.

The Department's balanced scorecard and Strategic Plan are structured around three programmatic themes (Economic Growth, Science and Information, and Environmental Stewardship) and three management themes (Customer Service, Organizational Excellence, and Workforce Excellence). The Economic Growth theme is further subdivided into three goals (Innovation and Entrepreneurship, Market Development and Commercialization, and Trade Promotion and Compliance).

These themes and goals are further subdivided into 27 strategic objectives, which frame all of the Department's programs and supporting activities. Each objective narrative addresses the Department's strategies to achieve the objective, key challenges, external factors, contributing programs, and program evaluations. Narratives for the 18 programmatic objectives also include performance measures (*i.e., GPRA* measures) for tracking attainment.

The Department's Strategic Plan is implemented on an annual basis through the Annual Performance Plan for each operating unit. Results are published in the Department's annual Performance and Accountability Report. Copies of the Department's Annual Performance Plans and Performance and Accountability Reports are posted at *http://www.osec.doc.gov/bmi/budget/.*

Dated: March 4, 2011.

Scott Quehl,

Chief Financial Officer and Assistant Secretary for Administration.

[FR Doc. 2011–5563 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–GA–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16–2011]

Foreign-Trade Zone 229—Charleston, WV; Application for Subzone; Cabela's Inc.; (Hunting, Fishing, Camping and Related Outdoor Merchandise) Triadelphia, WV

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the West Virginia Economic Development Authority, grantee of FTZ 229, requesting special-purpose subzone status for the warehousing and distribution facility of Cabela's Inc. (Cabela's), located in Triadelphia, West Virginia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 7, 2011.

The Cabela's facility (510 employees, 60 acres) is located at One Distribution Road, Triadelphia, West Virginia. The facility is used for the storage and distribution of outdoor merchandise, clothing and footwear, including optics, electronics, hunting, archery, shooting, fishing, boating, camping, pet and related products (duty rate ranges from duty-free to 48%).

FTZ procedures could exempt Cabela's from customs duty payments on foreign products that will be re-exported (approximately 1% of shipments). On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Cabela's to realize logistical benefits through the use of weekly customs entry procedures. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman 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 Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 25, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 7, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–5695 Filed 3–10–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2011]

Foreign-Trade Zone 266—Dane County, WI; Application for Subzone, Cabela's Inc. (Hunting, Fishing, Camping and Related Outdoor Merchandise), Prairie du Chien, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Dane County, Wisconsin, grantee of FTZ 266, requesting special-purpose subzone status for the warehousing and distribution facility of Cabela's Inc. (Cabela's), located in Prairie du Chien, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 7, 2011.

The Cabela's facility (685 employees, 56 acres) is located at 501 Cliffhaven Road, Prairie du Chien, Wisconsin. The facility is used for the storage and distribution of outdoor merchandise, clothing and footwear, including optics, electronics, hunting, archery, shooting,

fishing, boating, camping, pet and related products (duty rate ranges from duty-free to 48%).

FTZ procedures could exempt Cabela's from customs duty payments on foreign products that will be re-exported (approximately 1% of shipments). On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Cabela's to realize logistical benefits through the use of weekly customs entry procedures. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman 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 Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 25, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 7, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–5698 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal From the Russian Federation: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 1, 2011, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination as applied to PSC VSMPO–AVISMA Corporation (VSMPO–AVISMA) pursuant to the CIT's remand order in *PSC VSMPO–Avisma Corp.* v. *United States,* 724 F. Supp. 2d 1308 (CIT 2010) (*AVISMA II*). The Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation covering the period of review April 1, 2006, through March 31, 2007 with respect to VSMPO–AVISMA.

DATES: *Effective Date:* March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2008, the Department published the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review (POR) April 1, 2006, through March 31, 2007. See *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 73 FR 52642 (September 10, 2008) (*Final Results*). In the *Final Results* the Department determined that it was appropriate to treat raw magnesium and chlorine gas as co-products and employed a net-realizable-value (NRV) analysis to allocate joint costs incurred up to the split-off point where raw magnesium and chlorine gas become separately identifiable products. The CIT remanded the *Final Results* to the Department to take into account an affidavit from Dr. George Foster, an accounting professor (the Foster Affidavit), when considering the best methodology for calculating the NRV for the chlorine gas.[1] *See PSC VSMPO–AVISMA Corp.* v. *United States,* 31 I.T.R.D. 2235 (CIT 2009) (*AVISMA I*). In accordance with the CIT's order in *AVISMA I,* the Department admitted the Foster Affidavit into the record, considered the arguments of Dr. Foster upon remand, and, as a result of that consideration, determined not to recalculate the dumping margin for VSMPO–AVISMA upon concluding that Dr. Foster's proposed methodology was not appropriate to use in this case. See Results of Redetermination Pursuant to Remand, dated March 30, 2010 (*First Remand*) (available at *http://ia.ita.doc.gov/remands*). As a result, in the *First Remand* the Department adhered to the same allocation methodology it used in the *Final Results.*

In *AVISMA II,* the CIT remanded the *Final Results* again, instructing the Department to consider VSMPO–AVISMA's entire production process, including titanium production, in allocating joint costs to the subject merchandise. The CIT found the Department's cost-allocation methodology in the *Final Results* to be unsupported by substantial record evidence and not in accordance with section 773(e)(1) of the Tariff Act of 1930, as amended (the Act). *See AVISMA II,* 724 F. Supp. 2d at 1313–16. In accordance with the CIT's order in *AVISMA II,* and under respectful protest, the Department reexamined its calculation methodology to take VSMPO–AVISMA's entire production process into account, including the stages of production encompassing and following ilmenite catalyzation, and, based on that examination, the Department recalculated the weighted-average dumping margin for VSMPO–AVISMA. *See* Results of Redetermination Pursuant to Remand, dated November 22, 2010 (*Second Remand*) (available at *http://ia.ita.doc.gov/remands*). As a result of the Department's recalculations, the weighted-average dumping margin for the period April 1, 2006, through March 31, 2007, for magnesium metal from the Russian Federation is 8.51 percent for VSMPO–AVISMA. The CIT sustained

[1] VSMPO–AVISMA submitted the Foster Affidavit as part of its administrative case brief, dated June 11, 2008, which the Department rejected as untimely new factual information.

the Department's *Second Remand* on March 1, 2011. *See PSC VSMPO–Avisma Corp.* v. *United States,* Consol. Court No 08–00321, Slip Op. 11–22 (March 1, 2011) (*AVISMA III*); *see also Second Remand.*

Timken Notice

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (CAFC 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC 2010), pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's judgment in *AVISMA III* on March 1, 2011, sustaining the Department's *Second Remand* with respect to VSMPO–AVISMA constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to VSMPO–AVISMA, the weighted-average dumping margin for the period April 1, 2006, through March 31, 2007, for magnesium metal from the Russian Federation is 8.51 percent for VSMPO–AVISMA. The cash-deposit rate will remain the company-specific rate established for the subsequent and most recent period for which the Department reviewed VSMPO–AVISMA. *See Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010). In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported during the POR by VSMPO–AVISMA using the revised assessment rates calculated by the Department in the *Second Remand.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: March 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5691 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on magnesium metal from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2010, the Department initiated sunset reviews of the antidumping duty order on magnesium metal from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 9160 (March 1, 2010).

As a result of its review, the Department determined that revocation of the antidumping duty order on magnesium metal from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Magnesium Metal From the People's Republic of China and the Russian Federation: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 75 FR 38983 (July 7, 2010).

On February 24, 2011, the ITC notified the Department of its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on magnesium metal from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 4214 (February 2011), *Magnesium From China and Russia:* Investigation Nos. 731–TA–10701–1072 (Review).

Scope of the Order

The merchandise covered by the order is magnesium metal, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: Products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an "ASTM Specification for Magnesium Alloy" [1] and thus are outside the scope of the existing antidumping order on magnesium from the PRC (generally referred to as "alloy" magnesium).

The scope of the order excludes the following merchandise: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy;" [2] (2) magnesium that is in liquid

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

[2] This material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995), and

or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[3]

The merchandise subject to the order is currently classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on magnesium metal from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: February 25, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5699 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–DS–P

Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 57936 (November 19, 2001).

[3] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the PRC, Israel, and Russia. *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Correction Notice to Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029, (202) 482–7924, and (202) 482–3019, respectively.

Correction

On February 18, 2011, the Department published a notice of amended final results of administrative review for stainless steel sheet and strip in coils from Mexico. *See Stainless Steel Sheet and Strip in Coils from Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review,* 76 FR 9542 (February 18, 2011) (*Amended Final Results*). The *Amended Final Results* states incorrectly that cash deposit requirements, "continue to be effective on any entries made on or after February 14, 2011, the date of publication of these amended final results." In addition, the *Amended Final Results* incorrectly refer to a 21.14 percent final results weighted-average margin calculated for ThyssenKrupp Mexinox S.A. de C.V. (Mexinox).

The *Amended Final Results* are hereby corrected to read that cash deposit requirements, "continue to be effective on any entries made on or after the date of publication of these amended final results." The *Amended Final Results* are also hereby corrected to refer to Mexinox's weighted-average margin of 21.16 percent determined by the Department in its final results of this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 76 FR 2332 (January 13, 2011).

This notice is published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: March 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5682 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE.

International Trade Administration

[A–570–970]

Multilayered Wood Flooring from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* March 11, 2011.

FOR FURTHER INFORMATION CONTACT: John Hollwitz or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2336 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On November 10, 2010, the Department of Commerce ("the Department") initiated an antidumping duty investigation on multilayered wood flooring from the People's Republic of China.[1] The notice of initiation stated that, unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). The preliminary determination is currently due no later than March 30, 2011.

On March 3, 2011, the Coalition for American Hardwood Parity ("Petitioners"), made a timely request, pursuant to 19 CFR 351.205(b)(2) and (e), for a postponement of the

[1] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 75 FR 70714 (November 18, 2010).

preliminary determination, in order to allow additional time for the review of questionnaire responses.[2] Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days to no later than May 19, 2011. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless postponed.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5686 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] See Letter from Petitioners, Multilayered Wood Flooring from the People's Republic of China: Request of Postponement of Preliminary Determination, dated March 3, 2011.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China ("PRC") covering the period July 1, 2009, through June 30, 2010. This administrative review covers one producer/exporter of the subject merchandise, *i.e.,* United Initiators (Shanghai) Co., Ltd. ("United Initiators").

We preliminarily determine that United Initiators does not qualify for a separate rate because it did not respond to the Department's request for information; thus, as adverse facts available, we are assigning to United Initiators, as part of the PRC-wide entity, the PRC-wide rate. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise exported by United Initiators during the period of review ("POR"). We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1997, the Department published in the **Federal Register** the antidumping duty order on persulfates from the PRC.[1] On July 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on persulfates from the PRC.[2] In accordance with 19 CFR 351.213(b)(1), on July 30, 2010, FMC Corporation, a domestic producer of persulfates, requested that the Department conduct an administrative review of United Initiators' exports to the United States for the POR July 1, 2009, through June 30, 2010. Pursuant to this request, the Department published a notice of initiation of the administrative review of the antidumping duty order on persulfates from the PRC.[3]

On October 5, 2010, the Department issued an antidumping duty questionnaire to United Initiators. On October 8, 2010, we confirmed that United Initiators signed for and received our mailing of the antidumping duty questionnaire. United Initiators did not respond to the Department's antidumping duty questionnaire. On January 3, 2011, the Department placed on the record of this administrative review the UPS International Air Waybill receipt and delivery confirmation for the questionnaire issued to United Initiators to confirm that we mailed, and United Initiators received and signed for, the questionnaire.

Scope of the Order

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country.[4] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Because no interested party in this case has contested such treatment, the Department continues to treat the PRC as an NME country.

PRC-Wide Rate and Use of Facts Available

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 36259 (July 7, 1997) ("*Persulfates Order and Amended Final*"), amended by *Notice of Amended Antidumping Duty Order: Persulfates From the People's Republic of China,* 62 FR 39212 (July 22, 1997) ("*Persulfates Amended Order*").

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 38074 (July 1, 2010).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076 (September 29, 2010) ("*September 29 Initiation Notice*"). In the initiation notice that published on August 31, 2010, the Department incorrectly initiated an administrative review of the company FMC Corporation, the domestic producer of persulfates, for the instant administrative review of persulfates from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010). However, in the initiation notice that published on September 29, 2010, the Department retracted its initiation of an administrative review of FMC Corporation. *See September 29 Initiation Notice,* 75 FR at 60081–82, n.9.

[4] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

exporters of subject merchandise, subject to review in an NME country, a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate.[5] We have determined that United Initiators does not qualify for a separate rate and is instead subject to the PRC-wide rate.

In relevant part, section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if "(1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested," or "(B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act." Further, section 776(b) of the Act provides that the Department may make an adverse inference in applying the facts otherwise available when a party "has failed to cooperate by not acting to the best of its ability to comply with a request for information." Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[6] Finally, according to section 776(b) of the Act and 19 CFR 351.308(c)(1), such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Because United Initiators did not respond to the Department's questionnaire, it has not demonstrated its eligibility for a separate rate. United Initiators has not rebutted the Department's presumption of government control and is, therefore, presumed to be part of the PRC-wide entity. Further, in accordance with sections 776(a)(2)(A) and (B) of the Act, because the PRC-wide entity (including United Initiators) failed to cooperate to the best of its ability by not responding to our questionnaire, we find it appropriate to use adverse facts available. As a result, in accordance with the Department's practice,[7] we have preliminarily assigned to the PRC-wide entity (including United Initiators) a rate of 119.02 percent, the highest rate determined in the current, or any previous, segment of this proceeding.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than information obtained in the course of a review, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. According to the SAA, secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise."[8] To "corroborate" means that the Department will satisfy itself that the secondary information has probative value. The Department will, to the extent practicable, examine the reliability and relevance of the secondary information used.[9] Further, independent sources used to corroborate information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.

In the instant review, we are applying to the PRC-wide entity (which includes United Initiators) the PRC-wide rate that was corroborated in the underlying investigation of sales at less than fair value ("LTFV").[10] No evidence has been presented in the current review that calls into question the reliability of this information.[11] Thus, the Department finds that the rate information is reliable.

Additionally, regarding relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate, the Department will disregard the margin and establish an appropriate margin. Similarly, the Department does not apply a margin that has been discredited.[12] No unusual circumstances are present here. Since the LTFV investigation, no new information has indicated that this rate is invalid or uncharacteristic of the persulfates industry. Further, this rate has been used as the PRC-wide rate in other segments of this proceeding.[13] Therefore, we find that this rate has probative value.

As the PRC-wide entity rate from the LTFV investigation is both reliable and relevant, we preliminarily determine that using this rate, the highest rate from any segment of this administrative proceeding (*i.e.,* the rate of 119.02 percent), is in accord with section 776(c) of the Act, which requires that secondary information be corroborated. Thus, the Department finds that the LTFV investigation rate is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC-wide entity based on the failure of the PRC-wide entity, which includes United Initiators, to cooperate to the best of its ability.

Preliminary Results of the Review

We preliminarily find that the following weighted-average dumping margin exists for the July 1, 2009, through June 30, 2010, POR:

Manufacturer/exporter	Margin (percent)
PRC–Wide Entity*	119.02

*The PRC-wide entity includes United Initiators.

[5] *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 74764, 74765 (December 16, 2005), unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review* 71 FR 34893 (June 16, 2006).

[6] *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, Vol. 1, at 870 (1994).

[7] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

[8] *See* SAA at 870.

[9] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[10] *See Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China,* 62 FR 27222, 27224 (May 19, 1997), amended by *Persulfates Order and Amended Final,* 62 FR at 36260 (identifying 119.02 percent as the PRC-wide rate); *see also Persulfates Amended Order,* 62 FR at 39212 (confirming that 119.02 percent is the PRC-wide rate).

[11] *See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 68 FR 41304, 41308 (July 11, 2003) (where the Department relied on the corroboration memorandum from the LTFV investigation to assess the reliability of the petition rate as the basis for an adverse facts available rate in the administrative review).

[12] *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department cannot use a margin that has been judicially invalidated).

[13] *See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 68 FR 6712 (February 10, 2003).

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within ten days of the date of publication of this notice. *See* 19 CFR 351.309(c). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within ten days of publication of this notice. *See* 19 CFR 351.310(c). Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. *See* 19 CFR 351.310(d).

The Department will issue the final results of this administrative review, which will include its analysis of any written comments, no later than 120 days after the publication date of these preliminary results. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. If these preliminary results are adopted in our final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the PRC-wide entity (which includes United Initiators), the cash deposit rate will be the PRC-wide rate established in the final results of review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: March 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5687 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA283

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage, AK.

DATES: The meetings will be held March 28 through April 5, 2011. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings. All meetings are open to the public, except executive sessions.

ADDRESSES: Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, March 30 continuing through Tuesday, April 5. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, March 28 and continue through Friday, April 1. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, March 28 and continue through Wednesday, March 31, 2011. The Enforcement Committee will meet Tuesday, March 29 from 1 p.m. to 5 p.m. The Ecosystem Committee will meet Tuesday, March 29 from 1 p.m. to 5 p.m.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports

1. Executive Director's Report

NMFS Management Report (including status report on charter trip definition, and 3-mile line status).

Alaska Department of Fish & Game Report.

United States Coast Guard Report.

United States Fish & Wildlife Service Report.

Protected Species Report.

2. Cooperative (Coop) reports: Review American Fisheries Act (AFA) Cooperative reports; review Amendment 80 Cooperative reports; Review Central Gulf of Alaska Rockfish Cooperative reports (T).

3. *Halibut/Sablefish:* Final action on Halibut/sablefish hired skipper restrictions.

4. *Salmon Issues:* Preliminary Review of Salmon Fishery Management Plan (FMP) changes (T); Initial Review of Gulf of Alaska (GOA) Chinook Salmon Bycatch control measures.

5. *Bering Sea Aleutian Island (BSAI) Crab Management Issues:* Final Action on Individual Fishing Quotas (IFQs)/ Individual Processing Quota (IPQ) Deadline; review alternatives economic data collection (EDR); Final Action on Pribilof Bristol King Crab rebuilding plan; finalize alternatives for Bering Sea

Tanner crab rebuilding; Bering Sea Aleutian Island Crab Remodeling workshop report (SSC only).

6. *Essential Fish Habitat (EFH):* Final Action on EFH omnibus Amendment; discussion paper on Bristol Bay Red King Crab spawning area/fishing effects.

7. *GOA Pacific jig fishery management:* Initial Review/Final Action to revise GOA Pacific cod processing jig fishery management.

8. *Scallop Fishery Management:* review Scallop Fishery Stock Assessment Fishery Evaluation (SAFE) and approve catch specifications.

9. *Miscellaneous Groundfish Issues:* receive report on Halibut ramp Exempted Fishing Permit (EFP) report; review discussion paper on GOA Halibut Prohibited Species Catch (PSC); review/approve salmon excluder EFP; review discussion paper on AFA impacts on Bering Sea cod trawlers.

10. *Staff Tasking:* Review Committees and tasking; receive Observer Advisory Committee report and take action as necessary.

11. Other Business

The SSC agenda will include the following issues:

1. GOA Salmon Issues.
2. GOA Pacific Cod Jig Fishery Management.
3. Review Alternatives Economic Data Collection.
4. Finalize alternatives for Bering Sea Tanner Crab Rebuilding.
5. BSAI Crab modeling workshop report.
6. Scallop Management.
7. Halibut Ramp EFP.
8. GOA Halibut PSC.
9. Salmon Excluder EFP.

The Advisory Panel will address most of the same agenda issues as the Council, except Coop reports and #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens 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 aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5594 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA284

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on March 30–31, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, March 30 at 10 a.m. and Thursday, March 31, 2011 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Seaport Hotel, 200 Seaport Boulevard, Boston, MA 02210; telephone: (617) 385–4000; fax: (617) 385–4001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, March 30, 2011–Thursday, March 31, 2011

The Scientific and Statistical Committee (SSC) will hold a new member orientation; discuss the process for upcoming SSC elections; provide an update on SSC activities and review the Massachusetts Fisheries Institute Report on "Economic and Scientific Conditions in the Massachusetts Multispecies Groundfish".

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5643 Filed 3–10–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 4/11/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 1/14/2011 (76 FR 2673–2674), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

Comments were received from the incumbent contractor opposing adding these services to the Procurement List (PL). The contractor commented that the addition of these services to the PL would result in severe adverse impact to his company. The contractor also questioned whether the particular services identified in this requirement would be suitable or appropriate for a nonprofit agency employing individuals who are blind or severely disabled and whether such a nonprofit would be capable of performing the services.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) administers the AbilityOne® program under the authority of the Javits-Wagner-O'Day Act. Committee responsibilities include identifying products and services produced or provided by qualified nonprofit agencies employing people who are blind or severely disabled that the Committee determines are suitable for procurement by the Government. Prior to adding any project to the PL, the Committee reviews each project for suitability, employment potential, nonprofit agency qualifications and level of impact on the current contractor.

The Committee reviews financial information provided by current contractors to determine whether severe adverse impact will occur if a project is added to the PL. The Committee did so in this instance and disagrees with the contractor's assertion that the addition of this project to the PL will result in severe adverse impact to the contractor company. The Committee also reviewed the specific requirements of this project and determined that this project is suitable for performance by a nonprofit agency employing people who are blind or severely disabled. Placing this project on the PL will result in employment and training opportunities for people with severe disabilities.

Accordingly, following a deliberative review of the facts of this project, the Committee determines that this project is appropriate for the AbilityOne Program and will be added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative Support Service, Keystone Bldg, 530 Davis Drive, South Campus, 111 T.W. Alexander Drive, Research Triangle Park, NC.
NPA: OE Enterprises, Inc., Hillsborough, NC.
Contracting Activity: Dept of Health and Human Services, National Institutes of Health, Research Triangle Park, NC.

Deletions

On 1/14/2011 (76 FR 2673–2674), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Shim

NSN: 5365–00–159–3781
NSN: 5365–00–159–3792
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2011–5617 Filed 3–10–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete a service previously furnished by such agency.

Comments Must Be Received On or Before: 4/11/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the

services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Rock Island Arsenal, 3154 Rodman Avenue, Rock Island, IL.
NPA: Association for Retarded Citizens of Rock Island County, Rock Island, IL.
Contracting Activity: DEPT OF THE ARMY, SR W0K8 USA ROCK ISL ARSENAL, ROCK ISLAND, IL.
Service Type/Location: Base Operations Support, Mark Center Campus, Alexandria, VA.
NPA: Service Source Inc., Alexandria, VA (prime); CW Resources Inc., New Britain, CT (subcontractor); Able Forces, Front Royal, VA (subcontractor).
Contracting Activity: Department of Defense, Acquisition Directorate, Washington Headquarters Service, Washington, DC.
Service Type/Location: Central Issue Facility Service, Fort Hood, TX.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Department of the Army, Mission & Installation Contracting Command Center, Fort Sam Houston, TX.
Service Type/Location: Mail Management Support Service, Philadelphia Naval Business Center, Official Mail Center Carderock, Philadelphia, PA.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK (prime); ServiceSource, Inc., Alexandria, VA (subcontractor); Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station, Official Mail Center Carderock, West Bethesda, MD.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: Department of the Navy, Commander, Fleet and Industrial Supply Center, San Diego, CA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Recycling Service, Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS.
NPA: Goodwill Industries of Mississippi, Inc., Ridgeland, MS.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2011–5616 Filed 3–10–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 16, 2011; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. 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: March 8, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–5777 Filed 3–9–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Port of Gulfport Expansion Project, Harrison County, MS (Department of the Army Permit Number SAM–2009–1768–DMY)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District (USACE) announces its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts associated with the construction and operation of a project proposed by the Mississippi State Port Authority (MSPA). As part of the NEPA process, the Mississippi Development Authority (MDA) will be a cooperating agency in the preparation of the EIS. The National Marine Fisheries Service (NMFS) has expressed interest in acting as a cooperating agency in the preparation of the EIS.

The proposed project as described in the application filed on March 17, 2010, proposed filling approximately 700 acres of open-water benthic habitat. Since submittal of the application, the proposed project footprint has been modified by the MSPA to reduce the overall potential fill required for implementation and to not include any impacts to the Gulfport Harbor Federal Navigation Channel or Turning Basin. The currently proposed project involves filling of up to 400 acres of open-water bottom in the Mississippi Sound, the construction of wharfs, bulkheads, terminal facilities, container storage areas, intermodal container transfer facilities, dredging and dredged material disposal and infrastructure, and construction of a breakwater of approximately 4,000 linear feet. The proposed expanded port facility will be elevated 25 feet above sea level to provide protection against future tropical storm surge events.

The EIS will evaluate the potential impacts of the proposed project, connected actions, and alternatives. The

EIS will also assist the USACE in deciding whether to issue a Department of the Army permit.

The purpose of this Notice of Intent (NOI) is to inform and educate the public of the proposed project; invite public participation in the EIS process; announce the plans for a public scoping meeting; solicit public comments for consideration in establishing the scope and content of the EIS; and provide notice of potential impacts to open-water benthic habitats.

DATES: A scoping meeting will be held on March 31, 2011. Comments will be accepted in written format at the scoping meeting or via mail/e-mail until April 11, 2011, to ensure consideration. Late comments will be considered to the extent practicable.

ADDRESSES: The scoping meeting will be held at the Fleming Education Center Auditorium at the University of Southern Mississippi's Gulf Park Campus, 730 East Beach Boulevard, Long Beach, Mississippi. Written comments regarding the proposed EIS scope should be addressed to Mr. Damon M. Young, P.G. USACE, Mobile District, Post Office Box 2288, Mobile, Alabama 36628. Individuals who would like to electronically provide comments should contact Mr. Young by electronic mail: *port.gulfporteis@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: For information about this project, to be included on the mailing list for future updates and meeting announcements, or to receive a copy of the DRAFT EIS when it is issued, contact Damon M. Young, P.G., at the USACE at (251) 690–2658 or the address provided above. Mr. Ewing Milam, at the MDA can also be contacted for additional information at P.O. Box 849, Jackson, Mississippi, 39205–0849, telephone 601.359.2157 or by electronic mail at *emilam@mississippi.org.*

SUPPLEMENTARY INFORMATION:

1. *Background:* The Gulfport Harbor Navigation Project was adopted by the River and Harbors Act approved on July 3, 1930 (House Document Number 692, 69th Congress, 2nd session) and the River and Harbors Act approved on June 30, 1948 (House Document Number 112, 81st Congress, 1st session). Construction of the existing Gulfport Harbor commenced in 1932 and was completed in 1950. Authorization to conduct improvements to the existing harbor was issued in the Fiscal Year 1985 Supplemental Appropriations Act (Public Law 99–88). The Water Resources Development Acts (WRDAs) 1986 and 1988 further modified the previous authorization to cover widening and deepening and thin-layer disposal, respectively. The authorized deepening was completed in 1993. Currently, there is an ongoing Federal action to widen the channel to the Federally authorized dimensions of 300 feet in the Mississippi Sound Channel and 400 feet in the Bar Channel. A Department of the Army Permit MS96–02828–U was issued in 1998 authorizing an 84-acre expansion to fill the West Pier to construct new tenant terminals and infrastructure. Phases I and II are currently under construction. Phase III is expected to begin in late 2011.

On August 29, 2005, Hurricane Katrina made landfall on the Mississippi Gulf Coast, resulting in one of the most significant natural disasters in the United States. The Port of Gulfport was severely impacted by the storm. The electrical power supply, roads, water, sewer, rail, small craft harbor fendering systems, navigational aids, and lighting and security systems were all destroyed or damaged beyond repair. According to the MSPA, the Port is currently operational at this time but it is not capable of withstanding another major hurricane without significant rehabilitation.

2. *Location:* The proposed Port of Gulfport Expansion Project is located in the City of Gulfport, Harrison County, Mississippi. The proposed project is approximately 80 miles west of Mobile, Alabama, and 80 miles east of New Orleans, Louisiana. The Port encompasses approximately 184 acres and is located within 5 miles of the Gulf Intracoastal Waterway (GIWW) and approximately 7 miles south of Interstate Highway 10.

3. *Work:* The proposed project involves filling of up to 400 acres of open-water bottom in the Mississippi Sound, the construction of wharfs, bulkheads, terminal facilities, container storage areas, intermodal container transfer facilities, dredging and dredged material disposal and infrastructure, construction of a breakwater of approximately 4,000 linear feet, and may include additional improvements identified at the public scoping meeting. The proposed expanded port facility will be elevated 25 feet above sea level to provide protection against future tropical storm surge events. A Department of the Army permit is required for the proposed project, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1251), Section 10 of the River and Harbors Act (33 U.S.C. 403), and Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401–1445, 16 U.S.C. 1431 *et seq.,* also 33 U.S.C. 1271).

An Environmental Impact Statement (EIS) will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality NEPA regulations (40 CFR parts 1500–1508) to assess the potential environmental impacts associated with the construction and operation of a project proposed by the Mississippi State Port Authority (MSPA).

4. *Need:* According to the MSPA, this project will enhance Mississippi's standing in the global economy by repositioning the Port into a sustainable, world-class maritime facility for future generations. This project is needed to expand the Port's current footprint, which will include the construction of wharfs, bulkheads, terminal facilities, container storage areas, intermodal container transfer facilities, dredging and dredged material disposal and infrastructure. Specific alternatives will be developed as part of the EIS process and feedback provided during project scoping.

5. *Affected Environment:* Environmental characteristics that may be affected by the proposed project include geological, chemical, biological, physical, socioeconomic, and commercial and recreational activities. Offshore, the navigation channel extends 20 miles south into the Gulf of Mexico, passing close to the western end of Ship Island. On-shore, the regional environment is characterized as Coastal Lowlands, and the shore area, where not developed, consists typically of gently undulating swampy plains. The beach area is man-made and bordered by constructed seawalls. The existing Port, as part of the man-made environment of Gulfport, is constructed on fill material. The Gulfport area is well developed. Beyond the seawalls are extensive commercial and residential developments. The near-shore area is known for its valuable resources as a productive fishery and is also utilized extensively for commercial and recreational shipping and boating.

6. *Applicable Environmental Laws and Policies:* The proposed project could result in both beneficial and negative environmental impacts. These impacts will be evaluated in the EIS in accordance with applicable environmental laws and policies, which include NEPA; WRDA; Endangered Species Act (ESA); Clean Water Act; Clean Air Act; U.S. Fish and Wildlife Coordination Act; National Historic Preservation Act; Coastal Barrier Resources Act; Magnuson–Stevens Fishery Conservation and Management Act; Coastal Zone Management Act; Marine, Protection, Research, and Sanctuaries Act; Rivers and Harbors

Act; National Marine Sanctuaries Act; Fishery Conservation Act; Marine Mammal Protection Act; Executive Order 12898, Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risk (among other Executive Orders); and Ports and Waterways Safety Act.

7. *Preliminary Identification of Environmental Issues:* The following list of nine environmental issues has been tentatively identified for analysis in the EIS. This list, which was developed during preliminary internal scoping, has been included with the permit application filed for the proposed project. This list (and information from similar projects) is neither intended to be all inclusive nor a predetermined set of potential impacts, but is presented to facilitate public comment on the planned scope of the EIS. Additions to or deletions may occur as a result of the public scoping process. Preliminary identified environmental issues include but are not limited to the loss of aquatic resource (impact to potential submerged and shoreline aquatic habitat); water quality, coastal zone consistency, hydrodynamic modeling, threatened and endangered species (including critical habitat and essential fish and shellfish habitat), air quality, alternatives, secondary and cumulative impacts, socioeconomics, and mitigation.

8. *Scoping meeting:* To ensure that all of the issues related to this proposed project are addressed, the USACE will conduct a public scoping meeting in which agencies, organizations, and members of the general public are invited to present comments or suggestions with regard to the range of actions, alternatives, and potential impacts to be considered in the EIS. The scoping meeting will be held at the Fleming Education Center Auditorium at the University of Southern Mississippi's Gulf Park Campus, 730 East Beach Boulevard, Long Beach, Mississippi, on March 31, 2011. The scoping meeting will begin with an informal open house from 5:30 p.m. to 6:30 p.m. followed by a formal presentation of the proposed action and a description of the NEPA process. Comments will be accepted following the formal presentation until 8 p.m. Displays and other forms of information about the proposed action will be available, and the USACE, the MSPA and the MDA personnel will be present at the informal session to discuss the proposed project and the EIS Process. The USACE invites comments on the proposed scope and content of the EIS from all interested parties. Verbal transcribers will be available at the scoping meeting to accept verbal comments following the formal presentation until 8:00 p.m. A time limit will be imposed on verbal comments.

9. *DRAFT EIS:* It is anticipated that a DRAFT EIS will be made available for public review in late calendar year 2011 or early 2012.

Dated: February 24, 2011.

Craig J. Litteken,

Chief, Regulatory Division.

[FR Doc. 2011–5672 Filed 3–10–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Credit Enhancement for Charter School Facilities Program; Office of Innovation and Improvement; Overview Information; Credit Enhancement for Charter School Facilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.354A.

Dates:

Applications Available: March 11, 2011.

Date of Pre-Application Meeting: April 4, 2011 at 9:00 a.m., Washington, DC time.

Deadline for Transmittal of Applications: May 10, 2011.

Deadline for Intergovernmental Review: July 9, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides grants to eligible entities to permit them to enhance the credit of charter schools so that the charter schools can access private-sector and other non-Federal capital in order to acquire, construct, and renovate facilities at a reasonable cost. Grants awarded under this program will be of sufficient size, scope, and quality to enable the grantees to implement effective strategies for reaching this objective.

Priorities: This competition includes one competitive preference priority and one invitational priority that are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from the regulations for this program (34 CFR 225.12).

Competitive Preference Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 15 points to an application, depending on how well the application meets this priority.

This priority is:

The capacity of charter schools to offer public school choice in those communities with the greatest need for school choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA);

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

Invitational Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose a grant project that uses competitive market forces to obtain the best rates and terms on financing for charter schools in order for the charter schools to acquire, construct, and renovate facilities while using the least amount of grant funds.

Program Authority: 20 U.S.C. 7223–7223j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 225.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2011 does not include funds for this

program. In place of this and several other, sometimes narrowly targeted, programs that seek to expand educational options for students and families, the Administration has proposed to create, through the reauthorization of the ESEA, a broader initiative, Expanding Educational Options, that would address the need to increase the supply of high-quality public educational options available to students. Funds under this proposed program would be available for competitive grants to help ensure that charter schools have access to adequate facilities. However, we are inviting applications at this time under the current Credit Enhancement for Charter School Facilities program to allow enough time to complete the grant process if Congress appropriates funds for the program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2011 and in FY 2012 from the list of unfunded applicants from this competition.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

III. Eligibility Information

1. *Eligible Applicants:* (a) A public entity, such as a State or local governmental entity; (b) A private, nonprofit entity; or (c) A consortium of entities described in (a) and (b).

Note: Under 20 U.S.C. 7223a(b)(2), the Secretary makes, if possible, at least one award in each of the three categories of eligible applicants.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* The charter schools that a grantee selects to benefit from this program must meet the definition of a *charter school* in section 5210(1) of the ESEA.

IV. Application and Submission Information

1. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Credit Enhancement for Charter School Facilities program, some applications may include proprietary financial or confidential commercial information whose disclosure could reasonably be expected to cause substantial competitive harm. Upon submission of an application, applicants should identify any information contained in their application that they consider to be confidential commercial information or financial information. Doing so will assist the Department in making any future determination regarding public release of the application. Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section of their application. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. *Address To Request Application Package:* Ann Margaret Galiatsos, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W259, Washington, DC 20202–5970. Telephone: (202) 205–9765 or by e-mail: *ann.galiatsos@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

3. *Content and Form of Application Submission:* Each Credit Enhancement for Charter School Facilities program application must include the following specific elements:

(a) A statement identifying the activities proposed to be undertaken with grant funds (the "grant project"), including a description of how the applicant will determine which charter schools will receive assistance and how much and what types of assistance these schools will receive.

(b) A description of the involvement of charter schools in the application's development and in the design of the proposed grant project.

(c) A description of the applicant's expertise in capital markets financing. (Consortium applicants must provide this information for each of the participating organizations.)

(d) A description of how the proposed grant project will leverage the maximum amount of private-sector financing capital relative to the amount of government funding used and otherwise enhance credit available to charter schools.

(e) A description of how the applicant possesses sufficient expertise in education to evaluate the likelihood of success of a charter school for which facilities financing is sought.

(f) In the case of an application submitted by a State governmental entity, a description of past, current, and planned State funding actions, including obtaining other forms of financial assistance, that ensure that charter schools within the State receive the funding they need to have adequate facilities.

Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read. Applicants are encouraged to limit their applications to no more than 40 double-spaced pages (not including the required forms and tables), using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

4. *Submission Dates and Times:*

Applications Available: March 11, 2011.

Date of Pre-Application Meeting: The Department will hold a pre-application meeting for prospective applicants on April 4, 2011 at 9:00 a.m., Washington, DC time, at the U.S. Department of Education, room 1W128, 400 Maryland Avenue, SW., Washington, DC. Interested parties are invited to participate in this meeting to discuss the purpose of the program, priorities,

selection criteria, application requirements, submission requirements, and reporting requirements. Interested parties may participate in this meeting either by conference call or in person. This site is accessible by Metro on the Blue, Orange, Green, and Yellow lines at the Seventh Street and Maryland Avenue exit of the L'Enfant Plaza station. After the meeting, program staff will be available from 12:00 p.m. to 2:00 p.m. on that same day to provide information and technical assistance through individual consultation.

Individuals interested in attending this meeting are encouraged to pre-register by e-mailing their name, organization, and contact information with the subject heading PRE–APPLICATION MEETING to *ann.galiatsos@ed.gov.* There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Ann Margaret Galiatsos, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W259, Washington, DC 20202–5970. Telephone: (202) 205–9765 or by e-mail: *ann.galiatsos@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Deadline for Transmittal of Applications: May 10, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.8. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 9, 2011.

5. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

6. *Funding Restrictions:* (a) *Reserve accounts.* Grant recipients, in accordance with State and local laws, must deposit the grant funds they receive under this program (other than funds used for administrative costs) in a reserve account established and maintained by the grantee for this purpose. Amounts deposited in such account shall be used by the grantee for one or more of the following purposes in order to assist charter schools in accessing private-sector and other non-Federal capital:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

(2) Guaranteeing and insuring leases of personal and real property.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

(4) Facilitating the issuance of bonds by charter schools or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

Funds received under this program and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Any earnings on funds, including fees, received under this program must be deposited in the reserve account and used in accordance with the requirements of this program.

(b) *Charter school objectives.* An eligible entity receiving a grant under this program must use the funds deposited in the reserve account to assist charter schools in accessing capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (which may be an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.

(c) *Other.* Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. The full faith and credit of the United States are not pledged to the payment of funds under such obligation. In the event of a default on any debt or other obligation, the United States has no liability to cover the cost of the default.

Applicants that are selected to receive an award must enter into a written Performance Agreement with the Department prior to drawing down funds, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds.

In accordance with 34 CFR 80.36(b)(3), grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must mandate disinterested decision-making.

A grantee may use not more than 0.25 percent (one quarter of one percent) of the grant funds for the administrative costs of the grant.

The Secretary, in accordance with chapter 37 of title 31, United States Code, will collect all or a portion of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that (a) the grantee has permanently ceased to use all or a portion of the funds in such account to accomplish the purposes described in the authorizing statute and the Performance Agreement or, (b) if not earlier than two years after the date on which the entity first receives these funds, the entity has failed to make substantial progress in undertaking the grant project.

(d) *Unallowable costs.* We specify some unallowable costs in 34 CFR 225.21.

We reference additional regulations outlining funding restrictions in the

Applicable Regulations section in this notice.

7. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

8. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Credit Enhancement for Charter School Facilities program, CFDA number 84.354A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Credit Enhancement for Charter School Facilities program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.354, not 84.354A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline

date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ann Margaret Galiatsos, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W259, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.354A),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.354A)
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 225.11 and are listed in the following paragraphs. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider to determine how well an application meets the criterion. We encourage applicants to make explicit connections to the selection criteria and factors in their applications.

A. *Quality of project design and significance.* (35 points)

In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to charter schools at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established, are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting charter schools for assistance

and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage private or public-sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs beyond what would be accomplished absent the program;

(7) The extent to which the project will serve charter schools in States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the ESEA; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

B. *Quality of project services.* (15 points)

In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

C. *Capacity.* (35 points).

In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

D. *Quality of project personnel.* (15 points)

In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) Applicants selected for funding will be required to submit to the Department an annual report that includes the information from section 5227(b) of the ESEA and any other information the Secretary may require.

Grantees must also cooperate and assist the Department with any periodic financial and compliance audits of the grantee, as determined necessary by the Department. The specific Performance Agreement between the grantee and the Department may contain additional reporting requirements. At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c).

(b) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

4. *Performance Measures:* The performance measures for this program are: (1) The amount of funding grantees leverage for charter schools to acquire, construct, and renovate school facilities and (2) the number of charter schools served. Grantees must provide this information as part of their annual performance reports.

VII. Agency Contact

For Further Information Contact: Ann Margaret Galiatsos, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W259, Washington, DC 20202–

5970. Telephone: (202) 205–9765 or by e-mail: *ann.galiatsos@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *http://www.gpo.gov/fdsys.*

Dated: March 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–5702 Filed 3–10–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Paraprofessional Preservice Program Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325N.

Dates:

Applications Available: March 11, 2011.

Deadline for Transmittal of Applications: April 25, 2011.

Deadline for Intergovernmental Review: June 24, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants, toddlers, and children with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1462 and 1481)).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Personnel Development to Improve Services and Results for Children with Disabilities—Paraprofessional Preservice Program Improvement Grants (84.325N).

Background:

Paraprofessionals provide important services to children with disabilities ages birth through 21 and their families. In early intervention (EI) programs, preschools, and elementary, middle, and high schools, paraprofessionals provide instructional support, modify instructional materials, implement behavioral management plans, assist in the implementation of postsecondary education transition plans, and collect data to monitor children's development and learning (Kellegrew, Pacifico-Banta, & Stewart, 2008; Mikulecky & Baber, 2005; Shkodriani, 2003). Kellegrew, Pacifico-Banta, and Stewart (2008) and Shkodriani (2003) note that paraprofessionals have become increasingly responsible for other activities involving children with disabilities, such as participating in the development of their Individualized Family Service Plans and Individualized Education Programs; providing direct services to children and their families, including small group instruction and one-on-one tutoring; and assisting with classroom management. Westat (2002) reported that the average paraprofessional works in five different classes per week and serves 21 students, 15 of whom have disabilities; consequently, it is important that paraprofessionals are prepared to meet professional qualifications that will enable them to provide effective services to all children, including students with disabilities.

Section 635(a)(9) of Part C of IDEA, section 612(a)(14)(B) of Part B of IDEA, and 34 CFR 300.156(b)(1) of the IDEA Part B regulations require States to provide assurances that they have established paraprofessional qualifications that are consistent with State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing early intervention, special education, or related services. In a 2004 survey of coordinators for the Part C infants and toddlers program under IDEA, half of the respondents indicated that their State had added or created new professional categories, particularly at the paraprofessional level, such as EI associates and EI assistants (Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education, 2004a). Additionally, many States are trying to identify preservice preparation opportunities for paraprofessionals in EI or are working on strategies to increase the quality of preservice programs (Kellegrew *et al.,* 2008).

Despite these efforts and the critical roles that paraprofessionals play in the lives of children with disabilities, overall scant attention has been paid to ensuring that early childhood or K through 12 paraprofessional preservice programs adequately prepare paraprofessionals to serve children with disabilities and their families. Coordinators for the Part B, section 619 preschool program under IDEA have expressed concern about the adequacy of paraprofessionals' preparation, particularly to work with young children with disabilities and their families (Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education, 2004b). Although national professional organizations (*e.g.,* the Division for Early Childhood of the Council for Exceptional Children and the National Association for the Education of Young Children) have personnel standards that could be used to guide the preparation of paraprofessionals working with young children with disabilities and their families, many of the certificate or associate degree programs that prepare paraprofessionals have not yet met these standards or do not offer practicum experiences in working with children with disabilities and their families (Chang, Early, & Winton, 2005). Further, according to Giangreco (2010), paraprofessionals in elementary and secondary special education settings are

inadequately prepared to work with students with disabilities. Thus, improving paraprofessional preservice programs will help to ensure that paraprofessionals are adequately prepared to meet the requirements under IDEA and in turn, better prepared to meet the needs of children with disabilities.

The Office of Special Education Programs (OSEP) is establishing this priority to support projects that will improve preservice programs for paraprofessionals who serve children ages birth through five and in grades K through 12 by enhancing or redesigning curricula to adequately prepare these paraprofessionals to address the needs of children with disabilities.

Priority: The purpose of this priority is to provide Federal support to improve the quality of existing paraprofessional certificate or associate degree programs. An institution receiving support under this priority must enhance or redesign its program curricula so that paraprofessionals are well-prepared to work with children with disabilities and their families. There are two focus areas under this priority. Under focus area A, the Secretary intends to support improvement grants for EI, early childhood special education (ECSE), and early childhood education (ECE) paraprofessional preservice programs. Under focus area B, the Secretary intends to support improvement grants for K through 12 paraprofessional preservice programs.

Note: Applicants must identify the specific focus area, A or B, under which they are applying as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal under more than one focus area.

Focus Area A: EI, ECSE, and ECE Paraprofessional Preservice Programs.

The programs under focus area A include certificate or associate degree programs at institutions of higher education (IHEs), including but not limited to community colleges, that currently prepare EI, ECSE, or ECE paraprofessionals to serve children ages birth through five. The programs under this focus area must enhance or redesign their curricula by: (1) Incorporating evidence-based and competency-based practices and content in special education into each course; and (2) providing at least one practicum experience in a program that serves children with disabilities ages birth through five and their families. Paraprofessional students must obtain the knowledge and skills necessary to collaborate and work effectively with licensed or certified practitioners to provide appropriate services to children with disabilities ages birth through five and their families. In addition, the programs funded under this focus area must ensure that program graduates meet the qualifications for paraprofessionals that are consistent with the State standards in accordance with section 635(a)(9) of Part C of IDEA and 34 CFR 303.360(b) of the IDEA Part C regulations or section 612(a)(14)(B) of Part B of IDEA and 34 CFR 300.156(b) of the IDEA Part B regulations, as appropriate, or in States that do not have State standards, meet appropriate national professional organization standards for paraprofessionals.

Focus Area B: K through 12 Paraprofessional Preservice Programs.

The programs under focus area B include certificate or associate degree programs at IHEs, including but not limited to community colleges, that currently prepare paraprofessionals to serve students in grades K through 12. The programs under this focus area must enhance or redesign the curricula by: (1) Incorporating evidence-based and competency-based practices and content in special education into each course; and (2) providing at least one practicum experience in a setting that serves children with disabilities in grades K through 12 and their families. Paraprofessional students must obtain the knowledge and skills necessary to collaborate and work effectively with licensed or certified K through 12 practitioners to provide appropriate services to children with disabilities in grades K through 12 and their families. In addition, the programs funded under this focus area must ensure that program graduates meet the qualifications for paraprofessionals that are consistent with the State standards in accordance with section 612(a)(14)(B) of Part B of IDEA and 34 CFR 300.156(b) of the IDEA Part B regulations or in States that do not have State standards, meet the paraprofessional standards in accordance with section 1119 of the Elementary and Secondary Education Act of 1965, as amended.

To be considered for funding under the Paraprofessional Preservice Program Improvement Grants absolute priority, focus area A or B, applicants must meet the application requirements contained in this priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Note: The two focus areas under this priority only support the improvement of existing EI, ECSE, and ECE or K through 12 paraprofessional preservice programs. This priority does not support the development of new paraprofessional preservice programs, nor does it provide for financial support of paraprofessional students during any year of the project. Projects preparing paraprofessionals in related services are not eligible under these focus areas.

Application Requirements for Focus Areas A and B. An applicant must include in its application—

(a) A plan to implement the activities described in the *Project Activities* section of this priority. In this plan applicants must describe first-year activities, evidence-based and competency-based practices (including relevant research citations of these practices) that will be included in the enhanced or redesigned program, a four-year timeline, and an implementation plan. In addition, the plan must indicate the projected number of graduates per academic year;

(b) A budget that includes attendance at a three-day Project Directors' Conference in Washington, DC, during each year of the project period; and

(c) An appendix that includes all course syllabi for the existing paraprofessional preservice program.

Project Activities for Focus Areas A and B. To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Based on the plan described under paragraph (a) of the *Application Requirements,* enhance or redesign the paraprofessional preservice program's curricula by incorporating evidence-based and competency-based practices and content in special education into each course and by providing at least one practicum experience in a setting that serves children with disabilities and their families. The project must implement the enhanced or redesigned paraprofessional preservice program in the first year of the project; describe the proposed project activities associated with implementation of the curricula; and attain the approval of the OSEP Project Officer prior to the implementation of the program. The improved paraprofessional preservice program must—

(1) Be aligned to State standards for paraprofessionals, or in States that do not have State standards, meet appropriate national professional organization standards for paraprofessionals, or if appropriate, paraprofessional standards in accordance with section 1119 of the Elementary and Secondary Education Act of 1965, as amended; and

(2) Be designed to ensure that paraprofessional students develop knowledge and skills in the following areas:

(i) Collaborating and working effectively with licensed and certified professional practitioners, as appropriate.

(ii) Implementing social-emotional and behavioral interventions and classroom management practices.

(iii) Implementing instructional strategies to support early development and learning or academic achievement.

(iv) Using technology to enhance children's development and access to natural learning opportunities or improve student achievement and participation in the general education curriculum.

(v) Observing and collecting data for progress monitoring.

(vi) Communicating effectively with children and families.

(vii) Assisting in the implementation of transition plans and services across settings from EI to preschool, preschool to elementary school, elementary school to secondary school, and secondary school to postsecondary education or the workforce, as appropriate.

(viii) Working with children and families from diverse cultural and linguistic backgrounds, including English learners with disabilities and high-need children with disabilities [1] and their families.

(3) Be designed to include field-based preservice preparation opportunities in high-need LEAs,[2] high-poverty schools,[3] or low-performing schools, including the persistently lowest-achieving schools.[4]

(b) Develop and implement a plan to ensure that program faculty have the necessary supports, knowledge, and skills to implement the new content and to prepare paraprofessional students to work with children with disabilities and their families.

(c) Develop and implement a management plan for instituting the improved paraprofessional preservice program that was developed in the first year.

(d) Demonstrate how the improved program will work with other projects funded by OSEP and the U.S. Department of Education to incorporate existing paraprofessional preparation resources on evidence-based practices into the enhanced or redesigned curricula (*e.g.,* the IRIS Center for Faculty Enhancements: *http://iris.peabody.vanderbilt.edu* and CONNECT: The Center to Mobilize Early Childhood Knowledge: *http://community.fpg.unc.edu/connect*).

(e) Submit the revised curriculum and syllabi for courses that are included in the improved program to the OSEP Project Officer for approval at the end of the first year of the project period.

(f) Develop and implement a clear, effective plan for evaluating project outcomes. This plan must include a description of how the project will—

(1) Measure the extent to which faculty in the program have the knowledge and skills necessary to implement the revised curriculum;

(2) Measure the extent to which graduates of the program have the knowledge and skills necessary to provide evidence-based practices and services that result in improved outcomes for children with disabilities and their families; and

(3) Use the findings of the evaluation to inform ongoing program improvements. Applicants must also clearly describe under the Quality of Project Evaluation selection criterion how the findings will be reported to OSEP in annual and final performance reports.

(g) Develop a plan to maintain the improved program once Federal funding ends.

(h) If the project maintains a Web site, include relevant information about the improved program and documents in a form that meets government or industry-recognized standards for accessibility.

(i) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations or e-mail communication and participate in monthly grantee community of practice teleconferences, as directed by OSEP.

References:

Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education. (2004a). *Study I data report: The national landscape of early intervention in personnel preparation standards under Part C of the Individuals with Disabilities Education Act.* Farmington, CT: University of Connecticut Health Center. Available at: *http://www.uconnucedd.org/per_prep_center/publications.html*

Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education. (2004b). *Study I data report: The national landscape of early childhood special education in personnel preparation standards under 619 of the Individuals with Disabilities Education Act.* Farmington, CT: University of Connecticut Health Center. Available at: *http://www.uconnucedd.org/per_prep_center/publications.html*

Chang, F., Early., D., & Winton, P. (2005). Early childhood teacher preparation in special education at 2- and 4-year institutions of higher education. *Journal of Early Intervention, 27*(2), 110–124.

Giangreco, M.F. (2010). One-to-one paraprofessionals for students with disabilities in inclusive classrooms: Is conventional wisdom wrong? *Intellectual & Developmental Disabilities,* 48(1), 1–13. DOI: 10.1352/1934–9556–48.1.1 Full text pdf available. Posted with permission of the American Association on Intellectual and Developmental Disabilities *http://www.aaidd.org*

Kellegrew, D.H., Pacifico-Banta, J., & Stewart, K. (2008). *Training early intervention assistants in California's community colleges.* (Issues & Answers Report, REL 2008–No. 060). Washington, DC: US Department of Education, Institute of Educational Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory West. Available at: *http://*

[1] For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they are living in poverty, are English learners, are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, or who are migrant.

[2] For purposes of this priority, the term "high-need LEA" means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[3] For the purpose of this priority, the term "high-poverty school" means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

[4] For purposes of this priority, the term "persistently lowest-achieving school" means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the "all students" group.

ies.ed.gov/ncee/edlabs/projects/project.asp?ProjectID=165

Mikulecky, M.T. & Baber, A. (2005). ECS policy brief: from highly qualified to highly competent paraprofessionals: How NCLB requirements can catalyze effective program and policy development guidelines from the ECS paraprofessional expert. Retrieved January 22, 2008, from *http://www.ecs.org/html/IssueSection.asp?issueid=195&subissueid=112&ssID=0&s=Selected+Research+%26+Readings*

Shkodriani, G. (2003). *Training for paraprofessionals: The community college role.* Retrieved January 22, 2008, from *http://hems.aed.org/docs/Paraprofessionals.pdf*

Westat. (2002) *Study of personnel needs in special education.* Retrieved January 23, 2008 from *http://ferdig.coe.ufl.edu/spense/KeyFindings.doc*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: The Administration has requested $90,653,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2011, of which we intend to use an estimated $1,500,000 for the competition announced in this notice. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $145,000–150,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs (as defined in section 101 of the Higher Education Act of 1965).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325N.

To obtain a copy from the program office, contact the person listed under *For Further Information Contact* in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 11, 2011.

Deadline for Transmittal of Applications: April 25, 2011.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 24, 2011.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Paraprofessional Preservice Program Improvement Grants competition, CFDA number 84.325N, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Paraprofessional Preservice Program Improvement Grants competition at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.325, not 84.325N).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325N) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325N) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of projects that incorporate scientifically based or evidence-based practices; (2) the percentage of scholars who exit paraprofessional preparation programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion; (4) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion and are fully qualified under IDEA; (5) the percentage of scholars completing IDEA-funded preservice preparation programs who are knowledgeable and skilled in scientifically based or evidence-based practices for children with disabilities; and (6) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Shedeh Hajghassemali, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4091, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7506.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 4, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–5704 Filed 3–10–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to Sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plans previously submitted by Delaware.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty states, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA Sections 254(a)(11) through (13). HAVA Sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is

the second revision to the state plan for Delaware.

The amendments to Delaware's state plan provide for compliance with the requirements of Title III. In accordance with HAVA Section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. Delaware confirms that its amendments to the state plan were developed and submitted for public comment in accordance with HAVA Sections 255 and 256.

Upon the expiration of thirty days from March 11, 2011, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA Section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the state election official listed below.

Chief State Election Official

Elaine Manlove, State Election Commissioner, 905 S. Governor's Ave., Suite 170, Dover, Delaware 19904, Phone: (302) 739–4277, Fax: (302) 739–6794.

Thank you for your interest in improving the voting process in America.

Dated: March 7, 2011.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

STATE OF DELAWARE

HELP AMERICA VOTE ACT

STATE PLAN

2010

INTRODUCTION

The Help America Vote Act of 2002 (HAVA) was enacted by Congress to make specified changes to election administration throughout the United States with the intention of strengthening the integrity of the election process, and to provide for the continuing improvement of election administration into the future.

HAVA also created a new federal agency, the Election Assistance Committee (EAC), to guide the management of federal elections and administer grants to states for fulfilling the requirements of HAVA's Title III.

HAVA further requires each state to develop and implement a plan to describe how it will use Title II funds to meet the requirements of the Act, as specified in Title III. Section 251 requires that all Title II funds be used for the purpose of meeting these requirements except that Title II funds may be used for "activities to improve the administration of elections for federal office" if a state certifies that it has met all the requirements of Title III.

Attachment A is a letter, pursuant to Section 251(b)(2)(A) from Elaine Manlove, Delaware State Election Commissioner, certifying that the state has met all Title III requirements. The actions and activities undertaken to implement Title III requirements are itemized in **Attachment B**.

Since Delaware is HAVA compliant, all remaining HAVA funds, future interest earned, and any additional payments received will be spent on maintaining the HAVA requirements and improving the administration of the election process.

BACKGROUND

The somewhat unique nature of election administration in Delaware bears mentioning. The administration of elections in Delaware is a state responsibility accomplished by the State Election Commissioner and the Departments of Elections in each of Delaware's three counties. The Commissioner of Elections is appointed by the Governor and confirmed by the State Senate. The Commissioner is responsible for establishing and assuring election management standards incorporating uniformity in the conduct of elections, the application of election standards, and voting equipment, among other duties. The Departments of Elections for each county report to respective Boards of Election that are appointed by the Governor. The Commissioner is an ex oficio member of each board. The Departments conduct elections in accordance with the Delaware Code and with standards and operating procedures established by the Commissioner. Because Delaware is a small state, the Commissioner's Office and the Departments of Elections in each county are able to uniformly administer election laws, standards, and procedures affecting the essential elements of the electoral process.

Delaware filed its initial State Plan September 15, 2003. The Plan was developed pursuant to the requirements of Sections 254, 255, and 256 of HAVA, including the appointment of a HAVA Committee, establishment of a state HAVA web site to provide information and receive public comments, and the required public hearing and notice procedures. An initial "gap analysis" identified where the state was already in compliance with HAVA and where action (including changes to state law) was required to bring the state into compliance.

Attachment D is a copy of the legislation implementing many of the Requirements of Title III of the Help America Vote Act.

Delaware revised its State Plan in September of 2005 --- again according to the procedural requirements of Sections 254, 255, and 256 of HAVA --- to reflect progress in implementing the Act and to specify how additional funding would be directed to meeting Title III requirements.

State Election Commissioner Elaine Manlove convened a two-day meeting on May 20-21, 2009 to discuss HAVA implementation and potential improvements in the administration of elections in Delaware. Day 1 included election officials from each of the three counties as well as personnel from the office of the Election Commissioner. Day 2 expanded the discussion to also include the HAVA Committee members as representatives from the "stakeholder community." The purpose of the meetings was to systematically discuss each aspect of HAVA implementation and election administration, identify problems, inefficiencies, or barriers, develop a list of possible actions to improve election administration (with specific attention to the application of technology to accomplishing these improvements) and to determine whether the current State Plan should be updated.

THE 2010 DELAWARE STATE PLAN

Section 254 of HAVA specifies the required elements of a State Plan. Each State Plan must include a narrative description of those elements. Delaware intends to monitor, maintain, and improve on those activities required by HAVA, and to generally improve the administration of Federal elections within the boundaries of the guidelines and opinions of the Election Assistance Commission.

GOALS AND GUIDING PRINCIPLES

There are several goals and guiding principles that will function as the compass the state will use in determining the direction of its vision for future election activities. These include:

1. Preservation, protection, and enhancement of the integrity and security of the voting process.
2. Application of technology to improve the voting process, and appropriate research and support to maximize the benefits of that technology.
3. Continuous improvement of the voting experience such that all Delaware citizens find it simple, easy, accessible, and convenient to participate.
4. Continuous improvement of the administration of elections such that the infrastructure of the election process provides the best possible customer service.
5. Ensuring that elections are conducted openly, fairly, honestly, transparently, professionally, and to the highest ethical standards so that all citizens continue to trust and respect the election process and results.

HAVA SECTION 254: ELEMENTS OF A STATE PLAN

SECTION 254(a)(1)

How the State will use the requirements payments to meet the requirements of Title III, and, if applicable under Section 251(a)(2), to carry out other activities to improve the administration of elections.

Since Delaware is HAVA compliant, all remaining HAVA funds, future interest, and additional requirements payments made to the State will be used to: (a) monitor, maintain, and enhance activities required by HAVA and; (b) improve administration of elections for Federal office. Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this State Plan. Rather than narrowly predict or specify future programs, this State Plan is constructed so as to provide the flexibility to respond to new technologies, mandates, unforeseen circumstances, or administrative improvements so that this State Plan may stand indefinitely without need for further revision. The State will continue to publish annual fiscal and narrative reports.

With continued conservative management of HAVA funds and the benefit of accumulating interest, the State may be able to indefinitely continue to meet HAVA requirements and improve the administration of federal elections in Delaware without needing further state resources.

SECTION 254(a)(2)(A)

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of the criteria to be used to determine the eligibility of such units or entities for receiving the payment.

As described in the BACKGROUND section of this report above, Delaware has a somewhat unique structure for election administration. There are no local government units involved since the Department of Elections in each county are independent state agencies. Each Department has its own budget appropriated by the General Assembly. They do, however, serve counties and they will receive resources to carry out HAVA mandates as a statewide effort. Supplies and equipment for HAVA purposes are purchased and distributed by the State Election Commissioner. Any RFPs or other requirements that are necessary will be developed by the State Election Commissioner in collaboration with the county Departments.

SECTION 254(a)(2)(B)

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of the methods to be used by the State to monitor the performance of the units or entities to who payment is distributed, consistent with the goals and measures adopted under paragraph (8).

The State uses a single audit procedure to track expenditures by the Departments of Elections in each county by maintaining all HAVA expenditures on a State level in the office of the State Election Commissioner. The State will audit HAVA expenditures through its normal audit procedures. The three county Departments of Elections will report to the State Election Commissioner on how the expenditures contribute to the appropriate performance measures that adopted pursuant to Section 254(a)(8).

SECTION 254(a)(3)

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Training and education of election officials, poll workers, and voters is a vital element of the goals enumerated above, namely:

Continuous improvement of the administration of elections such that the infrastructure of the election process provides the best possible customer service.

Ensuring that elections are conducted openly, fairly, honestly, transparently, professionally, and to the highest ethical standards so that all citizens continue to trust and respect the election process and results.

Continuous improvement of the voting experience such that all Delaware citizens find it simple, easy, and convenient to participate.

The State Election Commissioner, in conjunction with county election officials and others, develops and maintains standards for training and education. In addition, the State employs an "Educator/Trainer" to assist with this development and to conduct training with state agencies and others. Educational materials and programs address HAVA requirements.

Examples of training and educational efforts may include, but are not limited to, development, implementation, and/or updating materials and programs for:

ELECTION OFFICIALS

- Training and development of Information Technology personnel to encourage retention of key and critical personnel;
- Implementation of a certification program for Information Technology employees;
- Development of a knowledge-based Help Desk that includes information for election officials;
- HAVA requirements;
- Development of training targeting new election personnel;
- New laws and requirements effecting elections;
- Voting procedures and requirements for UOCAVA voters;
- Facilitating professional development through participation in conferences, courses, and certification programs;
- Continuing development of the Educator/Trainer position;
- Determining polling place accessibility for persons with disabilities;
- Methods to make polling places temporarily accessible on Election Day;
- Etc.

POLL WORKERS

- Development and updating of on-line materials to augment in-person poll worker training;
- HAVA requirements;
- Issues of accessibility for persons who are disabled;
- Sensitivity to special needs voters, including persons with disabilities;
- Operation and maintenance of voting equipment;
- Emergency procedures on Election Day;
- New laws and procedures regarding elections;
- Procedures for provisional ballots;
- Etc.

VOTERS

- HAVA requirements, including ID requirement for 1st time voters;
- Registration and voting procedures for voters who are newly eligible due to becoming 18 years of age, new residents in the State, or through naturalization as US citizens;
- How to register to vote, voter registration requirements, and how to cast a ballot;
- Increased voter familiarity with voting equipment, including demonstrations at events and schools
- Increased familiarity with rights and responsibilities
- Voter actions that can decrease the error rate in both polling place and absentee voting;
- The provisional ballot process, including information on the "free Access" system and how to locate the appropriate polling place on Election Day;
- Development of a knowledge-based "Help Desk" to answer election-related questions;
- Providing information and materials at Department of Motor Vehicle offices;
- Information for UOCAVA voters, including a web site;
- Programs encouraging students to participate in civic affairs, such as elections;
- Development of social networking tools to target younger voters;
- Conducting mock elections;
- Developing information on absentee voting for inclusion on election web sites;
- Etc.

ACCESSIBILITY FOR VOTERS WITH SPECIAL NEEDS

Although not required as an element of State Plans, Delaware is committed to making the entire election process as accessible to persons with disabilities as is possible and feasible. Examples of actions, materials, or programs the State may undertake include, but are not limited to:

- Surveying potential polling places to determine if they meet criteria for accessibility;
- Temporary measures to make polling places accessible on Election Day;
- Early voting at accessible election office sites;
- Poll worker training on accessibility and sensitivity;
- Development and distribution of educational materials specifically designed to provide information on accessibility;
- Ensuring that the State's election web site meets industry standards for accessibility;

- Upgrades to voting equipment to increase accessibility;
- Application for grant funds to increase polling place accessibility;
- Etc.

APPLICATION OF TECHNOLOGY TO IMPROVEMENT OF ELECTION ADMINISTRATION

Although not required as an element of State Plans, Delaware is committed to integrating technology into the election process as a part of our goal to continuously improve both the implementation of HAVA requirements and improvement of election administration. Examples of actions, materials, or programs the State may undertake include, but are not limited to:

- Develop and implement incentives to facilitate recruitment, training, and retention of key personnel, including experienced software developers and database administrators and others with expertise in Information Technology, with a career ladder adequate to insure redundancy of expertise and/or succession in the case of loss or absence of a key employee;
- Meet the goal of ensuring that the State is not dependent on the vendor community for conduct of elections, including operation and maintenance of voting system equipment;, the statewide voter registration database, and other technology dependent programs;
- Set standards for repair of critical systems so that glitches, bugs, and other system complexities are resolved as quickly as possible;
- Develop standards for testing, back up and redundancy of voting systems and other equipment so that system failure or acts of God do not interfere with the orderly conduct of elections;
- Ensure adequate funding for voting systems and other equipment upgrades , maintenance, support, testing, documentation, audits, certification, and replacement, including software, firmware, and hardware, as well as ancillary expenses such as license renewal;
- Ensure that all equipment undergoes acceptance testing prior to installation and that a process for knowledge transfer exists that results in in-house operating and maintenance expertise;
- Continuously improve the election web site --- including incorporation of information for persons with disabilities, military and overseas voters, persons who need language assistance, etc;
- Implement and integrate an Electronic Poll Book into the current election system;
- Construct a "Command Center" for each election, with uninterrupted power supply and communication capability from the State to each county (and potentially from the county to each polling place within the county) to facilitate response to any election related emergencies or other situations on Election Day;
- Enhance the current "Free Access" and "Polling Place Look Up" systems;
- Research web-based candidate qualification and election night reporting systems;
- Ensure that the State has trained GPS and GIS technicians and technology to assist with precincting voters, assisting voters in finding their polling place, and reapportioning legislative districts;
- Potential integration of polling place accessibility surveys into an on-line tool;
- Conducting an analysis after each general election to evaluate error rates, reliability, user friendliness, and accessibility to identify potential problems and improvements;
- Expand the current voter registration system at Department of Motor Vehicle offices to provide equal access to information on all political parties;
- Research and, if appropriate, implement an "Asset Tracking" system for all voting system equipment, as well as an inventory and control system for voting software;
- Regularly evaluate new equipment and software opportunities for accessibility of the voting process, including absentee and write-in voting, for voters with disabilities;
- Conduct an independent security/risk analysis to determine the overall integrity of the voting process and suggest improvements;
- Etc.

SECTION 254(a)(4)

How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

The State, through the State Election Commissioner, purchases voting equipment in Delaware. Legislation enacted in July 2003 requires that all voting systems purchased after that date be certified by the National Association of State Election Directors and/or the Election Assistance Commission. The voting equipment now in use throughout the State is HAVA compliant including for persons with visual disabilities. The State has purchased audio units that have been integrated into the current voting machines for persons with visual disabilities.

All new voting equipment included in the definition of "Voting System" in Section 301(b) will meet the requirements of Section 301, including the capability to:

- Permit the voter, in a private and independent manner, to verify and/or correct his or her ballot;
- Notify the voter of an overvote and permit the voter to correct it;
- Include an educational program for absentee voters;
- Produce a permanent paper record with a manual audit capability;
- Be accessible (as specified)to persons with disabilities;
- Be accessible (in jurisdictions where this is required) to persons who need language assistance;
- Comply with error rate standards promulgated by the Election Assistance Commission, and;
- Include a uniform definition of what constitutes a vote.

SECTION 254(a)(5)

How the state will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

The State has established an election fund with the Mellon Financial Corporation (State of Delaware-General Collection Account). The State Election Commissioner, as the chief state election official, is the single managing authority for receipt of election funds. After complying with the Single Point of Contact procedure established by the Office of Management and Budget, which is the submission of an expenditure budget for the State Clearinghouse, the funds are transferred to the Commissioner of Elections appropriations. The management of the election fund is consistent with current Delaware Financial Management System standards and procedures. The Department understands that it must provide periodic reports on the use of the Election Fund to the Election Assistance Commission and that the Election Fund is subject to audit by various federal and state entities. The State Election Commissioner will report the status of the fund at least annually to the State Plan Task Force Committee.

Since Delaware is HAVA compliant, all HAVA funds remaining from prior fiscal years, future interest earned, and any additional payments received will be spent on maintaining HAVA requirements and improving the administration of the election process.

The State may elect to create a separate or sub-account --- The Delaware Infrastructure of Democracy Fund --- with the principal and interest from this account restricted to funding replacement, modification, or upgrading of voting systems, as defined in Section 301(b), HAVA related functionality of the statewide voter registration database, and/or other capital assets. This fund would be managed to the same standards and with the same practices is the existing fund.

SECTION 254(a)(6)

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on: (A) the costs of the activities required to be carried out to meet the requirements of Title III; (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and (C) the portion of the requirements payment which will be used to carry out other activities. (*See Page 17 for Proposed Budget*)

In previous HAVA State Plans, Delaware has described detailed budgets for projected expenses to meet Title III requirements. All programs were fulfilled within that budget and significant funds remain available to the State for ongoing HAVA expenses, future voting system purchases, and other improvements to the administration of federal elections.

The nature and extent of future costs to administer HAVA and improve elections is largely unknown. The State expects that costs to the State to continue HAVA programs will likely be reduced for some time as they become interwoven into the fabric of election administration and require less training and education of election officials and poll workers. Voting systems have been modified or purchased to meet accessibility and other Section 301 requirements and are not expected to need replacement in the near future. Similarly, modifications have been made to the pre-existing statewide voter registration database to bring it into HAVA compliance. Procedural requirements of Title III have been built into ongoing and routine election administration.

Continued compliance with HAVA requirements will require costs for maintenance, technical support, network connections, and software/firmware upgrades, among other expenditures. Implementation of new and future laws (e.g. the Military and Overseas Voter Empowerment Act) may also require funding. Taking a longer view, there is a significant need for setting aside funds for replacement of voting systems and other capital equipment.

Since Delaware is HAVA compliant, all remaining HAVA funds, future interest, and additional requirements payments made to the State will be used to: (a) monitor, maintain, and enhance activities required by HAVA and; (b) improve administration of elections for Federal office.

Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this State Plan. Rather than narrowly predict or specify future programs and spending, this State Plan is constructed so as to provide the flexibility to respond to new technologies, mandates, unforeseen circumstances, or administrative improvements so that this State Plan may stand more or less indefinitely without need for further revision. The State will continue to publish annual fiscal and narrative reports.

With continued conservative management of HAVA funds and the benefit of accumulating interest, the State may be able to indefinitely continue to meet HAVA requirements and improve the administration of federal elections in Delaware without needing further state resources.

SECTION 254(a)(7)

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

The State will fund the Commissioner's Office and the Departments of Elections for the counties for expenditures at or above 2000 levels for activities consistent with HAVA. The total appropriation prior to 2000 was $3,264,102.73. Currently the State exceeds this expenditure level.

SECTION 254(a)(8)

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Delaware has met the requirements of Title III and has fulfilled the goals described in prior State Plans (see Attachment B), including, but not limited to: providing a private and independent voting opportunity to every registered voter; educating voters on how to avoid and correct ballot errors; integrating the statewide voter registration database with the Department of Motor Vehicles; verifying each new voter registration against a unique identifier; adopting a uniform definition of a vote; posting required notices at polling places; complying with requirements for a provisional voting system; and establishing requirements for first time voters.

In addition, the State will monitor new requirements, such as the potential for required provision of language assistance, for which the State is not now responsible.

The State Election Commissioner and county election officials will continue to monitor these processes (See Section 11).

SECTION 254(a)(9)

A description of the uniform, nondiscriminatory, state-based administrative complaint procedures in effect under Section 402.

The administrative complaint process is described in the legislation that was enacted in July, 2003. A copy is of the statute is included in Attachment D.

SECTION 254(a)(10)

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

The State used Title I payments to integrate both state and federal elections into a single Election Management System, thereby creating a stable infrastructure to conduct Delaware elections and to plan for the future needs of Delaware voters. Maintenance and upgrades of this Election Management System will be an ongoing activity in implementation of HAVA requirements.

SECTION 254(a)(11)

How the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless the change: (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan; (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and (C) takes effect only after the expiration of the 30-day period, which begins on the date the change, is published in the Federal Register in accordance with subparagraph (A).

Ongoing management of the State Plan is an important concern for Delaware election officials. As indicated in earlier sections, the intent of this Plan is to focus future efforts on the twin goals of maintaining HAVA requirements and improving administration of elections.

PROCESS FOR PLAN MANAGEMENT

The State is a leader in election management and will encourage new ideas and programs to emerge to solve problems and improve service. The Plan will be managed and administered --- with the highest level of professionalism --- through the following process:

- The State Election Commissioner is ultimately responsible for management of the Plan; in collaboration with the Departments of Elections in each county.
- The State Election Commissioner maintains standards and procedures for essential elements of HAVA administration, including a State Manual, to ensure uniformity of application.
- The HAVA Task Force, consisting of election officials, experts, stakeholders, and representatives of other state agencies will continue to exist and meet on a regular basis, as determined by the State Election Commissioner in collaboration with members of the Task Force.
- The State Election Commissioner, in conjunction with the HAVA Task Force, may establish goals and set performance metrics to evaluate progress towards goal these goals;
- The State Election Commissioner will publish an annual report for public review;
- The State Election Commissioner will approve all HAVA expenditures, and the State Auditor will provide regular review of budgetary expenditures;
- The HAVA Task Force will study and research activities and programs to promote the overall goals of the Plan and to encourage continuous improvement in the Plan's implementation;
- Although the intention of this Plan is to provide flexibility for future efforts to improve election administration, changes that materially affect the Plan will be subject to the procedural requirements of Sections 255 and 256 of HAVA.

ADDITIONAL MANAGEMENT OBJECTIVES AND ACTIVITIES

- Identify Information Technology as an essential element of successful election administration and ensure that IT personnel, including experienced software developers and database administrators, are recruited, trained, and retained;
- Promote a culture of customer service and continuous improvement in the election community;
- Ensure that elections staff, to the greatest degree possible independent of vendor assistance, can operate, maintain, and improve essential election equipment, including voting systems and the statewide voter registration database;
- Periodically conduct security and system risk analyses to maintain the integrity of the election process;
- Take steps to anticipate potential natural or man-made disasters and construct plans to prepare for these circumstances. Examples might include training retired election officials to fill in if an emergency results in the sudden loss of one or more key elections employee at a critical point in the election process, or development of Desk Manuals and other program documentation for important election tasks;
- Continue and improve quality assurance practices to reduce the potential for errors and omissions in ballots and other election materials.

SECTION 254(a)(12)

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The methods by which Delaware met the requirements of Title III are described in Attachment B. The State anticipates no major changes to its implementation of HAVA, except that Title II, Section 251 funds may now be used for additional improvements to the administration of federal elections.

SECTION 254(a)(13)

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

Delaware filed its initial State Plan September 15, 2003. The Plan was developed pursuant to the requirements of Sections 254, 255, and 256 of HAVA, including the appointment of a HAVA Committee, establishment of a state HAVA web site to provide information and receive public comments, and the required public hearing and notice procedures. An initial "gap analysis" identified where the state was already in compliance with HAVA and where action (including changes to state law) was required to bring the state into compliance. Membership on the HAVA Task Force has to some degree changed over time, but many members have had consistent participation through the several revisions.

Delaware revised its State Plan in September of 2005 --- again according to the procedural requirements of Sections 254, 255, and 256 of HAVA --- to reflect progress in implementing the Act and to specify how additional funding would be directed to meeting Title III requirements.

State Election Commissioner Elaine Manlove convened a two-day meeting on May 20-21, 2009 to discuss HAVA implementation, potential improvements in the administration of elections in Delaware, and changes to the State Plan. Attendees at these meetings are listed below. Day 1 included election officials from each of the three counties as well as personnel from the office of the Election Commissioner. Day 2 expanded the discussion to also include the HAVA Committee members as representatives from the "stakeholder community" as well as representatives from other state agencies involved in HAVA implementation and the Governor's office. The purpose of the meetings was to systematically discuss each aspect of HAVA implementation and election administration, identify problems, inefficiencies, or barriers, develop a list of possible actions to improve election administration (with specific attention to the application of technology to accomplishing these improvements) and to determine whether the current State Plan should be updated.

The State Election Commissioner contracted with the Election Center, also known as the National Association of Election Officials, a nationally recognized organization formed to promote, preserve, and improve democracy, to prepare an updated "2010 HAVA State Plan for the State of Delaware."

This Plan was reviewed by the State Election Commissioner, as well as others, and was published and posted on the State's HAVA website (http://www.state.de.us/hava) for a period of 30 days. The website was established to provide public information and notice, and also to enable the public to review the updated State Plan and transmit comments electronically.

Comments and suggested revisions were reviewed and incorporated into the Plan, as appropriate.

HAVA TASK FORCE MEMBERS/ATTENDEES

Elaine Manlove, State Election Commissioner

Debra Grier, Educator/Trainer, Office of the Commissioner of Elections

Stan Anderson, Information Technology, Office of the Commissioner of Elections

Virginia Lane, Support Services Administrator, Office of the Commissioner of Elections

Heather Volkomer, Staff, Office of the Commissioner of Elections

Anthony Albence, Director, New Castle County Department of Elections

Howard Sholl, Deputy Director, New Castle County Department of Elections

Joyce Wright, Director, Kent County Department of Elections

Patrick W. Murray, Deputy Director, Kent County Department of Elections

Kenneth L. McDowell, Director, Sussex County Department of Elections

Jean A. Turner, Deputy Director, Sussex County Department of Elections

John Trabaudo Delaware Department of Technology and Information

Bob Goodhart, Delaware Division for the Visually Impaired

Kyle Hodges, State Council for Persons with Disabilities

Letty Diswood, League of Women Voters

Dana Rohrbough, Office of the Lieutenant Governor

Laura Waterland, Disabilities Law Program

Lisa Furber,CLASI (Disability Law Program in Kent County)

Lexi McFassel, CLASI (Disability Law Program in Kent County)

HELP AMERICA VOTE ACT - DELAWARE STATE PLAN BUDGET REVISED 2010

ITEM		TITLE	YR	YR	YR	YR	YR	YR	YR	UNIT	TIME	Expenditure				Title II	EXTENDED DESCRIPTION
																$56,579.00	
																$1,425,000.00	
	TITLE II	$1,481.579..00														$1,481,579.00	
							10	11	12								
Election Improvements	Maintenance						x	x	x	$250,000.00	3	$750,000.00				$731,579.00	● Maintenance for Voting Machines
										$250,000.00		$750,000.00					
	Maintenance						x	x	x	$56,000.00	3	$168,000.00				563,579.00	● Election Management System
										$56,000.00		$168,000.00					
Election Expenses	Provisional Voting						x	x	x	$145,000.00	3	$435,000.00				$128,579.00	●Provisional Poll Workers,
										$145,000.00		$435,000.00					Salaries, Training
	Voting Rights Information						x	x	x	$42,859.66	3	$128,579.00				0.00	●News Papers, Manuals, Polling Materials
										$42,859.26		$128,579.00					

ATTACHMENTS

A Title III Compliance Letter

B State of Delaware Compliance with Title III Requirements

C Implementation of the Military and Overseas Voter Empowerment Act

D Delaware Statutes Implementing HAVA Requirements

ATTACHMENT A

Date

U.S. Election Assistance Commission
1201 New York Avenue, Suite 300
Washington, D.C. 20005

Dear Commissioners:

The Help America Vote Act of 2002 (HAVA) was enacted by Congress to make specified changes to election administration throughout the United States with the intention of strengthening the integrity of the election process, and to provide for the continuing improvement of election administration into the future.

Section 251(b) of the Help America Vote Act of 2002 requires that states use title II payments received to meet the requirements of title III.

Section 251(b)(2)(A) indicates that states may use requirements payments to "improve the administration of elections for Federal office" if the State certifies to the Commission that the State has implemented the requirements of title III.

This letter serves as official certification that the State of Delaware has implemented the requirements of title III of the Help America Vote Act of 2002 and intends to use remaining funds, as well as interest and any future funds, to continue to meet HAVA requirements and improve the administration of Federal elections in our state.

Sincerely,

Elaine Manlove
State Election Commissioner
905 S. Governor's Avenue, Suite 170
Dover, Delaware 19904

ATTACHMENT B

IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2003

THE STATE OF DELAWARE

SUMMARY OF REQUIREMENTS AND COMPLIANCE WITH THE REQUIREMENTS OF TITLE III

SECTION 301 – VOTING SYSTEM STANDARDS

REQUIREMENT

Each voting system used in an election for Federal office is required to permit voters, in a private and independent manner, to verify and correct their voting choices before their ballot is actually cast and (b) notify the voter (including absentee voters) if he or she has over voted.

Each voting system is required to produce a permanent paper record of each of the ballots cast that permits a manual audit of those votes and provides an opportunity for the voter to change his or her vote before the paper record is created.

Each voting system is required to provide voters with disabilities with the same opportunity for access and participation as other voters, and provide alternative language accessibility if so required by the Voting Rights Act of 1965, as amended.

Each voting system is required to not exceed the error rate established by the Election Assistance Commission.

Each state is required to adopt a uniform and nondiscriminatory definition of what constitutes a vote and what will be counted as a vote for each voting system in use in the state.

COMPLIANCE

All primary, general and special elections are conducted in accordance with Delaware Code, Title 15, using Danaher Controls *ELECT*ronic 1242 (model 6T) full-face ballot Direct Recording Electronic (DRE) voting machines. The machines are stored, maintained, and ballots programmed by the Departments of Elections in each county following standards produced by the State Election Commissioner. The Departments and their boards of elections also certify and secure the machines for each election. These voting machines meet the requirements of Section 301, including providing accessibility for individuals with disabilities.

Delaware uses paper ballots for absentee voting. To comply with section 301, the State created an education program and provided instructions as required by section 301(a)(1)(B). Under existing provisions of the Delaware Code, the Commissioner prepares the instructions based upon shared practices in the Departments of Elections in each county.

The Delaware Legislature enacted legislation defining what constitutes a vote for each voting system in use in the state. The legislation is included in Attachment D. Changes have been made to training manuals and programs accommodating the new standards.

SECTION 302 (a) --- PROVISIONAL VOTING

REQUIREMENT

Voters whose names do not appear on the list of voters at a polling place, or who are asserted by an election official to not be eligible to vote, shall be notified that they may cast a provisional ballot, as specified. The elections official shall count the voter's ballot upon determining the voter's eligibility.

Voters who cast provisional ballots shall be given information describing how he or she may, using a "free access" system, determine if his or her provisional ballot was counted, and, if not, why not.

COMPLIANCE

Enacted legislation (See Attachment D) authorizes provisional voting in state law. Poll workers are trained using the statewide standard in each county to offer provisional ballots under the conditions set forth in Section 302 of HAVA. The ballots are cast on paper and sealed using a double envelope system similar to that used for absentee ballots. Each completed ballot is assigned a tracking number. The Departments of Elections for each of the counties meet the day following the election to determine the eligibility of provisional voters in accordance with Delaware law. The Commissioner of Elections has created a "free access" system so that provisional voters can determine whether their ballots were counted and, if not, the reason why.

SECTION 302 (b) --- POSTING INFORMATION ON ELECTION DAY

REQUIREMENT

Election officials are required to post specified information at each polling place on Election Day.

COMPLIANCE

Section 4910 of Title 15 of the Delaware Code (see Attachment D) specifies requirements for posting of information at polling places on Election Day, including:

- A sample of the Election Day ballot;
- The election date and polling place hours;
- Instructions on how to vote and how to vote by provisional ballot;
- Instructions about mail-in registrants and information for first- time voters;
- General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated;
- General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

The State Election Commissioner, in collaboration with the Departments of Elections in each County, has adopted standards to produce statewide uniformity of information and practice.

SECTION 302 (c) --- VOTERS WHO VOTE AFTER THE POLLS CLOSE

REQUIREMENT

If the period for voting is extended by order of a court, any person wishing to vote must do so by provisional ballot.

COMPLIANCE

Section 4948 of Title 15 of the Delaware Code was enacted to comply with this requirement.

SECTION 303 (a) --- COMPUTERIZED STATEWIDE VOTER REGISTRATION DATABASE

REQUIREMENT

Each state is required to implement a single, uniform, official, centralized, interactive statewide voter registration list that is defined, maintained, and administered at the state level and contains the name and registration information, including a unique identifier, of every legally registered voter, and is immediately accessible to local election officials.

Election officials are required to maintain the list so as to ensure its accuracy and remove the names of ineligible voters and to provide appropriate security to ensure against unauthorized access to the list.

Applications for voter registration are required to include a driver's license, the last four digits of the social security number, or a unique identifier assigned by the elections official. The elections official is required to determine the validity of the number provided or assigned through sharing of information with the Department of Motor Vehicles and the Social Security Administration.

COMPLIANCE

Delaware has a HAVA compliant statewide, computerized voter registration database administered, maintained, and evaluated by the State Election Commissioner. The Department of Elections in each county registers voters using a standard application. Those applications are forwarded to the Commissioner along with applications executed at the Division of Motor Vehicles, other state agencies as required by the National Voter Registration Act, or Organized Voter Registration Drives which are administered by the State Election Commissioner. Since voters register on paper forms, the Department of Elections in each county verifies required informational elements when registering applicants and before entering their names into the statewide system. All election officials have immediate access to the data once it is entered at the county level.

Delaware has made several changes in voter registration in order to implement HAVA. Voter registration forms have been revised to ask for the individual's driver's license number, the last 4 digits if a Social Security Number or the State assigns a unique identifier to individuals who do not provide a either.

The State has an on-going file maintenance program which checks various data elements with other databases form Vital Statistics and the Delaware Justice Department.

The State Election Commissioner has signed an agreement with the Division of Motor vehicles to share data file information in July of 2005. The State's Division of Motor Vehicles is responsible for completing an agreement with the Social Security Administration to match information as required by section 303(a)(5)(B).

SECTION 303 (b) --- REQUIREMENT FOR VOTERS WHO REGISTER BY MAIL

REQUIREMENT

Specified individuals who register to vote by mail rather than in person and who appear to vote at a polling place are required to present a current and valid photo identification or other document that shows both the name and address of the voter.

Persons who similarly register and apply to vote by absentee ballot are also required to provide proof of identity and residence.

The mail-in registration form is required to include questions and boxes to ascertain that the voter is a minimum of 18 years of age and a citizen of the United States.

COMPLIANCE

Legislation has been enacted to comply with HAVA requirements regarding identification for persons who register by mail according to the provisions of HAVA, including the ability to cast a "fail safe" provisional ballot, and the required elements of forms to register to vote.

SECTION 402 --- ESTABLISHMENT OF AN ADMINISTRATIVE COMPLAINT PROCEDURE

REQUIREMENT

Each state is required to establish and maintain, as a condition of receiving funds, a procedure for individuals who believe that a violation of any provision of Title III has occurred or is about to occur to file a written complaint and to have that complaint responded to.

COMPLIANCE

Delaware has enacted Sections 4990 and 4991 of Title 15 of the Delaware Code specifying the procedure for complaints under this section.

SECTION 702 ---MILITARY AND OVERSEAS VOTERS

REQUIREMENT

Each state is required to designate a single state office to provide information to military and overseas voters regarding voting procedures and to report specified information to the Election Assistance Commission following each federal general election.

COMPLIANCE

Delaware has designated the New Castle County Department of Elections as the office for purposes of this requirement.

SECTION 253 (b) (3) --- CONDITION FOR RECEIPT OF FUNDS; STATE PLAN REQUIREMENT; CERTIFICATION OF COMPLIANCE WITH APPLICABLE LAWS AND REQUIREMENTS

REQUIREMENT

In order to receive a requirements payment a state must certify that it is in compliance with each of the laws described in Section 906 and has appropriated funds in an amount equal to 5 percent of the requirements payments allocated to the state.

COMPLIANCE

Delaware has made these certifications.

ATTACHMENT C

IMPLEMENTATION IN DELAWARE OF THE

MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT OF 2009

The Military and Overseas Voter Empowerment Act of 2009 (MOVE) was signed into law on October 28, 2009 as a part of the National Defense Authorization Act to, among other provisions, augment the Uniformed Overseas Citizen Absentee Voting Act (UOCAVA) by:

- Permitting UOCAVA voters to request applications for voter registration and absentee voting by mail or electronically;
- Requiring states to transmit forms to register to vote and to apply for an absentee ballot by mail or electronically according to the preference selected by the voter;
- Requiring each state to provide at least one form of electronic transmission for voting materials;
- Requiring each state to develop procedures for transmitting blank ballots to UOCAVA voters by mail and electronically;
- Requiring states to develop a "free access" system to enable UOCAVA voters to determine whether his/her absentee ballot was received by the elections official;
- Prohibiting states from rejecting voter registrations, absentee ballot applications, or voted ballots due to a lack of notarization or because of paper or envelope type, weight, or size;
- Removing the UOCAVA requirement that a single absentee ballot application serves as a request for an absentee ballot for two federal election cycles;
- Amending the Help America Vote Act of 2002 to authorize funds to pay for implementation of MOVE's provisions, and also to permit states to use existing HAVA funds for this purpose;
- Requiring states to report the number of ballots transmitted and received, as well as other data determined appropriate by the Department of Defense;
- Making various requirements of the Department of Defense, the Election Assistance Commission, and the National Institute of Technology Standards to utilize technology and implement pilot programs to facilitate the voting process by UOCAVA voters.

Delaware views implementation of the Military and Overseas Voter Empowerment Act of 2009 as an important priority and has amended state law to facilitate UOCAVA voting in state primary elections. Military and overseas voters may now request a form to register to vote and apply for an absentee ballot by regular mail or FAX. The blank ballot may be sent to the voter and the voted ballot returned by regular mail, FAX, or email. In addition, Delaware, in order to provide additional enhancements for military and overseas voters, has requested, under the provisions of MOVE, a waiver from the requirement to fully implement the bill's requirements for the 2010 General Elections. Delaware has notified the Federal Voting Assistance Program of the state's desire and intention to be included in that agency's Election Wizard program.

Delaware has, to date, not received any funds from the Help America Vote Act to implement the requirements of MOVE.

The state will provide a supplemental filing upon further implementation of MOVE requirements.

ATTACHMENT D

STATE OF DELAWARE LEGISLATION ENACTING HAVA REQUIREMENTS

SENATE BILL NO. 153

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.

WHEREAS, the Help America Vote Act of 2002 imposes several mandates upon the state; and

WHEREAS, it is necessary to implement the Help America Vote Act of 2002;

NOW, THEREFORE BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Delaware Code, Title 15, § 1302 by striking the aforesaid section in its entirety and substituting in lieu thereof:

§ 1302 Voter registration application.

The Commissioner of Elections, in consultation with the Departments of Elections for the counties, shall promulgate the voter registration application and shall set the effective date of each new version. The application shall be updated as necessary to comply with state and federal law and/or to facilitate administration of the State's voter registration program. The application shall be uniform throughout the state and shall be used for all voter registration transactions within the state.

The application shall be in two parts. The Departments of Elections for the counties shall send the original part of each application that was accepted and processed to the Commissioner of Elections office. The Departments of Elections for the counties shall maintain the second copy in the County Master Record. The records contained in the County Master Record shall remain in the office of each department and not be removed for any reason except as provided by law.

The voter registration application shall include a question asking whether or not the applicant is a citizen of the United States. The Departments of Elections for the counties shall reject the applications of new registrants who indicate that they are not citizens of the United States or who fail to answer the question. The departments shall notify such persons by first-class mail that their application has been rejected and the reason (so) thereto. Persons already registered to vote who indicate that they are not citizens of the United States shall be notified by first-class mail that their voter registration shall be cancelled at the expiration of 15 days if they do not affirm in writing that they are citizens of the United States. The departments shall cancel the voter registration of any person who fails to affirm in writing that they are United States citizens after the expiration of the aforesaid 15-day period. Persons who subsequently affirm in writing to a department that they are United States citizens shall be reinstated by the department as a registered voter.

The voter registration application shall include a place for the applicant's home telephone number; provided, however, that the provision of a telephone number shall be annotated on the form as being optional, and no application shall be rejected for lack thereof. Any registered voter may have his/her telephone number removed from the electronic voter registration files by making a request of the department of elections for the county in which they are registered either by telephone or in writing. The applicant's signature may be a digitized signature obtained by a state agency as part of a process that includes registering a person to vote or updating his/her voter registration information.

The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, may examine methods to streamline the voter registration process through the application of technology. The Commissioner of Elections, in consultation with the Departments of Elections for the counties, may adopt and implement such technology. In the event that the process adopted conflicts with subsection "(b)" above, that subsection shall be considered null and void. These innovations may include adoption of a paperless or semi-paperless registration process.

The Commissioner of Elections shall make the State's Voter Registration Application available on the internet by January 1, 2006.

Section 2. Amend Delaware Code, Title 15 by inserting as § 2015 the following:

§ 2015. Late registration procedures for military and overseas citizens.

An individual who has been discharged or separated from the Uniformed Services, the merchant marine, or from employment outside of the territorial limits of the United States too late to register to vote for a primary or general election but within 60 days of the date of a primary or general election, shall be entitled to register to vote for the purpose of voting in that and ensuing primary or general elections after presenting documentation of his/her discharge, separation, or termination of employment to the Department of Elections for the county in which he/she resides. This exception includes any accompanying family members who are otherwise eligible to register to vote.

Section 3. Amend Delaware Code, Title 15 by inserting as § 2016 the following:

§ 2016. Enfranchisement of citizens who have never resided in the United States.

If a United States citizen outside of the United States who has never lived in the United States has a parent who is a qualified elector of the State, then that person is eligible to register and vote where his/her parent is a qualified elector.

Section 4. Amend Delaware Code, Title 15 by inserting as § 2033 the following:

§ 2033. Special procedures for persons who register to vote by mail and have not voted in the State in an election for federal office.

A person who registers to vote by mail on or after January 1, 2003 shall submit with his/her application a copy of current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. Should the person not include a copy of the required identification with the voter registration

application, the voter shall provide a valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter prior to voting for the first time at a polling place in the State. If the person fails to show required identification at the polling place, he/she shall be permitted to vote by Provisional Ballot.

The poll lists and signature cards for each polling place shall identify those persons who must show proper identification before being permitted to vote.

A registrant may satisfy the requirement to submit identification by subsequently submitting a voter registration application through a source not subject to the provisions of this section (e.g.through the Division of Motor Vehicles).

A person who votes by absentee ballot and who registered to vote for the first time by mail and did not submit a copy of any of the required identification documents shall submit a copy of one or more of the documents listed in subsection "a" above showing the person's name and address with the Absentee Ballot. The Absentee Ballot from a person who is required to submit identification, and who does not, shall not be counted.

This section does not apply to persons listed in § 5502 (1) and § 5502 (2) of this title or to persons identified in subsection "a" above who submitted their driver's license number (includes State ID card number) or Social Security Number that the Department of Elections for a county is able to use to verify an existing State Identification record bearing the same number, the name and date of birth as provided by the applicant.

Section 5. Amend Delaware Code, Title 15, Chapter 49, by inserting as subchapter IV the following: Subchapter IV. Administrative Complaint Procedure

§ 4990. Applicability.

The Administrative Complaint Process shall only apply to alleged violations of Title III of the Help America Vote Act of 2002 to include an alleged violation that has occurred, is occurring or is about to occur.

§ 4991. Process.

The person making a complaint shall submit the complaint to the Commissioner of Elections or any of the Departments of Elections for the counties. The complaint shall be in writing, notarized, and signed and sworn to by the person making the complaint. If one of the Departments for the counties receives such a complaint, the Department shall forward it to the Commissioner of Elections on the same business day that it is received. The Commissioner of Elections shall notify the complainant(s) of receipt of the complaint and provide the complainant(s) a description of the complaint resolution process. The Commissioner of Elections may consolidate similar complaints. If requested by the complainant(s), there shall be a hearing for the record. The Commissioner of Elections shall appoint a person or persons to examine the complaint, gather information about the circumstances and then determine whether or not there was a violation of Title III. If the person handling the complaint determines that a violation has occurred, he/she shall recommend a suitable remedy to the Commissioner of Elections. The Commissioner may accept, reject or modify any proposed remedy. If the person handling the complaint determines that a violation did not occur, the complaint shall be dismissed.

The Commissioner of Elections shall publish the results of the resolution of each complaint as he/she sees fit. A final determination shall be made on each complaint as quickly as possible, but no later than 90 days following the date that the complaint was filed unless the complainant consents to a longer period for resolving the complaint. If the complaint is not resolved within 90 days and the complainant has not agreed to a longer period, the Commissioner of Elections shall take such steps as necessary to resolve the complaint within the next 60 days. The original complaint and all information developed in the previous attempt(s) to resolve the issue(s) shall be made available to the person(s) subsequently charged with resolving the complaint.

The Commissioner of Elections shall develop a system for tracking complaints alleging Title III violations.

Section 6. Amend Delaware Code, Title 15, § 4910 (a) by striking said subsection in its entirety and substituting in lieu thereof:

§4910 Posting Requirements

The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, shall design poster(s) that will be uniform throughout the State. The poster(s) shall be publicly displayed in each polling place on the day of the election. The poster(s) shall contain the following information:
 Information stating the date and hours during which the polling place will be open;
 Instructions on how to vote, including how to cast a vote and how to cast a Provisional Ballot;
 Instructions for mail-in registrants who are first-time voters under Section 303(b) of the Help America Vote Act of 2002;
 General information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and
 Instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and
 General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

Section 7. Amend Subchapter II, Chapter 49, Title 15 of the Delaware Code by inserting as § 4948 the following:

§ 4948. Provisional Ballots.

Provisional ballots shall be used in primary and general elections conducted under the provisions of this title. Provisional ballots shall not be used in public school elections or municipal elections unless specifically authorized in Title 14, Title 15 and/or the respective town or city charter. A person claiming to be properly registered in an Election District, but whose eligibility to vote at that Election District cannot be determined, shall be entitled to vote a Provisional Ballot. Election officers shall inform a person who is not being permitted to vote for whatever reason that he/she may cast a provisional ballot in that election. The Inspector shall return all voted Provisional Ballots to the Department of Elections for the county responsible for the Election District on the night of the election.

Persons voting a Provisional Ballot shall present proof of identity and address to the Election Officers. The type of ID shown by the voter shall be annotated on the Provisional Ballot Envelope. If the person

does not show proof of identity or address, the person shall be permitted to vote by Provisional Ballot and the fact that he/she did not show proof of identity and/or address shall be annotated on the Provisional Ballot Envelope.

If Superior Court or another court of competent jurisdiction orders that some or all polling places in a county of the state be kept open beyond the normal time for closing, all persons who arrive to vote at the polling place(s) ordered to be kept open after the normal time for closing shall vote by Provisional Ballot. The Election Officers shall keep such ballots separate and return them to the Department of Elections for the county responsible for the Election District on the night of the election.

Provisional Ballots shall be as much as possible in the same form as Absentee Ballots except that only federal offices shall be listed and they shall be labeled as Provisional Ballots. The Departments of Elections for the counties shall provide to each Election District Provisional Ballots for 6% of the registered voters in the Election District as of 45 days prior to the date of the election. Regardless of the number of ballots required by this subsection, the Departments of Elections for the counties shall provide a minimum of 15 Provisional Ballots to each Election District.

Each Department of Elections for the counties shall deliver additional Provisional Ballots, envelopes, instructions or voter information sheets to the polling place for an Election District when notified by an Election Officer from the district that the supply of some or all of the Provisional Ballot materials is very low.

Election Officers shall give whatever assistance is requested by a voter who is voting by Provisional Ballot. When that assistance includes marking or assisting in marking the person's ballot, two Election Officers with different political party affiliations shall provide that assistance.

A voter who spoils his or her ballot shall, upon request, be given a replacement ballot after surrendering the spoiled ballot.

Tallying Provisional Ballots.

At 12 noon the day following an election in which Provisional Ballots were used, the Department of Elections for each county shall meet to examine the Provisional Ballots, determine which of the ballots should be tallied in accordance with the rules stated below, and then tally those ballots. The Attorney General shall appoint a Deputy Attorney General to advise each of the Departments of Elections for the counties as requested during the Provisional Ballot tallying process.

The county chairperson of each political party with a candidate on a Provisional Ballot within the county may appoint in writing one observer to be in the room where Provisional Ballots are being reviewed and tallied.

The Departments of Elections for each county shall sit until the disposition of every Provisional Ballot has been determined. Each county Department of Elections shall establish an appropriate schedule of breaks, meals and rest periods.

Where the Provisional Ballot affidavit is incomplete, the ballot shall be set aside, not opened and the votes not tallied. An incomplete affidavit shall be defined as one that does not include all of the following information: full name, complete address, political party affiliation (Primary Elections only), and date of birth.

Where the person who voted by Provisional Ballot did not show suitable identification at the polling place, the ballot shall be set aside, not opened and the votes not tallied.

Provisional Ballots cast by persons who are not registered to vote in the state or who are not registered to vote in the Election District in which they were cast shall be set aside, not opened and the votes not tallied.

A Provisional Ballot cast by a person who is registered to vote and who has moved into the Election District shall be counted if the person voted at the correct polling place for his/her new address.

Each Department of Elections for a county shall tally the Provisional Ballots that meet the above criteria. After all of the Provisional Ballots determined as meeting the above criteria have been tallied, the Department of Elections for the county shall deliver one copy of the Provisional Ballot Tally Sheet for each Election District, all the Provisional Ballots cast in the election, and all affidavits, envelopes and supporting documentation to the Prothonotary.

Post election processing and notification.

As soon as practical, but not later than 30 days following an election in which Provisional Ballots were used, the Department of Elections for each county shall enter the appropriate data into a free access system so that a person who voted by Provisional Ballot may determine whether or not his/her ballot was counted, and if it was not counted, the reason(s) for which it was not counted.

The respective Department of Elections for a county shall use the Provisional Ballot affidavit as authority to register a person to vote who voted by Provisional Ballot in an election and who is not already registered to vote providing that the minimum information required to register a person to vote is provided.
The Provisional Ballot envelope shall be used to transfer a registered voter's address and/or update his/her name when the address and/or name is different than the information on the person's voter registration record.

Section 8. Amend Delaware Code, Title 15, § 4972, by striking the aforesaid section in its entirety and substituting in lieu thereof the following.

§ 4972. Rules regarding what constitutes a legal vote.

Votes cast on a direct recording electronic voting machine shall be considered legal votes once the voter has taken the necessary action(s) to cast his/her ballot. A voter who has cast his/her ballot on a direct recording electronic voting machine shall not be permitted to cast a second ballot under any circumstances.

Votes cast at any election on paper ballots shall be counted for whom they are intended as far as can be ascertained by the marks on the ballot. The following rules shall be observed in determining those votes on paper ballots that shall be counted:

- The voter shall mark the ballot for his/her selections by placing a distinct mark in the box at the right of the name of the candidate and or response to a question for which he/she wants to vote; Where a voter indicates his/her selections in a manner not in accordance with paragraph "1" above, the Election Officers shall attempt to determine from the marks on the ballot the candidate or response that the voter intended to select; If it is not possible to determine a voter's choice for an office or response to a question, the ballot shall not be counted for that office or question but shall be counted for all other offices and questions on the ballot where the voter's intention can be determined;

- A voter may only vote for two or more choices for any office or question when specifically instructed on the ballot that it is allowable; Where a voter is permitted to make more than one choice for candidates and or responses to a question, he/she may make fewer than the allowable number of choices; If a ballot is marked for more names or responses than are permitted, it shall not be counted for that office or question, but it shall be counted for all other offices or questions on the ballot in accordance with these rules; and

- If a ballot has been defaced or torn so that it is impossible to determine the voter's choice for one or more offices or questions, it shall not be counted for such offices or questions but shall be counted for all other offices and questions where the voter's choice(s) can be determined.

Section 9. Amend Delaware Code, Title 15, § 5001A (a) by inserting as subsections (12) and (13) the following:

(12) It shall permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted. It shall provide the voter the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and corrected (including the opportunity to correct the error through the issuance of a replacement ballot before the voter has cast his/her ballot if the voter was otherwise unable to change the ballot or correct any error).

Section 10. Amend Delaware Code, Title 15, § 5001A (b) by striking the second sentence in its entirety and substituting in lieu thereof the following:

§ 5001A(b)

All voting devices used in any election shall provide the voter the opportunity to make his/her selections and cast his/her ballot in secrecy through placement of the devices in the polling place or through the use of curtains or other devices.

Section 11. Amend Delaware Code, Title 15, § 5001A by adding the following as subsection (d):

§ 5001A(d)

Any voting device, machine or system purchased by the State shall be certified by the National Association of State Election Directors or the Election Assistance Commission as meeting or exceeding the Voluntary Voting Systems Standards or Guidelines as promulgated by the Federal Election Commission or the Election Assistance Commission prior to delivery to and acceptance by the State.

Section 12. Amend Delaware Code, Title 15, § 5004A by inserting the following at the end of the section:

The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, shall gather information from other jurisdictions using the same or similar systems and then establish an appropriate registered voter to voting device ratio for voting systems purchased after July 1, 2003.

Section 13. Amend Delaware Code, Title 15, § 5005A by adding the following as subsection (d):

(d) Nothing in this section shall preclude the use of an electronic device where the ballot is electronically generated and displayed or which has the capability to generate and display multiple ballots.

Section 14. Amend Delaware Code, Title 15, § 5503 (d) by adding the following as the second sentence:

Additionally, the Departments of Elections for the counties shall accept facsimile transmissions of affidavits for absentee ballots.

Section 15. Amend Delaware Code, Title 15, § 5523 by inserting the following as subsection (d):

(d) An FPCA submitted by a person who qualifies under any of the reasons set forth in § 5502(1) or §5502(2) of this chapter shall be valid for the next two general elections.

Section 16. Amend Delaware Code, Title 15, by inserting as § 5526 the following:

§ 5526. Emergency Authority for the Commissioner of Elections.

In the event that a national or local emergency makes substantial compliance with the provisions of this title and/or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable for some of all of the citizens covered under § 5502(1) or § 5502(2) of this title, the Commissioner of Elections may direct the use of special procedures to facilitate absentee voting for those citizens directly affected who are eligible to vote in the State. Such an emergency may be a natural and/or humanitarian disaster; and/or armed conflict involving United States Armed Forces to include mobilized State National Guard and/or Reserve components.

The Commissioner of Elections shall consult with the Governor and the Federal Voting Assistance Program or its successor prior to directing the use of the special procedures cited in subsection "a" above.

The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, shall promulgate special procedures to be followed in the event that such a national or local emergency occurs.

SYNOPSIS

This legislation if enacted will implement the Help America Vote Act of 2002 (HAVA), implement some recommendations regarding voting and registration of military and overseas and make other changes. Specifically, it provides that the Commissioner of Elections shall promulgate the voter registration application and deletes the list of items required in order to provide flexibility in quickly dealing with changes in federal law. It directs that a question dealing with citizenship be added and that a digitized signature obtained by a state agency in a process that includes voter registration be acceptable as an applicant's signature. It authorizes the Departments of Elections for the counties to accept facsimile transmissions of Affidavits for Absentee Ballots from all citizens. It adds the following provisions to comply with HAVA: establishes procedures for dealing with persons who registered by mail and have not voted in an election for federal office, establishes an Administrative Complaints Procedure for handling violations of HAVA's Title III mandate, provides for posting additional information in the polling place, authorizes Provisional Voting, defines what constitutes a legal vote, and modifies the standards for electronic voting systems, devices and/or machines. It, also, provides that military and overseas citizens who return to the United States within 60 days of an election and establish residence in Delaware can register to vote after the normal deadline, that citizens born abroad who have never lived in the State can register and vote if one of their parents is a qualified elector, and gives the Commissioner of Elections authority to direct the use of special procedures in handling the delivery and transmission of ballots to military and overseas citizens in the event of a national or local emergency.

Delaware/2010stateplan3-0710

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DEPARTMENT OF ENERGY

Notice of Availability of the Draft Environmental Impact Statement for the Mountaineer Commercial Scale Carbon Capture and Storage Project, Mason County, WV

AGENCY: U.S. Department of Energy.

ACTION: Notice of Availability and Public Hearing.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the *Draft Environmental Impact Statement for the Mountaineer Commercial Scale Carbon Capture and Storage Project* (DOE/EIS–0445D) for public review and comment, as well as the date, location and time for a public hearing. The draft environmental impact statement (EIS) analyzes the potential environmental impacts of a project proposed by American Electric Power (AEP) Service Corporation, which was selected by DOE to receive financial assistance under the Clean Coal Power Initiative (CCPI) program. DOE's Proposed Action is to provide cost-shared funding to AEP under the CCPI. DOE proposes to provide up to $334 million of the project cost to support the construction and operation of AEP's Mountaineer Commercial Scale Carbon Capture and Storage (CCS) Project (Mountaineer CCS II Project). AEP's proposed project would construct a commercial-scale CCS system at its Mountaineer Power Plant (a 1,300-megawatt [MW] coal-fired power plant) and other AEP-owned properties in Mason County, West Virginia, near the town of New Haven. The project would capture carbon dioxide (CO_2) from the existing pulverized coal-fired power plant, transport the captured CO_2 by pipeline to well locations, and inject it into deep saline geologic formations for permanent geologic storage.

DATES: DOE invites the public to comment on the Draft EIS during the public comment period, which ends April 18, 2011. DOE will consider all comments postmarked or received during the comment period in preparing the Final EIS, and will consider late comments to the extent practicable. In addition to receiving comments in writing and by e-mail [*See* **ADDRESSES**], DOE will conduct a public hearing at which government agencies, private-sector organizations, Native American Tribes and individuals are invited to present oral and written comments on the Draft EIS. The public hearing will be held at the New Haven Elementary School at 138 Mill Street in New Haven, West Virginia, on March 30, 2011. Oral comments will be heard during the formal portion of the public hearing beginning at 7 p.m. The public is also invited to an informal session to learn more about the project and DOE's Proposed Action at the same location beginning at 6 p.m. Various displays and other information about DOE's Proposed Action and AEP's Mountaineer CCS II Project will be available. Representatives from DOE and AEP will discuss the proposed project, the CCPI program, and the EIS process at the informal session.

ADDRESSES: Requests for information about the Draft EIS, requests to receive paper or electronic copies of it or to provide comments on the Draft EIS should be directed to: Mr. Mark W. Lusk, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, M/S B07, P.O. Box 880, Morgantown, WV 26507–0880. Requests or comments can also be made by electronic mail at *Mountaineer.EIS0445@netl.doe.gov;* by telephone (412) 386–7435, toll-free 1–877–812–1569; or by fax (304) 285–4403.

The Draft EIS is available on DOE's NEPA Web page at: *http://nepa.energy.gov/DOE_NEPA_documents.htm;* and on the National Energy Technology Laboratory's Web page at: *http://www.netl.doe.gov/publications/others/nepa/index.html.* Copies of the Draft EIS will also be available at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this Notice. Written comments on the Draft EIS should be marked "AEP Mountaineer CCS Project" and sent to Mark W. Lusk, NEPA Document Manager, by one of the methods listed above. Oral comments on the Draft EIS will be accepted by telephone at the numbers listed above, or during the public hearing scheduled for the date and location provided in the **DATES** section of this Notice.

FOR FURTHER INFORMATION CONTACT: For further information about this project or the Draft EIS, please contact Mr. Mark W. Lusk (*see* **ADDRESSES**). For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4600; fax (202) 586–7031; or leave a toll-free message (1–800–472–2756).

SUPPLEMENTARY INFORMATION: DOE's Proposed Action is to provide $334 million in cost-shared financial assistance to AEP to support the construction and operation of AEP's Mountaineer CCS II Project. This financial assistance would constitute about 50 percent of the estimated total project cost during the 46-month demonstration period. Through a cooperative agreement with DOE, AEP would construct a CO_2 capture facility using Alstom's chilled ammonia process (CAP) at the Mountaineer Plant. Alstom's CAP is a proprietary process for removing CO_2 from combustion flue gas. The capture facility would be located within the boundaries of the existing Mountaineer Plant and would occupy approximately 11.5 acres. The capture facility would process a slipstream of the plant's flue gas, equivalent in quantity to the emissions from a 235–MW power plant. Each year, approximately 1.5 million metric tons of CO_2 would be captured, treated, and compressed into a highly concentrated form suitable for geologic storage. The processed CO_2 would be transported by pipeline (primarily underground) to injection wells on AEP properties located within approximately 12 miles of the Mountaineer Plant. The captured CO_2 would be injected into deep saline formations for permanent storage, approximately 1.5 miles below ground.

Consistent with DOE's objectives in CCPI Round 3, the Mountaineer CCS Project would be designed to:

- Remove approximately 90 percent of the CO_2 from the 235–MW slipstream;
- Demonstrate a commercial-scale deployment of the CAP for CO_2 capture; and
- Demonstrate the injection, permanent geologic storage, and monitoring of CO_2 in deep underground saline formations.

Existing infrastructure (*e.g.,* roadways, utilities) at the Mountaineer Plant would be used to the extent possible. However, upgrades to, and construction of, additional infrastructure may be required. Major new equipment would include absorbers, regenerators, strippers, pumps, heat exchangers, compressors, and a refrigeration system. In addition, the CO_2 capture system would include reagent and refrigerant unloading equipment, water-handling equipment, a control room, maintenance and administrative facilities, and a laboratory. All of these would be located at the Mountaineer Plant. Carbon dioxide injection wells and pipelines would be located along existing rights-of-way (ROWs) to the extent possible and on other AEP properties in the area.

DOE prepared this Draft EIS in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500–1508), and DOE's procedures implementing NEPA (10 CFR Part 1021). Projects considered by DOE for possible CCPI funding originate as a private party's (*e.g.,* electric power industry) application submitted to DOE in response to requirements specified in CCPI funding opportunity announcements. DOE is limited to considering the application as proposed by the private party; however, DOE may require mitigation measures to reduce a project's potential impacts. Consequently, DOE's consideration of reasonable alternatives is limited to the technically acceptable applications and the No Action Alternative for each selected project.

Under the No Action Alternative, DOE would not provide cost-shared funding for the project beyond that required to complete the NEPA process. Although AEP could still elect to construct and operate the proposed project, without DOE funding the project would likely be canceled. Therefore, for purposes of analysis in the Draft EIS, the No Action Alternative is assumed to be equivalent to a "no build" alternative, meaning that environmental conditions would remain as they are (no new construction, resource utilization, emissions, discharges, or wastes generated). The No Action Alternative would not contribute to the goal of the CCPI program, which is to accelerate commercial deployment of advanced technologies that provide the United States with clean, reliable, and affordable energy.

The Draft EIS analyzes the environmental consequences that may result from the Proposed Action, including options for pipeline routes and injection well sites, and the No Action Alternative. Potential impacts identified during the scoping process and analyzed in the Draft EIS relate to the following: air quality and climate; greenhouse gases; geology; physiography and soils; groundwater; surface water; wetlands and floodplains; biological resources; cultural resources; land use and aesthetics; traffic and transportation; noise; materials and waste management; human health and safety; utilities; community services; socioeconomics; and environmental justice.

Copies of the Draft EIS have been distributed to: Members of Congress; Native American Tribal governments; Federal, State, and local officials; and agencies, organizations and individuals who may be interested or affected. Copies of the Draft EIS are available for review at the New Haven Public Library, 106 Main Street, New Haven, WV 25265, and at the Meigs County Library District, 216 West Main Street, Pomeroy, OH 45769. The Draft EIS will also be available on the Internet at: *http://nepa.energy.gov/DOE_NEPA_documents.htm;* or *http://www.netl.doe.gov/publications/others/nepa/index.html.*

Issued in Washington, DC on March 8, 2011.

Mark J. Matarrese,

Director, Office of Environment, Security, Safety & Health, Office of Fossil Energy.

[FR Doc. 2011–5694 Filed 3–10–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2010–2 of the Defense Nuclear Facilities Safety Board, Pulse Jet Mixing at the Waste Treatment and Immobilization Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2010–2, concerning *Pulse Jet Mixing at the Waste Treatment and Immobilization Plant* was published in the **Federal Register** on December 27, 2010 (72 FR 24279). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary of Energy transmitted the following response to the Defense Nuclear Facilities Safety Board on February 10, 2011.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Petras, Nuclear Engineer, Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 28, 2011.

Mari-Jo Campagnone,

Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security.

The Honorable Peter S. Winokur
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, DC 20004–2901

Dear Mr. Chairman:

This is in response to your December 17, 2010 letter, which provided Defense Nuclear Facilities Safety Board (Board) Recommendation 2010–2, *Pulse Jet Mixing at the Waste Treatment and Immobilization Plant.* Mr. Dale E. Knutson will be the responsible Manager for this Recommendation.

The Department of Energy (DOE) agrees with the Board that more testing and analysis should be completed to provide additional confidence that pulse jet mixing (PJM) and transfer systems for the Waste Treatment and Immobilization Plant (WTP) will achieve their design and operating requirements. DOE has previously made commitments to address the concerns raised by the Board in its Recommendation 2010–2. These commitments were made by the Federal Project Director in August 2010 during an internal project management meeting; in the October 7–8, 2010 public hearing on WTP; and in our supplement to the public hearing record submitted to the Board in January 2011. At each point, full disclosure of DOE plans, with identified timelines for further details and schedules for testing and analysis, was included. The implementation of these commitments is on-going as part of WTP project plans that supports scheduled testing to begin in 2012.

The Board acknowledged in its letter that DOE has taken and continues to take steps to increase the confidence that the PJM mixed vessels will comply with their designed operating requirements. As outlined in your letter:

- DOE contracted an independent technical review team, Consortium for Risk Evaluation and Stakeholder Participation (CRESP), that presented DOE with 13 recommendations. DOE is continuing to take actions addressing the CRESP recommendations.
- On October 7–8, 2010, DOE publicly committed to large-scale testing and to complete relevant portions of the testing before installing remaining process vessels in the WTP Pretreatment Facility. As part of that commitment, the testing objectives and summary schedule for the large-scale testing was included in the WTP Project's January 2011 update to the public record.

We believe the Board's concerns regarding PJM at the WTP will be addressed by DOE's current direction related to resolving PJM and transfer system uncertainty. Accordingly, DOE accepts Recommendation 2010–2.

The Board's Recommendation includes specific sub-recommendations that it believes need to be addressed as part of the DOE's pulse jet mixed vessel testing program. There are certain specific details of the Board's Recommendation that require clarification and are summarized below. We believe our intended actions should satisfy the Board's concerns.

- *Sub-recommendations 1 and 2:* Wording in both sub-recommendations calls for "*testing that envelope the complete range of*

physical properties for the high-level waste stored in the Hanford Tank Farms."

DOE intends to conduct large-scale testing with simulants selected to represent the vast majority of the waste in the tank farms, consistent with the approach used in WTP's pulse jet mixing test program conducted to date. The WTP design and planned operations approach is intended to address residual uncertainty with other actions and design features. These include (1) waste feed pre-qualification activities; and (2) specific design features, including the ability to inspect vessels and equipment for vessel heel dilution and cleanout, that would enable waste particles that may not be mixing with the bulk of the waste to be moved forward to the melters.

• *Sub-recommendation 3:* This sub-recommendation calls for "* * * *verification and validation of any computational models used by the WTP project team (e.g., Low Order Accumulation Model and FLUENT) based on the results from the 'large-scale testing.'*"

The verification and validation effort is expected to be completed prior to the "large scale testing." The WTP project intends to compare the results from the "large scale testing" with the computational models.

• *Sub-recommendation 4:* This sub-recommendation calls for "* * * *including demonstrating that representative samples can be obtained even if the assumed WTP design particle size or density is exceeded. This will ensure that the sampling system does not exclude large, dense particles and artificially bias the measured particle size and density distribution.*"

The vessel testing activities will include determining the acceptability of vessel sampling in conditions where sampling may be challenged by mixing performance, i.e., solids-containing vessels. There may be cases where the sample system operation during normal vessel operations does not retrieve some large dense particles for analysis. As noted above, this is planned to be accommodated by the feed-prequalification process and by the ability to pull a sample during the heel dilution and cleanout process, when larger, denser particles would be retrieved into the sample system. Consequently, the large-scale testing program is not intending to demonstrate that normal sampling activities can retrieve all waste particles.

DOE is committed to the safe design and operation of its nuclear facilities, consistent with the principles of Integrated Safety Management, and values input on how DOE can improve its activities. We look forward to working further with the Board and its staff on preparation of the DOE's Implementation Plan for Recommendation 2010–2 so that the WTP project can complete its design and construction activities while promoting nuclear safety for the life of WTP operations.

If you have any further questions, please contact me or Inés R. Triay, Assistant Secretary for Environmental Management, at (202) 586–7709.

Sincerely,

Steven Chu.

[FR Doc. 2011–5608 Filed 3–10–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

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

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information to support the Weatherization Assistance Program ARRA–Period Evaluation that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record. Information about the operation of the program, energy used before and after weatherization, energy used by control group low-income homes, the effectiveness of specific energy efficiency measures, customer satisfaction with the program, and non-energy benefits is needed for a comprehensive and rigorous evaluation of the program operated during the American Recovery and Reinvestment Act of 2009 (ARRA), which includes Program Years 2009, 2010, and 2011.

DATES: Comments regarding this proposed information collection must be received on or before May 10, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Bruce Tonn, Environmental Sciences Division, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, MS–6038, Oak Ridge, TN 37831–6038, Fax #: (865) 576–8646, *tonnbe@ornl.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bruce Tonn, Environmental Sciences Division, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, MS–6038, Oak Ridge, TN 37831–6038, Fax #: (865) 576–8646, *tonnbe@ornl.gov.*

The plan for this evaluation can be found at *http://weatherization.ornl.gov.* The surveys and data forms that comprise this information request can also be found at *http://weatherization.ornl.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.:* 1910–NEW; (2) *Package Title:* The Weatherization Assistance Program ARRA–Period Evaluation; (3) *Type of Review:* Regular; (4) *Purpose:* This collection of information is necessary for a complete evaluation of the program that will weatherize approximately 600,000 low-income homes in Program Years 2009, 2010 and 2011; (5) *Estimated Number of Total Respondents:* 6,996. Information will be collected from seventy-four grantees (fifty states, five U.S. territories, Washington DC, two Native American tribes, and sixteen Weatherization Innovation grantees); one-thousand and nine local weatherization agencies; approximately one thousand utilities; approximately two thousand residents; and approximately 2,913 individuals working in the weatherization field; (6) *Estimated Number of Total Responses:* 8,196; (7) *Estimated Number of Total Burden Hours:* The estimated burden is 67,000 hours; (8) *Estimated Reporting and Recordkeeping Cost Burden:* There is no reporting or recordkeeping cost burden associated with this request.

Authority: Section 6861 of title 42 of the United States Code and 10 CFR 440.25 authorize the collection of this information.

Issued in Washington, DC on March 3, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–5614 Filed 3–10–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–1195–000.
Applicants: Mittal Steel USA, Inc.
Description: Motion of ArcelorMittal USA LLC For Determination of Category 1 Seller Status.
Filed Date: 02/09/2011.
Accession Number: 20110209–5165.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER10–3182–002.
Applicants: Clean Currents LLC.
Description: Change of Status for Clean Currents LLC.
Filed Date: 03/04/2011.
Accession Number: 20110304–5089.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER10–3189–002.
Applicants: CCES LLC.
Description: Change of Status for CCES LLC.
Filed Date: 03/04/2011.
Accession Number: 20110304–5087.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2172–001.
Applicants: Vermont Transco, LLC.
Description: Vermont Transco, LLC submits tariff filing per 35: Compliance Filing of Finalized Exclusive Use and Shared Use Costs to be effective 12/1/2010.
Filed Date: 03/04/2011.
Accession Number: 20110304–5040.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2482–002.
Applicants: Casselman Windpower LLC.
Description: Casselman Windpower LLC submits tariff filing per 35: Compliance Filing to Market-Based Rate Tariff to be effective 12/23/2010.
Filed Date: 03/04/2011.
Accession Number: 20110304–5086.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2485–002.
Applicants: Locust Ridge Wind Farm, LLC.
Description: Locust Ridge Wind Farm, LLC submits tariff filing per 35: Compliance Filing to Market-Based Rate Tariff to be effective 12/23/2010.
Filed Date: 03/04/2011.
Accession Number: 20110304–5085.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2487–002.
Applicants: Providence Heights Wind, LLC.
Description: Providence Heights Wind, LLC submits tariff filing per 35: Compliance Filing to Baseline Market Based Rate Tariff to be effective 12/23/2010.
Filed Date: 03/04/2011.
Accession Number: 20110304–5088.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2684–001.
Applicants: Palmco Power NY, LLC.
Description: Palmco Power NY, LLC submits tariff filing per 35.17(b): Palmco Power NY FERC Electric Tariff Original Volume No 1 to be effective 3/15/2011.
Filed Date: 03/04/2011.
Accession Number: 20110304–5074.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3015–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: W3–002 ISA—Original Service Agreement No. 2782 to be effective 2/2/2011.
Filed Date: 03/04/2011.
Accession Number: 20110304–5000.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3018–000
Applicants: ISO New England Inc.
Description: ISO New England Inc. Resource Termination Filing (CMEEC).
Filed Date: 03/04/2011.
Accession Number: 20110304–5023.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–28–004.
Applicants: Avista Corporation.
Description: Compliance Filing of Avista Corporation.
Filed Date: 03/04/2011.
Accession Number: 20110304–5022.
Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5585 Filed 3–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–64–000.
Applicants: Alta Wind III Owner Lessor A.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind III Owner Lessor A.

Filed Date: 03/03/2011.
Accession Number: 20110303–5109.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: EG11–65–000.
Applicants: Alta Wind III Owner Lessor B.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind III Owner Lessor B.
Filed Date: 03/03/2011.
Accession Number: 20110303–5110.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: EG11–66–000.
Applicants: Alta Wind III Owner Lessor C.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind III Owner Lessor C.
Filed Date: 03/03/2011.
Accession Number: 20110303–5111.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: EG11–67–000.
Applicants: Alta Wind III Owner Lessor D.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind III Owner Lessor D.
Filed Date: 03/03/2011.
Accession Number: 20110303–5112.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–39–001.
Applicants: Flat Water Wind Farm, LLC.
Description: Supplement to Notice of Non-Material Change in Status of Flat Water Wind Farm, LLC.
Filed Date: 03/03/2011.
Accession Number: 20110303–5137.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER98–4109–007; *ER03–427–009; ER99–3426–013; ER05–440–005; ER03–175–011.*
Applicants: San Diego Gas & Electric Company, Sempra Energy, Inc.
Description: San Diego Gas & Electric Company Supplement to Notice of Category 1 Status for Northwest Region.
Filed Date: 03/03/2011.
Accession Number: 20110303–5070.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER98–4109–008; ER09–1655–003; ER09–1453–004; ER03–427–010; ER04–170–012; ER99–3426–014; ER08–100–013; ER01–1178–008; *ER03–175–012.*
Applicants: Sempra Energy Resources.
Description: Supplement to Notice of Non-Material Change in Status.
Filed Date: 03/03/2011.
Accession Number: 20110303–5145.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–2128–004.
Applicants: California Independent System Operator Corporation.
Description: Filing of the California ISO in Compliance with FERC Order.
Filed Date: 03/02/2011.
Accession Number: 20110302–5247.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–2458–001.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35: SCE Resubmits BPII Settlement LGIA SA No. 235 to be effective 5/29/2010.
Filed Date: 03/03/2011.
Accession Number: 20110303–5086.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–2753–002.
Applicants: Cedar Point Wind, LLC.
Description: Cedar Point Wind, LLC submits tariff filing per 35.17(b): Supplement to Revised Application for MBR and MBR Tariffs to be effective 4/1/2011.
Filed Date: 03/03/2011.
Accession Number: 20110303–5117.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–3010–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company Notice of Cancellation of Rate Schedules 46, 47, and 48.
Filed Date: 03/02/2011.
Accession Number: 20110302–5246.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–3011–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 217 of Florida Power Corporation to be effective 3/1/2011.
Filed Date: 03/03/2011.
Accession Number: 20110303–5082.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–3012–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): SCE Resubmits BPII Settlement Tie-Line RS 481 to be effective 6/3/2010.
Filed Date: 03/03/2011.
Accession Number: 20110303–5087.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–3013–000.
Applicants: Coolidge Power LLC.
Description: Coolidge Power LLC submits tariff filing per 35.12: Coolidge Power LLC Market Based Rate Schedule 1.0 to be effective 4/29/2011.
Filed Date: 03/03/2011.
Accession Number: 20110303–5118.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–3014–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.15: Notice of Cancellation of Engineering Study Letter Agreement Blythe Solar Proj to be effective 12/9/2010.
Filed Date: 03/03/2011.
Accession Number: 20110303–5126.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–3016–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company Submits Cancellation of Letter Agreement with Solar Millennium for the Colorado River Substation Siting Study.
Filed Date: 03/03/2011.
Accession Number: 20110303–5138.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Docket Numbers: ER11–3017–000.
Applicants: Hudson Transmission Partners, LLC.
Description: Application of Hudson Transmission Partners, LLC under for Authority to Sell Transmission Rights at Negotiated Rates and Request for Expedited Action.
Filed Date: 03/03/2011.
Accession Number: 20110303–5146.
Comment Date: 5 p.m. Eastern Time on Thursday, March 24, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–19–000
Applicants: Northern Maine Independent Administrator, Inc.
Description: Pro Forma Financial Statements of the Northern Maine Independent Administrator, Inc.
Filed Date: 03/03/2011.
Accession Number: 20110303–5143.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5587 Filed 3–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2997–000]

Vectren Retail, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Vectren Retail, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 24, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5586 Filed 3–10–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8995–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements
Filed 02/28/2011 Through 03/04/2011
Pursuant to 40 CFR 1506.9

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110067, Draft Supplement, USFS, NV, Martin Basin Rangeland Project, Updated Information on the Analysis on the Effects of Livestock Grazing on the Wilderness, Reauthorizing Grazing on Eight

Existing Cattle and Horse Allotments: Bradshaw, Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek, Santa Rosa Ranger District, Humboldt-Toiyabe National Forest, NV, *Comment Period Ends:* 04/25/2011, *Contact:* Vern Keller 775–355–5356

EIS No. 20110068, Final EIS, USFS, AK, Central Kupreanof Timber Harvest Project, Proposes to Harvest up to 70.2 Million Board Feet of Timber, Kupreanof Island, Petersburg Ranger District, Tongass National Forest, AK, *Review Period Ends:* 04/11/2011, *Contact:* Carey Case 907–772–3871

EIS No. 20110069, Draft EIS, USFS, MT, Montana Snowbowl Expansion Project, Proposed Expansion is to Increase Outdoor Recreation Opportunities, Missoula Ranger District, Lolo National Forest, Missoula County, MT, *Comment Period Ends:* 04/25/2011, *Contact:* Tami Paulsen 406–329–3731

EIS No. 20110070, Final EIS, TVA, KY, Tennessee Valley Authority (TVA) Integrated Resource Plan (IRP), To Address the Demand for Power in the TVA Service Area, KY, *Review Period Ends:* 04/11/2011, *Contact:* Charles P. Nicholson 865–632–3582

EIS No. 20110071, Final EIS, BLM, ID, Blackfoot Bridge Mine Project, Developing Three Mine Pits, Haul Roads, Water Management Structures, and Overburden Disposal Areas, Implementation, Caribou County, ID, *Review Period Ends:* 04/11/2011, *Contact:* Kyle Free 208–478–6368

EIS No. 20110072, Draft Supplement, STB, PA, R.J. Corman Railroad/Pennsylvania Lines Project, Additional Information, Construction, Operation, and Reactivation to Approximately 20 Miles of Railline in Clearfield and Centre Counties, PA, *Comment Period Ends:* 04/25/2011, *Contact:* Danielle Gosselin 202–245–0300

EIS No. 20110073, Final EIS, FHWA, CO, PROGRAMMATIC—I–70 Mountain Corridor Tier 1 Project, from Glenwood Springs and C–470 Proposes to Increase Capacity, Improve Accessibility and Mobility, and Decrease Congestion, Colorado, Garfield, Eagle, Summit, Clear Creek and Jefferson Counties, CO, *Review Period Ends:* 04/11/2011, *Contact:* Monica Pavlik 720–963–3012

EIS No. 20110074, Final EIS, USN, AK, Gulf of Alaska Navy Training Activities, Proposal to Support and Conduct Current, Emerging, and Future Training Activities, Implementation, Gulf of Alaska, AK, *Review Period Ends:* 04/11/2011, *Contact:* Amy Butt 360–396–0924

EIS No. 20110075, Final EIS, NOAA, 00, Harvest Specifications and Management Measures for the 2011–2012 Pacific Coast Groundfish Fishery and Amendment 16–5 to the Pacific Coast Groundfish Fishery Management Plan, and Adopt a Rebuilding Plan for Petrale Sole, RIN–0648–BA01, WA, OR and CA, *Review Period Ends:* 04/11/2011, *Contact:* William W. Stelle, Jr. 206–526–6150

Amended Notices

EIS No. 20100480, Draft Supplement, USFS, VT, Deerfield Wind Project, Updated Information, Application for a Land Use Authorization to Construct and Operate a Wind Energy Facility, Special Use Authorization Permit, Towns of Searsburg and Readsboro, Manchester Ranger District, Green Mountain National Forest, Bennington County, VT, *Comment Period Ends:* 03/18/2011, *Contact:* Bob Bayer 802–362–2307 Ext. 218 Revision to FR Notice Published 12/23/2010: Extending Comment Period from 03/04/2011 to 03/18/2011

Dated: March 8, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–5618 Filed 3–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9279–5; Docket ID No. EPA–HQ–ORD–2007–0664]

Integrated Risk Information System (IRIS); Announcement of Availability of Literature Searches for IRIS Assessments

AGENCY: Environmental Protection Agency.

ACTION: Announcement of availability of literature searches for IRIS assessments; request for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of literature searches for cobalt (CASRN 7440–48–4) and inorganic cobalt compounds, vanadium pentoxide (CASRN 1314–62–1), vinyl acetate (CASRN 108–05–4), and Libby Amphibole asbestos. EPA is requesting scientific information on health effects that may result from exposure to these chemical substances. EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment.

DATES: EPA will accept information related to the specific substances included herein as well as any other compounds being assessed by the IRIS Program. Please submit any information in accordance with the instructions provided below.

ADDRESSES: Please submit relevant scientific information identified by docket ID number EPA–HQ–ORD–2007–0664, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *ord.docket@epa.gov;* mailed to Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Information on a disk or CD–ROM should be formatted in Word or as an ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Karen Hammerstrom, IRIS Program Deputy Director, National Center for Environmental Assessment, (mail code: 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (703) 347–8642, facsimile: (703) 347–8689; or e-mail: *FRNquestions@epa.gov.*

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical

substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects as well as assessments of potential carcinogenic effects resulting from chronic exposure. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

This data call-in is a step in the IRIS process. As literature searches are completed, the results will be posted on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA.

Request for Public Involvement in IRIS Assessments

EPA is soliciting public involvement in assessments on the IRIS agenda. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that are not available through the open literature. EPA would appreciate receiving scientific information from the public during the information gathering stage for the assessments listed in this notice or any other assessments on the IRIS agenda. Interested persons may provide scientific analyses, studies, and other pertinent scientific information. While EPA is primarily soliciting information on new assessments, the public may submit information on any chemical substance at any time.

EPA is announcing the availability of additional literature searches on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA. Literature searches are now available for cobalt (CAS No. 7440–48–4) and inorganic cobalt compounds, vanadium pentoxide (CASRN 1314–62–1), vinyl aceate (108–05–4), and Libby Amphibole asbestos at *http://www.epa.gov/iris* under "IRIS Agenda and Literature Searches." The literature search for Libby Amphibole asbestos encompasses publicly available and peer reviewed literature that is specific to Libby Amphibole asbestos. EPA would appreciate receiving scientific information from the public that is specific to Libby Amphibole asbestos, rather than general asbestos, in an effort to support the development of an IRIS human health assessment specific for Libby Amphibole asbestos (CASRN 1332–21–4). Instructions on how to submit information are provided below under General Information.

General Information

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0664 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket, (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide information by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0664. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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 e-mail. 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 e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *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 OEI Docket in the EPA Headquarters Docket Center.

Dated: February 28, 2011.

Darrel A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–5629 Filed 3–10–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2011–0035]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Broker Registration Form, EIB 92–79.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically.

This application is used by insurance brokers to register with Export Import Bank. The application provides Export Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export Import Bank's credit insurance programs.

We have revised the following question: "Indicate (Not Required) if owned by a woman or an ethnic minority, describe"

To this question:

"Is the majority ownership of your business represented by: women or minority?"

This form can be reviewed at *http://www.exim.gov/pub/pending/EIB 92_79 Broker Registration Form.*

DATES: Comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Comments maybe submitted through *http://www.Regulations.Gov* or mailed to Judith Rivera, Export Import Bank of the United States, 811 Vermont Ave., NW. Washington, DC 20571

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 92–79 Broker Registration Form.

OMB Number: 3048–0024.

Type of Review: Regular.

Need and Use: This application is used by insurance brokers to register with Export Import Bank. The application provides Export Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export Import Bank's credit insurance programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 100 hours.

Government Annual Burden Hours: 200 hours.

Frequency of Reporting or Use: Once.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–5598 Filed 3–10–11; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, March 15, 2011, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule Making Technical Amendments to FDIC's Anti-Money-Laundering Program and Fair Credit Reporting Rules to Update Cross-References to Treasury Regulations.

Memorandum and resolution re: Authorization to Publish Privacy Act System of Records Notice in the Federal Register.

Discussion Agenda

Memorandum and resolution re: Notice of Proposed Rulemaking regarding Priorities and Claims Process under the Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: March 8, 2011.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2011–5730 Filed 3–9–11; 4:15 pm]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, March 16, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of the Minutes for the Meeting of March 3, 2011

Draft Advisory Opinion 2011–03: Democratic Senatorial Campaign Committee, National Republican Congressional Committee, Republican National Committee, Democratic Congressional Campaign Committee, and National Republican Senatorial Committee by Marc E. Elias, Esq., Jessica Furst, Esq., John Phillippe, Esq., Brian G. Svoboda, Esq., and Michael E. Toner, Esq.

Proposed Final Audit Report on Hillary Clinton for President (A08–05)

Withdrawal and Resubmission of Proposed Interpretative Rule Regarding Electronic Contributor Redesignations (LRA 820)

Legislative Recommendations

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–5846 Filed 3–9–11; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Cancer Therapy Evaluation Program Intellectual Property Option to Collaborator

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, Division of Cancer Treatment and Diagnosis, is announcing the final revision of the NCI Cancer Therapy Evaluation Program's Intellectual Property Option to Collaborator.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 6, 2010 (FR Vol. 65, No. 65), the National Cancer Institute, Division of Cancer Treatment and Diagnosis (DCT) issued a proposed revision to the Cancer Therapy Evaluation Program (CTEP)'s Intellectual Property Option to Collaborator. The proposed revision represents a major effort on the part of NCI CTEP to address the disposition of intellectual property (IP) related to data and Agent-treated specimens in studies where CTEP provides agents, as well as to harmonize the IP terms with standards currently used by the cancer research community. The background and description of the rationale can be found in the Background Section of the proposed revision issued April 6, 2010. The proposal called for submission of comments by May 6th, 2010. NCI CTEP received numerous comments in response to the proposed revision, many of which asserted that the proposed change would not meet its stated goals and requested NCI CTEP to reevaluate specific aspects of the proposal. CTEP agreed with some of these comments and has revised selected aspects of the proposed CTEP Intellectual Property Option to Collaborator to better reflect our stated goals.

I. Rationale for the Changes to the IP Option

The Cancer Therapy Evaluation Program (CTEP) of the National Cancer Institute's (NCI) Division of Cancer Treatment and Diagnosis (DCTD) obtains proprietary "Agents" from biotechnology and pharmaceutical companies (hereinafter "Collaborators") for use in NCI-supported clinical trials under funding agreements. As part of the arrangement with these Collaborators to use their proprietary Agents and to make conducting such clinical research possible, Collaborators will often require, as a condition of collaboration, that the NCI funded recipients receiving the Agent ("Institutions") agree to certain conditions, including the willingness to provide notice of and grant options to certain intellectual property rights arising from research involving the Agent under the scope of an NCI funding agreement. The IP Option will apply to inventions generated from clinical studies for which CTEP provided Agent(s) and for inventions generated under any other NCI CTEP-approved studies that use CTEP-provided Agent(s), non-publicly released clinical data or Agent(s)-treated specimens from those clinical studies.

The previous IP option language was silent as to the disposition of intellectual property developed from data and Agent-treated samples. As a result, both Collaborators and Institutions claimed an ownership interest in inventions generated from these data and materials. This lack of clarity has become a major impediment in NCI CTEP's ability to obtain proprietary Agents from collaborators for use in NCI CTEP-sponsored clinical studies. This has resulted in delays and threatens the continuing ability of CTEP to provide proprietary Agents to NCI-funded investigators for important clinical studies to advance the treatment of cancer. The lack of Agents for these clinical studies jeopardizes NCI CTEP's ability to support these research activities. The revised CTEP IP Option and Institution Notification is intended to offer appropriate incentives and assurance for both Collaborators and Institutions to participate in CTEP-sponsored clinical studies.

II. The Proposed Revision to the CTEP Intellectual Property Option to the Collaborator

The following is the proposed revision to the CTEP IP Option that was published in the **Federal Register** on April 6th:

The Cancer Therapy Evaluation Program (CTEP) of the National Cancer Institute's (NCI) Division of Cancer Treatment and Diagnosis (DCTD) obtains "Agents" from biotechnology and pharmaceutical companies (hereinafter "Collaborators") through Cooperative Research and Development Agreements ("CRADAs") and other means, for use in NCI-funded research conducted via extramural funding agreements. As part of the arrangement with these Collaborators to use their Agents and to make the collaborative research possible, NCI CTEP would agree not to provide Agents to Institutions unless they provide Collaborators with the IP Options and Institution Notifications described below. The specific terms of the IP Options depend on the types of inventions that arise out of the NCI CTEP funded research (Section A Inventions, Section B Inventions, or Unauthorized Inventions). NCI CTEP is requesting applicants include assurances of agreement with the terms of the IP Options and Institutional Notification described below in their funding applications to NCI CTEP.

References to "Institution" mean the funding recipient conducting the research described herein. The Intellectual Property Options (IP Options) and Institution Notification described below will apply to inventions arising from research involving the Agent(s) under the scope of an NCI CTEP funding agreement.

A. The IP Option described in this Section A would apply to inventions that use or incorporate the Agent(s) and that are conceived or first actually reduced to practice pursuant to NCI CTEP-funded clinical or non-clinical studies utilizing the Agent(s) ("Section A Inventions"):

Institution agrees to grant Collaborator(s): (i) A royalty-free, worldwide, non-exclusive license for commercial purposes; and (ii) a time limited first option to negotiate an exclusive, or co-exclusive, if applicable, world-wide, royalty bearing license for commercial purposes, including the right to grant sub licenses, subject to any rights of the Government of the United States of America, on terms to be negotiated in good faith by the Collaborator(s) and Institution. If Collaborator accepts the non-exclusive commercial license, the Collaborator agrees to pay all out of pocket patent prosecution and maintenance costs which will be pro-rated and divided equally among all licensees. If Collaborator obtains an exclusive commercial license, in addition to any other agreed upon licensing arrangements such as royalties and due diligence requirements, the Collaborator agrees to pay all out of pocket patent prosecution and maintenance costs. Collaborator(s) will notify Institution, in writing, if it is interested in obtaining a commercial license to any Section A Invention within three (3) months of Collaborator's receipt of a patent application or six (6) months of receipt of an invention report notification of such Section A Invention. In the event Collaborator fails to so notify Institution, or elects not to obtain an exclusive license, then Collaborator's option expires with respect to that Section A Invention, and Institution will be free to dispose of its interests in accordance with its policies. If Institution and Collaborator fail to reach agreement within ninety (90) days, (or such additional period as Collaborator and Institution may agree) on the terms for an exclusive license for a particular Section A Invention, then for a period of three (3) months thereafter Institution agrees not to offer to license the Section A Invention to any third party on materially better terms than those last offered to Collaborator without first offering such terms to Collaborator, in which case Collaborator will have a period of thirty (30) days in which to accept or reject the offer. If Collaborator elects to negotiate an exclusive commercial license to a Section A Invention, then Institution agrees to file

and prosecute patent application(s) diligently and in a timely manner and to give Collaborator an opportunity to comment on the preparation and filing of any such patent application(s). Notwithstanding the above, Institution is under no obligation to file or maintain patent prosecution for any Section A Invention.

For all Section A Inventions, regardless of Collaborator's decision to seek a commercial license, Institution agrees to grant Collaborator a paid-up, nonexclusive, royalty-free, world-wide license for research purposes only. Institution retains the right to make and use any Section A Invention for all non-profit research, including for educational purposes and to permit other educational and non-profit institutions to do so.

B. The IP Option described in this Section B would apply to inventions that do not use or incorporate the Agent(s) but that are conceived or first actually reduced to practice pursuant to NCI CTEP clinical or non-clinical studies utilizing the Agent(s). It also applies to inventions that are conceived or first actually reduced to practice pursuant to NCI CTEP studies utilizing clinical data or specimens from patients treated with the Agent (including specimens obtained from NCI CTEP-funded tissue banks) ("Section B Inventions"):

Institution agrees to grant to Collaborator(s): (i) A paid-up nonexclusive, nontransferable, royalty-free, world-wide license to all Section B Inventions for research purposes only; (ii) a time-limited first option to negotiate a non-exclusive, exclusive, or co-exclusive, if applicable, world-wide royalty-bearing license for commercial purposes, including the right to grant sub-licenses, subject to any rights of the Government of the United States of America, on terms to be negotiated in good faith by the Collaborator(s) and Institution; and (iii) a nonexclusive, royalty-free, world-wide license either to (a) disclose Section B Inventions to a regulatory authority when seeking marketing authorization of the Agent, or (b) disclose Section B Inventions on a product insert or other promotional material regarding the Agent after having obtained marketing authorization from a regulatory authority. Collaborator will notify Institution, in writing, of its interest in obtaining an exclusive commercial license to any Section B Invention within one year of Collaborator's receipt of a patent application or eighteen months of receipt of an invention report notifying Collaborator of such Section B Invention(s). In the event that Collaborator fails to so notify Institution, or elects not to obtain an exclusive license, then Collaborator's option expires with respect to that Section B Invention, and Institution will be free to dispose of its interests in such Section B Invention in accordance with Institution's policies. If Institution and Collaborator fail to reach agreement within ninety (90) days, (or such additional period as Collaborator and Institution may agree) on the terms for an exclusive license for a particular Subject B Invention, then for a period of six (6) months thereafter Institution agrees not to offer to license the Section B Invention to any third party on materially better terms than those last offered to Collaborator without first offering such terms to Collaborator, in which case Collaborator will have a period of thirty (30) days in which to accept or reject the offer. Institution retains the right to make and use any Section B Inventions for all non-profit research, including for educational purposes and to permit other educational and non-profit institutions to do so. If Collaborator elects to negotiate an exclusive commercial license to a Section B Invention, then Institution agrees to file and prosecute patent application(s) diligently and in a timely manner and to give Collaborator an opportunity to comment on the preparation and filing of any such patent application(s). Notwithstanding the above, Institution is under no obligation to file or maintain patent prosecution for any Section B Invention.

Inventions arising more than five years after the release of data on the primary end point of the NCI CTEP clinical trial that generated the clinical data and/or specimens will not be subject to the Section B(ii) IP Option.

C. The IP Option described in this Section C would apply to inventions made by Institution's investigator(s) or any other employees or agents of Institution, which are or may be patentable or otherwise protectable, as a result of research utilizing the Agent(s) outside the scope of the NCI CTEP funding agreement (Unauthorized Inventions):

Institution agrees, at Collaborator's request and expense, to grant to Collaborator a royalty-free exclusive or co-exclusive license to Unauthorized Inventions.

D. Institution Notification

Institution agrees to promptly notify NCI CTEP (*NCICTEPpubs@mail.nih.gov*) and Collaborator(s) in writing of any Section A Inventions, Section B Inventions, and Unauthorized Inventions upon the earlier of: (i) Any submission of any invention disclosure to Institution of a Section A, Section B, or Unauthorized Invention, or (ii) the filing of any patent applications of a Section A, Section B, or Unauthorized Invention. Institution agrees to provide a copy of either the invention disclosure or the patent application to the Collaborator and to NCI CTEP which will treat it in accordance with 37 CFR part 401. These requirements do not replace any applicable reporting requirements under the Bayh-Dole Act, 35 U.S.C. 200–212, and implementing regulations at 37 CFR part 401.

III. Comments on the Proposed Revision and NCI CTEP's Response and Modifications to the Proposed Option Based on Feedback

The NCI CTEP received 24 responses to the proposed revision to the CTEP Intellectual Property Option. Comments were received from pharmaceutical and biotechnology companies, diagnostic companies, industry groups, the cooperative groups, universities, hospitals and the Council on Government Relations.

To make it easier to identify comments and our responses, the word "Comment" in parentheses, appears before the comment's description and the word "Response," in parentheses, appears before our response. Similar comments are grouped together under the same number. Due to the detail of some responses as well as space and time limitations, we will not address every point brought up by every Commenter, but will focus on major concerns expressed by a variety of Commenter's and the issues that were addressed in the final version of the CTEP IP Option. We have condensed some responses into topic areas, especially areas where there were a wide range of conflicting suggestions. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was received. For ease of use comments will be divided by Section and follow a generalized order of the proposed Option itself:

1. Overall Scope of the IP Option and Situations in Which the IP Option Would Be Applied

(Comment) A recurring issue among many respondents was that the document itself was unclear as to the scope of the IP Option, specifically to which studies the IP Option must be applied.

(Response) NCI has endeavored to properly clarify the scope in the final revision. The NCI CTEP IP option will

apply to inventions generated from: (a) Clinical studies for which CTEP provided Agent(s), (b) other NCI CTEP-approved studies that use CTEP–Provided Agent(s), and (c) non-publicly released clinical data or Agent(s)-treated specimens from those clinical studies.

2. The Definition of Inventions, Was too Vague and Ambiguous in Both Sections A and B

(Comment) Many respondents from all groups commented that the definition of inventions as those that "use or incorporate" Agent was too vague. Several respondents offered suggestions as to language that would clarify the intended meaning and narrow the scope.

(Response) NCI concurs that this language was vague, and in the final Option has modified the language to more appropriately clarify the scope. The final Option replaces "use or incorporates" with the statement that the Option will apply to "inventions that would be described in patent disclosures that claim the use and/or the composition of the Agent(s)."

3. Invention Language Should State That the Scope Should Cover Inventions That Are "Conceived AND Reduced to Practice" Under the Clinical Studies as Opposed to "Conceived OR Reduced to Practice"

(Comment) Several respondents suggested altering this language based on the following reasoning: While this language is consistent with the Bayh-Dole Act scope of "subject inventions" for Federal funding purposes, Bayh-Dole only speaks to the rights to inventions provided to funding recipients and the government. The IP option, however applies to rights that funding recipients grant to third party Collaborators, therefore the Bayh-Dole scope does not apply to theses inventions. Since the Bayh-Dole scope does not apply this language should not be considered. Use of "OR" language was purported to have substantial risk to create conflicting obligations, as the Collaborator would have rights to prior conceptions (that are reduced to practice under the clinical study) and future reductions to practice (of conceptions made under this clinical study). This would require institutions to carefully monitor and possibly restrict other agreements and funding related to follow on research.

(Response) NCI CTEP finds this argument unpersuasive. While it may not be necessary to apply the Bayh-Dole scope to the inventions covered under this Option, NCI CTEP feels that there is value in maintaining a consistent standard that reflects the intent of Bayh-Dole. This language is also consistent with the terms offered to collaborators under Federal Cooperative Research and Development Agreements. More importantly this change would be inconsistent with programmatic policy and the manner in which clinical studies are reviewed and approved. Many of the clinical study proposals are in response to an NCI CTEP-solicitation that has been formulated with the Collaborator so it would be difficult for the investigator to have "conceived" the invention. However, the investigator could be the first to "reduce it to practice." "Conceived or reduced to practice" benefits the investigators submitting unsolicited proposals since, even if the Collaborator disapproved a proposal, the investigator would still have "conceived" the invention.

In regards to future reductions to practice, NCI CTEP wants to reinforce that the Section A is only applicable to studies wherein CTEP provides Agent, which limits the application of this clause sufficiently that future reductions are not a concern. If an Institution is utilizing NCI CTEP provided agent, any invention generated is by definition not a future reduction to practice, but rather part of an ongoing study.

4. The Section A and B Licenses Should be an Assignment of all Intellectual Property (Including Copyright and Trademarks) to the Collaborator, With an Offer to Provide an Automatic Non-Exclusive Research Use License Back to the Inventing Institution

(Comment) Several respondents felt that an outright assignment of all intellectual property to collaborators would provide a better incentive for participation in NCI CTEP clinical studies.

(Response) NCI believes that while this would provide greater incentives for participation on the part of Industry, such assignment would have a chilling effect on the participation of academic researchers and on the business model of downstream diagnostic companies. In addition, NCI CTEP feels that the rights offered in the CTEP IP Option should pertain solely to patents.

5. The Section A Non-Exclusive Royalty Free Commercialization License Should be Sub-Licensable

(Comment) Several respondents felt that the Section A non-exclusive license needed to be sub-licensable in order to have any real value. In today's market place, collaborators often partner with several other entities when undertaking development efforts, so the non-exclusive license is effectively worthless without the ability to sub-license.

(Response) NCI believes that there is merit to this position; however we are cognizant that an unfettered right to sub-license would destroy all value for inventing institutions. NCI CTEP has included new language indicating that the Section A license is sublicensable, however it may only be sub-licensed to affiliates or Collaborators for the purposes of development.

6. Patent Expenses Related to all Licensing Options

(Comment) There were several distinct and competing views in the comments related to the disposition of patent expenses. Some respondents felt that it was inappropriate for the Institutions to receive reimbursement of any patent expenses for non exclusive licenses. Conversely, other respondents felt that the Option should clearly state that the Collaborator is responsible for all patent expenses, including expenses associated with the exclusive licensing option.

(Response) NCI believes that the proposed IP option strikes an appropriate balance in regards to patent expenses. Since the proposed option represents an expansion of rights relative to the current option, NCI believes it is entirely appropriate for Collaborators to shoulder patent expenses (in a pro-rated manner) if they wish to exercise their option to the NERF or the Exclusive licensing option in Section A. If Collaborator is not interested in shouldering patent expenses related to Section A inventions, they are in no way obligated to and will still receive a research use license.

In regard to Section B inventions, NCI CTEP feels that the granted licenses are sufficiently narrow in scope and consistent with the free research use license of Section A. NCI CTEP will remain silent in regard to any exclusive or non-exclusive licenses that parties may wish to negotiate in addition to the licenses described in this section. The Institution and the Collaborator are in the best position to determine the most appropriate terms for an exclusive or a non exclusive license on any Section B invention, should they decide to negotiate such a license. While it is a standard convention in exclusive licensing negotiations for the licensee to cover the cost of patents, there may be instances, particularly with regard to smaller companies participating in the program, where it would be to the benefit of both the Institution and the Collaborator to have the flexibility to negotiate other licensing terms.

7. Time Frames On Negotiation of Section A Exclusive Licensing Options as Well as Most-Favored Nation Period

(Comment) This was an area of broad discussion where comments varied substantially based on the position of the commenter. In general Industry responders felt the time period for negotiation and most favored nation status was too short, and asked for a time frame double what the proposed Option provided. Arguments focused on the difficulty of properly valuating the IP in such a short time frame. Conversely, Institutions and diagnostic company respondents felt the time frame for negotiation was too long, and that the most favored nation provisions should be removed entirely. Arguments focused on the delay that these terms engender and the ability of a Collaborator to use them to "halt" development of associated technologies.

(Response) NCI believes that the current time frame for negotiation of Section A inventions appropriately balances the concerns expressed by both Collaborators and Institutions. While neither side is completely satisfied with the time frames, they are consistent with previous policy, and our experience indicates they are at the very least functional.

8. Section B Inventions: Clarity Regarding the Scope of Data to Which the Option Will Apply

(Comment) Several respondents felt that the description of data in Section B was ambiguous and overly broad, and that it could be interpreted to apply to data that had been published or had otherwise entered the public domain.

(Response) NCI CTEP agrees that the language in this Section B pertaining to data required more clarity. We have added language specifying that it only applies to confidential data from clinical studies that used NCI CTEP-provided Agent or data from such studies that has not yet been published. The Option is not intended to read on publicly available or published data.

9. Section B(ii) Inventions (ii): Exclusive Licensing Option

(Comment) In general the inclusion of the Section B(ii) exclusive licensing option was the source of greatest controversy within the proposed Option. Institutions and diagnostic company respondents felt strongly that the proposed B(ii) exclusive licensing option:

a. Was overly broad and included reach-through that would stifle the development of Inventions that are critical to the treatment of cancer patients. In particular the Option would make it difficult, if not impossible, for diagnostic companies to develop companion diagnostics to a particular treatment in a timely manner.

b. Had time frames for negotiation of these licenses that were overly generous and needed to be reduced.

c. Should not have a 5 year time limitation as this was both overly long and logistically impractical to implement.

d. Was fundamentally unfair, would constrain the ability of Institutions to collaborate on diagnostics, and thus, it would have a chilling effect on participation in CTEP studies.

(Response) NCI believes that Institution, and particularly Diagnostic company respondents made a compelling argument for the removal of this clause from the proposed option. The NCI's goal in promulgating the revision was to encourage participation in CTEP studies by ensuring that Collaborators receive enough rights to protect their ability to successfully manufacture and commercially market any therapeutic they supply to the CTEP program (freedom to operate).

The NCI believes that freedom to operate is protected by the more narrowly tailored Section B(iii) option, and that the B(ii) option as presented in the proposed option is overbroad and unnecessary to achieve NCI's goals. In response, the NCI has removed the Section B(ii) option in its entirety from the final Option.

10. Section B(iii) Inventions Use of "and" Instead of "or"

(Comment) Several respondents felt that it was unclear whether Collaborators would receive both the right to use Invention data for regulatory purposes and the right to include Invention data on product insert information.

(Response) NCI agrees that this language was unnecessarily vague. The intent was for Collaborator to have both rights and as such the wording has been amended to replace "or" with "and."

11. Section C Inventions: Recommendations That the NCI Remain Silent on Unauthorized Inventions

(Comment) Several respondents felt that that section was unduly harsh and should be removed altogether, with any action regarding unauthorized use to be left for the parties to resolve. Respondents also felt that this language may be in conflict with the Bayh-Dole Act.

(Response) The NCI finds this argument unpersuasive. The removal of this section would effectively make it more attractive to develop an invention outside the scope of approved studies than under the scope and would provide a strong incentive for participants to breach the agreement. The NCI feels that there must be some form of penalty for breaching the agreement in order to maintain our ability to obtain proprietary Agents for clinical studies.

In regards to Bayh-Dole, NCI has discussed this with our legal counsel at OGC. These unauthorized studies are, by definition, not done under the scope of a government funding agreement (the party is in fact in breach of a government funding agreement) therefore Bayh-Dole does not apply to these inventions. This language provides consequences in the event that a party steps outside of the agreed upon scope of work.

12. Section C Inventions: Recommendation That the NCI include a Non-Exclusive Research Use License Back to the Inventing Institution

(Comment) Several respondents felt that while the unauthorized use language was appropriate, the institution should retain a license to use any inventions generated, including those through unauthorized use, for internal research purposes.

(Response) The NCI believes that this argument has merit and has included this language in the final Option. While we do not believe it is appropriate for Institutions to benefit from misuse of Agent, data or Agent-treated samples, we feel that we also have an obligation to support the scientific endeavor and avoid blocking important research in the case of inadvertent breach.

IV. The Final Revision to the CTEP IP Option

The following is the revision in its final form, with alterations made based on comments received to the April 6th **Federal Register** notice:

The Cancer Therapy Evaluation Program (CTEP) of the National Cancer Institute's (NCI) Division of Cancer Treatment and Diagnosis (DCTD) obtains "Agents" from biotechnology and pharmaceutical companies (hereinafter "Collaborators") through Cooperative Research and Development Agreements ("CRADAs") and other means, for use in NCI-funded research conducted via extramural funding agreements. As part of the arrangement with these Collaborators to use their Agents and to make the collaborative research possible, NCI CTEP would agree not to provide Agents to Institutions unless they provide Collaborators with the IP Options and

Institution Notifications described below. The specific terms of the IP Option depend on the types of inventions that arise out of the studies wherein Agent is supplied by NCI CTEP pursuant to an agreement with a Collaborator (Section A Inventions, Section B Inventions, or Unauthorized Inventions). NCI CTEP is requesting that applicants include assurances of agreement with the terms of the IP Options and Institutional Notification described below in applicable funding applications to NCI.

References to "Institution" mean the funding recipient conducting the research described herein. The Intellectual Property Options (IP Options) and Institution Notification described below will apply to inventions arising from research involving the Agent(s) under the scope of an NCI funding agreement.

A. The IP Option described in this Section A would apply to inventions that would be described in patent disclosures that claim the use and/or the composition of the Agent(s) and that are conceived or first actually reduced to practice pursuant to clinical or non-clinical studies utilizing the NCI CTEP provided Agent(s) ("Section A Inventions"):

Institution agrees to grant to Collaborator(s): (i) a royalty-free, worldwide, non-exclusive license for commercial purposes with the right to sub license to affiliates or collaborators working on behalf of Collaborator for Collaborator's development purposes; and (ii) a time limited first option to negotiate an exclusive, or co-exclusive, if applicable, world-wide, royalty bearing license for commercial purposes, including the right to grant sub licenses, subject to any rights of the Government of the United States of America, on terms to be negotiated in good faith by the Collaborator(s) and Institution. If Collaborator accepts the non-exclusive commercial license, the Collaborator agrees to pay all out-of-pocket patent prosecution and maintenance costs which will be pro-rated and divided equally among all licensees. If Collaborator obtains an exclusive commercial license, in addition to any other agreed upon licensing arrangements such as royalties and due diligence requirements, the Collaborator agrees to pay all out-of-pocket patent prosecution and maintenance costs. Collaborator(s) will notify Institution, in writing, if it is interested in obtaining a commercial license to any Section A Invention within three (3) months of Collaborator's receipt of a patent application or six (6) months of receipt of an invention report notification of such a section A invention. In the event that Collaborator fails to so notify Institution, or elects not to obtain an exclusive license, then Collaborator's option expires with respect to that Section A Invention, and Institution will be free to dispose of its interests in accordance with its policies. If Institution and Collaborator fail to reach agreement within ninety (90) days, (or such additional period as Collaborator and Institution may agree) on the terms for an exclusive license for a particular Section A Invention, then for a period of three (3) months thereafter Institution agrees not to offer to license the Section A Invention to any third party on materially better terms than those last offered to Collaborator without first offering such terms to Collaborator, in which case Collaborator will have a period of thirty (30) days in which to accept or reject the offer. If Collaborator elects to negotiate an exclusive commercial license to a Section A Invention, then Institution agrees to file and prosecute patent application(s) diligently and in a timely manner and to give Collaborator an opportunity to comment on the preparation and filing of any such patent application(s). Notwithstanding the above, Institution is under no obligation to file or maintain patent prosecution for any Section A Invention.

For all Section A Inventions, regardless of Collaborator's decision to seek a commercial license, Institution agrees to grant Collaborator a paid-up, nonexclusive, royalty-free, world-wide license for research purposes only. Institution retains the right to make and use any Section A Invention for all non-profit research, including for educational purposes and to permit other educational and non-profit institutions to do so.

B. The IP Option described in this Section B would apply to inventions not covered by Section A, but are nevertheless conceived or first actually reduced to practice pursuant to clinical or non-clinical studies utilizing the CTEP-provided Agent(s). It also applies to inventions that are conceived or first actually reduced to practice pursuant to NCI CTEP-approved studies that use non-publicly available clinical data or specimens from patients treated with the CTEP-provided Agent (including specimens obtained from NCI CTEP-funded tissue banks) ("Section B Inventions"):

Institution agrees to grant to Collaborator(s): (i) a paid-up nonexclusive, nontransferable, royalty-free, world-wide license to all Section B Inventions for research purposes only; and (ii) a nonexclusive, royalty-free, world-wide license to (a.) disclose Section B Inventions to a regulatory authority when seeking marketing authorization of the Agent, and (b.) disclose Section B Inventions on a product insert or other promotional material regarding the Agent after having obtained marketing authorization from a regulatory authority. Notwithstanding the above, Institution is under no obligation to file or maintain patent prosecution for any Section B Invention.

C. The IP Option described in this Section C would apply to inventions made by Institution's investigator(s) or any other employees or agents of Institution, which are or may be patentable or otherwise protectable, as a result of research utilizing the CTEP-provided Agent(s), unreleased or non-publicly available clinical data or Agent treated specimens outside the scope of approval granted by the NCI CTEP (Unauthorized Inventions):

Institution agrees, at Collaborator's request and expense, to grant to Collaborator a royalty-free exclusive or co-exclusive license to Unauthorized Inventions. Institution will retain a non-exclusive, non-sub-licensable royalty free license to practice the invention for research use purposes.

D. Institution Notification

Institution agrees to promptly and confidentially notify NCI CTEP (*NCICTEPpubs@mail.nih.gov*) and Collaborator(s) in writing of any Section A Inventions, Section B Inventions, and Unauthorized Inventions upon the earlier of: (i) Any submission of any invention disclosure to Institution of a Section A, Section B, or Unauthorized Invention, or (ii) the filing of any patent applications of a Section A, Section B, or Unauthorized Invention. Institution agrees to provide a copy of either the invention disclosure or the patent application to the Collaborator and to NCI CTEP which will treat it in accordance with 37 CFR Part 401. These requirements do not replace any applicable reporting requirements under the Bayh-Dole Act, 35 U.S.C. 200–212, and implementing regulations at 37 CFR part 401.

V. Conclusion

NCI and NIH would like to offer our thanks to all respondents for their articulate and well thought out comments, and their willingness to participate in this process.

Dated: March 8, 2011.

Jeffrey Abrams,

Associate Director, Cancer Therapy Evaluation Program, Division of Cancer Treatment and Diagnosis, National Cancer Institute.

[FR Doc. 2011–5609 Filed 3–10–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Pilot Test of the Proposed Pharmacy Survey on Patient Safety Culture." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, A1–IRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by May 10, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pilot Test of the Proposed Pharmacy Survey on Patient Safety Culture

As the baby boomer population ages, the general U.S. population continues to grow, and as drug therapies for the treatment of chronic diseases become more efficacious, the expected increase in the number of prescriptions and demand for pharmaceutical products is likely to increase the potential for medication errors in community/retail pharmacies. In 2007, there were about 56,000 community/retail pharmacies, including about 22,000 traditional chain pharmacy companies, nearly 17,000 independent drug stores, about 9,300 supermarket pharmacies, and about 7,700 mass merchant pharmacies. Numerous reports substantiate the presence of medication errors in pharmacies. For example, one national observational study of prescription dispensing accuracy and safety in 50 pharmacies in the U.S. found a rate of about 4 errors per day in a pharmacy filling 250 prescriptions daily. This error rate translates to an estimated 51.5 million errors occurring during the filling of 3 billion prescriptions each year.

Given the widespread impact of pharmacies on patient safety, the new Pharmacy Survey on Patient Safety Culture (Pharmacy SOPS) will measure pharmacy staff perceptions about what is important in their organization and what attitudes and behaviors related to patient safety are supported, rewarded, and expected. The survey will help community/retail pharmacies to identify and discuss strengths and weaknesses of patient safety culture within their individual pharmacies. They can then use that knowledge to develop appropriate action plans to improve their practices and their culture of patient safety. This survey is designed for use in community/retail pharmacies, which includes chain drugstores (*e.g.,* Walgreens and CVS), supermarket pharmacies, independently owned pharmacies, and mass merchant pharmacies (*e.g.,* Wal-Mart, Costco, Target), not for use in hospital pharmacies.

This research has the following goals:

(1) Cognitively test and modify as necessary the Pharmacy Survey on Patient Safety Culture Questionnaire;

(2) Pretest and modify the questionnaire as necessary;

(3) Make the final questionnaire available to the public.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this study the following activities and data collections will be implemented:

(1) *Cognitive interviews*—Two rounds of interviews will be conducted by telephone with 10 respondents each. The purpose of these interviews is to refine the questionnaire's items and composites. Each round will be conducted with a mix of pharmacists and non-pharmacist staff working in community/retail pharmacies throughout the U.S. The same interview guide will be used for each round.

(2) *Pretest*—The draft questionnaire will be pretested with all pharmacy staff in approximately 60 community/retail pharmacies. The purpose of the pretest is to collect data for an assessment of the reliability and construct validity of the survey's items and composites, allowing for their further refinement.

(3) *Pharmacy background questionnaire*—This questionnaire will be completed by the pharmacy manager in each of the 60 pretest sites to provide background characteristics of the pharmacy, such as pharmacy type (independently owned or chain), type of chain (traditional drugstore, supermarkets, mass merchant), average number of prescriptions filled weekly, average number of hours the pharmacy is open on weekdays, *etc.*

(4) *Dissemination activities*—The final questionnaire will be made available to the public through the AHRQ Web site. This activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibit 1.

The information collected will be used to test and improve the draft survey items in the Pharmacy Survey on Patient Safety Culture Questionnaire. Psychometric analysis will be conducted on the pilot data to examine item nonresponse, item response variability, factor structure, reliability, and construct validity of the items included in the survey. Because the survey items are being developed to measure specific aspects of patient safety culture in the pharmacy setting, the factor structure of the survey items will be evaluated through multilevel confirmatory factor analysis. On the basis of the data analyses, items or factors may be dropped.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the pharmacies' time to participate in this research. Cognitive interviews will be conducted with staff at 20 pharmacies (approximately 10 pharmacists and 10 nonpharmacist staff) and will take about one hour and 30 minutes to complete. 627 staff from 60 pharmacies will participate in the pretest (an average of 10.45 staff from each pharmacy). The pretest questionnaire (the Pharmacy Survey on Patient Safety Culture)

requires 15 minutes to complete. The pharmacy background questionnaire will be completed by the manager at each of the 60 pharmacies participating in the pretest and takes 10 minutes to complete. The total annualized burden is estimated to be 197 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the pharmacies' time to participate in this research. The total cost burden is estimated to be $4,948 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name/activity	Number of pharmacies	Number of responses per pharmacy	Hours per response	Total turden hours
Cognitive interviews	20	1	1.5	30
Pretest	60	10.45	15/60	157
Pharmacy background questionnaire	60	1	10/60	10
Total	140	na	na	197

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name/activity	Number of pharmacies	Total burden hours	Average hourly wage rate*	Total cost burden
Cognitive interviews	20	30	$32.28	$968
Pretest	60	157	22.08	3,467
Pharmacy background questionnaire	60	10	51.27	513
Total	140	197	na	4,948

*Based upon the mean of the average hourly wages for Pharmacists (29–1051; $51.27), Pharmacy Technicians (29–2052; $13.92), and Pharmacy Aides (31–9095; $10.74), National Compensation Survey: Occupational wages in the United States May 2009, "U.S. Department of Labor, Bureau of Labor Statistics." The hourly wage for the cognitive interviews is a weighted average for 10 pharmacists, 8 pharmacy technicians and 2 pharmacy aides; the hourly wage for the pretest is a weighted average for 157 pharmacists, 235 pharmacy technicians and 235 pharmacy aides.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost for this project. Although data collection will last for less than one year, the entire project will take about 3 years. The total cost for this project is approximately $320,818.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$65,340	$21,780
Data Collection Activities	62,831	20,944
Data Processing and Analysis	11,004	3,368
Publication of Results	15,767	5,256
Project Management	7,496	2,498
Overhead	158,380	5,293
Total	320,818	106,939

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 2, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–5397 Filed 3–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Health IT Tool Evaluation." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by May 10, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Health IT Tool Evaluation

The Agency for Healthcare Research and Quality (AHRQ) is a lead Federal agency in developing and disseminating evidence and evidence-based tools on how health IT can improve health care quality, safety, efficiency, and effectiveness.

In support of the health IT initiative, AHRQ developed the National Resource Center (NRC) for Health IT Web site. This site contains a range of information and evidence-based tools that support the health IT initiative's work and aims.

With this project AHRQ is conducting an evaluation to assess whether these tools are reaching their intended audiences, are easy to use, and provide the information that users expect and need. The current project is an evaluation of one of the tools available on the NRC site: The Health IT Survey Compendium. The Health IT Survey Compendium is a searchable resource that contains a set of publicly available surveys to assist organizations in evaluating health IT. The surveys in the Health IT Survey Compendium cover a broad spectrum, including user satisfaction, usability, technology use, product functionality, and the impact of health IT on safety, quality, and efficiency.

The audiences included in this evaluation are health IT researchers (ranging in experience and expertise from research assistants to more senior investigators such as university professors) and health IT implementers (*e.g.,* clinical champions and IT staff at provider organizations, IT implementation consultants and experts). In the course of conducting this evaluation, AHRQ will evaluate both users and non-users (defined as not current but possible users) of the Health IT Survey Compendium.

The goals of this project are to determine whether the Health IT Survey Compendium is reaching its intended audiences, whether it is meeting the information needs and expectations of these audiences, and whether it is easy to use.

This study is being conducted by AHRQ through its contractors, Westat and Mosaica Partners, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to health care technologies. 42 U.S.C. 299a(a)(5).

Method of Collection

To achieve the projects' goals AHRQ will conduct the following activities:

(1) Screening questionnaire—used to recruit research participants for the needs assessment interviews, usability testing and discussion groups, which are described below. The questionnaire also has a demographics section to collect some basic demographic information for those persons that "screen-in."

(2) Needs assessment interviews—consisting of semi-structured interviews with non-users of the Health IT Survey Compendium. The purpose of these interviews is to discover and then assess the relative importance of information needs of the intended audiences of the Compendium. These interviews will provide the perspective of non-users of the Compendium in order to elicit unbiased feedback about information needs. After thoroughly exploring information needs, each interviewee will be shown the Health IT Survey Compendium and asked to provide feedback about how it addresses their needs for surveys and data collection instruments.

(3) Usability testing—focusing on the navigation, ease of use, and usefulness of the Health IT Survey Compendium. These interviews will include both current users and non-users of the Health IT Survey Compendium.

(4) Discussion groups—consisting of eight groups of 6–8 participants each (a maximum of 64 participants across all eight groups). The majority of the session time will be spent showing the Health IT Survey Compendium to the participants, and the moderator will elicit reactions to and opinions about the Health IT Survey Compendium, its features, and the surveys offered.

The outcome of the evaluation will be a report including recommendations for enhancing and improving the Health IT Survey Compendium. The report will provide results about both the perceived usefulness and the usability of the Health IT Survey Compendium. Results will be presented for individual audience segments as well as for the user population as a whole. The report will also include specific suggestions on how to revise and extend the Health IT Survey Compendium to make it more useful to health IT researchers and implementers, and will discuss the general implications of the Health IT Survey Compendium evaluation for the development and evaluation of other tools available on the NRC Web site.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for each respondent's time to participate in this evaluation. The screening questionnaire will be completed by as many as 120 persons and will take 3 minutes to complete on average (only those persons that "screen-in" will complete the demographics section). The needs assessment will be completed by 18 persons and requires one hour. Usability testing will involve 18 persons and is estimated to take one and a half hours. Eight discussion groups with no more than 8 persons each will be held and will last for about 90 minutes. The total annual burden is estimated to be 147 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondent time to participate in this evaluation. The total annual burden is estimated to be $7,454.

EXHIBIT 1— ESTIMATED ANNUALIZED BURDEN HOURS

Interview type	Maximum No. of respondents	No. of responses per respondent	Maximum hours per response	Total burden hours
Screening Questionnaire	120	1	3/60	6
Needs Assessment	18	1	1.0	18
Usability Testing	18	1	1.5	27
Discussion Groups	64	1	1.5	96
Total	120	na	na	147

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Interview type	Maximum No. of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Screening Questionnaire	120	6	$50.71	$304
Needs Assessment	18	18	50.71	913
Usability Testing	18	27	50.71	1,369
Discussion Groups	64	96	50.71	4,868
Total	120	147	NA	7,454

* The hourly wage for the participants across the four data collections (screening questionnaire, needs assessment interview, usability testing interviews, and discussion group interviews) is based upon the mean of the average hourly wages for Social science research assistants (19–4061; $19.39 per hour); Postsecondary Health Specialties Teachers (25–1071; $53.88 per hour); Management analysts (13–1111; $40.70 per hour); Computer and Information Systems Managers (11–3021; $58.00 per hour); Family and General Practitioners Teachers (29–1060; $81.03 per hour); Pharmacists (29–1051; $51.27 per hour). May 2009 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics Division of Occupational Employment Statistics *http://www.bls.gov/oes/current/oes_nat.htm#29–0000.*

Estimated Annual Costs to the Federal Government

The estimated total cost to the Federal Government for this project is $411,641.00 over a two-year period from September 8, 2010 to September 7, 2012. The estimated average annual cost is $205,821. Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST * TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Project Management and Coordination Activities	$58,140	$29,070
Evaluation Plan and Protocol Development	44,908	22,454
OMB Submission Package	12,362	6,181
Conduct Evaluation **	159,991	79,996
Data Analysis, Report and Briefing	118,081	59,041
Documentation and 508 Compliance	18,159	9,080
Total	411,641	205,821

* Costs are fully loaded including overhead, G&A and fees.
** These activities include the data collections described in this submission.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 2, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–5401 Filed 3–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP); Meeting

Studies at the Animal-Human Interface of Influenza and Other Zoonotic Diseases in Vietnam, Funding Opportunity Announcement (FOA) IP11–005; The Incidence and Etiology of Influenza-Associated Community-Acquired Pneumonia in Hospitalized Persons Study, FOA IP11–011; Spectrum of Respiratory Pathogens in Acute Respiratory Tract Infection

Among Children and Adults in India, FOA IP11–012; Influenza Vaccine Efficacy in Tropical and Developing Countries, FOA IP11–013; and Influenza and Other Respiratory Diseases in Southern Hemisphere, FOA IP11–014; initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p. m., May 12, 2011 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Studies at the Animal-Human Interface of Influenza and Other Zoonotic Diseases in Vietnam, FOA IP11–005; The Incidence and Etiology of Influenza-Associated Community-Acquired Pneumonia in Hospitalized Persons Study, FOA IP11–011; Spectrum of Respiratory Pathogens in Acute Respiratory Tract Infection Among Children and Adults in India, FOA IP11–012; Influenza Vaccine Efficacy in Tropical and Developing Countries, FOA IP11–013; and Influenza and Other Respiratory Diseases in Southern Hemisphere, FOA IP11–014, initial review."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 7, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5626 Filed 3–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Continuation of the National Mesothelioma Virtual Bank for Translational Research, Program Announcement PAR 11–002, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 2 p.m.–4 p.m., April 5, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Continuation of the National Mesothelioma Virtual Bank for Translational Research, PAR 11–002."

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333, Telephone: (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 3, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5630 Filed 3–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pilot Longitudinal Data Collection To Inform Public Health—Fragile X Syndrome, DD11–007, Initial Review

Notice of Cancellation: This notice was published in the **Federal Register** on December 17, 2010, Volume 75, Number 242, page 78997.

This SEP previously scheduled to convene on April 15, 2011, is cancelled in its entirety.

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 4, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5628 Filed 3–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of the Impact of Work or School Exclusion Criteria on the Spread of Influenza and Influenza-Like-Illness (U01), Funding Opportunity Number (FOA) CK11–007, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., May 2, 2011 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, *Telephone:* (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Evaluation of the Impact of Work or School Exclusion Criteria on the Spread of Influenza and Influenza-like-Illness (U01), FOA CK11–007."

Contact Person for More Information: Dr. Amy Yang, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60,

Atlanta, Georgia 30333, *Telephone:* (404) 498–2733.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 7, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5623 Filed 3–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10367]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection (Request for a new OMB Control Number); *Title of Information Collection:* Medicaid State Plan Preprint for Use by States When Implementing Section 6505 of the [Patient Protection and] Affordable Care Act; *Use:* CMS has developed a Medicaid State Plan Preprint for use by States and specifically to support the January 1, 2011, mandate of the prohibition on payments outside of the United States. The preprint follows the format and requested information from prior preprints provided to the States by CMS and provides a placeholder and assurance of compliance with section 1902(a) of the Social Security Act; *Form Number:* CMS–10367 (OMB#: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 5. (For policy questions regarding this collection contact Carla Ausby at 410–786–2153. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on April 11, 2011: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: March 4, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–5685 Filed 3–10–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2540–10, CMS–10115, CMS–10136, CMS–10260, CMS–10320, CMS–10381, CMS–855(S), CMS–855(A, B, I, R) and CMS–855(O)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report. *Use:* Form CMS 2540–10 is used by Skilled Nursing Facilities (SNFs) and Skilled Nursing Facility Complexes participating in the Medicare program to report the health care costs to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries. It is required under sections 1815(a), 1833(e) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. The revision is due to new reporting requirements as mandated by the Patient Protection and Affordability Act section 6104. The Patient Protection and Affordable Care Act, § 6104(1) of Public Law 111–148 amended § 1888(f) of the Social Security Act ("Reporting of Direct Care Expenditures"), requires SNFs to separately report expenditures for wages and benefits for direct care staff (registered nurses, licensed professional nurses, certified nurse assistants, and other medical and therapy staff). In implementing these changes Worksheet S–3, part V was added. With the addition of this worksheet the average record keeping time for each provider will be increased by 5 hours and the average reporting time by 1 hour. *Form Number:* CMS–2540–10 (OMB#: 0938–0463); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,071; *Total Annual Responses:* 15,071; *Total Annual Hours:* 3,171,602 (For policy questions regarding this collection contact Amelia Citerone at 410–786–3901. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of currently approved collection; *Title of*

Information Collection: Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (Sections 1011) Provider Enrollment Application; *Use:* Section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, provides that the Secretary will establish a process (*i.e.,* enrollment and claims payment) for eligible providers to request payment. The Secretary must directly pay hospitals, physicians and ambulance providers (including Indian Health Service, Indian Tribe and Tribal organizations) for their otherwise un-reimbursed costs of providing services required by section 1867 of the Social Security Act (EMTALA) and related hospital inpatient, outpatient and ambulance services. CMS will use the application information to administer this health services program and establish an audit process. The Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (Sections 1011) Provider Enrollment Application has been revised. For a list of these revisions, refer to the summary of changes document.

Form Number: CMS–10115 (OMB# 0938–0929); *Frequency:* On occasion; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 5,000; *Total Annual Responses:* 5,000; *Total Annual Hours:* 2,999.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Demonstration Ambulatory Care Quality Measure Performance Assessment Tool ("PAT"); *Use:* This request is to cover a modification of an existing, approved data collection effort with a new secure Web based system. This system will also provide a platform for developing tools to collect clinical quality data for future demonstrations and programs. There is no increase in burden. In fact, because all of the practices submitting data will have Electronic Health Records (EHRs), it is likely that the originally estimated burden will decrease over the coming years of the demonstration. CMS is requesting an extension of the currently approved tool for the collection of ambulatory care clinical performance measure data.

The data will be used to continue implementation of two Congressionally mandated demonstration projects (the Physician Group Practice (PGP) Demonstration and the Medicare Care Management Performance (MCMP) Demonstration); also the support data collection under the new EHR Demonstration. Each of these demonstrations, test new payment methods for improving the quality and efficiency of health care services delivered to Medicare fee-for-service beneficiaries, especially those with chronic conditions that account for a disproportionate share of Medicare expenditures. In addition, the MCMP and EHR demonstration specifically encourage the adoption of electronic health records systems as a vehicle for improving how health care is delivered.

4. *Type of Information Collection Request:* Extension without change; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program: Final Marketing Provisions CFR 422.111(a)(3) and 423.128 (a)(3). *Use:* Medicare Advantage (MA) plans must provide notice to plan members of impending changes to plan benefits, premiums and copays in the coming year so that members will be in the best position to make an informed choice on continued enrollment or disenrollment from that plan at least 15 days before the Annual Election Period (AEP). Beginning 2009, organizations will be required to notify plan members of the coming year changes using a combined standardized document at the time of enrollment and annually thereafter.

Section 422.111 requires, to the extent that a MA plan has a Web site, annual notification through the Web site of written, hard copy notification sent to the beneficiaries. Section 423.128 requires that a part D plan have mechanisms for providing specific information on a timely basis to current and prospective enrollees upon request.

These mechanisms include, Internet Web site that includes information on part D plan description. MA organizations (formerly M+C organizations) and Prescription Drug Plan Sponsors use the information to comply with the eligibility requirements and the MA and part D contract requirements. CMS will use this information to ensure that correct information is disclosed to Medicare beneficiaries, both potential enrollees and enrollees. *Form Number:* CMS–10260 (OMB#: 0938–1051); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 790; *Total Annual Responses:* 790; *Total Annual Hours:* 9,480. (For policy questions regarding this collection contact Camille Brown at 410–786–0274. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Reinstatement of previously approved collection; *Title of Information Collection:* Health Care Reform Insurance Web Portal Requirements 45 CFR part 159; *Use:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

This information collection is mandated by Sections 1103 and 10102 of The Patient Protection and Affordability Care Act, Public Law 111–148 (ACA). Once all of the information is collected from insurance issuers of major medical health insurance (hereon referred to as issuers) and other affected parties, it will be processed for will display at *http://www.healthcare.gov* with quarterly refreshes. The information that is provided will help the general public make educated decisions about organizations providing private health care insurance.

In accordance with the provisions of the ACA referenced above, the U.S. Department of Health and Human Services created a Web site called healthcare.gov to meet these and other provisions of the law, and data collection was conducted for six months based upon an emergency information collection request. The interim final rule published on May 5, 2010 served as the emergency **Federal Register** Notice for the prior Information Collection Request (ICR). The Office of Management and Budget (OMB) reviewed this ICR under emergency processing and approved the ICR on April 30, 2010. The CCIIO will be submitting a new ICR to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

CCIIO is currently updating a system (hereon referred to as Web portal) where State Departments of Insurance and issuers will log in to using a custom user ID and password validation. The

States will be tasked to provide information on issuers in their State and various Web sites maintained for consumers. The issuers will be tasked to provide information on their major medical insurance products and plans. They will ultimately be given the choice to download a basic information template to enter data then upload into the Web portal; to manually enter data within the Web portal itself; or to submit xml files containing their information. Once the States and issuers submit their data, they will receive an e-mail notifying them of any errors, and that their submission was received.

CCIIO is mandating the issuers verify and update their information on a quarterly basis and is requesting the States to verify State submitted information on an annual basis. In the event that an issuer enhances its existing plans, proposes new plans, or deactivates plans, the organization would be required to update the information in the Web portal. Changes occurring during the three month quarterly periods will be allowed utilizing effective dates for both the plans and rates associated with the plans. Information that is to be collected from State high risk pools will be collected from The National Association of State Comprehensive Health Insurance Plans (NASCHIP) at this time. Updates to this information may be submitted voluntarily.

The estimated hour burden on issuers for the Plan Finder data collection in the first year is estimated as 84,600 total burden hours, or 113 hours per organization. This estimate is based on an assumed average of 450 individual plan issuers and 700 small group plan issuers per each of the four quarterly collections. It includes 30 hours per organization for training and communication. Additionally, for each of the issuers it includes 10 hours of preparation time, one hour of login and upload time, two hours of troubleshooting and data review and one half hour for attestation per organization per quarterly refresh.

The estimated hour burden on the States is informed by the fact that they have already submitted the data once and only need to update. The overall hours estimate is 575, or 11.5 per Department of Insurance. This is premised on 2 hours of training and communication, 8 hours for data collection, and one half hour of submission. *Form Number:* CMS–10320 (OMB#: 0938–1086); *Frequency:* Reporting—Annually/Quarterly; *Affected Public:* Business or other for-profits and States; *Number of Respondents:* 801; *Total Annual Responses:* 3,051; *Total Annual Hours:* 85,175. (For policy questions regarding this collection contact Beth Liu at 301–492–4268. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Version 5010/ICD–10 Industry Readiness Assessment *Use:* The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires the Secretary of HHS to adopt transaction standards that covered entities are required to use when electronically conducting certain health care administrative transactions, such as claims, remittance, eligibility and claims status requests and responses. Accordingly, on January 16, 2009, HHS published final rules adopting by regulation two sets of standards for HIPAA transactions: Version 5010 standards for eight types of electronic health care transactions (claims, eligibility inquiries, remittance advices, *etc.*) and ICD–10 code set standards. The final rules set compliance dates of January 1, 2012 for Version 5010 standards and October 1, 2013 for ICD–10 standards. HIPAA transactions not meeting the standards by those dates will be rejected. The final rules also outlined interim milestones that organizations should meet in order to achieve compliance by the required dates. For Version 5010, these interim milestones include completing internal testing and being able to send and receive compliant transactions by December 2010, commencing external testing with trading partners by January 2011, and completing that testing and moving into production by the compliance date of January 1, 2012. Entities cannot implement ICD–10 standards until they are in compliance with Version 5010; the interim milestone for ICD–10 is to begin compliance activities (gap analysis, design, development, internal testing) by January 2011.

CMS has developed an education and communication campaign to support the adoption of and transition to Version 5010 and ICD–10. The education and communication activities will be targeted towards the millions of professionals across the health care industry who must take steps to prepare for the implementation of the new codes and transaction standards. CMS is requesting Office of Management and Budget (OMB) approval to conduct survey research to monitor the health care industry's awareness of, and preparation for, the transition to Version 5010 and ICD–10. The aggregated data obtained through the survey will help inform CMS outreach and education efforts to help affected entities (health care providers, health plans, clearinghouses, and then vendors who service them) meet interim milestones and achieve timely compliance so that they can continue to process HIPAA transactions without interruption.

CMS has contracted to conduct a tracking survey of populations charged with implementing Version 5010 and ICD–10 electronic transaction processing, specifically payers (health insurance plans and managed care organizations), providers (hospitals and primary care providers), and vendors (software providers, third-party billers and clearinghouses). A self-administered Web-based survey will be the data collection. The data collection field period is expected to be four weeks in Summer 2011. *Form Number:* CMS–10381 (OMB#: 0938–NEW); *Frequency:* Once; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 600; *Total Annual Responses:* 600; *Total Annual Hours:* 150. (For policy questions regarding this collection contact Rosali Topper at 410–786–7260. For all other issues call 410–786–1326.)

7. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Durable Medical Equipment Supplier Enrollment Application *Use:* The primary function of the CMS 855S DMEPOS supplier enrollment application is to gather information from a supplier that tells us who it is, whether it meets certain qualifications to be a health care supplier, where it renders its services or supplies, the identity of the owners of the enrolling entity, and information necessary to establish the correct claims payment. The goal of evaluating and revising the CMS 855S DMEPOS supplier enrollment application is to simplify and clarify the information collection without jeopardizing our need to collect specific information. Additionally, periodic revisions are necessary to incorporate new regulatory requirements. The goal of this revision of the CMS 855S is to incorporate new regulatory provisions found at 42 CFR 424.57(c) (1 through 30) and 42 CFR 424.58. These revisions will allow CMS to be in compliance with the above stated regulations implementing new quality standards for DMEPOS suppliers, including accreditation requirements. This revision will also incorporate new supplier standard regulations found in the final regulation that published on August 27, 2010 (75 FR 52629–52649). *Form Number:* CMS–855(S) (OMB#: 0938–1056); *Frequency:*

Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 140,290; *Total Annual Responses:* 140,290; *Total Annual Hours:* (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

8. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application *Use:* The primary function of the CMS–855 Medicare enrollment application is to gather information from a provider or supplier that tells us who it is, whether it meets certain qualifications to be a health care provider or supplier, where it practices or renders its services, the identity of the owners of the enrolling entity, and other information necessary to establish correct claims payments. The goal of this submission is to address the following issues. The CMS–855A enrollment form currently captures ownership/managerial information on providers. The data required under sections 6401 and 6001, however, is more specific than that currently obtained on the CMS–855A. CMS will therefore create four attachments to the CMS–855A—two for SNFs and the other two for physician-owned hospitals—to secure this information. In addition to the application changes triggered by ACA, CMS is making other revisions to the forms as well. *Form Number:* CMS–855 (A, B, I, R) (OMB#: 0938–0685); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 440,450; *Total Annual Responses:* 440,450; *Total Annual Hours:* 842,810 (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

9. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Enrollment Application for Eligible Ordering and Referring Physicians and Non-physician Practices *Use:* CMS is adding a new CMS–855 Medicare Enrollment Application (CMS 855O—Medicare Enrollment Application for Ordering and Referring Physicians only). CMS has found that many providers and suppliers who are not enrolled in Medicare are ordering and referring physicians for Medicare enrolled providers and suppliers. The ordering and referring data field on the CMS 1500 claims submission form requires an ordering or referring physician to have a Medicare identification number. Without an ordering or referring physician, specific types of claims submitted by Medicare approved providers and suppliers are rejected by Medicare Administrative Contractors (MAC) as required by Medicare regulation. Therefore, if an ordering or referring physician does not participate in the Medicare program, but orders or refers his/her patients to a Medicare provider or supplier, the claim submitted by the Medicare provider or supplier for the given ordered or referred service is automatically rejected by the MAC. The CMS 855O allows a physician to receive a Medicare identification number (without being approved for billing privileges) for the sole purpose of ordering and referring beneficiaries to Medicare approved providers and suppliers. This new Medicare application form allows physicians who do not provide services to Medicare beneficiaries to be given a Medicare identification number without having to supply all the data required for the submission of Medicare claims. It also allows the Medicare program to identify ordering and referring physicians without having to validate the amount of data necessary to determine claims payment eligibility (such as banking information), while continuing to identify the physician's credentials as valid for ordering and referring purposes. *Form Number:* CMS–855(O) (OMB#: 0938–NEW0685); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 48,000; *Total Annual Responses:* 48,000; *Total Annual Hours:* 46,000 (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *May 10, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 4, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–5684 Filed 3–10–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3246–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee, May 11, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) ("Committee"). The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on the currently available evidence regarding the outcomes associated with the use of unilateral and bilateral cochlear implant technology for hearing loss. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, May 11, 2011 from 7:30 a.m. until 4:30 p.m., eastern daylight time (e.d.t.).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m. e.d.t., Monday, April 11, 2011. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The

deadline to register to be a speaker and to submit power point presentation materials and writings that will be used in support of an oral presentation, is 5 p.m., e.d.t. on Monday, April 11, 2011. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: To attend the meeting in person, individuals may register online at *http://www.cms.gov/apps/events/* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. e.d.t, Friday, May 6, 2011. We will be broadcasting the meeting via Webinar. To attend via Webinar, you must register at *https://webinar.cms.hhs.gov/cochlearimplant/event/registration.html* by 5 p.m. e.d.t, Friday, May 6, 2011.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., e.d.t. Friday, April 29, 2011.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780).) This notice announces the May 11, 2011 public meeting of the Committee. During this meeting, the Committee will discuss the currently available evidence regarding the outcomes associated with the use of unilateral and bilateral cochlear implant technology for hearing loss. Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&.* CMS will no longer be providing paper copies of the handouts for the meeting. Electronic copies of all the meeting materials will be on the CMS Web site no later than 2 business days before the meeting. We encourage the participation of appropriate organizations with expertise in the use of cochlear implant technology for hearing loss.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, CMS may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 15, 2011. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. To attend in person, you may register online at *http://www.cms.gov/apps/events/* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached. To attend via Webinar, you must register for the Webinar portion of the meeting at *https://webinar.cms.hhs.gov/cochlearimplant/event/registration.html* by the deadline listed in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the

convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 7, 2011.

Dennis Wagner,

Acting Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–5679 Filed 3–10–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Rural Health Community-Based Grant Program (OMB No. 0915–0319)—[Revision]

On May 20, 2008, OMB approved the agency's request for the collection of data related to OMB No. 0915–0319 and set an expiration date of May 31, 2011. The agency is now proceeding to submit a revised package which will include program specific measures that grantees will have to collect and report on. The revisions will include measures that are aligned with the agency's updated clinical measures. There are currently six rural health grant programs that operate under the authority of Section 301 of the Public Health Service (PHS) Act. These programs include: (1) Rural Health Care Services Outreach Grant Program (Outreach); (2) Rural Health Network Development Grant Program (Network Development); (3) Small Healthcare Provider Quality Grant Program (Quality); (4) Delta States Rural Development Network Grant Program (Delta); (5) Rural Health Network Planning Grant Program (Network Planning) and; (6) Rural Health Workforce Development Grant Program (Workforce). These grants are to provide expanded delivery of health care services in rural areas, for the planning and implementation of integrated health care networks in rural areas, and for the planning and implementation quality improvement and workforce activities.

For these programs, performance measures were drafted to provide data useful to the programs and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993. These measures cover the principal topic areas of interest to ORHP, including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development; and, (g) health related clinical measures. Several measures will be used for all six programs. All measures will speak to the Office of Rural Health Policy's progress toward meeting its goals.

The annual estimate of burden is as follows:

Grant program	Number of respondents	Frequency of responses	Total responses	Hours per response	Total hour burden
Rural Health Care Services Outreach Grant Program	111	1	111	3.25	360.75
Rural Health Network Development	49	1	49	2.75	134.75
Delta States Rural Development Network Grant Program	12	1	12	3.125	38
Small Health Care Provider Quality Improvement Grant Program	59	1	59	8	472
Network Development Planning Grant Program	30	1	30	1	30
Rural Health Workforce Development Program	20	1	20	3	60
Total	281		281		1096

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: March 7, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–5602 Filed 3–10–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Division of Independent Review Grant Reviewer Recruitment Form (OMB No. 0915–0295)—Extension

HRSA's Division of Independent Review (DIR) is responsible for carrying out the independent and objective review of all eligible applications submitted to HRSA. DIR ensures that the independent review process is efficient, effective, economical, and complies with statutes, regulations, and

policies. The review of applications is performed by people knowledgeable in the field of endeavor for which support is requested and is advisory to individuals in HRSA responsible for making award decisions.

To streamline the collection, selection, and assignment of expert grant reviewers to objective review committees, HRSA utilizes a Web-based data collection *Grant Reviewer Recruitment Form* to gather critical reviewer information. The *Grant Reviewer Recruitment Form* standardizes pertinent categories of reviewer information such as areas of expertise, occupations, work settings, reviewer education, and experience. This standardized information is automatically entered into a centralized data base that the Division of Independent Review uses to determine suitability and to select appropriate reviewers for objective review committees that judge the merits of grant applications and cooperative agreements.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
New reviewer	1,380	1	1,380	45 min.	1,035
Updating reviewer information	4,255	1	4,255	30 min.	2,128
Total	5,635		5,635		3,163

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: March 7, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–5603 Filed 3–10–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, FOA–HL 11–035: Basic Mechanisms Influencing Behavioral Maintenance.

Date: March 22, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business—Nephrology.

Date: April 4–5, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Name of Committee: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892. 301–435–1501. *morrisr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology Special Emphasis Panel.

Date: April 11, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Angela Y. Ng, MBA, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817) Bethesda, MD 20892. 301–435–1715. *nga@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pharmacogenetics.

Date: April 13, 2011.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

*Place:*National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: David J Remondini, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892. 301–435–1038. *remondid@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vectors and Pathogens.

Date: April 14–15, 2011.

Time: 7 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Rolf Menzel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892. 301–435–0952. *menzelro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–10–279: Robotics Technology Development and Deployment.

Date: April 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR10–279: Joint-Agency Robotics SBIR, Panel 1.

Date: April 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892. 301–806–8065. *lijames@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5607 Filed 3–10–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0043]

Lower Mississippi River Waterway Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Lower Mississippi River Waterway Safety Advisory Committee. This Committee advises and makes recommendations to the Coast Guard on matters relating to safe transit of vessels and products to and from the ports on the Lower Mississippi River and related waterways.

DATES: Applicants should submit a cover letter and resume in time to reach the Designated Federal Officer on or before May 1, 2011.

ADDRESSES: Applicants should send his or her cover letter and resume to Captain E. M. Stanton, Designated Federal Officer, DFO, 200 Hendee Street, New Orleans, LA 70114. This notice, is available in our online docket, USCG–2011–0043, at *http://www.regulations.gov*. Send your completed application to the DFO at the street address above.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer David Chapman, Assistant to DFO of Lower Mississippi River Waterway Safety Advisory Committee; telephone (504) 365–2282 or fax (504) 365–2287.

SUPPLEMENTARY INFORMATION: The Lower Mississippi River Waterway Safety Advisory Committee is a Federal advisory committee under the authority found in section 19 of the Coast Guard Authorization Act of 1991, (Pub. L. 102–241) as amended by section 621 of the Coast Guard Authorization Act of 2010, Public Law 111–281. The Lower Mississippi River Waterway Safety Advisory Committee advises the U.S. Coast Guard on matters relating to communications, surveillance, traffic management, anchorages, development and operation of the New Orleans Vessel Traffic Service, and other related topics dealing with navigation safety on the Lower Mississippi River as required by the U.S. Coast Guard.

The Committee expects to meet at least two times annually. It may also meet for extraordinary purposes with the approval of the DFO.

We will consider applications for 25 positions that expire or become vacant March 30, 2011. To be eligible, you should have experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels on the Lower Mississippi River and its connecting navigable waterways, including the Gulf of Mexico. The 25 positions available for application are broken down as follows:

1. Five members representing River Port authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

2. Two members representing vessel owners domiciled in the state of Louisiana.

3. Two members representing organizations which operate harbor tugs or barge fleets in the geographical area covered by the committee.

4. Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

5. Three members representing State Commissioned Pilot organizations, with one member each representing New Orleans-Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

6. Two at-large members who utilize water transportation facilities located in the geographical area covered by the committee.

7. Three members each one representing one of three categories: consumers, shippers, and importers-exporters that utilize vessels which utilize the navigable waterways covered by the committee.

8. Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the committee.

9. One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

10. One member representing an environmental organization.

11. One member drawn from the general public.

12. One member representing the Associated Federal Pilots and Docking Masters of Louisiana.

Each member serves for a term of 2 years. Members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government. Registered lobbyists are not eligible to serve on Federal Advisory Committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act, Title 2, United States Code, Section 1603.

In support of the policy of the Coast Guard on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are selected as a non-representative member, or as a member who is drawn from the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send a completed application to Captain E.M. Stanton, Designated Federal Officer (DFO) of Lower Mississippi River Waterway Safety Advisory Committee, 200 Hendee Street, New Orleans, LA 70114. Send the application in time for it to be received by the DFO on or before 1, May 2011. A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov*, enter the docket number for this notice (USCG–2011–0043) in the Search box, and click "Go >>." Please do not post your application on this site.

Dated: February 28, 2011.

Mary Landry,

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

[FR Doc. 2011–5669 Filed 3–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–16]

Notice of Submission of Proposed Information Collection to OMB; Section 3 Program Implementation and Coordination Grant

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is required by the grant application to assist the Department in selecting the Department in selecting the highest ranked applicants to receive funds under the Section 3 Program Implementation and Coordination NOFA. The information collected from quarterly and final progress reports will enable the Department to evaluate the performance of agencies that receive funding and determine the effectiveness of the funding for increasing the capacity of recipient agencies to comply with the regulatory requirements of Section 3.

DATES: *Comments Due Date:* April 11, 2011

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0050) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Section 3 Program Implementation and Coordination Grant.

OMB Approval Number: 2529–0050.

Form Numbers: HUD 40076–RHED, HUD 2990, HUD 96010, HUD 2880, SF 424, SF LLL, HUD 424–CBWI, HUD 2994–A, HUD 96011, HUD 424–CB, HUD 2993, HUD 27061.

Description of the Need for the Information and Its Proposed Use:

This information is required by the grant application to assist the Department in selecting the Department in selecting the highest ranked applicants to receive funds under the Section 3 Program Implementation and Coordination NOFA. The information collected from quarterly and final progress reports will enable the Department to evaluate the performance of agencies that receive funding and determine the effectiveness of the funding for increasing the capacity of recipient agencies to comply with the regulatory requirements of Section 3.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	515	1.145		54,661		32,250

Total Estimated Burden Hours: 32,250.

Status: Reinstatement, with change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 2, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–5690 Filed 3–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–17]

Notice of Submission of Proposed Information Collection to OMB; Contractor's Requisition—Project Mortgages

AGENCY: Office of the Chief Information Officer, HUD,

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Contractor's monthly application for distribution of insured mortgage proceeds for construction costs. Multifamily Hub Centers ensure that work is actually completed satisfactorily. The prevailing wages certification ensures compliance with prevailing wage rate.

DATES: *Comments Due Date:* April 11, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0028) and should be sent to: HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Contractor's Requisition—Project Mortgages.

OMB Approval Number: 2502–0028.

Form Numbers: HUD 92448.

Description of the Need for the Information and Its Proposed Use: Contractor's monthly application for distribution of insured mortgage proceeds for construction costs. Multifamily Hub Centers ensure that work is actually completed satisfactorily. The prevailing wages certification ensures compliance with prevailing wage rate.

Frequency of Submission: Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,300	12		6		93,600

Total Estimated Burden Hours: 93,600.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2011.

Colette Pollard,

Departmental Reports Management Officer,

[FR Doc. 2011–5689 Filed 3–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–18]

Notice of Submission of Proposed Information Collection to OMB; Requisition for Disbursement of Sections 202 and 811 Capital Advance/Loan Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owner entities submit requisitions periodically (generally monthly) to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection identifies the owner, project, type of disbursement, items covered, name of the depository, and account number.

DATES: *Comments Due Date:* April 11, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0187) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Requisition for Disbursement of Sections 202 and 811 Capital Advance/Loan Funds.

OMB Approval Number: 2502–0187.

Form Numbers: HUD 92403–ca, HUD 92403 eh.

Description of the Need for the Information and Its Proposed Use: Owner entities submit requisitions periodically (generally monthly) to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection identifies the owner, project, type of disbursement, items covered, name of the depository, and account number.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,210	0.5		0.214		344

Total Estimated Burden Hours: 344.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 2, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–5688 Filed 3–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave., NW., 4th Floor, Washington, DC 20006: (202) 208–5399; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: March 3, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/11/2011

SUITABLE/AVAILABLE PROPERTIES

BUILDING

ILLINOIS

1LT A.J. Ellison

Army Reserve
Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified most current use: unknown.

WASHINGTON

Bureau of Reclamation
4976 Rd.
Soap Lake WA
Landholding Agency: Interior
Property Number: 61201110002
Status: Unutilized
Directions: 2 Bldgs. at the same location
Comments: Off-site removal only, sq. ft. varies; 772–924 sq. ft., current use varies: residence and storage.

LAND

MISSOURI

FAA
North Congress Ave & 110th St.
Kansas City MO 64153
Landholding Agency: GSA
Property Number: 54201110005
Status: Surplus
GSA Number: 7–U–MO–0688
Comments: Correction from 02/25/2011 Federal Register: .23 acres, legal constraint: utility easement only, current use: vacant land.

UNSUITABLE PROPERTIES

BUILDING

ARKANSAS

3 Bldgs.
Buffalo Nat'l River
Yellville AR
Landholding Agency: Interior
Property Number: 61201110003
Status: Excess
Directions: Tracts #s: 25–101 (Armer House), 41–101 (Main House), and 41–101A (Guest House)
Reasons: Extensive deterioration.

CALIFORNIA

Marine Corp Mnt. Trng. Ctr.
P–600
Bridgeport CA
Landholding Agency: Navy
Property Number: 77201110005
Status: Unutilized
Reasons: Extensive deterioration.

Bldg. 91084
NAS
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77201110007
Status: Excess
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material.

Bldg. 25011
Naval Air Weapons Station
China Lake CA
Landholding Agency: Navy
Property Number: 77201110008
Status: Excess
Reasons: Secured Area, Extensive deterioration.

FLORIDA

Bldg. 319
NAS
Jacksonville FL
Landholding Agency: Navy
Property Number: 77201110006
Status: Unutilized
Reasons: Extensive deterioration, Within airport runway clear zone, Secured Area.

IDAHO

4 Bldgs.
Idaho Nat'l Lab
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41201110002
Status: Unutilized
Directions: 629, 631, 669, 673
Reasons: Extensive deterioration, Secured Area.

ILLINOIS

Bldg. 531
2131 Luce Blvd.
Great Lakes IL 60008
Landholding Agency: Navy
Property Number: 77201110009
Status: Unutilized
Reasons: Secured Area.

MARYLAND

6 Bldgs.
Naval Support Facility
Indian Head MD
Landholding Agency: Navy
Property Number: 77201110010
Status: Underutilized
Directions: 157, 178, 223, 448, 474, 590
Reasons: Extensive deterioration.

MASSACHUSETTS

Former Industrial Plant
180 Hartwell Rd.
Bedford MA
Landholding Agency: GSA
Property Number: 54201110008
Status: Excess
GSA Number: MA–0840–AB
Directions: Lab, Radar Test Bldg., Warehouse
Reasons: Within airport runway clear zone, Extensive deterioration.

Former Aviation Hanger
Hartwell Road
Bedford MA
Landholding Agency: GSA
Property Number: 54201110010
Status: Excess
GSA Number: MA–0804–AC
Reasons: Within airport runway clear zone, Extensive deterioration, Secured Area.

NEW YORK

2 Bldgs.
Fan House and Reactor Stack
Upon NY
Landholding Agency: Energy
Property Number: 41201110001
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material.

OHIO

Bldgs. 500 and 501
Glenn Research Ctr.
Cleveland OH
Landholding Agency: GSA
Property Number: 54201110009
Status: Excess
GSA Number: 1–Z–OH–0598
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

TEXAS

Bldg. 111
AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18201110012
Status: Excess
Reasons: Secured Area.

USCG
7034 South 1st Ave.
Sabine Pass TX 77655
Landholding Agency: Coast Guard
Property Number: 88201110004
Status: Unutilized
Directions: 3 Bldgs.—Command, Multipurpose, and OIC Qtrs.
Reasons: Extensive deterioration.

USCG
1 Ferry Rd.
Galveston TX 77553
Landholding Agency: Coast Guard
Property Number: 88201110005
Status: Unutilized
Directions: 8 Bldgs.—Admin., Dental, Med. Modular, Blackthorn, Exch. Modular, Tricare Modular, Berthing Modular, and Galveston Modular
Reasons: Extensive deterioration.

USCG
9640 Clinton Dr.
Houston TX 77029
Landholding Agency: Coast Guard
Property Number: 88201110006
Status: Unutilized
Directions: 8 Bldgs.—Command, Gallery, Prevention, Exch, R21 Modular, Boathouse, Berthing, Management
Reasons: Extensive deterioration.

LAND

VIRGINIA

Ft. Myer Military Reservation
4th St. and State Rte. 27
Arlington VA
Landholding Agency: GSA
Property Number: 54201110011
Status: Excess
GSA Number: VA–1103–AA
Reasons: Other—Property is landlocked by adjacent landowner and State Rte. 27.

Naval Support Facility
Dahlgren VA
Landholding Agency: Navy
Property Number: 77201110011
Status: Underutilized
Reasons: Floodway, Secured Area.

[FR Doc. 2011–5268 Filed 3–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–38]

Notice of Availability: Notice of Funding Availability for HUD's Fiscal Year (FY) 2010 Section 202 Supportive Housing for the Elderly Program

AGENCY: Office of the Chief Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for HUD's FY2010 Section 202 NOFA. Approximately $371 million in capital advance funds, plus associated project rental assistance contract (PRAC) funds is made available through this NOFA, by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009). The Section 202 program provides funding for the development and operation of supportive housing for very low-income persons 62 years of age or older. Applicants planning to submit an application in response to this NOFA should also review HUD's Fiscal Year 2010 Notice of Funding Availability (NOFA) Policy Requirements and General Section that HUD posted on June 7, 2010 (FR 5415–N–01) for program thresholds and additional information and instructions to assist in submitting an application.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 14.157, Section 202 Supportive Housing for the Elderly. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: March 8, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief Human Capital Officer.

[FR Doc. 2011–5692 Filed 3–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2010–N202; 80230–1265–0000–S3]

Ellicott Slough National Wildlife Refuge, Santa Cruz County, CA; Final Comprehensive Conservation Plan and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final Comprehensive Conservation Plan (CCP) and finding of no significant impact (FONSI) for the Ellicott Slough National Wildlife Refuge (Refuge). In the CCP, we describe how we will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. The FONSI was signed on September 29, 2010. Implementation of the CCP may begin immediately.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/sfbayrefuges/Ellicott/Ellicott_CCP.htm.*

E-mail: fw8plancomments@fws.gov. Include "Ellicott Slough CCP" in the subject line of the message.

Fax: Attn: Sandy Osborn, (916) 414–6497.

Mail: Pacific Southwest Region, Refuge Planning, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846.

In-Person Viewing or Pickup: Call 510–792–0222 to make an appointment during regular business hours at San Francisco Bay National Wildlife Refuge Complex, 1 Marshlands Road, Fremont, CA 94536.

Local Library: The final document is also available at the Watsonville Main Public Library, 275 Main Street, Suite 100, Watsonville, CA 95076.

FOR FURTHER INFORMATION CONTACT: Sandy Osborn, Planning Team Leader, at (916) 414–6503 (*See* **ADDRESSES**), or Diane Kodama, Refuge Manager, at (510) 792–0222.

SUPPLEMENTARY INFORMATION:

Background

Ellicott Slough National Wildlife Refuge was established in 1975 under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901–3932). The nearly 300-acre Ellicott Slough National Wildlife Refuge, located in Santa Cruz County, California, consists of three noncontiguous units within the Watsonville Slough System. The Refuge was established to protect the endangered Santa Cruz long-toed salamander, and currently supports 2 of the 20 known breeding populations of the salamander.

We announce our decision and the availability of the FONSI for the final CCP for Ellicott Slough in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the EA that accompanied the draft CCP.

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Our Draft CCP and Environmental Assessment (EA) were available for a 30-day public review and comment period, which we announced via several methods, including press releases, updates to constituents, and a **Federal Register** notice (75 FR 44806, July 29, 2010). The Draft CCP/EA identified and evaluated three alternatives for

managing the Refuge for the next 15 years.

Under Alternative A (No Action), management would continue unchanged. Alternative B (the Selected Alternative) would standardize the wildlife monitoring and surveying program; develop a habitat management plan including an adaptive vegetation management plan; assess contaminants and disease; pursue climate change modeling; identify additional habitat for boundary expansion; continue planning and redesign of a breeding pond; assess the need and plan for new breeding ponds; develop habitat, mosquito, and water management plans, and a visitor services plan; improve energy efficiency; develop a trail system; expand the in-class environmental education program to other schools; and expand on-site restoration education. Alternative C includes all actions in Alternative B, and would expand natural resource surveys, expand control of additional priority invasive vegetation, identify buffer habitat for boundary expansion and acquisition, remove invasive wildlife, reintroduce native plants historically found on the Refuge, improve trail access, and improve outreach to the community.

We received 10 letters on the Draft CCP and EA during the review and comment period. Comments focused on mosquito control and listed species management. We incorporated comments we received into the CCP when appropriate, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected Alternative B for implementation. The FONSI documents our decision and is based on the information and analysis contained in the EA.

Under the selected alternative, the Refuge will achieve an optimal balance of biological resource objectives and visitor services opportunities. Habitat management and associated biological resource monitoring will be improved. Visitor service opportunities will focus on quality wildlife-dependent recreation with expanded environmental education opportunities. In addition, interpretation, wildlife observation, and photography programs will be improved and/or expanded.

The selected alternative best meets the Refuges' purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. Based on the associated environmental assessment, this alternative is not expected to result in significant environmental impacts and therefore does not require an environmental impact statement.

Dated: March 7, 2011.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2011–5633 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6690–A2; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Pedro Bay Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Pedro Bay Corporation. The lands are in the vicinity of Pedro Bay, Alaska, and are located in:

Seward Meridian, Alaska

T. 4 S., R. 30 W.,
Sec. 14, lot 2.
Containing 409.69 acres.

T. 5 S., R. 30 W.,
Sec. 2, lots 4, 5, and 6;
Sec. 21, lots 2, 3, and 4;
Sec. 34, lots 2 and 3.
Containing 13.41 acres.
Aggregating 423.10 acres.

Notice of the decision will also be published four times in the *Bristol Bay Times.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 11, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–5610 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6666–B; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Ahtna, Incorporated, Successor in Interest to Gakona Corporation. The decision approves the conveyance of surface estate in the lands described below pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Ahtna, Incorporated when the surface estate is conveyed to Ahtna, Incorporated, Successor in Interest to Gakona Corporation. The lands are in the vicinity of Gakona, Alaska, and are located in:

Copper River Meridian, Alaska

T. 8 N., R. 3 E.,
Sec. 22.

Containing approximately 316 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who

fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 11, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2011–5612 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI02000. L71220000.EO0000.LVTFD0980300]

Notice of Availability of Final Environmental Impact Statement for the Proposed Blackfoot Bridge Mine, Caribou County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) is announcing the availability of the Final Environmental Impact Statement (EIS) for the proposed Blackfoot Bridge Mine.

DATES: The Final EIS is now available for public review. The BLM Record of Decision will be released no sooner than 30 days after the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register.**

ADDRESSES: Copies of the Blackfoot Bridge Mine Final EIS are available in the BLM Pocatello Field Office at the following address: 4350 Cliffs Drive, Pocatello, Idaho 83204. In addition, an electronic copy of the Final EIS is available at the following Web site: *http://www.blm.gov/id/st/en/prog/0.html.*

FOR FURTHER INFORMATION CONTACT: Kyle Free, Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone (208) 478–6368, fax (208) 478–6376.

SUPPLEMENTARY INFORMATION: The Final EIS was prepared to provide decision-makers and the public with an evaluation of significant environmental impacts resulting from the proposed action and from all reasonable alternatives. P4 Production, LLC (P4), a subsidiary of Monsanto Company, holds mineral leases issued by the United States, granting them exclusive rights to develop phosphate minerals in the Blackfoot Bridge area. P4 submitted a Mine and Reclamation Plan (MRP) to the BLM for the development of a phosphate mine on existing Federal leases and an application to modify these leases to increase their size. Prior to mining under the proposed MRP P4 must receive BLM approval and obtain additional Federal and state permits.

The BLM has prepared a Final EIS to evaluate effects of the Blackfoot Bridge Mine upon the human environment, including the potential effects of selenium and other contaminants associated with other phosphate mines in the region. The Final EIS also considers appropriate mitigation measures. The National Environmental Policy Act of 1969 (NEPA) requires the BLM to evaluate the MRP, considering the no action alternative and other reasonable alternatives, before issuing decisions on the development of the phosphate leases and modification of the existing leases.

The BLM is also required by the Mineral Leasing Act of 1920, as amended, and 43 CFR Part 3590, to evaluate the MRP from P4 to determine if the plan will achieve the ultimate maximum recovery of phosphate ore reserves contained within Federal Phosphate Leases I–05613 and I–013709.

The U.S. Army Corps of Engineers (USACE) is required to evaluate and respond to P4's application for a permit under Section 404 of the Clean Water Act, which is needed to implement the MRP. The USACE is informing the public of this application through a 30-day Public Notice for Application for Permit that will run concurrently with this Notice of Availability. The Final EIS provides the analysis upon which the BLM and other involved agencies can base their decisions.

The Proposed Action consists of P4's Plan to develop the Blackfoot Bridge Mine using open pit mining methods to extract phosphate ore. The ore would be hauled about 8 miles to P4's existing Soda Springs elemental phosphorus plant. The mine would consist of three separate mine pits, the North, Mid, and South Pits. Mining would begin in the Mid Pit, followed by the North Pit and then the South Pit. Mining of the North Pit and portions of the Mid Pit are predicted to extend below groundwater level and would require the mine to pump water during portions of the 17-year mine life. All overburden would either be used to backfill the mine pits or be placed in the external East Overburden Pile (EOP) or Northwest Overburden Pile (NWOP). Other mine-related facilities would include an ore stockpile, a truck loading facility, an equipment yard, a water management system, topsoil stockpiles, roads, and sediment control structures. Approximately 739 acres of surface are expected to be disturbed over the life of the project, with about 674 acres (91 percent) planned to be re-vegetated. Nine percent of the mine site would involve residual highwalls that cannot be re-vegetated. About 90 percent of the disturbance would occur on privately owned surface controlled by P4 and about 10 percent would occur on BLM managed surface lands.

As phosphate mining has developed in southeast Idaho, increasing concern for surface and groundwater contamination has led to the development of various best management practices to control potential selenium migration from the mines. Placing an impermeable or low-permeability cover over external overburden piles and pit backfilled areas is a preferred way to reduce infiltration into the materials to reduce the potential leaching of selenium into the environment.

As part of the Final EIS analysis, groundwater modeling has been used to estimate the potential effects of the proposed action on water resources in the project area. Model results indicate that the Proposed Action, as designed, has the potential to release selenium concentrations to groundwater and surface water in excess of applicable water quality standards. Alternative waste rock capping designs (Alternatives 1A and 1B) were developed to reduce the amount of water that would contact the backfilled pits and external overburden piles. This

would reduce the volume of water containing constituents of concern that could potentially affect the quality of area groundwater and surface water and prevent the release of excessive selenium. Alternatives 1A and 1B would incorporate a layer of impermeable material called a laminated geosynthetic clay liner, or GCLL. The GCLL cover system would be comprised of the following materials (from surface to base):

- 18 inches of topsoil;
- 1 foot of weathered alluvium cover material;
- 6 inches of drainage/protective layer material;
- GCLL;
- 6 inches of a protective sub-grade layer (weathered alluvium or other earthen material); and
- Run of mine (ROM) overburden.

The GCLL includes a thin layer of powdered clay sandwiched between two geotextile layers. A geotextile is a sheet of material that is resistant to penetration damage. The top geotextile layer is laminated with a polyethylene geomembrane layer, providing an additional layer of protection.

Alternative 1A would cover all backfilled pits with the GCLL cover as well as 86 acres of the EOP and would cover the remaining areas with the Simple 1 cover, while Alternative 1B would cover all backfilled pits and the entire 141 acre EOP with the GCLL. While Alternatives 1A and 1B primarily address water quality issues, additional alternatives address other issues and are also considered in the Final EIS.

The Proposed Action and Alternatives 1A and 1B include a lease modification to Phosphate Lease I–05613. The amended lease modification areas occur in 4 separate parcels located on private and BLM surface. The lease modification allows for extending proposed mine facilities from the original lease areas into an additional 300 acres.

A Notice of Intent (NOI) to prepare this EIS was published in the **Federal Register** on February 3, 2006. Publication of the NOI in the **Federal Register** initiated a 56-day public scoping period for the Proposed Action that provided for acceptance of written comments. The scoping process identified concerns that included potential effects of the project on water resources; socioeconomic conditions; livestock grazing; reclamation and restoration; wildlife and vegetation; soils; threatened, endangered, and sensitive species; air quality; aesthetics; land use; visual resources; hazardous and solid wastes; tribal interests and cumulative effects.

The Notice of Availability for the Draft EIS was published in the **Federal Register** on August 14, 2009. A 45-day comment period on the Draft EIS was extended by 30 days, extending the comment period to November 2, 2009. Agencies, organizations, and interested parties provided comments on the Draft EIS via mail, email, and public meetings. Comments also came in the form of postcards, form letters, and comment forms. A total of 6,994 comments were received. The majority, approximately 80 percent of the comments, expressed support for the project. Comments expressing concerns about the Draft EIS largely focused on surface and groundwater quality issues and the proximity of the mine to the Blackfoot River. In developing responses to these comments, additional mitigation measures have been added to Alternatives 1A and 1B. Alternative 1A is the Agency Preferred Alternative. Primary mitigation features added to Alternatives 1A and 1B in the Final EIS include:

- GCLL coverage over the East Overburden Pile (EOP) has been expanded from 21 acres to 86 acres for Alternative 1A and the northern portion of the EOP will be constructed of limestone instead of chert. GCLL coverage over the entire 141- acre EOP for Alternative 1B remains unchanged from the Draft EIS.
- An Overburden Seepage Management System (OSMS) has been proposed as an addition protective measure for Alternatives 1A and 1B that would use a network of perforated pipes constructed underneath the external overburden piles for additional protection against unanticipated leakage events and during construction of the EOP. and
- An Adaptive Management Plan for the water management system has been developed that would result in placement of dredged or fill material in areas currently containing wetlands and non-wetland waters of the U.S. only as necessary to manage runoff water.

It is currently expected that P4's existing South Rasmussen Mine will be depleted sometime in 2012. Because of operating requirements at the Soda Springs processing plant, it is necessary to bring Blackfoot Bridge Mine online in 2011. In the initial years of Blackfoot Bridge mining, a blend of ores from both South Rasmussen Mine and Blackfoot Bridge Mine would be required.

Authority: Mineral Leasing Act of 1920, as amended and the Federal Land Policy and Management Act of 1976, as amended.

Joe Kraayenbrink,

BLM Idaho Falls District Manager.

[FR Doc. 2011–5497 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.AL 0000]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Saturday, March 26, 2011, from 8 a.m. to 5 p.m. at the Hilton Garden Inn, 12603 Mariposa Road, Victorville, CA 92395. There will be no field trip on Friday, March 25. On that date, the Council will hold an internal business meeting on administrative matters.

Agenda topics for the Saturday meeting will include updates by Council members and reports from the BLM District Manager and five field office managers. In addition, the agenda may include updates on California Independent System Operator, the 29 Palms Marine Corps Air-to-Ground Combat Center proposed expansion, abandoned mine lands, special recreation permits, and renewable energy. Final agenda items will be posted on the BLM California state Web site at *http://www.blm.gov/ca/st/en/info/rac/dac.html.*

SUPPLEMENTARY INFORMATION: All Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 5 p.m., the meeting could conclude prior to 5 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the

California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs (951) 697–5220.

Dated: March 2, 2011.

Jack L. Hamby,

Associate District Manager.

[FR Doc. 2011–5456 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW160470]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW160470, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from O'Brien Energy Resources Corporation for competitive oil and gas lease WYW160470 for land in Niobrara County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW160470 effective November 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–5491 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of major portion prices for calendar year 2009.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require the Office of Natural Resources Revenue (ONRR) to determine major portion prices and notify industry by publishing the prices in the **Federal Register.** The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. This notice provides major portion prices for the 12 months of calendar year 2009.

DATES: The due date to pay additional royalties based on the major portion prices is May 10, 2011.

FOR FURTHER INFORMATION CONTACT: John Barder, Manager, Team B, Western Audit and Compliance, ONRR; telephone (303) 231–3702; fax number (303) 231–3744; e-mail *John.Barder@onrr.gov;* or Mike Curry, Team B, Western Audit and Compliance, ONRR, telephone (303) 231–3741; fax (303) 231–3744; e-mail *Michael.Curry@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit and Compliance Management, Team B, P.O. Box 25165, MS 62220B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, Minerals Management Service (now Office of Natural Resources Revenue) published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases" (64 FR 43506). The gas valuation regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month, beginning January 2000, and a due date for additional royalty payments. *See* 30 CFR 1206.174(a)(4)(ii) (2010). (Note that ONRR regulations were moved from 30 CFR, chapter II, to 30 CFR, chapter XII (75 FR 61051), effective October 1, 2010.)

If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to ONRR by the due date. If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended Form MMS–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR–designated areas	Jan 2009	Feb 2009	Mar 2009	Apr 2009
Blackfeet Reservation	3.57	3.53	2.70	2.41
Fort Belknap	5.93	5.58	5.41	5.45
Fort Berthold	4.94	3.88	2.94	2.77
Fort Peck Reservation	5.96	4.83	4.23	3.93
Navajo Allotted Leases in the Navajo Reservation	4.93	3.32	2.78	2.77
Rocky Boys Reservation	4.25	2.81	2.32	2.02
Ute Tribal Leases in the Uintah and Ouray Reservation	3.96	2.69	2.21	2.11
	May 2009	Jun 2009	Jul 2009	Aug 2009
Blackfeet Reservation	2.88	2.49	2.39	2.24

	May 2009	Jun 2009	Jul 2009	Aug 2009
Fort Belknap	5.35	5.28	5.38	5.39
Fort Berthold	2.98	2.96	2.66	2.83
Fort Peck Reservation	3.99	4.22	3.98	4.56
Navajo Allotted Leases in the Navajo Reservation	2.78	2.80	3.15	3.39
Rocky Boys Reservation	2.15	1.96	1.82	1.61
Ute Tribal Leases in the Uintah and Ouray Reservation	2.19	2.27	2.43	2.69
	Sep 2009	**Oct 2009**	**Nov 2009**	**Dec 2009**
Blackfeet Reservation	2.26	3.81	3.16	4.93
Fort Belknap	4.54	4.95	5.08	5.42
Fort Berthold	2.68	4.20	4.13	4.68
Fort Peck Reservation	4.17	5.98	6.49	6.22
Navajo Allotted Leases in the Navajo Reservation	2.79	3.93	4.41	4.89
Rocky Boys Reservation	1.96	2.95	2.84	3.90
Ute Tribal Leases in the Uintah and Ouray Reservation	2.18	3.22	3.95	3.97

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the ONRR Web site at *http://www.onrr.gov/FM/PDFDocs/991201.pdf.*

Dated: March 7, 2011.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2011–5591 Filed 3–10–11; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–765]

In the Matter of Certain Display Devices, Including Digital Televisions and Monitors II; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 9, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sony Corporation of Tokyo, Japan. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain display devices, including digital televisions and monitors by reason of infringement of certain claims of U.S. Patent No. 5,731,847 ("the '847 patent"); U.S. Patent No. 5,583,577 ("the '577 patent"); U.S. Patent No. 6,661,472 ("the '472 patent") and U.S. Patent No. RE 40,468 ("the '468 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 7, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain display devices, including digital televisions and monitors that infringe one or more of claims 41–44 of the '468 patent; claims 1–4, 8, and 11–15 of the '472 patent; claims 13, 15, 19, and 20 of the '577 patent; and claims 11, 12, 16, 27, 33–35, and 39–41 of the '847 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Sony Corporation, 1–7–1, Konan, Minato-ku, Tokyo, Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu, Seoul 150–721, Korea;

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief 2Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by

the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 7, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–5670 Filed 3–10–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–700]

In the Matter of Certain Mems Devices and Products Containing Same; Notice of Commission Decision To Review-in-Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions Regarding Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 in the above-captioned investigation, and is requesting written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 31, 2009, based on a complaint filed on December 1, 2009, by Analog Devices, Inc. ("Analog Devices") of Norwood, Massachusetts. 75 FR 449–50 (Jan. 5, 2010). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microelectromechanical systems ("MEMS") devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,220,614 ("the '614 patent") and 7,364,942 ("the '942 patent"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named as respondents Knowles Electronics LLC of Itasca, Illinois and Mouser Electronics, Inc. of Mansfield, Texas.

On December 23, 2010, the ALJ issued his final ID finding a violation of section 337 by respondents with respect to the '942 patent, and which also included his recommendation on remedy and bonding during the period of Presidential review. The ALJ found no section 337 violation with respect to the '614 patent due to non-infringement of the asserted claims. On January 21, 2011, the Commission issued notice of its determination to extend the deadline to March 7, 2001, for determining whether to review the final ID. On January 18, 2011, Analog Devices, respondents, and the Commission investigative attorney ("IA") filed petitions for review of the final ID, and each party filed responses to the other parties' petitions on January 26, 2011. On February 4, 2011, Analog Devices and respondents each filed submissions on the public interest.

Upon considering the parties' filings, the Commission has determined to review-in-part the ID. Specifically, the Commission has determined to review: (1) The ALJ's construction of the claim term "oven" relating to both the '614 and '942 patents; (2) the ALJ's construction of the claim term "sawing" relating to both the '614 and '942 patents; (3) the ALJ's determination that the accused process does not infringe, either literally or under the doctrine of equivalents, claims 12, 15, 31–32, 34–35, and 38–39 of the '614 patent or claim 1 of the '942 patent; (4) the ALJ's finding that U.S. Patent No. 5,597,767 ("the '767 patent") does not incorporate by reference U.S. Patent Nos. 5,331,454 and 5,512,374 ("the '374 patent"); (5) the ALJ's finding that claims 2–6 and 8 are infringed by the accused process; (6) the ALJ's findings that claims 34–35 and 38–39 of the '614 patent, and claims 2–6 and 8 of the '942 patent, are not anticipated, under 35 U.S.C. § 102(a), by the '767 patent or the '374 patent; (7) the ALJ's findings that claims 34–35 and 38–39 of the '614 patent are not obvious, under 35 U.S.C. § 103, in view of the '767 patent and the Sakata et al. prior art reference; and (8) the ALJ's finding that the technical prong of the domestic industry requirement has been satisfied as to both the '614 and '942 patents. The Commission has determined not to review the remainder of the ID.

On review, with respect to violation, the parties are requested to submit briefing limited to the following issues:

(1) In arguing that the term "oven" should be construed as "a system that includes a heated chamber," is it the contention of Complainant and the IA that the system includes elements such as a reservoir, heaters on the reservoir, a delivery line that connects the reservoir and the deposition chamber, a vacuum line, a nitrogen line, and a device (such as a computer) for programming the temperature, gas pressure, etc., of the oven? *See* Complainant Analog's Contingent Petition at 25 and the IA's Contingent Petition at 6.

(2) If the term "oven" as it appears in claim 1 of the '942 was construed broadly to encompass the entire system, would the claim cover a method in which the wafer is inserted into, and the anti-stiction compound is heated within, any portion of the system, including the elements listed in the question above, such as a heater, delivery line, or a device for programming? In your response, please address whether the Commission should construe the disputed term in light of the context supplied by the claim, which indicates, for example, that the anti-stiction compound is heated within said oven.

(3) If the term "oven" is construed broadly, then is the claim invalid based on a failure to satisfy the written description and enablement requirements? For example, does the specification disclose that the anti-stiction compound can be heated within a vacuum line or a device for programming?

(4) The ALJ determined that the '374 patent did not disclose the limitation "exposing said wafer, substantially at room temperature, to the vapor of a compound having anti-stiction properties" of claim 34 of the '614 patent, finding that a table found at column 5 of the '374 does not disclose a "process whereby the anti-stiction compound is deposited on a wafer 'substantially at room temperature.'" ID at 108–09. Can the required disclosure be found in the '374 at cols. 4:59–5:62?

In addressing these issues, the parties are requested to make specific reference to the evidentiary record and to cite relevant authority.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation, particularly in the context of the ALJ's recommendations on remedy.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review in response to the above-referenced questions. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than close of business on March 18, 2011. Reply submissions must be filed no later than the close of business on March 25, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46.

By order of the Commission.

Issued: March 7, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–5673 Filed 3–10–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–732]

In the Matter of Certain Devices Having Elastomeric Gel and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 20) of the presiding administrative law judge ("ALJ") in the above-captioned investigation terminating the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 4, 2010, based on the complaint, as supplemented, of

Interactive Life Forms, LLC of Austin, Texas ("ILF"). 75 FR 47027 (Aug. 4, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices having elastomeric gel and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,782,818 and 5,807,360. The complaint originally named 26 respondents, including Polydigitech Inc. of Schaumburg, Illinois ("Polydigitech"), and Satistic, LLC of Las Vegas, Nevada ("Satistic"). The complaint was later amended, as was the notice of investigation, to add two respondents and correct the identification of two original respondents. 75 FR 64742 (Oct. 20, 2010). Since institution, Satistic has been found in default and all remaining respondents, save Polydigitech, have been terminated from the investigation based upon consent order stipulations and consent orders or based upon settlement.

On December 29, 2010, ILF filed a motion to terminate the investigation in its entirety, in which it represented that it is not seeking entry of a limited exclusion order, a cease and desist order, or any other relief despite Satistic having been found in default. ILF further represented that it had decided to withdraw its complaint against Polydigitech, the last remaining respondent in the investigation, because its allegations against Polydigitech were based upon that firm's distribution of products manufactured by original respondent TENGA Co., Ltd. of Tokyo, Japan, which has since entered into a consent order and been terminated from the investigation. ILF also stated that neither Polydigitech nor the Commission investigative attorney opposed the motion.

On January 28, 2011, the ALJ issued the subject ID. Given ILF's decision not to seek any relief against the defaulted party, and finding no extraordinary circumstances that would preclude the Commission from terminating the investigation in its entirety based on the withdrawal of the complaint as to Polydigitech, the only remaining respondent in the investigation, the ALJ granted ILF's unopposed motion. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission Rules 210.21, 210.42 (19 CFR 210.21, 210.42).

By order of the Commission.

Issued: February 17, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–5680 Filed 3–10–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0094]

Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Department Annual Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until May 10, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street, NE., Washington, DC 20530.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Ashley Hoornstra at 202–616–1314 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* Department Annual Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and public safety agencies that are recipients of COPS hiring grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 100 respondents can complete the report in an average of 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 total burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: March 8, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–5678 Filed 3–10–11; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1546]

NIJ Request for Comments on Draft Vehicular Digital Multimedia Evidence Recording System Certification Program Requirements for Law Enforcement and Draft Law Enforcement Vehicular Digital Multimedia Evidence Recording System Selection and Application Guide

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public two draft documents:

- "Vehicular Digital Multimedia Evidence Recording System Certification Program Requirements for Law Enforcement"
- "Law Enforcement Vehicular Digital Multimedia Evidence Recording System Selection and Application Guide"

The opportunity to provide comments on these documents is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: The comment period will be open until April 25, 2011.

FOR FURTHER INFORMATION CONTACT: Casandra Robinson, by telephone at 202–305–2596 [*Note:* this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2011–5700 Filed 3–10–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements

ACTION: Notice of Charter Reestablishment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the North American Agreement on Labor Cooperation (NAALC), and the Labor Provisions of U.S. Free Trade Agreements, the Secretary of Labor has determined that the reestablishment of the charter of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements is necessary and in the public interest and will provide information that can not be obtained from other sources. The committee shall provide its views to the Secretary of Labor through the Bureau of International Labor Affairs of the U.S. Department of Labor, which is the point of contact for the NAALC and the Labor Provisions of U.S. Free Trade Agreements. The committee is to be comprised of twelve members, four representing the labor community, four representing the business community, and four representing the public.

Purpose: In accordance with the provisions of the Federal Advisory Committee Act, Article 17 of the NAALC, Article 17.4 of the United States—Singapore Free Trade Agreement, Article 18.4 of the United States—Chile Free Trade Agreement, Article 18.4 of the United States—Australia Free Trade Agreement, Article 16.4 of the United States—Morocco Free Trade Agreement, Article 16.4 of the Central America—Dominican Republic—United States Free Trade Agreement (CAFTA–DR), Article 15.4 of the United States—Bahrain Free Trade Agreement, Article 16.4 of the United States—Oman Free Trade Agreement, and Article 17.5 of the United States—Peru Trade Promotion Agreement, the Secretary of Labor has determined that the reestablishment of the charter of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (FTAs) is necessary and in the public interest and will provide information that can not be obtained from other sources.

The Bureau of International Labor Affairs serves as the U.S. point of contact under the FTAs listed above. The committee shall provide its advice to the Secretary of Labor through the Bureau of International Labor Affairs of the U.S. Department of Labor concerning the implementation of the NAALC and the labor chapters of U.S. FTAs. The committee may be asked to provide advice on the implementation of labor provisions of other free trade agreements to which the United States may be a party or become a party. The committee should provide advice on issues within the scope of the NAALC and the labor provisions of the free trade agreements, including cooperative activities and the labor cooperation mechanism of each free trade agreement as established in the labor provisions and the corresponding annexes. The committee may be asked to provide advice on these and other matters as they arise in the course of administering the NAALC and the labor provisions of other free trade agreements.

The committee shall be comprised of twelve members, four representing the labor community, four representing the business community, and four representing the public. Unless already employees of the United States Government, no members of the Committee shall be deemed to be employees of the United States Government for any purpose by virtue of their participation on the Committee. Members of the Committee will not be compensated for their services or reimbursed for travel expenses.

Authority: The authority for this notice is granted by the Federal Advisory Committee Act (5 U.S.C. App. 2) and the Secretary of Labor's Order No. 18–2006 ((71 FR 77559 (12/26/2006)).

FOR FURTHER INFORMATION CONTACT: Paula Church Albertson, Deputy Division Chief, Trade Agreement Administration and Technical Cooperation, Bureau of International Labor Affairs, U.S. Department of Labor, telephone (202) 693–4789.

Signed at Washington, DC, this 4th day of March 2011.

Sandra Polaski,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2011–5637 Filed 3–10–11; 8:45 am]

BILLING CODE 4510–28–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Merit Systems Protection Board.

ACTION: 30-day notice of submission of information collection approval from the Office of Management and Budget (OMB) and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Merit Systems Protection Board (MSPB) has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of

Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted April 11, 2011.

ADDRESSES: Written comments may be submitted to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200, fax: (202) 653–7130, or e-mail: *mspb@mspb.gov.* Written comments also should be submitted to OMB by e-mail: *Service DeliveryComments@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200, fax: (202) 653–7130, or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between MSPB and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The MSPB did not receive any comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the MSPB's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 12.

Respondents: 7,000.

Annual responses: 3,500.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 1,750.

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.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–5589 Filed 3–10–11; 8:45 am]

BILLING CODE P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal Government-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 172nd Meeting; Amendment Notice

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, this notice is to announce changes to the previously announced meeting of the National Council on the Arts.

The session on Thursday, March 24th, previously announced for 5 p.m. to 5:30 p.m., will instead be held from 4:45 p.m. to 5:15 p.m. (ending time is approximate). The session on Friday, March 25th, will be held from 9 a.m. to 11 a.m.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: March 8, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2011–5604 Filed 3–10–11; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and PRA; Revision to March 24, 2010, ACRS Meeting Federal Register Notice

The **Federal Register** Notice for the ACRS Subcommittee Meeting on Reliability and Probabilistic Risk Assessment scheduled to be held on March 24, 2011, has been cancelled.

The notice of this meeting was previously published in the **Federal Register** on Wednesday, March 2, 2011, [75 FR 11525].

Further information regarding this meeting can be obtained by contacting John Lai, Designated Federal Official (Telephone: 301–415–5197, E-mail: *John.Lai@nrc.gov*) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: March 2, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–5338 Filed 3–10–11; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Amended Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council), an interstate compact agency organized under the authority of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 *et seq.* (Northwest Power Act).

ACTION: Notice of final action adopting the management plan elements of the Blackfoot River Subbasin Plan into the Council's *Columbia River Basin Fish and Wildlife Program.*

SUMMARY: Pursuant to Section 4(h) of the Northwest Power Act, the Council has amended its *Columbia River Basin Fish and Wildlife Program* to add the Blackfoot River Subbasin Plan. The program as amended may be found on the Council's Web site at *http://www.nwcouncil.org/fw/program* and then, for the subbasin plan elements and relevant decision documents in particular, at *http://www.nwcouncil.org/fw/subbasinplanning/Default.htm.* Further information and an explanation of this amendment process may be found in the documents on that page or by contacting the Northwest Power and Conservation Council at (503) 222–5161 or toll free (800) 452–5161.

Stephen L. Crow,

Executive Director.

[FR Doc. 2011–5599 Filed 3–10–11; 8:45 am]

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POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIME: Tuesday, March 22, 2011, at 10 a.m.

PLACE: Washington, DC at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Closed.

Matters To Be Considered

Tuesday, March 22, at 10 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–5869 Filed 3–9–11; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of AdAl Group, Inc., Com/Tech Communications Technologies, Inc., Dialog Group, Inc., Eurogas, Inc., Golden Books Family Entertainment, Inc. (n/k/a GB Holdings Liquidation, Inc.), Information Management Technologies Corporation, Interiors, Inc., and SFG Financial Corp.; Order of Suspension of Trading

March 9, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AdAl Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Com/Tech Communications Technologies, Inc. because it has not filed any periodic reports since the period ended December 31, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dialog Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eurogas, Inc. because its Forms 10–K for the periods ended December 31, 2007, 2008 and 2009 failed to include audited financial statements and its Forms 10–Q for the interim periods from March 31, 2007 through September 30, 2010, inclusive, were not reviewed by an independent auditing firm, as required by Commission rules.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Golden Books Family Entertainment, Inc. (n/k/a GB Holdings Liquidation, Inc.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Information Management Technologies Corporation because it has not filed any periodic reports since the period ended June 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interiors, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SFG Financial Corp. because it has not filed any periodic reports since the period ended January 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 9, 2011, through 11:59 p.m. EDT on March 22, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–5802 Filed 3–9–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

AccessTel, Inc., American Asset Management Corp., DME Interactive Holdings, Inc., DocuPort, Inc., and iCarbon Corp., Order of Suspension of Trading

March 8, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AccessTel, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Asset Management Corp. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DME Interactive Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DocuPort, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of iCarbon Corp. because it has not filed any periodic reports since the period ended December 31, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 8, 2011, through 11:59 p.m. EDT on March 21, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–5644 Filed 3–8–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64044; File No. SR–DTC–2011–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Dividends Service Guide as It Relates to the Domestic Tax Reporting Service and the U.S. Tax Withholding Service

March 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 22, 2011, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by DTC.[2] DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(4) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will update DTC's Dividends Service Guide to clarify that: (1) The Domestic Tax Reporting Service ("DTax") is no longer available on the Internet or as a computerized file, (2) DTC's tax withholding services that DTC performs relate exclusively to payments processed through DTC, and (3) DTC's U.S. Tax Withholding Service is available to all non-U.S. entities that are DTC participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When an issuer makes a distribution on a security, the payment is classified for tax purposes as a particular type of income. Often such income is reclassified at the end of the year as a different type of income than originally designated, which may result in a different taxability characteristic than the original income announcement described.[5] When an income reclassification occurs, DTC participants need to be aware of it so they can properly prepare the IRS Forms 1099 they are required to provide to their customers. The Domestic Tax Reporting Service ("DTax") provides participants with income classification information for assistance in completing those forms.

In 2005, for purposes of efficiency and enhanced customer service, DTax became a service offering of DTCC Solutions, a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, DTC's parent company.[6] At that time, DTCC Solutions partnered with ADP Investor Communication Services, Inc. to provide DTax on the Internet and as a computerized file. Recently, DTCC Solutions and Broadridge, formerly ADP Investor Communication Services, Inc., ended their strategic alliance. In an effort to enhance the utility of the DTC Dividends Service Guide ("Guide"), DTC is making updates to the Guide to reflect the fact that the strategic alliance no longer exists and to note that while DTax is still accessible through inquiry functions on DTC's Participant Terminal System and DTC's Participant Browser Service, DTax is no longer available on the Internet or as a computerized file.

Additionally and as requested by its participants, DTC is making other minor updates to the Guide's information relating to DTC's U.S. Tax Withholding Service in order to clarify that the tax withholding services that DTC performs relate exclusively to payments processed through DTC and that DTC cannot and does not perform tax withholding for payments outside of its systems. The updates include clarifications to assure participants that DTC performs tax withholding services on the credits processed by its Stock Loan Income Tracking Service and Repo Tracking Service and on payments credited to the DTC accounts of non-U.S. participants.[7] The Guide is also being updated to make clear that DTC's U.S. Tax Withholding Service is available to all non-U.S. entities that are participants of DTC and not just to entities that are qualified or nonqualified intermediaries (in tax parlance) for tax purposes.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to DTC because the proposed rule should facilitate the prompt and accurate clearance and settlement of securities transactions by

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change is attached as Exhibit 5 to DTC's filing, which is available at *http://www.dtcc.com/downloands/legal/rule_filings/2010/dtc/2011–04.pdf.*

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by the DTC.

[5] For example, some income may be reclassified at the end of the year as short or long term capital gains.

[6] Securities Exchange Release Act. No. 52977 (December 19, 2005) [File No. SR–DTC–2005–20].

[7] DTC's Participants have requested that DTC clarify in its Procedures that it is currently performing this service because the IRS earlier this year published a notice on performing tax withholding on substitute dividend payments.

[8] 15 U.S.C. 78q–1.

clarifying DTC's procedures as they relate to certain tax services offered by and through DTC, which should enhance the use of DTC's existing tax withholding services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(4) [10] thereunder because it is a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2011–04 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–DTC–2011–04. This file number should be included on the subject line if e-mail 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, *http://www.dtcc.com.* 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–DTC–2011–04 and should be submitted on or before April 1, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5645 Filed 3–10–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64042; File No. SR–NYSEArca–2011–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period of the Exchange's Prior Approvals To Receive Inbound Routes of Certain Equities Orders From Archipelago Securities LLC

March 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 28, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of certain equities orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Arca affiliated ETP Holder. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex").[4] The Exchange, through NYSE Arca Equities, has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of the NYSE and NYSE Amex.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities is subject to a pilot period ending March 31, 2011.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 6 months, through September 30, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[10] and Rule 19b–4(f)(6) thereunder.[11] 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)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–06 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–2011–06. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of the filing also

[3] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving SR–NYSEArca–2008–90).

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also* Securities Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90); *see also* Securities Exchange Act Release No. 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (order approving SR–NYSEArca–2008–130).

[6] *See* Securities Exchange Act Release No. 62833 (September 2, 2010), 75 FR 55382 (September 10, 2010) (Notice of immediate effectiveness of SR–NYSEArca–2010–82).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

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–2011–06 and should be submitted on or before April 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5578 Filed 3–10–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64043; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 25 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

March 7, 2011.

I. Introduction

On December 23, 2010 the operating committee ("Operating Committee" or "Committee") [1] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq/UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") pursuant to Rule 608 [2] under the Securities Exchange Act of 1934 ("Act") [3] a proposal to amend the Plan [4] to permit ministerial amendments to the Plan under the signature of the Chairman of the Nasdaq/UTP Plan Operating Committee. The proposed amendment was published for comment in the **Federal Register** on January 28, 2011.[5] No comment letters were received in response to the Notice. This order approves the proposal.

II. Description of the Proposal

Currently, Section XVI of the Nasdaq/UTP Plan requires each Participant to execute most amendments [6] to the Plan before the amendments can be filed with the Commission. The Participants proposed to amend the Plan to permit the submission of ministerial Plan amendments to the Commission under the signature of the Chairman of the Nasdaq/UTP Plan Operating.

The categories of ministerial Plan amendments that may be submitted under the signature of the Chairman include amendments to the Plan that pertain solely to any one or more of the following:

(1) Admitting a new Participant into the Plan;

(2) Changing the name or address of a Participant;

(3) Incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of the Plan (*e.g.,* the Commission rule establishing the Advisory Committee);

(4) Incorporating a change (i) that the Commission has implemented by rule, (ii) that requires conforming language to the text of the Plan (*e.g.,* the Commission rule amending the revenue allocation formula), and (iii) that a majority of all Participants has voted to approve; [7] and,

(5) Incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete (*e.g.,* language regarding ITS).

III. Discussion

After careful review, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder,[8] and, in particular, Section 11A(a)(1) of the Act [9] and Rule 608 thereunder [10] in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. Permitting the Chairman of the Nasdaq/UTP Plan Operating Committee to submit ministerial amendments will increase the efficiency of the administration of the Plan and increase the timeliness of updating the Plan for accuracy. The proposed amendment streamlining the process for admitting new Participants removes impediments to competition by facilitating the timely admission of a new Participant to the Plan.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] that the proposed amendment to Nasdaq/UTP Plan (File No. S7–24–89) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5579 Filed 3–10–11; 8:45 am]

BILLING CODE 8011–01–P

[1] The Plan Participants (collectively, "Participants") are the: BATS Exchange, Inc. ("BATS"); BATS Y-Exchange, Inc.("BATS Y"); Chicago Board Options Exchange, Incorporated ("CBOE"); Chicago Stock Exchange, Inc. ("CHX"); EDGA Exchange, Inc. ("EDGA"); EDGX Exchange, Inc.("EDGX"); Financial Industry Regulatory Authority, Inc. ("FINRA"); International Securities Exchange LLC ("ISE"); NASDAQ OMX BX, Inc. ("BX"); NASDAQ OMX PHLX, Inc. ("PHLX"); Nasdaq Stock Market LLC ("Nasdaq"); National Stock Exchange, Inc. ("NSX"); New York Stock Exchange LLC ("NYSE"); NYSE Amex, Inc. ("NYSEAmex"); and NYSE Arca, Inc. ("NYSEArca").

[2] 17 CFR 240.608.

[3] 15 U.S.C. 78k–1.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

[5] *See* Securities Exchange Act Release No. 63756 (January 21, 2011), 76 FR 5224 ("Notice").

[6] Some Plan amendments do not require a unanimous vote; therefore not every Participant would have to execute the amendment.

[7] The Participants would vote only to approve the conforming language to the Plan, as the Commission's action in approving its rule would bind the Participants.

[8] The Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 240.608.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.608.

[13] 17 CFR 200.30–3(a)(27).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12481 and #12482]

Connecticut Disaster #CT–00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–1958–DR), dated 03/03/2011.

Incident: Snowstorm.

Incident Period: 01/11/2011 through 01/12/2011.

Effective Date: 03/03/2011.

Physical Loan Application Deadline Date: 05/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/05/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/03/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fairfield, Hartford, Litchfield, New Haven, New London, Tolland, and the Tribal Lands of the Mashantucket Pequot and the Mohegan Tribal Nations located entirely within New London County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12481B and for economic injury is 12482B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–5576 Filed 3–10–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12456 and #12457]

California Disaster Number CA–00164

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–1952–DR), dated 01/26/2011.

Incident: Severe Winter Storms, Flooding, and Debris and Mud Flows.

Incident Period: 12/17/2010 through 01/04/2011.

Effective Date: 03/03/2011.

Physical Loan Application Deadline Date: 03/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 10/26/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 01/26/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Madera, Mariposa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–5577 Filed 3–10–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7362]

30-Day Notice of Proposed Information Collection: Form DS–0064, Statement Regarding a Lost or Stolen Passport, 1405–0014

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Statement Regarding a Lost or Stolen Passport.
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/PPT/PMO/PC.
- *Form Number:* DS–0064.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 122,500.
- *Estimated Number of Responses:* 122,500.
- *Average Hours per Response:* 5 minutes.
- *Total Estimated Burden:* 10,208 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from March 11, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Passport Forms Management Officer, U.S. Department of State, Office of Program Management and Operational Support, 2100 Pennsylvania Avenue, NW., Room 3031, Washington, DC 20037, who may be reached on 202–663–2457 or at *PPT–Forms-Officer@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of Proposed Collection

The form is used prior to passport issuance and solicits information relating to the loss or theft of a valid U.S. passport. The information is used by the United States Department of State to ensure that no person shall bear more than one valid or potentially valid U.S. passport book and passport card at any one time, except as authorized by the Department, and is also used to combat passport fraud and misuse.

Methodology

This form is used in conjunction with the Form DS–11, Application for a U.S. Passport, or submitted separately to report loss or theft of a U.S. passport. Passport Services collects the information when a U.S. citizen or non-citizen national applies for a new U.S. passport and has been issued a previous, still valid U.S. passport that has been lost or stolen, or when a passport holder independently reports it lost or stolen. Passport applicants can either download the form from the Internet or pick one up at any Passport Agency or Acceptance Facility.

Dated: March 2, 2011.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–5703 Filed 3–10–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: # 7241]

Advisory Committee on Historical Diplomatic Documentation; Notice of Charter Renewal

The Advisory Committee on Historical Diplomatic Documentation is renewing its charter for a period of two years. This Advisory Committee will continue to make recommendations to the Historian and the Department of State on all aspects of the Department's program to publish the *Foreign Relations of the United States* series as well as on the Department's responsibility under statute (22 U.S.C. 4351, *et seq.*) to open its 30-year-old and older records for public review at the National Archives and Records Administration. The Committee consists of nine members drawn from among historians, political scientists, archivists, international lawyers, and other social scientists who are distinguished in the field of U.S. foreign relations.

Questions concerning the Committee and the renewal of its Charter should be directed to Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123 (e-mail *history@state.gov*).

Dated: February 9, 2011.

Edward Brynn,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2011–5706 Filed 3–10–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 26, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2002–11481.

Date Filed: February 22, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 15, 2011.

Description

Application of Edelweiss Air AG requesting an amendment to its foreign air carrier permit in order to conduct scheduled and charter foreign air transportation of persons, property, and mail under the U.S.-Switzerland Air Transport Agreement ("Open Skies") signed and effective June 21, 2010.

Docket Number: DOT–OST–2011–0032.

Date Filed: February 22, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 15, 2011.

Description

Application of Twin Cities Air Service, LLC requesting authority to operate scheduled passenger service as a commuter air carrier.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–5593 Filed 3–10–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 26, 2011

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0037.

Date Filed: February 25, 2011.

Parties: Members of the International Air Transport Association.

Subject: Composite Passenger Tariff Coordinating Conference, Geneva, 22 October 2010, Composite Resolutions 012, 026, 047a, 076xx, 076z, 087aa, Intended Effective Date: 1 April 2011.

Docket Number: DOT–OST–2011–0038.

Date Filed: February 25, 2011.

Parties: Members of the International Air Transport Association.

Subject: Composite Passenger Tariff Coordinating Conference, Geneva, 22 October 2010, Composite Resolutions 017a, 017c, Intended Effective Date: 1 April 2011.

Docket Number: DOT–OST–2011–0039.

Date Filed: February 25, 2011.

Parties: Members of the International Air Transport Association.

Subject: Composite Passenger Tariff Coordinating Conference, Geneva, 22

October 2010, Composite Resolution 024c, Intended Effective Date: 1 April 2011.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–5596 Filed 3–10–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35472]

Lycoming Valley Railroad Company–Operation Exemption—SEDA—COG Joint Rail Authority

Lycoming Valley Railroad Company (LVRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 0.4 miles of track, known as the Muncy Industrial Track, extending between milepost 0.0 and milepost 0.4 in Muncy, Lycoming County, Pa. The line is owned or leased by SEDA–COG Joint Rail Authority (SEDA–COG). LVRR states that the line it proposes to operate is an extension of its existing line of railroad it operates for SEDA–COG and that it will amend its agreement dated December 13, 2006, with SEDA–COG to provide common carrier rail service to multiple shippers on this extended line of railroad.[1]

LVRR indicates that it intends to interchange traffic with the Norfolk Southern Railway Company and/or Canadian Pacific Railway Company. LVRR also indicates that there are no interchange commitments in the operating agreement between it and SEDA–COG nor will there be any in the interchange agreements between LVRR and its connecting carriers as a result of this transaction.

The proposed transaction is scheduled to be consummated on or after March 27, 2011, the effective date of the exemption (30 days after this exemption was filed).

LVRR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues would not exceed $5 million.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 18, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35472, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Richard R. Wilson, Esq., 518 N. Center Street, Suite 1, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 8, 2011.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–5605 Filed 3–10–11; 8:45 am]

BILLING CODE 4915–01–P

[1] While not submitted with the verified notice of exemption here, the operating agreement between SEDA–COG and LVRR has recently been filed at the Board in *Susquehanna Union R.R.—Control Exemption—N. Shore R.R., Nittany & Bald Eagle R.R., Shamokin Valley R.R., Juniata Valley R.R., Lycoming Valley R.R., and Union Cnty. Indus. R.R.,* FD 35343, Pet. for Exemption Ex. B, Apr. 12, 2010. The parties are reminded that once the operator obtains Board authorization to provide common carrier rail service over a line, the common carrier obligation continues, notwithstanding any term of the parties' agreement, including term limitations and termination rights, unless and until the Board grants the appropriate discontinuance or abandonment authority. 49 U.S.C. 10903; *Chicago & N. W. Transp. Co.* v. *Kalo Brick & Tile Co.,* 450 U.S. 311, 320 (1981); *Pittsburg & Shawmut R.R.—Aban. Exemption—in Armstrong and Jefferson Counties, Pa.,* AB 976X, slip op. at 1 (STB served Sept. 15, 2005).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35470]

North Shore Railroad Company–Operation Exemption–SEDA–COG Joint Rail Authority

North Shore Railroad Company (NSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 2.0 miles of track, known as the BIDA Industrial Track, extending between milepost 0.0 and milepost 2.0 in Berwick, Columbia County, Pa. The line is leased by SEDA–COG Joint Rail Authority (SEDA–COG). NSRR states that the line it proposes to operate is an extension of its existing line of railroad it operates for SEDA–COG and that it will amend its agreement dated December 13, 2006, with SEDA–COG to provide common carrier rail service to multiple shippers on this extended line of railroad.[1]

NSRR indicates that it intends to interchange traffic with the Norfolk Southern Railway Company and/or Canadian Pacific Railway Company. NSRR also indicates that there are no interchange commitments in the operating agreement between it and SEDA–COG nor will there be any in the interchange agreements between NSRR and its connecting carriers as a result of this transaction.

The proposed transaction is scheduled to be consummated on or after March 27, 2011, the effective date of the exemption (30 days after this exemption was filed).

NSRR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 18, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35470, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Richard R. Wilson, Esq., 518 N. Center Street, Suite 1, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: March 8, 2011.

[1] While not submitted with the verified notice of exemption here, the operating agreement between SEDA–COG and NSRR has recently been filed at the Board in *Susquehanna Union R.R.–Control Exemption–N. Shore R.R., Nittany & Bald Eagle R.R., Shamokin Valley R.R., Juniata Valley R.R., Lycoming Valley R.R., and Union Cnty. Indus. R.R.,* FD 35343, Pet. for Exemption Ex. B, Apr. 12, 2010. The parties are reminded that once the operator obtains Board authorization to provide common carrier rail service over a line, the common carrier obligation continues, notwithstanding any term of the parties' agreement, including term limitations and termination rights, unless and until the Board grants the appropriate discontinuance or abandonment authority. 49 U.S.C. 10903; *Chicago & N. W. Transp. Co.* v. *Kalo Brick & Tile Co.,* 450 U.S. 311, 320 (1981); *Pittsburgh & Shawmut R.R.–Aban. Exemption–in Armstrong and Jefferson Counties, Pa.,* AB 976X, slip op. at 1 (STB served Sept. 15, 2005).

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–5639 Filed 3–10–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35469]

Juniata Valley Railroad Company–Operation Exemption–SEDA–COG Joint Rail Authority

Juniata Valley Railroad Company (JVRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 2.0 miles of track, known as the West Park Industrial Track, extending between milepost 0.0 and milepost 2.0 in Lewistown, Mifflin County, Pa. The line is owned or leased by SEDA–COG Joint Rail Authority (SEDA–COG). JVRR states that the line it proposes to operate is an extension of its existing line of railroad it operates for SEDA–COG and that it will amend its agreement dated December 13, 2006, with SEDA–COG to provide common carrier rail service to multiple shippers on this extended line of railroad.[1]

JVRR indicates that it intends to interchange traffic with the Norfolk Southern Railway Company and/or Canadian Pacific Railway Company. JVRR also indicates that there are no interchange commitments in the operating agreement between it and SEDA–COG nor will there be any in the interchange agreements between JVRR and its connecting carriers as a result of this transaction.

The proposed transaction is scheduled to be consummated on or after March 27, 2011, the effective date of the exemption (30 days after this exemption was filed).

JVRR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 18, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35469, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Richard R. Wilson, Esq., 518 N. Center Street, Suite 1, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: March 8, 2011.

By the Board, Joseph H. Detttmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–5640 Filed 3–10–11; 8:45 am]

BILLING CODE 4915–01–P

[1] While not submitted with the verified notice of exemption here, the operating agreement between SEDA–COG and JVRR has recently been filed at the Board in *Susquehanna Union R.R.–Control Exemption–N. Shore R.R., Nittany & Bald Eagle R.R., Shamokin Valley R.R., Juniata Valley R.R., Lycoming Valley R.R., and Union Cnty. Indus. R.R.,* FD 35343, Pet. for Exemption Ex. B, Apr. 12, 2010. The parties are reminded that once the operator obtains Board authorization to provide common carrier rail service over a line, the common carrier obligation continues, notwithstanding any term of the parties' agreement, including term limitations and termination rights, unless and until the Board grants the appropriate discontinuance or abandonment authority. 49 U.S.C. 10903; *Chicago & N. W. Transp. Co.* v. *Kalo Brick & Tile Co.,* 450 U.S. 311, 320 (1981); *Pittsburgh & Shawmut R.R.–Aban. Exemption–in Armstrong and Jefferson Counties, Pa.,* AB 976X, slip op. at 1 (STB served Sept. 15, 2005).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35471]

Nittany Bald and Eagle Railroad Company-Operation Exemption-SEDA–COG Joint Rail Authority

Nittany Bald and Eagle Railroad Company (N&BE), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 1.8 miles of track, known as the Castanea Branch, extending between milepost 0.0 and milepost 1.8 in Castanea, Clinton County, Pa. The line is owned or leased by SEDA–COG Joint Rail Authority (SEDA–COG). N&BE states that the line it proposes to operate is an extension of its existing line of railroad it operates for SEDA–COG and that it will amend its agreement dated December 13, 2006, with SEDA–COG to provide common carrier rail service to multiple shippers on this extended line of railroad.[1]

N&BE indicates that it intends to interchange traffic with the Norfolk Southern Railway Company and/or Canadian Pacific Railway Company. N&BE also indicates that there are no interchange commitments in the operating agreement between it and SEDA–COG nor will there be any in the interchange agreements between N&BE and its connecting carriers as a result of this transaction.

The proposed transaction is scheduled to be consummated on or after March 27, 2011, the effective date of the exemption (30 days after this exemption was filed).

N&BE certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues would not exceed $5 million.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 18, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35471, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Richard R. Wilson, Esq., 518 N. Center Street, Suite 1, Ebensburg, PA 15931

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: March 8, 2011.

[1] While not submitted with the verified notice of exemption here, the operating agreement between SEDA–COG and N&BE has recently been filed at the Board in *Susquehanna Union R.R.–Control Exemption–N. Shore R.R., Nittany & Bald Eagle R.R., Shamokin Valley R.R., Juniata Valley R.R., Lycoming Valley R.R., and Union Cnty. Indus. R.R.,* FD 35343, Pet. for Exemption Ex. B, Apr. 12, 2010. The parties are reminded that once the operator obtains Board authorization to provide common carrier rail service over a line, the common carrier obligation continues, notwithstanding any term of the parties' agreement, including term limitations and termination rights, unless and until the Board grants the appropriate discontinuance or abandonment authority. 49 U.S.C. 10903; *Chicago & N. W. Transp. Co.* v. *Kalo Brick & Tile Co.,* 450 U.S. 311, 320 (1981); *Pittsburg & Shawmut R.R.–Aban. Exemption–in Armstrong and Jefferson Counties, Pa.,* AB 976X, slip op. at 1 (STB served Sept. 15, 2005).

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–5613 Filed 3–10–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468–12—3/2/11), for permission to use certain data from the Board's 2009 Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–5592 Filed 3–10–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 9328]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 9328, Safe Harbor for Valuation Under Section 475.

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Ralph Terry, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–8144, or through the Internet at Ralph.M.Terry@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Safe Harbor for Valuation Under Section 475.

OMB Number: 1545–1945. *Regulation Project Number:* TD 9328.

*Abstract:*This document sets forth an elective safe harbor that permits dealers in securities and dealers in commodities to elect to use the values of positions reported on certain financial statements as the fair market values of those positions for purposes of section 475 of the Internal Revenue Code (Code). This safe harbor is intended to reduce the compliance burden on taxpayers and to improve the administrability of the valuation requirement of section 475 for the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12,308.

Estimated Average Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 49,232.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5564 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8096]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 8096, Product Liability Losses and Accumulations for Product Liability Losses (Section 1.172–13).

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Ralph Terry, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–8144, or through the Internet at *Ralph.M.Terry@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Product Liability Losses and Accumulations for Product Liability Losses.

OMB Number: 1545–0863. *Regulation Project Number:* TD 8096.

Abstract: This document provides final regulation relating to product liability losses and accumulations for the payment of reasonable anticipated product liability losses. Changes to the applicable tax law were made by the Revenue Act of 1978. The regulations would provide the public with guidance needed lo comply with the applicable parts of act.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Average Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB Approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5565 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209365–89] (T.D. 9013)

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning a final regulation, REG–209365–89 (T.D. 9013), Limitations on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense (Section 1.469–7(f)).

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense.

OMB Number: 1545–1244.

Regulation Project Number: REG–209365–89 (T.D. 9013).

Abstract: Section 1.469–7(f)(1) of this regulation permits entities to elect to avoid application of the regulation in the event the pass-through entity chooses to not have the income from leading transactions with owners of interests in the entity re-characterized as passive activity gross income. The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5566 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2009–41 (Rev. Proc. 2002–59 Is Superseded)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2009–41, Relief for Late Initial Entity Classification Elections.

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief for Late Initial Entity Classification Elections.

OMB Number: 1545–1771.

Revenue Procedure Number: Revenue Procedure 2009–41. (Rev. Proc. 2002–59 is superseded.)

Abstract: This revenue procedure provides guidance under § 7701 of the Internal Revenue Code for an eligible entity that requests relief for a late classification election filed with the applicable IRS service center within 3 years and 75 days of the requested effective date of the entity's classification election. It also provides guidance for those eligible entities that do not qualify for relief under this revenue procedure and that are required to request a letter ruling in order to request relief for a late entity classification election.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 4,554.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5570 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 9315]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 9315, Dual Consolidated Loss Regulations.

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Joel Goldberger, (202) 927–9368, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Dual Consolidated Loss Regulations.

OMB Number: 1545–1946.

Regulation Project Number: T.D. 9315.

Abstract: Section 1503(d) denies the use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of a foreign country. These final regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,780.

Estimated Time per Respondent: 1 hour, 32 minutes.

Estimated Total Annual Burden Hours: 2,740.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5571 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105346–03]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning proposed regulation, REG–105346–03, Partnership Equity for Services.

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of this regulation should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Partnership Equity for Services.

OMB Number: 1545–1947.

Regulation Project Number: REG–105346–03.

Abstract: The regulations provide that the transfer of a partnership interest in connection with the performance of services is subject to section 83 of the Code and provide rules for coordinating section 83 with partnership taxation principles.

Current Actions: There is no change to this proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 150,000.

Estimated Total Burden Hours: 112,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5572 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 9344, Discharge of Liens]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 9344, Discharge of Liens, (§ 301.7425–3(b)(2)).

DATES: Written comments should be received on or before May 10, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the information collection should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: T.D. 9344.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 14, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–5567 Filed 3–10–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 18
Marine Mammals; Incidental Take During Specified Activities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–FHC–2010–0098; 71490–1351–0000–L5–FY11]

RIN 1018–AX32

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes regulations that would authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walruses during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations for the covered period are similar to, and include all activities covered by the previous 5-year Beaufort Sea incidental take regulations that were effective from August 2, 2006, through August 2, 2011. We propose a finding that the total expected takings of polar bears and Pacific walruses during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. We base this finding on the results of 17 years of data on the encounters and interactions between polar bears, Pacific walruses, and Industry; recent studies of potential effects of Industry on these species; oil spill risk assessments; potential and documented Industry impacts on these species; and current information regarding the natural history and status of polar bears and Pacific walruses. We are proposing that this rule be effective for 5 years from date of issuance.

DATES: Comments on this proposed rule must be received by April 11, 2011.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS–R7–FHC–2010–0098; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203; Attention: Beaufort Sea Incidental Take Regulations; or
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–FHC–2010–0098.

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 Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907–786–3810 or 1–800–362–5148, or Internet: *craig_perham@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) through the Director of the Service (we) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. According to the MMPA, we shall allow this incidental taking if (1) we make a finding that the total of such taking for the 5-year regulatory period will have no more than a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives, and (2) we issue regulations that set forth (a) permissible methods of taking, (b) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses, and (c) requirements for monitoring and reporting. If regulations allowing such incidental taking are issued, we issue Letters of Authorization (LOA) to conduct activities under the provisions of these regulations when requested by citizens of the United States.

The term "take," as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild" (the MMPA calls this Level A harassment); "or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering" (the MMPA calls this Level B harassment).

The terms "small numbers," "negligible impact," and "unmitigable adverse impact" are defined in 50 CFR 18.27 (*i.e.,* regulations governing small takes of marine mammals incidental to specified activities) as follows. "Small numbers" is defined as "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." It is necessary to note that the Service's analysis of "small numbers" complies with the agency's regulatory definition and is an appropriate reflection of Congress' intent. As was noted during the development of this definition (48 FR 31220; July 7, 1983), Congress itself recognized the "imprecision of the term small numbers," but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits." See H.R. Report No. 97–228 at 19. Thus, Congress itself focused on the anticipated effects of the activity on the species and stated that authorization should be available to persons "whose taking of marine mammals is infrequent, unavoidable, or accidental."

"Negligible impact" is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." "Unmitigable adverse impact" means "an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met."

Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat that may result in the taking of marine mammals. Although Industry is under no legal requirement to obtain incidental take authorization, since 1993, Industry has requested, and we have issued, a series of regulations for incidental take authorization for conducting activities in areas of polar bear and walrus habitat. Since the inception of these incidental take regulations (ITRs), polar bear/walrus monitoring observations associated with

the regulations have recorded over 2,000 polar bear observations associated with Industry activities. The large majority of reported encounters have been passive observations of bears moving through the oil fields. Monitoring of Industry activities indicates that encounters with walruses are insignificant with only 18 walruses recorded during the same period.

A detailed history of our past regulations can be found in our most recent regulation, published on August 2, 2006 (71 FR 43926). In summary, these past regulations were published on: November 16, 1993 (58 FR 60402); August 17, 1995 (60 FR 42805); January 28, 1999 (64 FR 4328); February 3, 2000 (65 FR 5275); March 30, 2000 (65 FR 16828); November 28, 2003 (68 FR 66744); and August 2, 2006 (71 FR 43926).

Summary of Current Request

In 2009, the Service received a petition to promulgate a renewal of regulations for nonlethal incidental take of small numbers of walruses and polar bears in the Beaufort Sea for a period of 5 years (2011–2016). The request was submitted on April 22, 2009, by the Alaska Oil and Gas Association (AOGA) on behalf of its members and other participating parties. The petition is available at: (*http://alaska.fws.gov/fisheries/mmm/itr.htm*).

AOGA's application indicates that they request regulations that will be applicable to any company conducting oil and gas exploration, development, and production activities as described within the request. This includes members of AOGA and other parties planning to conduct oil and gas operations in the geographic region. Members of AOGA represented in the petition include:

- Alyeska Pipeline Service Company;
- Anadarko Petroleum Corporation;
- BP Exploration (Alaska) Inc.;
- Chevron USA, Inc.;
- Eni Petroleum;
- ExxonMobil Production Company;
- Flint Hills Resources, Inc.;
- Marathon Oil Company;
- Pacific Energy Resources Ltd.;
- Petro-Canada (Alaska) Inc.;
- Petro Star Inc.;
- Pioneer Natural Resources Alaska, Inc.;
- Shell Exploration & Production Company;
- Statoil Hydro;
- Tesoro Alaska Company; and
- XTO Energy, Inc.

Other participating parties include ConocoPhillips Alaska, Inc. (CPAI), CGG Veritas, Brooks Range Petroleum Corporation (BRPC), and Arctic Slope Regional Corporation (ASRC) Energy Services. The activities and geographic region specified in AOGA's request, and considered in these regulations, are described in the ensuing sections titled "Description of Geographic Region" and "Description of Activities."

Prior to issuing regulations at 50 CFR part 18, subpart J in response to this request, we must evaluate the level of industrial activities, their associated potential impacts to polar bears and Pacific walruses, and their effects on the availability of these species for subsistence use. The information provided by the petitioners indicates that projected oil and gas activities over this time frame will encompass onshore and offshore exploration, development, and production activities. The petitioners have also specifically requested that these regulations be issued for nonlethal take. Industry has indicated that, through implementation of the mitigation measures, it is confident a lethal take will not occur. The Service is tasked with analyzing the impact that lawful oil and gas industry activities will have on polar bears and walruses during normal operating procedures. In addition, the potential for impact by the oil and gas industry outside normal operating conditions warrant an analysis of the risk of an oil spill and its potential impact on polar bears and walruses.

Description of Proposed Regulations

The regulations that we propose to issue include: Permissible methods of nonlethal taking; measures to ensure the least practicable adverse impact on the species and the availability of these species for subsistence uses; and requirements for monitoring and reporting. If promulgated, these regulations will not authorize, or "permit," the actual activities associated with oil and gas exploration, development, and production. Rather, they will authorize the nonlethal incidental, unintentional take of small numbers of polar bears and Pacific walruses associated with those activities based on standards set forth in the MMPA. The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), the U.S. Army Corps of Engineers, and the Bureau of Land Management (BLM) are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting activities on State lands and in State waters.

If we finalize these nonlethal incidental take regulations, persons seeking taking authorization for particular projects will apply for an LOA to cover nonlethal take associated with exploration, development, or production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA. A separate LOA is mandatory for each activity. We must receive applications for LOAs at least 90 days before the activity is to begin.

Applicants must submit a plan to monitor the effects of authorized activities on polar bears and walruses. Applicants must include in their LOA request the time frame of proposed activities, the operating terms and conditions, a polar bear encounter and interaction plan, and a marine mammal monitoring plan.

Applicants must also include a Plan of Cooperation (POC) describing the availability of these species for subsistence use by Alaska Native communities and how they may be affected by Industry operations. The purpose of the POC is to ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or the stock for subsistence uses. The POC must provide the procedures on how Industry will work with the affected Native communities, including a description of the necessary actions that will be taken to: (1) Avoid or minimize interference with subsistence hunting of polar bears and Pacific walruses; and (2) ensure continued availability of the species for subsistence use. The POC is further described in "Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals."

If regulations are implemented, we will evaluate each request for an LOA based on the specific activity and specific location, and may condition the LOA depending on specific circumstances for that activity and location. For example, an LOA issued in response to a request to conduct activities in areas with known, active bear dens or a history of polar bear denning, may be conditioned to require one or more of the following: Forward Looking Infrared (FLIR) imagery flights to determine the location of active polar bear dens; avoiding all denning activity by 1 mile; intensified monitoring in a 1-mile buffer around the den; or avoiding the area during the denning period. More information on applying for and receiving an LOA can be found at 50 CFR 18.27(f).

Description of Geographic Region

The geographic area covered by the requested incidental take regulations

(hereafter referred to as the Beaufort Sea Region) encompasses all Beaufort Sea waters east of a north-south line through Point Barrow (71°23′29″ N, −156 °28′30″ W, BGN 1944), and up to 200 miles north of Point Barrow, including all Alaska State waters and Outer Continental Shelf waters, and east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is not included in these regulations. The geographical extent of these regulations is similar as in previous regulations (71 FR 43926), where the offshore boundary is the Beaufort Sea Planning area, approximately 200 miles offshore.

Description of Activities

Activities covered in these regulations include Industry exploration, development, and production operations of oil and gas reserves, as well as environmental monitoring associated with these activities, on the northern coast of Alaska. Throughout the five years that the future regulations will be in place, the petitioners expect similar types of oil and gas activities will occur at similar times of the year as under the prior regulations. Examples of future Industry activities include the completion of the Alpine Satellite Development, development of Point Thomson, Oooguruk, Nikaitchuq, and areas in the National Petroleum Reserve—Alaska (NPR–A). According to the petitioners, the locations of these operations are anticipated to be approximately equally divided among the onshore and offshore tracts presently under lease and to be leased during the period under consideration.

Additionally, for the purpose of assessing possible impacts we anticipate, based on information provided by the petitioners, that these activities will occur equally spaced over time and area for the upcoming ice-covered and open-water seasons. Due to the large number of variables affecting Industry activities, prediction of exact dates and locations of operation for the open-water and ice-covered seasons is not possible at this time. However, operators must provide specific dates and locations of proposed activities prior to receiving an LOA.

Industry-Proposed Activities Considered Under Incidental Take Regulations

Alaska's North Slope encompasses an area of 88,280 square miles and currently contains 11 oil and gas field units associated with Industry. These include the Greater Prudhoe Bay, Duck Island, Badami, Northstar, Kuparuk River, Colville River, Oooguruk, Tuvaq, Nikaitchuq, Milne Point, and Point Thomson. These units encompass exploration, development, and production activities. In addition, some of these fields include associated satellite oilfields: Sag Delta North, Eider, North Prudhoe Bay, Lisburne, Niakuk, Niakuk-Ivashak, Aurora, Midnight Sun, Borealis, West Beach, Polaris, Orion, Tarn, Tabasco, Palm, West Sak, Meltwater, Cascade, Schrader Bluff, Sag River, and Alpine.

Exploration Activities

As with previous regulations, exploration activities may occur onshore or offshore and include: Geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismic data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; sub-sea sediment sampling; construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-founded structures [steel drilling caisson (SDC)], ice pads and ice roads; oil spill prevention, response, and cleanup; and site restoration and remediation. Exploration activities could also include the development of staging facilities. The level of exploration activities is expected to be similar to the level during the past regulatory periods, although exploration projects may shift to different locations, particularly the NPR–A.

The location of new exploration activities within the geographic region of the rule will, in part, be determined by the following State and Federal oil and gas lease sales:

State of Alaska Lease Sales

In 1996, the State of Alaska Department of Natural Resources (ADNR), Oil and Gas Division, adopted an "area wide" approach to leasing. Under area-wide leasing, the State offers all available state acreage not currently under lease within each area annually. The area of activity in this Petition includes the North Slope and Beaufort Sea planning areas. Lease sale data are available on the ADNR Web site at: *http://www.dog.dnr.state.ak.us/oil/index.htm*. Industry activities may occur on state lease sales during the time period of the requested action. North Slope Area-wide lease sales are held annually in October. As of August 2008, there are 774 active leases on the North Slope, encompassing 971,245 hectares (2.4 million acres), and 224 active leases in the state waters of the Beaufort Sea, encompassing 249,000 hectares (615,296 acres). The sale on October 22, 2008 resulted in the sale of 60 tracts for a total of 86,765 hectares (214,400 acres). Eight lease sales have been held to date. As of July 2008, there are 38 active leases in the Beaufort Sea area, encompassing 38,333 hectares (94,724 acres). The sale on October 22, 2008 resulted in the sale of 32 tracts for a total of 40,145 hectares (99,200 acres).

Northwest and Northeast Planning Areas of NPR–A

The BLM manages over 9 million hectares (23 million acres) in the NPR–A, including the Northwest (3.5 million hectares, 8.8 million acres), Northeast (1.8 hectares, 4.6 million acres), and South (3.6 million hectares, 9 million acres) Planning Areas. The area of activity in this Petition includes the Northwest and Northeast areas.

Oil and gas lease sales were held in 2004, 2006, 2008, and 2010. The 2004 lease sale sold 123 tracts totaling 566,560 hectares (1.4 million acres); the 2006 sale sold 81 tracts covering 380,350 hectares (939,867 acres); the 2008 sale sold 23 tracts covering 106,013 hectares (261,964 acres). From 2000 to 2008, 25 exploratory wells were drilled in the Northeast and Northwest planning areas of the NPR–A. Current operator/ownership information is available on the BLM NPR–A Web site at *http://www.blm.gov/ak/st/en/prog/energy/oil_gas/npra.html.* Exploration activities were conducted on the FEX LP company leases in the Northwest Planning Area between 2006–2008. Exploration may continue where new areas have been selected. New project elements included exploration drilling at nine new ice drill pad locations (in the Uugaq, Aklaq, Aklaqyaaq, and Amaguq prospects), 99 km (62 mi) of new access corridor, and 34 new water sources.

In the Northeast Planning Area, CPAI applied for permits to begin a five-year (2006–2011) winter drilling program at 11 sites (Noatak, Nugget, Cassin and Spark DD prospects), including 177 km (110 mi) of new right-of-way corridors and 10 new water supply lakes. CPAI is planning to continue developing its program in the Northeast Planning Area throughout the duration of the requested regulations.

Outer Continental Shelf Lease Sales

The BOEMRE manages the Alaska Outer Continental Shelf (OCS) region encompassing 242 million hectares (600 million acres). In February, 2003, Minerals Management Service (MMS) (now known as the Bureau of Ocean Energy Management, Regulation and Enforcement or BOEMRE) issued the

Final Environmental Impact Statement (EIS) for three lease sales planned for the Beaufort Sea Planning Area: Sale 186, 195, and 202. Sale 186 was held in 2003, resulting in the leasing of 34 tracts encompassing 73,576 hectares (181,810 acres). Sale 195 was held in 2005, resulting in the leasing of 117 tracts encompassing 245,760 hectares (607,285 acres). Sale 202 was held in 2007, resulting in the leasing of 90 tracts covering 198,580 hectares (490,700 acres). Leasing information from BOEMRE is located at *http://www.boemre.gov/alaska/lease/lease.htm*. The next lease sale, Lease Sale 217, is planned for 2011. BOEMRE has begun preparing the multiple-sale EIS for these areas. The Draft EIS was released in November 2008 and is located at *http://www.BOEMRE.gov/alaska/ref/EIS%20EA/ArcticMultiSale_209/_DEIS.htm*. While the disposition of the leases is highly speculative at this time, it is probable that at least some seismic exploration and possibly some exploratory drilling will take place during the 5-year period of the regulations.

Exploratory drilling for oil occurs onshore, in inland areas, or in the offshore environment. Exploratory drilling and associated support activities and features may include: Transportation to site; setup and relocation of up to 100-person camps and support camps (lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, landing strips, aircraft support, health and safety facilities, data recording facilities and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection; ice islands; ice roads; gravel hauling; gravel mine sites; road building; pipelines; electrical lines; water lines; road maintenance; buildings and facilities; operating heavy equipment; digging trenches; burying and covering pipelines; sea lift; water flood; security operations; dredging; moving floating drill units; helicopter support; and drill ships such as the Steel Drilling Caisson (SDC), CANMAR Explorer III, and the Kulluk.

During the regulatory period, exploration activities are anticipated to occur in the offshore environment and continue in the current oil field units, including those projects identified by Industry below.

Point Thomson

The Point Thomson reservoir is approximately 32 km (20 mi) east of the Badami field. In January 2009, ADNR issued a conditional interim decision that allows for the drilling of two wells by 2010 and commencing production by 2014. Following startup of production from Point Thomson in 2014, field development is expected to include additional liquids production and sale of gas. Field development will require additional wells, field facilities, and pipelines. The timing and nature of additional facilities and expansions will depend upon initial field performance and timing of an Alaska gas pipeline to export gas off the North Slope.

Ataruq (Two Bits)

The Ataruq project is permitted for construction but, not completely permitted for operation. This Kerr-McGee Oil and Gas Corporation project is located about 7.2 km (4.5 mi) northwest of the Kuparuk River Unit (KRU) Drill Site 2M. The area consists of two onshore prospects and covers about 2,071 hectares (5,120 acres). It includes a 6.4-km (4-mi) gravel road and a single gravel pad with production facilities and up to 20 wells in secondary containment modules. The processed fluids will be transported to DS 2M via a pipe-in-a-pipe buried line within the access road. After drilling, the facility will be normally unmanned.

Shell Offshore Exploration Activities

Shell anticipates conducting an exploration drilling program, called the Suvulliq Project, on BOEMRE Alaska OCS leases located in the Beaufort Sea during the arctic drilling seasons of 2011–2016. Presently, the arctic drilling seasons are generally considered to be from July through October in the Beaufort Sea. Shell will use a floating drilling vessel complimented by ice management and oil spill response (OSR) barges and/or vessels to accomplish exploration and/or delineation drilling during each arctic drilling season. An open water program in support of the development of Shell's Beaufort Sea leases will involve a site clearance and shallow hazards study as well. A detailed description of an offshore drilling activity of this nature can be found at: *http://alaska.fws.gov/fisheries/mmm/itr.htm*, under "LOA Applications for Public Viewing."

ION Seismic Activity

ION is planning an open water seismic program in the late open-water and into the ice-covered season, which will consist of an estimated 3,000 miles of 2D seismic line acquisition and site clearance surveys in the eastern Beaufort Sea. The open water seismic program will consist of two vessels, one active in seismic acquisition and the second providing logistical support and ice breaking capabilities. An offshore open water seismic program is proposed to occur between September through October 2011.

Development Activities

Development activities associated with oil and gas Industry operations include: Road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance, water production, wastewater treatment); transportation (automobile, airplane, and helicopter); runway construction; installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

Alpine Satellites Development

CPAI has proposed to develop oil and gas from five satellites. Two proposed satellites known as CD–3 (CD North during exploration) and CD–4 (CD South) are in the Colville Delta. The CD–3 drill site is located north of CD–1 (Alpine facility) and is a roadless development accessed by a gravel airstrip or ice road in winter. The CD–4 drill site is connected to the main production pad via a gravel road. Production start-up of CD–3 and CD–4 drill sites occurred in late summer 2006. Three other proposed satellites known as CD–5, CD–6, and CD–7 (Alpine West, Lookout, and Spark, respectively, during exploration) are in the NPR–A. These remaining three drill sites are proposed to be connected to CD–2 via road and bridge over the Niglilq Channel from CD–5. The other two drill sites are planned to be connected to CD–5 via road; however, the permitting for these scenarios has not been completed. Development of five drill sites is planned by CPAI in the immediate future in the Alpine development area and could occur within the regulatory period. Production of CD–5, CD–6, and CD–7 could also occur during the regulatory period.

Liberty

BPXA is currently in the process of developing the Liberty field, where the use of ultra extended-reach drilling (uERD) technology will access an offshore reservoir from existing onshore facilities. The Liberty reservoir is located in federal waters in Foggy Island Bay about 13 km (8 mi) east of the Endicott Satellite Drilling Island (SDI). Liberty prospect is located approximately 5.5 miles offshore in 20 ft of water. The development of Liberty was first proposed in 1998 when BPXA submitted a plan to BOEMRE (then

MMS) for a production facility on an artificial island in Foggy Island Bay. In 2002, BPXA put the project on hold to review project design and economics after the completion of BPXA's Northstar project. In August 2005, BPXA moved the project onshore to take advantage of advances in extended reach drilling. Liberty wells will extend as much as 8 miles offshore. Drilling of the initial Liberty development well and first oil production is planned to occur during the 5-year period of the proposed action.

North Shore Development

Brooks Range Petroleum Company (BRPC) is proposing the North Shore Development Project to produce oil from several relatively small, isolated hydrocarbon accumulations on the North Slope. The fields are close to existing Prudhoe Bay infrastructure, where production will concentrate on the Ivishak and Sag River sands prospects. Horizontal drilling technology and long-reach wells will be used to maximize production while minimizing surface impacts. BRPC expects to recover between five and ten million barrels of oil, and future exploration success could increase the reserves.

Potential Gas Pipeline

Two companies are currently proposing to construct a natural gas pipeline that would transport natural gas from the North Slope to North American markets. The two proposed projects are discussed below, although it is expected that only one pipeline would be constructed. Only a small portion (40 km [25 mi] inland) of a pipeline would occur within the specified area of activity covered under this Petition. Initial stages of the gas pipeline development, such as environmental studies and route selection, could occur during the 5-year period of the requested action.

One project is proposed by the Alaska Gas Pipeline LLC (Denali), a company jointly owned by BP Alaska Gas Pipelines LLC and the ConocoPhillips Denali Company. The Denali natural gas pipeline project is expected to include a gas treatment plant on the North Slope and approximately 3,220 km (2,000 mi) of large-diameter natural gas transmission pipeline beginning on the North Slope and terminating in the vicinity of the British Columbia-Alberta, Canada border. The Alaska portion of the project would generally follow the Dalton Highway south from the North Slope.

The second project is proposed by the TransCanada Corporation. The Alaska Gasline Inducement Act (AGIA) was passed into law by the State of Alaska in May 2007. TransCanada Corporation was selected by the State of Alaska in August 2008 as the exclusive recipient of the AGIA license. TransCanada Corporation is currently in the planning stages of developing the Alaska Pipeline Project, which will move natural gas from Alaska to North American markets. The project is planned to stretch approximately 2,760 km (1,715 mi) from Prudhoe Bay to the British Columbia/Alberta border near Boundary Lake.

Nikaitchuq Unit

The Nikaitchuq Unit is located near Spy Island, north of Oliktok Point and the Kuparuk River Unit, and northwest of the Milne Point Unit. Former operator Kerr-McGee Oil and Gas Corporation drilled three exploratory wells on and immediately adjacent to Spy Island, 4 miles north of Oliktok Point in the ice-covered season of 2004–2005. The current operator, Eni, is moving to develop this site as a future production area. Future drilling will be from a small gravel island shoreward of the barrier islands. Additional operations will include approximately 13 miles of underground pipeline connecting the offshore sites to a mainland landfall and onshore facilities pad near Oliktok Point.

Production Activities

Existing North Slope production operations extend from the oilfield units of Alpine in the west to Point Thomson and Badami in the east. Badami and Alpine are developments without permanent access roads; access is available to these fields by airstrips, barges, and seasonal ice roads. Oil pipelines extend from these fields and connect to the Trans-Alaska Pipeline System (TAPS). North Slope oilfield developments include a series of major fields and their associated satellite fields. In some cases a new oilfield discovery has been developed completely using existing infrastructure. Thus, the Prudhoe Bay oilfield unit encompasses the Prudhoe Bay, Lisburne, Niakuk, West Beach, North Prudhoe Bay, Point McIntyre, Borealis, Midnight Sun, Polaris, Aurora, and Orion reservoirs, while the Kuparuk oilfield development incorporates the Kuparuk, West Sak, Tarn, Palm, Tabasco, and Meltwater oilfields.

Production activities include: Personnel transportation (automobiles, airplanes, helicopters, boats, rolligons, cat trains, and snowmobiles); and unit operations (building operations, oil production, oil transport, restoration, remediation, and improvement of oil field operations). Production activities are permanent, year-round activities, whereas exploration and development activities are usually temporary and seasonal.

Only production units and facilities operated by BP Exploration Alaska, Inc. and ConocoPhillips Alaska, Inc. have been covered under previous incidental take regulations (Greater Prudhoe Bay, Endicott, Milne Point, Badami, Northstar, Kuparuk River, and Alpine, respectively). Now the Oooguruk field, operated by Pioneer, is currently producing as well.

Prudhoe Bay Unit

The Prudhoe Bay oilfield is the largest oilfield by production in North America and ranks among the 20 largest oilfields ever discovered worldwide. Over 11 billion barrels have been produced from a field originally estimated to have 25 billion barrels of oil in place. The Prudhoe Bay field also contains an estimated 26 trillion cubic ft of recoverable natural gas. More than 1,100 wells are currently in operation in the greater Prudhoe Bay oilfields, just over 900 of which are producing oil (others are for gas or water injection).

The total development area in the Prudhoe Bay Unit is approximately 2,785 hectares (6,883 acres). The Base Operations Center on the western side of the Prudhoe Bay oilfield can accommodate 476 people, the nearby Main Construction Camp can accommodate up to 680 people, and the Prudhoe Bay Operations Center on the eastern side of the field houses up to 488 people. Additional contract or construction personnel can be housed at facilities in nearby Deadhorse or in temporary camps placed on existing gravel pads.

Kuparuk River Unit

The Kuparuk oilfield is the second-largest producing oilfield in North America. More than 2.6 billion barrels of oil are expected to be produced from this oilfield. The Greater Kuparuk Area includes the satellite oilfields of Tarn, Palm, Tabasco, West Sak, and Meltwater. These satellite fields have been developed using existing facilities. To date, nearly 900 wells have been drilled in the Greater Kuparuk Area. The total development area in the Greater Kuparuk Area is approximately 603 hectares (1,508 acres), including 167 km (104 mi) of gravel roads, 231 km (144 mi) of pipelines, 6 gravel mine sites, and over 50 gravel pads.

The Kuparuk Operations Center and Kuparuk Construction Camp are able to accommodate up to 1,200 people. The Kuparuk Industrial Center is primarily

used for personnel overflow during the winter in years with a large amount of construction.

Greater Point McIntyre

The Greater Point McIntyre Area encompasses the Point McIntyre field and nearby satellite fields of West Beach, North Prudhoe Bay, Niakuk, and Western Niakuk. The Point McIntyre area is located 11.3 km (7 mi) north of Prudhoe Bay. It was discovered in 1988 and came online in 1993. BPXA produces the Point McIntyre area from two drill site gravel pads. The field's production peaked in 1996 at 170,000 barrels per day, whereas in 2006 production averaged 21,000 barrels per day with just over 100 wells in operation. Cumulative oil production as of December 31, 2006, was 738 million barrels of oil equivalent.

Milne Point

Located approximately 56 km (35 mi) northwest of Prudhoe Bay, the Milne Point oilfield was discovered in 1969 and began production in 1985. The field consists of more than 220 wells drilled from 12 gravel pads. Milne Point produces from three main fields: Kuparuk, Schrader Bluff, and Sag River. Cumulative oil production as of December 31, 2006, was 248 million barrels of oil equivalent. The total area of Milne Point and its satellites is 94.4 hectares (236 acres) of tundra, including 31 km (19 mi) of gravel roads, 64 km (40 mi) of pipelines, and one gravel mine site. The Milne Point Operations Center has accommodations for up to 300 people. It is estimated that the Ugnu reservoir contains roughly 20 billion barrels of heavy oil in place. BPXA's reservoir scientists and engineers conservatively estimate that roughly 10 percent of that resource, or 2 billion barrels, could be recoverable. Currently, cold heavy oil production with sand (CHOPS) technology is being tested at Milne South Pad. CHOPS is part of a multiyear technology testing and research program initiated at Milne Point in 2007.

Endicott

The Endicott oilfield is located approximately 16 km (10 mi) northeast of Prudhoe Bay. It is the first continuously producing offshore field in the U.S. arctic. The Endicott oilfield was developed from two man-made gravel islands connected to the mainland by a gravel causeway. The operations center and processing facilities are located on the 18-hectare (45-acre) Main Production Island. Approximately 80 wells have been drilled to develop the field. Two satellite fields drilled from Endicott's Main Production Island access oil from the Ivishak formation: Eider produces about 110 barrels per day, and Sag Delta North produces about 117 barrels per day. The total area of Endicott development is 156.8 hectares (392 acres) of land with 25 km (15 mi) of roads, 47 km (29 mi) of pipelines, and one gravel mine site. Approximately 100 people are housed at the Endicott Operations Center.

Badami

Production began from the Badami oilfield in 1998, but has not been continuous. The Badami field is located approximately 56 km (35 mi) east of Prudhoe Bay and is currently the most easterly oilfield development on the North Slope. The Badami development area is approximately 34 hectares (85 acres) of tundra including 7 km (4.5 mi) of gravel roads, 56 km (35 mi) of pipeline, one gravel mine site, and two gravel pads with a total of eight wells. There is no permanent road connection from Badami to Prudhoe Bay. The pipeline connecting the Badami oilfield to the common carrier pipeline system at Endicott was built from an ice road. The cumulative production is five million barrels of oil equivalent. This field is currently in "warm storage" status, *i.e.,* site personnel are minimized and the facility is maintained at a minimal level. Additionally, it currently is not producing oil reserves at this time. BPXA recently entered into an agreement with Savant LLC; under this agreement Savant will drill an exploration well in the winter of 2009 and potentially add an additional well in 2010. Depending on the outcome of these drilling programs, Badami could resume production.

Alpine

Discovered in 1996, the Alpine oilfield began production in November 2000. Alpine is the westernmost oilfield on the North Slope, located 50 km (31 mi) west of the Kuparuk oilfield and 14 km (9 mi) northeast of the village of Nuiqsut. Although the Alpine reservoir covers 50,264 hectares (124,204 acres), it has been developed from 65.9 hectares (162.92 acres) of pads and associated roads. Alpine features a combined production pad/drill site and three additional drill sites with an estimated 172 wells. There is no permanent road connecting Alpine with the Kuparuk oilfield; small aircraft are used to provide supplies and crew changeovers. Major resupply activities occur in the winter, using the ice road that is constructed annually between the two fields. The Alpine base camp can house approximately 540 employees.

Northstar

The Northstar oilfield was discovered in 1983 and developed by BPXA in 1995. The offshore oilfield is located 6 km (4 mi) northwest of the Point McIntyre field and 10 km (6 mi) from Prudhoe Bay in about 39 feet of water. The 15,360-hectare (38,400-acre) reservoir has now been developed from a 2-hectare (5-acre) artificial island. Production from the Northstar reservoir began in late 2001. The 2-hectare (5-acre) island will eventually contain 19 producing wells, six gas injector wells, and one solids injection well. A subsea pipeline connects facilities to the Prudhoe Bay oilfield. Access to Northstar is via helicopter, hovercraft, and boat.

Oooguruk Unit

The Oooguruk Unit is located adjacent to and immediately northwest of the Kuparuk River Unit in shallow waters of the Beaufort Sea, near Thetis Island. Unit production began in 2008. Facilities include an offshore drill site and onshore production facilities pad. In addition, a subsea 5.7-mile flowline transports produced fluids from the offshore drill site to shore, where it transitions to an aboveground flowline supported on vertical support members for 3.9 km (2.4 mi) to the onshore facilities for approximately 3.3 hectares (8.2 acres). The offshore drill site (2.4 hectares, 6 acres) is planned to support 48 wells drilled from the Nuiqsut and Kuparuk reservoirs. The wells are contained in well bay modules, with capacity for an additional 12 wells, if needed. Pioneer is additionally proposing production facilities west of KRU drill site 3S on State oil and gas leases. The contemplated facilities consist of two drill sites near the Colville River delta mouth, a tie-in pad adjacent to DS–3S, gravel roads, flow lines, and power lines. Drilling of the initial appraisal well is planned to start in 2013, with first oil production as early as 2015.

During the time period of the previous ITRs (2006–2011), three development projects were described as possibly moving into the production phase. Currently, only Oooguruk is producing. The two other developments, Nikaitchuq and the Alpine West Development, have not begun to produce oil to their fullest capacity. Concurrently, there are two additional developments that could be producing oil during the regulatory period. They are the Liberty and North Shore developments.

Proposed production activities will increase the total area of the Industrial

footprint by the addition of new facilities, such as drill pads, pipelines, and support facilities, in the geographic region; however, oil production volume is expected to continue to decrease during this 5-year regulatory period, despite new fields initiating production. This is due to current producing fields reducing output and new fields not maintaining the loss of that output. Current monitoring and mitigation measures, described later, will be kept in place.

Evaluation of the Nature and Level of Proposed Activities

During the period covered by the proposed regulations, we anticipate the annual level of activity at existing production facilities, as well as levels of new annual exploration and development activities, will be similar to that which occurred under the previous regulations, although exploration and development may shift to different locations and new production facilities will add to the overall Industry footprint. Additional onshore and offshore production facilities are being considered within the timeframe of these regulations, potentially adding to the total permanent activities in the area. The progress is similar to prior production schedules, but there is a potential increase in the accumulation of the industrial footprint, with an increase mainly in onshore facilities.

Biological Information

Pacific Walrus

The Pacific walrus (*Odobenus rosmarus divergens*), is represented by a single population of animals inhabiting the shallow continental shelf waters of the Bering and Chukchi seas. The distribution of Pacific walruses varies markedly with seasons. During the late winter breeding season, walruses are found in areas of the Bering Sea where open leads, polynyas, or areas of broken pack ice occur. Significant winter concentrations are normally found in the Gulf of Anadyr, the St. Lawrence Island Polynya, and in an area south of Nunivak Island. In the spring and early summer, most of the population follows the retreating pack ice northward into the Chukchi Sea; however, several thousand animals, primarily adult males, remain in the Bering Sea, utilizing coastal haulouts during the ice-free season. During the summer months, walruses are widely distributed across the shallow continental shelf waters of the Chukchi Sea. Significant summer concentrations are normally found in the unconsolidated pack ice west of Point Barrow, and along the northern coastline of Chukotka in the vicinity of Wrangell Island. Small herds of walruses occasionally range east of point Barrow into the Beaufort Sea in late summer. As the ice edge advances southward in the fall, walruses reverse their migration and re-group on the Bering Sea pack ice.

Population Status

The size of the Pacific walrus population has never been known with certainty. Based on large sustained harvests in the 18th and 19th centuries, Fay (1957) speculated that the pre-exploitation population was represented by a minimum of 200,000 animals. Since that time, population size is believed to have fluctuated markedly in response to varying levels of human exploitation. Large-scale commercial harvests are believed to have reduced the population to 50,000–100,000 animals in the mid-1950s (Fay *et al.* 1989). The population appears to have increased rapidly in size during the 1960s and 1970s in response to harvest regulations and reductions in hunting pressure (Fay *et al.* 1989). Between 1975 and 1990, visual aerial surveys were carried out by the United States and Russia at 5-year intervals, producing population estimates ranging from 201,039 to 290,000 walruses. In 2006, U.S. and Russian researchers surveyed walrus groups in the pack ice of the Bering Sea using thermal imaging systems to detect walruses hauled out on sea ice and satellite transmitters to account for walruses in the water. The number of walruses within the surveyed area was estimated at 129,000 with 95 percent confidence limits of 55,000 to 507,000 individuals. Previous aerial survey results are highly variable and not directly comparable among years because of differences in survey methods, timing of surveys, segments of the population surveyed, and incomplete coverage of areas where walrus may have been present. Because of such issues, existing abundance estimates do not provide a basis for determining trends in population size.

Changes in walrus population status have also been investigated by examining changes in biological parameters over time. Based on evidence of changes in abundance, distributions, condition indices, and life-history parameters, Fay *et al.* (1989) and Fay *et al.* (1997) concluded that the Pacific walrus population increased greatly in size during the 1960s and 1970s, and postulated that the population was approaching, or had exceeded, the carrying capacity of its environment by the early 1980s. Harvest increased in the 1980s. Changes in the size, composition, and productivity of the sampled walrus harvest in the Bering Strait Region of Alaska over this timeframe are consistent with this hypothesis (Garlich-Miller *et al.* 2006). Harvest levels declined sharply in the early 1990s, and increased reproductive rates and earlier maturation in females occurred, suggesting that density-dependent feedback mechanisms had been relaxed and the population had likely dropped below carrying capacity (Garlich-Miller *et al.* 2006). However, it is unknown whether density-dependent changes in life-history parameters were mediated by changes in population abundance or changes in the carrying capacity of the environment (Garlich-Miller *et al.* 2006).

Habitat

Walruses rely on floating pack ice as a substrate for resting and giving birth. Walruses generally require ice thicknesses of 50 cm (20 in) or more to support their weight. Although walruses can break through ice up to 20 cm (8 in) thick, they usually occupy areas with natural openings and are not found in areas of extensive, unbroken ice (Fay 1982). Thus, their concentrations in winter tend to be in areas of divergent ice flow or along the margins of persistent polynyas. Concentrations in summer tend to be in areas of unconsolidated pack ice, usually within 100 km (30 mi) of the leading edge of the ice pack (Gilbert 1999). When suitable pack ice is not available, walruses haul out to rest on land. Isolated sites, such as barrier islands, points, and headlands, are most frequently occupied. Social factors, learned behavior, and proximity to their prey base are also thought to influence the location of haulout sites. Traditional walrus haulout sites in the eastern Chukchi Sea include Cape Thompson, Cape Lisburne, and Icy Cape. In recent years, the Cape Lisburne haulout site has seen regular use in late summer. Numerous haulouts also exist along the northern coastline of Chukotka, and on Wrangell and Herald islands, which are considered important haul-out areas in September, especially in years when the pack ice retreats far to the north.

Although capable of diving to deeper depths, walruses are generally found in shallow waters of 100 m (300 ft) or less, possibly because of higher productivity of their benthic foods in shallower water. They feed almost exclusively on benthic invertebrates although Native hunters have also reported incidences of walruses preying on seals. Prey densities are thought to vary across the continental shelf according to sediment

type and structure. Preferred feeding areas are typically composed of sediments of soft, fine sands. The juxtaposition of ice over appropriate depths for feeding is especially important for females and their dependent young that are not capable of deep diving or long exposure in the water. The mobility of the pack ice is thought to help prevent walruses from overexploiting their prey resource (Ray *et al.* 2006). Foraging trips may last for several days, during which time they dive to the bottom nearly continuously. Most foraging dives to the bottom last between 5 and 10 minutes, with a relatively short (1–2 minute) surface interval. The intensive tilling of the sea floor by foraging walruses is thought to have significant influence on the ecology of the Bering and Chukchi seas. Foraging activity recycles large quantities of nutrients from the sea floor back into the water column, provides food for scavenger organisms, and contributes greatly to the diversity of the benthic community.

Life History

Walruses are long-lived animals with low rates of reproduction. Females reach sexual maturity at 4–9 years of age. Males become fertile at 5–7 years of age; however, they are usually unable to compete for mates until they reach full physical maturity at 15–16 years of age. Breeding occurs between January and March in the pack ice of the Bering Sea. Calves are usually born in late April or May the following year during the northward migration from the Bering Sea to the Chukchi Sea. Calving areas in the Chukchi Sea extend from the Bering Strait to latitude 70°N. (Fay *et al.* 1984). Calves are capable of entering the water shortly after birth, but tend to haulout frequently, until their swimming ability and blubber layer are well developed. Newborn calves are tended closely. They accompany their mother from birth and are usually not weaned for 2 years or more. Cows brood newborns to aid in their thermoregulation (Fay and Ray 1968), and carry them on their back or under their flipper while in the water (Gehnrich 1984). Females with newborns often join together to form large "nursery herds" (Burns 1970). Summer distribution of females and young walruses is closely tied to the movements of the pack ice relative to feeding areas. Females give birth to one calf every two or more years. This reproductive rate is much lower than other pinniped species; however, some walruses live to age 35–40 and remain reproductively active until relatively late in life.

Walruses are extremely social and gregarious animals. They tend to travel in groups and haulout onto ice or land in groups. Walruses spend approximately one-third of their time hauled out onto land or ice. Hauled-out walruses tend to lie in close physical contact with each other. Youngsters often lie on top of the adults. The size of the hauled out groups can range from a few animals up to several thousand individuals.

Mortality

Polar bears are known to prey on walrus calves, and killer whales (*Orcinus orca*) have been known to take all age classes of walruses (Frost *et al.* 1992, Melnikov and Zagrebin 2005). Predation levels are thought to be highest near terrestrial haulout sites where large aggregations of walruses can be found; however, few observations exist for off-shore environs.

Pacific walruses have been hunted by coastal Natives in Alaska and Chukotka for thousands of years. Exploitation of the Pacific walrus population by Europeans has also occurred in varying degrees since first contact. Presently, walrus hunting in Alaska and Chukotka is restricted to meet the subsistence needs of aboriginal peoples. The Service, in partnership with the Eskimo Walrus Commission (EWC) and the Association of Traditional Marine Mammal Hunters of Chukotka, administered subsistence harvest monitoring programs in Alaska and Chukotka in 2000–2005. Harvest mortality over this timeframe averaged 5,458 walruses per year. This mortality estimate includes corrections for under-reported harvest and struck and lost animals.

Intra-specific trauma is also a known source of injury and mortality. Disturbance events can cause walruses to stampede into the water and have been known to result in injuries and mortalities. The risk of stampede-related injuries increases with the number of animals hauled out. Calves and young animals at the perimeter of these herds are particularly vulnerable to trampling injuries.

Distributions and Abundance of Pacific Walruses in the Beaufort Sea

The distribution of Pacific walruses is thought to be influenced primarily by the extent of the seasonal pack ice. In May and June, most of the Pacific walrus population migrates through the Bering Strait into the Chukchi Sea. Walruses tend to migrate into the Chukchi Sea along lead systems that develop along the northwest coast of Alaska. Walruses are expected to be closely associated with the southern edge of the seasonal pack ice during the open water season. By July, large groups of walruses, up to several thousand animals, can be found along the edge of the pack ice between Icy Cape and Point Barrow. During August, the edge of the pack ice generally retreats northward to about 71°N, but in light ice years, the ice edge can retreat beyond 76°N. The sea ice normally reaches its minimum (northern) extent in September. In years when the sea ice retreats beyond the relatively shallow continental shelf waters of the Chukchi Sea, some animals migrate west towards Chukotka, while others have been observed hauling out along the shoreline between Point Barrow and Cape Lisburne. In recent years, coastal haulouts in Chukotka Russia have seen regular and persistent use in the fall. Russian biologists attribute the increased use of these coastal haulouts to diminishing sea ice habitat. A similar event was recorded along the Alaskan coastline in August–September 2007, 2009, and 2010 when several thousand animals were reported along the Chukchi Sea coast between Barrow and Cape Lisburne. The pack ice usually advances rapidly southward in October, and most walruses are thought to have moved into the Bering Sea by mid to late November.

Although most walruses remain in the Chukchi Sea throughout the summer months, small numbers of animals occasionally range into the Beaufort Sea in late summer. A total of 18 walrus sightings have been reported as a result of Industry monitoring efforts over the past 20 years (Kalxdorff and Bridges 2003, USFWS unpubl. data). Two sightings occurred in 1996; one involved a single animal observed from a seismic vessel near Point Barrow, and a second animal was sighted during an aerial survey approximately 5 miles northwest of Howe Island. In 1997, another single animal was sighted during an aerial survey approximately 20 miles north of Pingok Island. In 1998, a dead walrus was observed on Pingok Island being scavenged by polar bears. One walrus was observed hauled out near the SDC at McCovey in 2002. In 2004, one walrus was observed 50 m from the Saltwater Treatment Plant, on West Dock. In addition, walrus have been observed on the armor of Northstar Island three times since 2001; in 2004, three walrus were observed on the armor in two separate instances. Between 2005 and 2009 additional walruses were recorded.

Climate Change

Analyses of long-term environmental data sets indicate that substantial

reductions in both the extent and thickness of the arctic sea-ice cover have occurred over the past 40 years. Record minimum sea ice extent was recorded in 2002, 2005, and again in 2007; sea ice cover in 2003 and 2004 was also substantially below the 20-year mean. Walruses rely on suitable sea ice as a substrate for resting between foraging bouts, calving, molting, isolation from predators, and protection from storm events. The juxtaposition of sea ice over shallow-shelf habitat suitable for benthic feeding is important to walruses. Recent trends in the Chukchi Sea have resulted in seasonal sea-ice retreat off the continental shelf and over deep Arctic Ocean waters, presenting significant adaptive challenges to walruses in the region. Reasonably foreseeable impacts to walruses as a result of diminishing sea ice cover include: Shifts in range and abundance, such as hauling out on land and potential movements into the Beaufort Sea; increased vulnerability to predation and disturbance; declines in prey species; increased mortality rates resulting from storm events; and premature separation of females and dependent calves. Secondary effects on animal health and condition resulting from reductions in suitable foraging habitat may also influence survivorship and productivity. Future studies investigating walrus distributions, population status and trends, and habitat use patterns are important for responding to walrus conservation and management issues associated with environmental and habitat changes.

Polar Bear

The polar bear (*Ursus maritimus*) was listed as threatened, range-wide, under the Endangered Species Act (ESA) on May 15, 2008, due to loss of sea ice habitat caused by climate change (73 FR 28212). The Service published a final special rule under section 4(d) of the ESA for the polar bear on December 16, 2008 (73 FR 76249), which provides for measures that are necessary and advisable for the conservation of polar bears. This means that this special 4(d) rule: (a) In most instances, adopts the conservation regulatory requirements of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions for the polar bear; (b) provides that incidental, nonlethal take of polar bears resulting from activities outside the bear's current range is not prohibited under the ESA; (c) clarifies that the special rule does not alter the Section 7 consultation requirements of the ESA; and (d) applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption.

Polar bears occur throughout the arctic. In Alaska, they have been observed as far south in the eastern Bering Sea as St. Matthew Island and the Pribilof Islands (Ray 1971). However, they are most commonly found within 180 miles of the Alaskan coast of the Chukchi and Beaufort Seas, from the Bering Strait to the Canadian border. Two stocks occur in Alaska: (1) The Chukchi-Bering seas stock (CS); and (2) the Southern Beaufort Sea stock (SBS). A summary of the CS and SBS polar bear stocks are described below. A detailed description of the CS and SBS polar bear stocks can be found in the "Range-Wide Status Review of the Polar Bear (*Ursus maritimus*)" (*http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm*).

Management and conservation concerns for the SBS and CS polar bear populations include: Climate change, which continues to increase both the expanse and duration of open water in summer and fall; human activities within the near-shore environment, including oil and gas activities; atmospheric and oceanic transport of contaminants into the Arctic; and over-harvest, should polar bear stocks become nutritionally stressed or decline due to some combination of the afore-mentioned threats.

Southern Beaufort Sea (SBS)

The SBS polar bear population is shared between Canada and Alaska. Radio-telemetry data, combined with earlier tag returns from harvested bears, suggest that the SBS region comprised a single population with a western boundary near Icy Cape, Alaska, and an eastern boundary near Pearce Point, Northwest Territories, Canada. Early estimates from the mid 1980s suggested the size of the SBS population was approximately 1,800 polar bears, although uneven sampling was known to compromise the accuracy of that estimate. A population analysis of the SBS stock was completed in June 2006 through joint research coordinated between the United States and Canada. That analysis indicated the population of the region between Icy Cape and Pearce Point is now approximately 1,500 polar bears (95 percent confidence intervals approximately 1,000–2,000). Although the confidence intervals of the current population estimate overlap the previous population estimate of 1,800, other statistical and ecological evidence (*e.g.,* high recapture rates encountered in the field) suggest that the current population is actually smaller than has been estimated for this area in the past.

Recent analyses of radio-telemetry data of spatio-temporal use patterns of bears of the SBS stock using new spatial modelling techniques suggest realignment of the boundaries of the SBS area. We now know that nearly all bears in the central coastal region of the Beaufort Sea are from the SBS population, and that proportional representation of SBS bears decreases to both the west and east. For example, only 50 percent of the bears occurring in Barrow, Alaska, and Tuktoyaktuk, Northwest Territories, are SBS bears, with the remainder being from the CS and Northern Beaufort Sea populations, respectively. The recent radio-telemetry data indicate that bears from the SBS population seldom reach Pearce Point, which is currently on the eastern management boundary for the SBS population. Conversely, SBS bears can also be found in the western regions of their range in the Chukchi Sea (*i.e.,* Wainwright and Point Lay) in lower proportions than the central portion of their range.

Additional threats evaluated during the listing included impacts from activities such as industrial operations, subsistence harvest, shipping, and tourism. No other impacts were considered significant in causing the decline, but minimizing effects from these activities could become increasingly important for conservation as polar bear numbers continue to diminish. More information can be found at: *http://www.fws.gov/* and *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.*

Chukchi/Bering Seas (CS)

The CS is defined as those polar bears inhabiting the area as far west as the eastern portion of the Eastern Siberian Sea, as far east as Point Barrow, and extending into the Bering Sea, with its southern boundary determined by the extent of annual ice. Based upon telemetry studies, the western boundary of the population has been set near Chaunskaya Bay in northeastern Russia. The eastern boundary is at Icy Cape, Alaska, which also is the previous western boundary of the SBS. This eastern boundary constitutes a large overlap zone with bears in the SBS population. The status of the CS population, which was believed to have increased after the level of harvest was reduced in 1972, is now thought to be uncertain or declining. The most recent population estimate for the CS population is 2,000 animals. This was based on extrapolation of aerial den surveys from the early 1990s; however,

this crude estimate is currently considered to be of little value for management. Reliable estimates of population size based upon mark and recapture are not available for this region and measuring the population size remains a research challenge (Evans *et al.* 2003).

With the action of the Bilateral Commission under the *Bilateral Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population,* legal subsistence harvest for polar bears from the CS stock occurs in both Russia and in western Alaska, as long as this harvest does not affect the sustainability of the polar bear population. In Alaska, average annual harvest levels declined by approximately 50 percent between the 1980s and the 1990s and have remained at low levels in recent years. There are several factors potentially affecting the harvest level in western Alaska. The factor of greatest direct relevance is the substantial illegal harvest in Chukotka. In recent years a reportedly sizable illegal harvest has occurred in Russia, despite a ban on hunting that has been in place since 1956. In addition, other factors such as climatic change and its effects on pack ice distribution, as well as changing demographics and hunting effort in native communities, could influence the declining take. The unknown rate of illegal take makes the stable designation uncertain and tentative.

Habitat

Polar bears evolved for life in the Arctic and are distributed throughout most ice-covered seas of the Northern Hemisphere. They are generally limited to areas where the sea is ice-covered for much of the year; however, polar bears are not evenly distributed throughout their range. They are most abundant near the shore in shallow-water areas, and in other areas where currents and ocean upwelling increase marine productivity and maintain some open water during the ice-covered season. Over most of their range, polar bears remain on the sea ice year-round or spend only short periods on land.

The Service designated critical habitat for polar bear populations in the United States effective January 6, 2011 (75 FR 76086; December 7, 2010). Critical habitat identifies geographic areas that contain features that are essential for the conservation of a threatened or endangered species and that may require special management or protection. The designation of critical habitat under the ESA does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. A critical habitat designation does not affect private lands unless Federal funds, permits, or activities are involved. Federal agencies that undertake, fund, or permit activities that may affect critical habitat are required to consult with the Service to ensure that such actions do not adversely modify or destroy critical habitat.

The Service's designation of critical habitat is divided into three areas or units: barrier island habitat, sea ice habitat (both described in geographic terms), and terrestrial denning habitat (a functional description). Barrier island habitat includes coastal barrier islands and spits along Alaska's coast and is used for denning, refuge from human disturbances, access to maternal dens and feeding habitat, and travel along the coast. Sea ice habitat is located over the continental shelf, and includes water 300 m (984 feet) and less in depth. Terrestrial denning habitat includes lands within 32 km (20 miles) of the northern coast of Alaska between the Canadian border and the Kavik River and within 8 km (5 miles) of the coastline between the Kavik River and Barrow. The total area designated would cover approximately 484,734 square kilometers (187,157 square miles) and is entirely within the lands and waters of the United States. A detailed description of the critical habitat can be found online at: *http://alaska.fws.gov/fisheries/mmm/polarbear/pdf/federal_register_notice.pdf.*

Denning and Reproduction

Female bears can be quite sensitive to disturbances during denning. Females can initiate breeding at 5 to 6 years of age. Females without dependent cubs breed in the spring. Pregnant females enter maternity dens by late November, and the young are usually born in late December or early January. Only pregnant females den for an extended period during the winter; other polar bears may excavate temporary dens to escape harsh winter winds. An average of two cubs is born. Reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is 3 to 4 years, and a female polar bear can produce about 8 to 10 cubs in her lifetime; in healthy populations, 50 to 60 percent of the cubs will survive.

In late March or early April, the female and cubs emerge from the den. If the mother moves young cubs from the den before they can walk or withstand the cold, mortality to the cubs increases. Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. Radio and satellite telemetry studies elsewhere indicate that denning can occur in multi-year pack ice and on land. Recent studies of the SBS indicate that the proportion of dens on pack ice have declined from approximately 60 percent in 1985–1994 to 40 percent in 1998–2004.

In northern Alaska, maternal polar bear dens appear to be less concentrated than in Canada to the east and in Russia to the west. In Alaska, certain areas, such as barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, much of the North slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat, receive proportionally greater use for denning than other areas. Maternal denning occurs on tundra-bearing barrier islands along the Beaufort Sea and also in the large river deltas, such as those associated with the Colville and Canning rivers.

A recent study showed that the proportion of polar bears denning in the SBS on pack ice, which requires a high level of sea-ice stability for successful denning, declined from 62 percent in 1985–1994 to 37 percent in 1998–2004 (Fischbach *et al.* 2007). The authors concluded that the denning distribution changed in response to reductions in stable old ice, increases in unconsolidated ice, and lengthening of the melt season. If sea-ice extent in the Arctic continues to decrease and the amount of unstable ice increases, a greater proportion of polar bears may seek to den on land (Durner *et al.* 2006, Fischbach *et al.,* 2007).

Prey

Ringed seals (*Pusa hispida*) are the primary prey of polar bears in most areas. Bearded seals (*Erignathus barbatus*) and walrus calves are hunted occasionally. Polar bears also opportunistically scavenge marine mammal carcasses, notably bowhead whale (*Balaena mysticetus*) carcasses at Point Barrow, and Cross and Barter islands, associated with the annual subsistence hunt in these communities. There are also anecdotal reports of polar bears killing beluga whales (*Delphinapterus leucas*) trapped in the ice, although the importance of beluga as a food source is not known. Polar bears have also been observed consuming non-food items including Styrofoam, plastic, antifreeze, and hydraulic and lubricating fluids.

Polar bears use the sea ice as a platform to hunt seals. Polar bears often

hunt seals along leads—cracks in the ice, and other areas of open water. Polar bears also hunt seals at breathing holes, or by breaking through the roof of seal lairs. Lairs are excavated by seals in snow drifts on top of the ice. Bears also stalk seals in the spring when they haul out on the ice in warm weather. The relationship between ice type and polar bear distribution is as yet unknown, but it is suspected to be related to seal availability. Due to changing sea ice conditions, the area of open water and proportion of marginal ice has increased and extends later in the fall. This may limit seal availability to polar bears as the most productive areas for seals appear to be over the shallower waters of the continental shelf.

Mortality

Polar bears are long-lived (up to 30 years), have no natural predators, and do not appear prone to death by diseases or parasites. Cannibalism by adult males on cubs and occasionally on adult bears is known to occur. The most significant source of premature adult polar bear mortality is man. Before the MMPA was passed in 1972, polar bears were taken by sport hunters and residents. Between 1925 and 1972, the mean reported kill was 186 bears per year. Seventy-five percent of these were males, as cubs and females with cubs were protected. Since 1972, only Alaska Natives from coastal Alaskan villages have been allowed to hunt polar bears for their subsistence uses, for the manufacture of handicraft and clothing items. From 1980 to 2005, the total annual harvest for Alaska averaged 101 bears: 64 percent from the Chukchi Sea and 36 percent from the Beaufort Sea. Other sources of mortality related to human activities include bears killed during research activities, euthanasia of sick or injured bears, and defense-of-life kills by non-Natives (Brower *et al.* 2002).

Distributions and Abundance of Polar Bears in the Beaufort Sea

Polar bears are dependent upon the sea ice as a platform for foraging. The most productive areas seem to be near the ice edge, leads, or polynyas over the continental shelf (Durner *et al.* 2004). Polar bears can also be observed throughout the year in the onshore and nearshore environments, where they will opportunistically scavenge on marine mammal carcasses washed up along the shoreline (Kalxdorff and Fischbach 1998). Their distribution in the coastal habitat can be influenced by the movement of the seasonal pack ice.

More specifically, during the ice-covered season, pregnant females can use terrestrial denning habitat between late-October and mid-April. The percentage of pregnant females using terrestrial habitat for denning is unknown but, as stated earlier, the proportion of dens on terrestrial habitat has increased in recent years. In addition, a small proportion of bears of different cohorts may be found along the coastline as well during this time period. During the open water season (July through September), a small proportion of bears will utilize the coastal environments while the majority of the population will be on the ice edge of the pack ice.

During the late summer/fall period (August through October), polar bears are most likely to be encountered along the mainland coastline and barrier islands, using these features as travel corridors and hunting areas. Based on Industry observations, encounter rates are higher during the fall period (August to October) than any other time period. The duration the bears spend in these coastal habitats depends on storm events, ice conditions, and the formation of the annual ice. In recent years, polar bears have been observed in larger numbers than previously recorded during the fall period. The remains of subsistence-harvested bowhead whales at Cross and Barter Islands provide a readily available food source for the bears in these areas and appear to play a role in these numbers (Schliebe *et al.* 2006). Based on Industry observations and coastal survey data acquired by the Service, up to 125 individuals of the SBS bear population have been observed during the fall period between Barrow and the Alaska-Canada border.

Climate Change

For polar bears, habitat loss due to changes in Arctic sea ice has been identified as the primary cause of decline in polar bear populations, where the decline of sea ice is expected to continue throughout the polar bear's range for the foreseeable future (73 FR 28212). In support of the listing, Amstrup *et al.* (2007) projected that if current sea ice declines continue, the sea-ice retreat may eventually exclude bears from onshore denning habitat in the Polar Basin Divergent Region, where they have projected a 42 percent loss of optimal summer polar bear habitat by 2050. SBS and CS polar bear populations inhabit this ecoregion, and Amstrup *et al.* (2007) have projected that these populations will be extirpated within the next 45–75 years, if sea ice declines continue at current rates.

Climate change is likely to have serious consequences for the world-wide population of polar bears and their prey (ACIA 2004, Derocher *et al.* 2004, NRC 2003). Climate change is expected to impact polar bears in a variety of ways. The timing of ice formation and breakup will impact seal distributions and abundance, and, consequently, how efficiently polar bears can hunt seals. Reductions in sea ice are expected to increase the polar bears' energetic costs of traveling, as moving through fragmented sea ice and open water requires more energy than walking across consolidated sea ice.

Decreased sea ice extent may impact the reproductive success of denning polar bears. Polar bears require a stable substrate for denning. As ice conditions moderate, ice platforms become less stable, and coastal dens become vulnerable to erosion from storm surges. In the 1990s, approximately 50 percent of the maternal dens of the SBS polar bear population occurred annually on the pack ice in contrast to terrestrial sites (Amstrup and Gardner 1994). Recently, the proportion of dens on pack ice declined from 62 percent in 1985–1994 to 37 percent in 1998–2004 (Fischbach *et al.* 2007). Terrestrial denning is expected to increase in the future, despite the threats of coastal erosion.

Due to the changing ice conditions, the Service anticipates that polar bear use of the Beaufort Sea coast will increase during the open-water season (June through October). Indeed, polar bear use of coastal areas during the fall open-water period has increased in recent years in the Beaufort Sea. This change in distribution has been correlated with the distance of the pack ice from the coast at that time of year (the farther from shore the leading edge of the pack ice is, the more bears are observed onshore) (Schliebe *et al.* 2006). Reductions in sea ice will result in increased distances between the ice edge and land which, in turn, will lead to increasing numbers of bears coming ashore during the open-water period, or possibly drowning in an attempt to reach land. An increased number of bears on land may increase human–bear interactions or conflicts during this time period.

Potential Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals

Pacific walruses and polar bears have been traditionally harvested by Alaska Natives for subsistence purposes. The harvest of these species plays an important role in the culture and economy of many villages throughout coastal Alaska. Walrus meat is often consumed, and the ivory is used to

manufacture traditional arts and crafts. Polar bears are primarily hunted for their fur, which is used to make cold weather gear; however, their meat is also consumed. Although walruses and polar bears are a part of the annual subsistence harvest of most rural communities on the North Slope of Alaska, these species are not as significant a food resource as bowhead whales, seals, caribou (*Rangifer tarandus*), and fish.

An exemption under section 101(b) of the MMPA allows Alaska Natives who reside in Alaska and dwell on the coast of the North Pacific Ocean or the Arctic Ocean to take polar bears and walruses if such taking is for subsistence purposes or for purposes of creating and selling authentic native articles of handicrafts and clothing, as long as the take is not done in a wasteful manner. Sport hunting of both species has been prohibited in the United States since enactment of the MMPA in 1972.

Pacific Walrus—Harvest Information

Few walruses are harvested in the Beaufort Sea along the northern coast of Alaska as the primary range of Pacific walruses is west and south of the Beaufort Sea. Walruses constitute a small portion of the total marine mammal harvest for the village of Barrow. Hunters from Barrow have reported 477 walruses harvested in the past 20 years with 65 of those since 2005. Reports indicate that up to six animals, approximately 10 percent of the recorded harvest, were taken east of Point Barrow in the last 5 years within the geographical limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik do not normally hunt walruses unless the opportunity arises. They have reported taking only three walruses since the inception of the regulations. Two walruses were harvested on Cross Island in 2004, but no walruses have been harvested since 2005. To date, two percent of the total walrus harvest for Barrow, Nuiqsut, and Kaktovik from 1994 to 2009 has occurred within the geographic range of the incidental take regulations.

Polar Bear—Harvest Information

Alaska Natives from coastal villages are permitted to harvest polar bears. Current harvest levels are believed to be sustainable for the SBS population at present (USFWS unpubl. data). Although there are no restrictions under the MMPA, a more restrictive Native-to-Native agreement between the Inupiat from Alaska and the Inuvialuit in Canada was created in 1988. This agreement, referred to as the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of take. Although this Agreement does not have the force of law from either the Canadian or the U.S. governments, the users have abided by its terms. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Inuvialuit-Inupiat Agreement set the original quota at 76 bears in 1988, and it was later increased to 80. The quota was based on estimates of the population size and age-specific estimates of survival and recruitment. One estimate suggests that harvest up to 1.5 percent of the adult females was sustainable. Combining this estimate and a 2:1 sex ratio (male:female) of the harvest ratio, 4.5 percent of the total population could be harvested each year. In July 2010, at the most recent Inuvialuit-Inupiat Polar Bear Management Meeting, the quota was reduced from 80 to 70 bears per year.

The Service has monitored the Alaska polar bear harvest since 1980. The Native subsistence harvest from the SBS has remained relatively consistent since 1980 and averages 36 bears removed per year. The combined harvest from Alaska and Canada from the SBS appears sustainable and equitable. During the period 2005–2009, 84 bears were harvested by residents of Barrow, 11 for Kaktovik, 6 for Nuiqsut, 13 for Wainwright, and 3 for Atqasuk for a total of 117 bears harvested. This was a decline of 40 harvested bears from the previous timeframe analyzed (2000–2004: 157 bears harvested). The Native subsistence harvest is the largest source of mortality related to human activities, although several bears have been killed during research activities, through euthanasia of sick or injured bears, and accidental drowning, or in defense of human life by non-Natives.

Plan of Cooperation

As a condition of incidental take authorization, and to ensure that Industry activities do not impact subsistence opportunities for communities using the geographic region, any applicant requesting an LOA is required to present a record of communication that reflects discussions with the Native communities most likely affected by the activity. The North Slope native communities that could potentially be affected by Industry activities include Barrow, Nuiqsut, and Kaktovik. Polar bear and Pacific walruses inhabiting the Beaufort Sea represent a small portion, in terms of the number of animals, of the total subsistence harvest of fish and wildlife for the villages of Barrow, Nuiqsut, and Kaktovik. Despite this, harvest of these species is important to Alaska Natives. Therefore, an important aspect of the LOA process is that, prior to issuance of an LOA, Industry must provide evidence to the Service that an adequate Plan of Cooperation (POC) has been coordinated with any affected subsistence community (or, as appropriate, with the EWC, the Alaska Nanuuq Commission (ANC), and the North Slope Borough (NSB)) if, after community consultations, Industry and the community concludes that increased mitigation and monitoring is necessary to minimize impacts to subsistence resources. Where relevant, a POC will describe measures to be taken to mitigate potential conflicts between the proposed activity and subsistence hunting. If requested by Industry or the affected subsistence community, the Service will review these plans and provide guidance. The Service will reject POCs if they do not provide adequate safeguards to ensure that any taking by Industry will not have an unmitigable adverse impact on the availability of polar bears and walruses for taking for subsistence uses.

Included as part of the POC and the overall State and Federal permitting process of Industry activities, Industry engages the Native communities in numerous informational meetings. During these community meetings, Industry must ascertain if community responses indicate that impact to subsistence uses will occur as a result of activities in the requested LOA. If community concerns suggest that Industry activities may have an impact on the subsistence uses of these species, the POC must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interfering with the availability of polar bear and walruses for subsistence harvest.

Evaluation of Anticipated Effects of Proposed Activities on Subsistence Uses

No unmitigable concerns from the potentially affected communities regarding the availability of polar bears or walruses for subsistence uses have been identified through Industry consultations in the potentially affected communities of Barrow, Nuiqsut, and Kaktovik in the geographic region.

Based on the proximity of the proposed activities and the location of its hunting areas for polar bears and walruses, Nuiqsut continues to be the community most likely affected by Industry activities due to its close proximity to Industry activities. Nuiqsut is located within 5 miles of

ConocoPhillips' Alpine production field to the north and ConocoPhillips' Alpine Satellite development field to the west. For this rule, we determined that the total taking of polar bears and walruses will not have an unmitigable adverse impact on the availability of these species for subsistence uses to Nuiqsut residents during the duration of the regulation. We base this conclusion on: The results of coastal aerial surveys conducted between 2000 and 2009 within the area; direct observations of polar bears occurring on Cross Island during Nuiqsut's annual fall bowhead whaling efforts; and anecdotal reports and recent sightings of polar bears by Nuiqsut residents. In addition, we have received no evidence or reports that bears are being deflected (*i.e.,* altering habitat use patterns by avoiding certain areas) or being impacted in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use, and we do not expect any change in the impact of future activities during the regulatory period.

Barrow and Kaktovik are expected to be affected differently and to a lesser degree by oil and gas activities than Nuiqsut, due to their distance from known Industry activities during the 5-year period of the regulations. As similar to past ITRs, through aerial surveys, direct observations, community consultations, and personal communication with hunters, it appears that subsistence opportunities for bears and walruses have not been impacted by past Industry operations and we do not anticipate any new impacts to result from the proposed activities.

Changes in activity locations may trigger community concerns regarding the effect on subsistence uses. Industry will need to remain proactive to address potential impacts on the subsistence uses by affected communities through consultations, and where warranted, POCs. Open communication through venues, such as public meetings, which allow communities to express feedback prior to the initiation of operations, will be required as part of an LOA application. If community subsistence use concerns arise from new activities, appropriate mitigation measures are available and will be applied, such as a cessation of certain activities at certain locations during specified times of the year, *i.e.,* hunting seasons. Hence, we find that any take will not have an unmitigable adverse impact on the availability of polar bears or walruses for subsistence uses by residents of the affected communities.

Potential Effects of Oil and Gas Industry Activities on Pacific Walruses, Polar Bears and Prey Species

Individual walruses and polar bears can be affected by Industry activities in numerous ways. These include: (1) Noise disturbance; (2) physical obstructions; (3) human encounters; and (4) effects on prey.

Pacific Walrus

The Beaufort Sea is beyond the normal range of the Pacific walrus and the likelihood of encountering walruses during Industry operations is low. During the time period of the proposed regulations, Industry operations may occasionally encounter small groups of walruses swimming in open water or hauled out onto ice floes or along the coast. Although interactions are expected to be infrequent, proposed activities could potentially result in some level of disturbances. The response of walruses to disturbance stimuli is highly variable. Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances. In other parts of their range, disturbance events are known to cause walrus groups to abandon land or ice haulouts and occasionally result in trampling injuries or cow-calf separations, both of which are potentially fatal. Calves and young animals at the perimeter of the haulouts appear particularly vulnerable to trampling injuries.

1. Noise Disturbance

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb small numbers of walruses. Potential impacts of Industry-generated noise include displacement from preferred foraging areas, increased stress and energy expenditure, interference with feeding, and masking of communications. Any impact of Industry noise on walruses is likely to be limited to a few individuals rather than the population due to their geographic range and seasonal distribution within the geographic region. For example, Pacific walruses generally inhabit the pack ice of the Bering Sea and do not normally range into the Beaufort Sea, although individuals and small groups are occasionally observed.

Reactions of marine mammals to noise sources, particularly mobile sources such as marine vessels, vary. Reactions depend on the individuals' prior exposure to the disturbance source; their need or desire to be in the particular habitat or area where they are exposed to the noise; and visual presence of the disturbance sources. Walruses are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb small numbers of walrus. The response of walrus to sound sources may be either avoidance or tolerance.

A. Stationary Sources

Endicott, BP's Saltwater Treatment Plant (located on the West Dock Causeway), Oooguruk, and Northstar are the offshore facilities that could produce noise that has the potential to disturb walruses. Liberty, as part of the Endicott complex, will also have this potential when it commences operations. A few walruses have been observed in the vicinity of these facilities. Three walruses have hauled out on Northstar Island since its construction in 2000, and a walrus was observed swimming near the Saltwater Treatment Plant in 2004. In 2007, a female and subadult walrus were observed hauled-out on the Endicott Causeway. In instances where walruses have been seen near these facilities, they have appeared to be attracted to them, possibly as a resting area or haulout.

B. Mobile Sources

Seismic operations introduce substantial levels of noise into the marine environment. There are relatively little data available to evaluate the potential response of walruses to seismic operations. Although the hearing sensitivity of walruses is poorly known, source levels associated with marine 3D and 2D seismic surveys are thought to be high enough to cause temporary hearing loss in other pinniped species. Therefore, it is possible that walruses within the 180-decibel (dB re 1 μPa) safety radius for seismic activities could suffer temporary shifts in hearing thresholds.

Seismic surveys and high-resolution site clearance surveys are typically carried out in open water conditions where walrus numbers are expected to be low. This will minimize potential interactions with large concentrations of walruses which typically favor sea ice habitats. Seismic operations in the Beaufort Sea are more likely to encounter small herds of walruses swimming in open water. Potential

adverse effects of seismic noise on swimming walruses can be reduced through the implementation of sufficient, practicable monitoring coupled with adaptive management responses (where the mitigation measures required are dependent on what is discovered during monitoring).

Previous open-water seismic exploration has been conducted in nearshore ice-free areas. This is the area where any future open-water seismic exploration will occur during the duration of this rule. It is highly unlikely that walruses will be present in these areas, and, therefore, it is not expected that seismic exploration would disturb walruses. Furthermore, with the adoption of the mitigation measures described in Section VI, the Service concludes that the only anticipated effects of seismic operations in the Beaufort Sea would be short-term behavioral alterations of small numbers of walruses.

C. Vessel Traffic

Although seismic surveys and offshore drilling operations are expected to occur in areas of open water away from the pack ice, support vessels and/or aircraft servicing seismic and drill operations may encounter aggregations of walruses hauled out onto sea ice. The sight, sound, or smell of humans and machines could potentially displace these animals from any ice haulouts. Walruses react variably to noise from vessel traffic; however, it appears that low-frequency diesel engines cause less of a disturbance than high-frequency outboard engines. In addition, walrus densities within their normal distribution are highest along the edge of the pack ice, and Industry vessel traffic typically avoids these areas. The reaction of walruses to vessel traffic is dependent upon vessel type, distance, speed, and previous exposure to disturbances. Walruses in the water appear to be less readily disturbed by vessels than walruses hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open-water and avoid large ice floes or land where walruses are likely to be found. In addition, walruses can use a vessel as a haul-out platform. In 2009, during Industry activities in the Chukchi Sea, an adult walrus was found hauled out on the stern of a vessel. It eventually left once confronted.

Drilling operations are expected to involve drill ships attended by icebreaking vessels to manage incursions of sea ice. Ice management operations are expected to have the greatest potential for disturbances since walruses are more likely to be encountered in sea ice habitats and ice management operations typically require the vessel to accelerate, reverse direction, and turn rapidly thereby maximizing propeller cavitations and producing significant noise. Previous monitoring efforts in the Chukchi Sea suggest that icebreaking activities can displace some walrus groups up to several kilometers away; however, most groups of hauled-out walruses showed little reaction beyond 800 m (0.5 mi).

Monitoring programs associated with exploratory drilling operations in the Chukchi Sea in 1990 noted that 25 percent of walrus groups encountered in the pack ice during icebreaking responded by diving into the water, with most reactions occurring within 1 km (0.6 mi) of the ship. The monitoring report noted that: (1) Walrus distributions were closely linked with pack ice; (2) pack ice was near active prospects for relatively short time periods; and (3) ice passing near active prospects contained relatively few animals. The report concluded that effects of the drilling operations on walruses were limited in time, geographical scale, and the proportion of population affected.

When walruses are present, underwater noise from vessel traffic in the Beaufort Sea may "mask" ordinary communication between individuals by preventing them from locating one another. It may also prevent walruses from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea ice cover alter northern shipping lanes.

Because offshore exploration activities are expected to move throughout the Beaufort Sea, impacts associated with support vessels and aircrafts are likely to be distributed in time and space. Therefore, the only effect anticipated would be short-term behavioral alterations impacting small numbers of walruses in the vicinity of active operations. Adoption of mitigation measures that include an 800-m (0.5-mi) exclusion zone for marine vessels around walrus groups observed on ice are expected to reduce the intensity of disturbance events and minimize the potential for injuries to animals.

D. Aircraft Traffic

Aircraft overflights may disturb walruses. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walruses tend to be more sensitive to aircraft disturbance. Fixed-winged aircraft are less likely to elicit a response than helicopter overflights. Walruses are particularly sensitive to changes in engine noise and are more likely to stampede when planes turn or fly low overhead. Researchers conducting aerial surveys for walruses in sea ice habitats have observed little reaction to fixed-winged aircraft above 457 m (1,500 ft) (USFWS unpubl. data). Although the intensity of the reaction to noise is variable, walruses are probably most susceptible to disturbance by fast-moving and low-flying aircraft (100 m above ground level). In 2002, a walrus hauled out near the SDC on the McCovey prospect was disturbed when a helicopter landed on the SDC. However, most aircraft traffic is in nearshore areas, where there are typically few to no walruses.

2. Physical Obstructions

Based on known walrus distribution and the very low numbers found in the Beaufort Sea near Prudhoe Bay, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar Island or causeway-linked Endicott/Liberty complex, or vessel traffic. There is no indication that the few walruses that used Northstar Island as a haulout in 2001 were displaced from their movements. Vessel traffic could temporarily interrupt the movement of walruses, or displace some animals when vessels pass through an area. This displacement would probably have minimal or no effect on animals and would last no more than a few hours.

3. Human Encounters

Human encounters with walruses could occur in the course of Industry activities, although such encounters would be rare due to the limited distribution of walruses in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before it disappeared in stormy seas. Additionally, a walrus calf was observed for 15 minutes during an exploration program 60 feet from the dock at Cape Simpson in 2006. It climbed onto an extended barge ramp, which was lowered. The walrus then jumped in the water the moment the crew member started the ramp engine.

4. Effect on Prey Species

Walruses feed primarily on immobile benthic invertebrates. The effect of Industry activities on benthic invertebrates most likely would be from oil discharged into the environment. Oil has the potential to impact walrus prey species in a variety of ways including, but not limited to, mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates. Relatively few walruses are present in the central Beaufort Sea. It is important to note that, although the status of walrus prey species within the Beaufort Sea are poorly known, it is unclear to what extent, if any, prey abundance plays in limiting the use of the Beaufort Sea by walruses. Further study of the Beaufort Sea benthic community as it relates to walruses is warranted. The low likelihood of an oil spill large enough to affect prey populations (see analysis in the section titled Potential Impacts of Waste Product Discharge and Oil Spills on Pacific Walruses and Polar Bears, Pacific Walrus subsection) combined with the fact that walruses are not present in the region during the ice-covered season and occur only infrequently during the open-water season indicates that Industry activities will likely have limited indirect effects on walruses through effects on prey species.

Evaluation of Anticipated Effects on Walruses

As with previous ITRs, Industry noise disturbance and associated vessel traffic may have a more pronounced impact than physical obstructions or human encounters on walruses in the Beaufort Sea. However, due to the limited number of walruses inhabiting the geographic region during the open-water season and lack of walruses in the region during the ice-covered season, the Service expects minimal impact to only small numbers of individual walruses and that any take will have a negligible impact on this stock during the 5-year regulatory period.

Polar Bear

Polar bears are present in the region of activity and, therefore, oil and gas activities could impact polar bears in various ways during both open-water and ice-covered seasons. Impacts from: (1) Noise disturbance; (2) physical obstructions; (3) human encounters; and (4) effects on prey species are described below.

1. Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could potentially result in the take of polar bears. The impact of noise disturbances may affect bears differently depending upon their reproductive status (*e.g.,* denning versus non-denning bears). The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include: Construction, maintenance, repair, and remediation activities; operations at production facilities; flaring excess gas; and drilling operations from either onshore or offshore facilities. Mobile sources include: Vessel and aircraft traffic; open-water seismic exploration; winter vibroseis programs; geotechnical surveys; ice road construction and associated vehicle traffic, including tracked vehicles and snowmobiles; drilling; dredging; and ice-breaking vessels.

A. Stationary Sources

All production facilities on the North Slope in the area to be covered by this rulemaking are currently located within the landfast ice zone. Typically, most polar bears occur in the active ice zone, far offshore, hunting throughout the year; although some bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, usually during the fall season when fall storms and ocean currents may deposit ice-bound bears on land, bears may remain along the coast or on barrier islands for several weeks until the ice returns.

Noise produced by stationary Industry activities could elicit variable responses from polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities, especially exploration facilities in the coastal or nearshore environment, could result in human-bear encounters, unintentional harassment, lethal take, or intentional hazing (stipulated under separate authorization) of the bear.

Noise from Industry activities has the ability to disturb bears at den sites. However, the timing of potential Industry impacts coupled with the time period in the denning cycle when any disturbance occurs can have varying effects and impacts on the female bear and the family group. Researchers have suggested that disturbances, including noise, can negatively impact bears during the early stages of denning, where the pregnant female has limited investment at the site, by causing them to abandon the site in search of another one. Premature site abandonment may also occur after the bears have emerged, but while they are still at the den site, when cubs are acclimating to their "new environment" and the female bear is now vigilant of the environment in regards to her offspring. During this time, in-air noises may disturb the female to the point of abandoning the den site before the cubs are physiologically ready to move from the site.

An example of a den abandonment in the early stages of denning occurred in January 1985, where a female polar bear appears to have abandoned her den in response to Rolligon traffic, which was occurring within 500 meters of the den site. In 2002, noise associated with a polar bear research camp in close proximity to a bear den is thought to have caused a female bear and her cub(s) to abandon their den and move to the ice prematurely. In 2006, a female and two cubs emerged from a den 400 meters from an active river crossing construction site. The den site was abandoned within hours of cub emergence after only 3 days. In 2009, a female and two cubs emerged from a den site within 100 meters of an active ice road with heavy traffic and quickly abandoned the site. While such events may have occurred, information indicates they have been infrequent and isolated. It is important to note that the knowledge of these recent examples occurred because of the monitoring and reporting program established by the ITRs.

Conversely, during the ice-covered seasons of 2000–2001 and 2001–2002, dens known to be active were located within approximately 0.4 km and 0.8 km (0.25 mi and 0.5 mi), respectively, of remediation activities on Flaxman Island in the Beaufort Sea with no observed impact to the polar bears. This suggests that polar bears exposed to routine industrial noises may habituate to those noises and show less vigilance than bears not exposed to such stimuli. This observation came from a study that occurred in conjunction with industrial activities performed on Flaxman Island in 2002 and a study of undisturbed dens in 2002 and 2003 (N = 8) (Smith *et al.* 2007). Researchers assessed vigilant behavior with two potential measures of disturbance: proportion of time scanning their surroundings and the frequency of observable vigilant behaviors. The two bears exposed to the industrial activity within 1.6 km spent less time scanning their surroundings

than bears in undisturbed areas and engaged in vigilant behavior significantly less often.

The potential for disturbance increases once the female emerges from the den, where she is potentially more vigilant to sights and in-air sounds as she uses the den site. As noted earlier, in some cases, while the female is in the den, Industry activities have progressed near the den sites with no perceived disturbance. Indeed, in the 2006 den incident previously discussed, it was believed that Industry activity commenced in the area after the den had been established. Ancillary activities occurred within 50 meters of the den site with no apparent disturbance while the female was in the den. Ongoing activity most likely had been occurring for approximately 3 months in the vicinity of the den. Likewise, in 2009, two bear dens were located along an active ice road. The bear at one den site appeared to establish her site prior to ice road activity and was exposed to approximately three months of activity 100 meters away and emerged at the appropriate time. The other den site was discovered after ice road construction commenced. This site was exposed to ice road activity, 100 meters away, for approximately one month. In all, there have been three recorded examples (2006, 2009, and 2010) of pregnant female bears establishing dens, prior to Industry activity occurring within 400 meters of the den site, and remaining in the den through the normal denning cycle despite the nearby activity.

More recent data suggests that, with proper mitigation measures in effect, activities can continue in the vicinity of dens until the emergence by the female bear. At that time, mitigation, such as activity shutdowns near the den and 24-hour monitoring of the den site can limit bear/human interactions, thereby allowing the female bear to abandon the den naturally and minimize impacts to the animals. For example, in the spring of 2010, an active den site was observed approximately 60 meters from a heavily used ice road. A 1-mile exclusion zone was established around the den, closing a 2-mile portion of the road. Monitors were assigned to observe bear activity and monitor human activity to minimize any other impacts to the bear group. These mitigation efforts minimized disturbance to the bears and allowed them to abandon the den site naturally.

B. Mobile Sources

During the open-water season in the SBS, polar bears spend the majority of their lives on the pack ice, which limits the chances of impacts on polar bears from Industry activities. Although polar bears have been documented in open water, miles from the ice edge or ice floes, this has been a relatively rare occurrence. In the open-water season, Industry activities are generally limited to vessel-based exploration activities, such as ocean-bottom cable (OBC) and shallow hazards surveys. These activities avoid ice floes and the multiyear ice edge; however, they may contact bears in open water and the effects of such encounters will be short-term behavior disturbance. Polar bears are more likely to be affected by on-ice seismic surveys rather than open-water surveys. Although no on-ice seismic surveys have reported polar bear observations during the period of the last ITRs, disturbance from on-ice operations would most likely occur by vehicle and nonpermanent camp activity associated with the seismic project. These effects would be minimal due to the mobility of such projects and limited to small-scale alterations to bear movements.

C. Vessel Traffic

During the open-water season, most polar bears remain offshore associated with the multiyear pack ice and are not typically present in the ice-free areas where vessel traffic occurs. Barges and vessels associated with Industry activities travel in open water and avoid large ice floes. If there is any encounter between a vessel and a bear, it would most likely result in short-term behavioral disturbance only. Indeed, observations from monitoring programs report that in the rare occurrence when bears are encountered in open water swimming, they retreat from the vessel as it passes the bear.

D. Aircraft Traffic

Routine aircraft traffic should have little to no effect on polar bears; however, extensive or repeated overflights of fixed-wing aircraft or helicopters could disturb polar bears. Behavioral reactions of non-denning polar bears should be limited to short-term changes in behavior, such as evading the plane by retreating from the stimulus. They would have no long-term impact on individuals and no discernible impacts on the polar bear population. In contrast, denning bears may abandon or depart their dens early in response to repeated noise produced by extensive aircraft overflights. Mitigation measures, such as minimum flight elevations over polar bears or areas of concern and flight restrictions around known polar bear dens, will be required, as appropriate, to reduce the likelihood that bears are disturbed by aircraft.

E. Offshore Seismic Exploration and Exploratory Drilling

Although polar bears are typically associated with the pack ice during summer and fall, open-water seismic exploration activities can encounter polar bears in the central Beaufort Sea in late summer or fall. It is unlikely that seismic exploration activities or other geophysical surveys during the open-water season would result in more than temporary behavioral disturbance to polar bears. Any disturbance would be visual and auditory in nature, where bears could be deflected from their route. Polar bears could be encountered on ice where they would be unaffected by underwater sound from the airguns. Bears could also be encountered in the water. Sound levels received by polar bears in the water would be attenuated because polar bears generally do not dive much below the surface and they normally swim with their heads above the surface, where noises produced underwater are weak. This occurs because received levels of airgun sounds are reduced near the surface because of the pressure release effect at the water's surface (Greene and Richardson 1988, Richardson *et al.* 1995).

Noise and vibrations produced by oil and gas activities during the ice-covered season could potentially result in impacts on polar bears. During this time of year, denning female bears as well as mobile, non-denning bears could be exposed to and affected differently by potential impacts from seismic activities. As stated earlier, disturbances to denning females, either on land or on ice are of particular concern.

As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, the Service evaluates these routes along with information about known polar bear dens, historic denning sites, and delineated denning habitat prior to authorizing seismic activities.

Previous regulations have analyzed open water exploration activity, such as seismic and drilling, even though this type of open water activity has not occurred on an annual basis in the Beaufort Sea. In the previous ITRs, open-water seismic programs and exploratory drilling programs were analyzed for impacts to polar bears and walruses. Due to the limited scope of the planned offshore activities, the Service concluded that this level of activity would affect only small numbers of polar bears and walrus and

would have no more than negligible effects on the populations. The actual number of offshore seismic projects during the previous regulatory period was smaller than the amount analyzed. We issued LOAs for five offshore seismic projects, and no offshore drilling projects occurred, even though drilling projects were requested twice during the previous ITRs (2006–2011).

2. Physical Obstructions

There is some chance that Industry facilities would act as physical barriers to movements of polar bears. Most facilities are located onshore and inland where polar bears are only occasionally found. The offshore and coastal facilities are most likely to be approached by polar bears. The majority of Industry bear observations occur within 1 mile of the coastline as bears use this area as travel corridors. Bears traversing along the coastline can encounter Industry facilities located on the coast, such as CPAI and Eni facilities at Oliktok Point and the Point Thomson development. As bears contact these facilities, the chances for bear/human interactions increase. The Endicott and West Dock causeways, as well as the facilities supporting them have the potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. However, polar bears appear to have little or no fear of man-made structures and can easily climb and cross gravel roads and causeways, and polar bears have frequently been observed crossing existing roads and causeways in the Prudhoe Bay oilfields. Offshore production facilities, such as Northstar, may be approached by polar bears, but due to their layout (*i.e.,* continuous sheet pile walls around the perimeter) and monitoring plans the bears may not gain access to the facility itself. This situation may present a small-scale, local obstruction to the bears' movement, but also minimizes the likelihood of bear/human encounters.

3. Human Encounters

Whenever humans work in polar bear habitat, there is a chance of an encounter, even though, historically, such encounters have been uncommon in association with Industry. Encounters can be dangerous for both polar bears and humans.

Although bears may be found along the coast during open-water periods, most of the SBS bear stock inhabits the multiyear pack ice during this time of year. Encounters are more likely to occur during fall and winter periods when greater numbers of the bears are found in the coastal environment searching for food and possibly den sites later in the season. Potentially dangerous encounters are most likely to occur at gravel islands or on-ice exploratory sites. These sites are at ice level and are easily accessible by polar bears. Industry has developed and uses devices to aid in detecting polar bears, including bear monitors and motion detection systems. In addition, some companies take steps to actively prevent bears from accessing facilities using safety gates and fences.

Offshore production islands, such as the Northstar production facility, may attract polar bears. In 2004, Northstar accounted for 41 percent of all polar bear observations Industry-wide. They reported 37 sightings in which 54 polar bears were observed. The offshore sites continue to account for the majority of the polar bear observations. The offshore facilities of Endicott, Liberty, Northstar, and Oooguruk accounted for 47 percent of the bear observations between 2005 and 2008 (182 of 390 sightings). It should be noted that, although most bears were observed passing through the area, the sites may also serve as an attractant, which could result in increased incidence of harassment of bears. Employee training and company policies currently reduce and mitigate such encounters.

Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with Industry activities. In the past, such interactions have been mitigated through conditions on the LOA, which require the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take, such as garbage disposal procedures, to minimize impacts to polar bears by reducing the attraction of Industry activities to polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site.

Employee training programs are designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. The result of these polar bear interaction plans and training allows on-site personnel to detect bears and respond safely and appropriately. Often, personnel are instructed to leave an area where bears are seen. Many times polar bears are monitored until they move out of the area. Sometimes, this response involves deterring the bear from the site. If bears are reluctant to leave on their own, in most cases bears can be displaced by using pyrotechnics (*e.g.,* cracker shells) or other forms of deterrents (*e.g.,* vehicle, vehicle horn, vehicle siren, vehicle lights, spot lights). The purpose of these plans and training is to eliminate the potential for injury to personnel or lethal take of bears in defense of human life. Since the regulations went into effect in 1993, there has been no known instance of a bear being killed or Industry personnel being injured by a bear as a result of Industry activities. The mitigation measures associated with these regulations have been proven to minimize bear/human interactions and will continue to be requirements of future LOAs, as appropriate.

There is the potential for humans to come into contact with polar bear dens as well. Known polar bear dens around the oilfield, discovered opportunistically, or as a result of planned surveys, such as tracking marked bears or den detection surveys, are monitored by the Service. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Industry routinely coordinates with the Service to determine the location of Industry's activities relative to known dens and denning habitat. General LOA provisions require Industry operations to avoid known polar bear dens by 1 mile.

There is the possibility that an unknown den may be encountered during Industry activities as well. Between 2002 and 2010, six previously unknown maternal polar bears dens were encountered by Industry during the course of project activities. Once a previously unknown den is identified by Industry, the Service requires that the den be reported, triggering mitigation measures per response plans. Communication between Industry and the Service and the implementation of mitigation measures, such as the 1-mile exclusion area around the now known den and 24-hour monitoring of the site, ensures that disturbance is minimized.

4. Effect on Prey Species

Ringed seals are the primary prey of polar bears in the Beaufort Sea and inhabit the nearshore waters where offshore Industry activities occur. Industry will mainly have an effect on seals through the potential for contamination (oil spills) or industrial noise disturbance. Effects of contamination from oil discharges for seals are described in the following section, "Potential Impacts of Waste Product Discharge and Oil Spills on

Pacific Walruses and Polar Bears," under the "Pacific Walrus" subsection.

Studies have shown that seals can be displaced from certain areas such as pupping lairs or haulouts and abandon breathing holes near Industry activity. However, these disturbances appear to have minor effects and are short term.

Evaluation of Anticipated Effects on Polar Bears

The Service anticipates that potential impacts of Industry noise, physical obstructions, and human encounters on polar bears would be limited to short-term changes in behavior and should have no long-term impact on individuals and no impacts on the polar bear population.

Potential impacts will be mitigated through various requirements stipulated within LOAs. Mitigation measures required for all projects will include a polar bear and/or walrus interaction plan, and a record of communication with affected villages that may serve as the precursor to a POC with the village to mitigate effects of the project on subsistence activities. Mitigation measures that may be used on a case-by-case basis include the use of trained marine mammal monitors associated with marine activities, the use of den habitat maps developed by the U.S. Geological Survey (USGS), the use of FLIR or polar bear scent-trained dogs to determine the presence or absence of dens, timing of the activity to limit disturbance around dens, the 1-mile buffer surrounding known dens, and suggested work actions around known dens. The Service implements certain mitigation measures based on need and effectiveness for specific activities based largely on timing and location. For example, the Service will implement different mitigation measures for a 2-month-long exploration project 20 miles inland from the coast, than for an annual nearshore development project in shallow waters. For example, based on past monitoring information, bears are more prevalent in the coastal areas than 20 miles inland and, therefore, there may be differences in monitoring and mitigation measures required by the Service to limit the disturbance to bears and to limit human/bear interactions.

The Service manages Industry activities occurring in polar bear denning habitat by applying proactive and reactive mitigation measures to limit Industry impact to denning bears. Proactive mitigation measures are actions taken to limit den site exposure to Industry activities in denning habitat before den locations are known. They include the requirement of a polar bear interaction plan, possible den detection surveys, and polar bear awareness and safety training. Reactive mitigation measures are actions taken to minimize Industry impact to polar bear dens once the locations have been identified. They can include applying the 1-mile buffer around the den site and 24-hour monitoring of the den site.

An example of the application of this process would be in the case of Industry activities occurring around a known bear den, where a standard condition of LOAs requires Industry projects to have developed a polar bear interaction plan and to maintain a 1-mile buffer between Industry activities and any known denning sites. In addition, we may require Industry to avoid working in known denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens through the use of remote sensing techniques, such as maps of denning habitat along the Beaufort Sea coast and FLIR imagery.

FLIR imagery, as a mitigation tool, is used in cooperation with coastal polar bear denning habitat maps. Industry activity areas, such as coastal ice roads, are compared to polar bear denning habitat, and transects are then created to survey the specific habitat within the Industry area. FLIR heat signatures within a standardized den location protocol are noted, and further mitigation measures are placed around these locations. FLIR surveys are more effective at detecting polar bear dens than visual observations. The effectiveness increases when FLIR surveys are combined with site-specific, scent-trained dog surveys. These techniques will continue to be required as conditions of LOAs when appropriate.

In addition, Industry has sponsored cooperative research evaluating polar bear hearing, the development of polar bear audiograms, the transmission of noise and vibration through the ground, snow, ice, and air; and the received levels of noise and vibration in polar bear dens. This information has been useful to refine site-specific mitigation measures. Using current mitigation measures, Industry activities have had no known polar bear population-level effects during the period of previous regulations. We anticipate that, with continued mitigation measures, the impacts to denning and non-denning polar bears will be at the same low level as in previous regulations.

Monitoring data suggests that the number of polar bear encounters in the oil fields fluctuates from year to year. Polar bear observations by Industry increased between 2004 and 2009 (89 bear observations in 2004 and 420 bear observations in 2009). These observations range from bears observed from a distance and passively moving through the area to bears that pose a threat to personnel and are hazed for their safety and the safety of Industry personnel. This increase in observations is believed to be due to an increased numbers of bears using terrestrial habitat, an effort by Industry and the Service to increase polar bear awareness and safety to Industry personnel, and an increase in the number of people monitoring bear activities around the facilities. Although bear observations appear to have increased, bear/human encounters remain uncommon events. We anticipate that bear/human encounters during the 5-year period of these regulations will remain uncommon.

Potential Impacts of Waste Product Discharge and Oil Spills on Pacific Walruses and Polar Bears

Individual walruses and polar bears can potentially be affected by Industry activities through waste product discharge and oil spills. These potential impacts are described below.

Polar bear and walrus ranges overlap with many active and planned oil and gas operations. Polar bears may be susceptible to oil spills from platforms/production facilities and pipelines in both offshore and onshore habitat, while walruses will be susceptible from offshore facilities. To date, no major offshore oil spills have occurred in the Alaska Beaufort Sea. Some on-shore spills have occurred on the North Slope at production facilities or pipelines connecting wells to the Trans-Alaska Pipeline System with no known impacts to polar bears.

Oil spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oil fields. Although most spills have been small (less than 50 barrels) by Industry standards, larger spills (more than 500 barrels) accounted for much of the annual volume. Seven large spills have occurred between 1985 and 2009 on the North Slope. The largest spill occurred in the spring of 2006 when approximately 260,000 gallons leaked

from flow lines near a gathering center. In November 2009, a 46,000 gallon spill occurred as well. These spills originated in the terrestrial environment in heavily industrialized areas not used by polar bears or walrus and posed minimal harm to walruses and polar bears. To date, no major offshore spills have occurred on the North Slope.

Spills of crude oil and petroleum products associated with onshore production facilities during ice-covered and open-water seasons have been minor spills. Larger spills are generally production-related and could occur at any production facility or pipeline connecting wells to the Trans-Alaska Pipeline System. In addition to onshore sites, this could include offshore facilities, such as causeway-linked Endicott or the sub-sea pipeline-linked Northstar Island. The trajectories of large offshore spills from Northstar and the proposed Liberty facilities have been modeled and analyzed in past ITRs to examine potential impacts to polar bears.

Oil spills in the marine environment that can accumulate at the ice edge, in ice leads, and similar areas of importance to polar bears and walruses are of particular concern. As additional offshore oil exploration and production projects come on line the potential for large spills in the marine environment increases.

During the open water season, polar bears could encounter oil if it is released during exploratory operations, from existing offshore platforms, or from a marine vessel spill. Furthermore, the shipping of crude oil or oil products could also increase the likelihood of an oil spill due to predicted reductions in Arctic sea ice extent and improved access to shipping lanes, where a projected extended shipping season is expected to occur around the margins of the Arctic Basin.

Spilled oil present in fall or spring during formation or breakup of ice presents a greater risk because of both the difficulties associated with cleaning oil in mixed, broken ice, and the presence of bears and other wildlife in prime feeding areas over the Continental Shelf during this period. Oil spills occurring in areas where polar bears are concentrated, such as along off-shore leads or polynyas, and along terrestrial habitat where marine mammal carcasses occur, such as at Cross and Barter islands during fall whaling, would affect more bears than spills in other areas.

Oiling of food sources, such as ringed seals, may result in indirect effects on polar bears, such as a local reduction in ringed seal numbers, or a change to the local distribution of seals and bears. More direct effects on polar bears could occur from: (1) Ingestion of oiled prey, potentially resulting in reduced survival of individual bears; (2) oiling of fur and subsequent ingestion of oil from grooming; and (3) disturbance, injury, or death from interactions with humans during oil spill response activities. Polar bears may be particularly vulnerable to disturbance when nutritionally stressed and during denning. Cleanup operations that disturb a den could result in death of cubs through abandonment, and perhaps death of the sow as well. In spring, females with cubs of the year that denned near or on land and migrate to offshore areas may encounter oil (Stirling *in* Geraci and St. Aubin 1990).

In the event of an oil spill, Service–approved response strategies are in place to reduce the impact of a spill on wildlife populations. Response efforts will be conducted under a three-tier approach characterized as: (1) Primary response—involving containment, dispersion, burning, or clean-up of oil; (2) secondary response—involving hazing, herding, preventative capture/relocation, or additional methods to remove or deter wildlife from affected or potentially-affected areas; and (3) tertiary response—involving capture, cleaning, treatment, and release of wildlife. If the decision is made to conduct response activities, primary and secondary response options will be vigorously applied since little evidence exists that tertiary methods will be effective for cleaning oiled polar bears.

OCS operators are advised to review the Service's *Oil Spill Response Plan for Polar Bears in Alaska* at (*http://www.fws.gov/Contaminants/FWS_OSCP_05/FWSContingencyTOC.htm*) when developing spill-response tactics. Several factors will be considered when responding to an oil spill. They include the location of the spill, the magnitude of the spill, oil viscosity and thickness, accessibility to spill site, spill trajectory, time of year, weather conditions (*i.e.,* wind, temperature, precipitation), environmental conditions (*i.e.,* presence and thickness of ice), number, age, and sex of polar bears that are (or are likely to be) affected, degree of contact, importance of affected habitat, cleanup proposal, and likelihood of bear/human interactions.

The BOEMRE has acknowledged that there are difficulties in effective oil-spill response in broken ice conditions, and The National Academy of Sciences has determined that "no current cleanup methods remove more than a small fraction of oil spilled in marine waters, especially in the presence of broken ice." The BOEMRE advocates the use of nonmechanical methods of spill response, such as in-situ burning, during periods when broken ice would hamper an effective mechanical response (MMS 2008b). An in situ burn has the potential to rapidly remove large quantities of oil and can be employed when broken-ice conditions may preclude mechanical response. However, oil spill cleanup in the broken ice and open water conditions that characterize Arctic waters is problematic.

Evaluation of Effects of Oil Spills

Pacific Walrus

As stated earlier, the Beaufort Sea is not within the primary range for the Pacific walrus; therefore, the probability of walruses encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walruses unless oil moved into the offshore environment. In the event of a spill that occurs during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walruses. Oil spills from offshore platforms could also contact walruses under certain conditions. Spilled oil during the ice-covered season not cleaned up could become part of the ice substrate and be eventually released back into the environment during the following open-water season. During spring melt, oil would be collected by spill response activities, but it could eventually contact a limited number of walruses.

Little is known about the effects of oil specifically on walruses; no studies have been conducted. Hypothetically, walruses may react to oil much like other pinnipeds. Adult walruses may not be severely affected by the oil spill through direct contact, but they will be extremely sensitive to any habitat disturbance by human noise and response activities. In addition, due to the gregarious nature of walruses, an oil spill would most likely affect multiple individuals in the area. Walruses may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Walrus calves are most likely to suffer the effects of oil contamination. Female walruses with calves are very attentive, and the calf will stay close to its mother at all times, including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell, and be

abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the potential mortality of both animals.

Walruses have thick skin and blubber layers for insulation and very little hair. Thus, they exhibit no grooming behavior, which lessens their chance of ingesting oil. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of walruses to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates into the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walruses may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis. Like other pinnipeds, walruses are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walruses were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walruses are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. In addition, because walruses feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walruses to find other food resources or move to nontraditional areas.

The small number of walruses in the Beaufort Sea and the low potential for a large oil spill, which is discussed in the following Risk Assessment Analysis, limit potential impacts to walruses to only certain events (a large oil spill) and then only to a limited number of individuals. In the unlikely event there is an oil spill and walruses in the same area, mitigation measures, especially those to deflect and deter animals from spilled areas, would minimize any effect. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately. A detailed discussion of oil spill prevention and response for walruses can be found at the following Web site: (*http://www.fws.gov/Contaminants/FWS_OSCP_05/fwscontingencyappendices/L-WildlifePlans/WalrusWRP.doc*).

Polar Bear

The possibility of oil and waste product spills from Industry activities and the subsequent impacts on polar bears are a major concern. Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitats. Although the majority of the SBS polar bear population spends much of their time offshore on the pack ice, some bears are likely to encounter oil regardless of the season or location in which a spill occurs.

Small spills of oil or waste products throughout the year could potentially impact small numbers of bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, approximately 9.3 km (5 nautical miles) northeast of Oliktok Point. The cause of death was determined to be poisoning by a mixture that included ethylene glycol and Rhodamine B dye. While the bear's death was human-caused, the source of the mixture was unknown.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than nonmobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. Many effects did not become evident until several weeks after the experiment (Oritsland *et al.* 1981).

Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperature. Oiled bears are also likely to ingest oil as they groom to restore the insulation value of the oiled fur.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment, and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces; some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on a polar bear, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption.

Polar bears swimming in, or walking adjacent to, an oil spill could inhale petroleum vapors. Vapor inhalation by polar bears could result in damage to various systems, such as the respiratory and the central nervous systems, depending on the amount of exposure.

Oil may also affect food sources of polar bears. Seals that die as a result of an oil spill could be scavenged by polar bears. This would increase exposure of the bears to hydrocarbons and could result in lethal impact or reduced survival to individual bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Possible impacts from the loss of a food source could reduce recruitment and/or survival.

Spilled oil also can concentrate and accumulate in leads and openings that occur during spring breakup and autumn freeze-up periods. Such a concentration of spilled oil would increase the chance that polar bears and their principal prey would be oiled. To access ringed and bearded seals, polar bears in the SBS concentrate in shallow waters less that 300 m deep over the continental shelf and in areas with greater than 50 percent ice cover (Durner *et al.* 2004).

Due to their seasonal use of nearshore habitat, the times of greatest impact from an oil spill to polar bears are likely the open-water and broken-ice periods (summer and fall). This is important because distributions of polar bears are not uniform through time. Nearshore and offshore polar bear densities are greatest in fall, and polar bear use of coastal areas during the fall open-water period has increased in recent years in the Beaufort Sea. This change in distribution has been correlated with the distance to the pack ice at that time of year (*i.e.,* the farther from shore the leading edge of the pack ice is, the more bears are observed onshore). An analysis of data collected 2001–2005 during the fall open-water period concluded: (1) On average approximately 4 percent of the estimated 1,526 polar bears in the Southern Beaufort population were observed onshore in the fall; (2) 80 percent of bears onshore occurred within 15 km of subsistence-harvested bowhead whale carcasses, where large congregations of polar bears have been observed feeding; and (3) sea ice conditions affected the number of bears on land and the duration of time they spent there (Schliebe *et al.* 2006). Hence, bears concentrated in areas where beach-cast marine mammal carcasses occur during the fall would likely be more susceptible to oiling.

The persistence of toxic subsurface oil and chronic exposures, even at sublethal levels, can have long-term effects on wildlife (Peterson *et al.* 2003). Although it may be true that small numbers of bears may be affected by an oil spill initially, the long-term impact could be much greater. Long-term oil effects could be substantial through interactions between natural environmental stressors and compromised health of exposed animals, and through chronic, toxic exposure as a result of bioaccumulation. Polar bears are biological sinks for pollutants because they are the apical predator of the Arctic ecosystem and are also opportunistic scavengers of other marine mammals. Additionally, their diet is composed mostly of high-fat sealskin and blubber, (Norstrom *et al.* 1988). The highest concentrations of persistent organic pollutants in Arctic marine mammals have been found in polar bears and seal-eating walruses near Svalbard (Norstrom *et al.* 1988, Andersen *et al.* 2001, Muir *et al.* 1999). As such, polar bears would be susceptible to the effects of bioaccumulation of contaminants associated with spilled oil, which could affect the bears' reproduction, survival, and immune systems. Sublethal, chronic effects of any oil spill may further suppress the recovery of polar bear populations due to reduced fitness of surviving animals.

In addition, subadult polar bears are more vulnerable than adults to environmental effects (Taylor *et al.* 1987). Subadult polar bears would be most prone to the lethal and sublethal effects of an oil spill due to their proclivity for scavenging (thus increasing their exposure to oiled marine mammals) and their inexperience in hunting. Because of the greater maternal investment a weaned subadult represents, reduced survival rates of subadult polar bears have a greater impact on population growth rate and sustainable harvest than reduced litter production rates (Taylor *et al.* 1987).

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the interest in, and the development of, offshore hydrocarbon reservoirs has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, the outcome of such a spill is uncertain. For example, in the event of a large spill (*e.g.,* 5,900 barrels (equal to a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline), oil would be influenced by seasonal weather and sea conditions including temperature, winds, wave action, and currents. Weather and sea conditions also affect the type of equipment needed for spill response and the effectiveness of spill cleanup. Based on the experiences of cleanup efforts following the Exxon Valdez oil spill, where logistical support was readily available, spill response may be largely unsuccessful in open-water conditions. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions.

The major concern regarding large oil spills is the impact a spill would have on the survival and recruitment of the SBS polar bear population. Currently, this bear population is approximately 1,500 bears. In addition, the maximum sustainable subsistence harvest is now 70 bears for this population (divided between Canada and Alaska). The population may be able to sustain the additional mortality caused by a large oil spill if a small number of bears are killed; however, the additive effect of numerous bear deaths due to the direct or indirect effects from a large oil spill are more likely to reduce population recruitment and survival. Indirect effects may occur through a local reduction in seal productivity or scavenging of oiled seal carcasses and other potential impacts, both natural and human-induced. The removal of a large number of bears from the population would exceed sustainable levels, potentially causing a decline in the bear population and affecting bear productivity and subsistence use.

Evaluation of the potential impacts of Industry waste products and oil spills suggest that individual bears could be impacted by the disturbances (Oritsland *et al.* 1981). Depending on the amount of oil or wastes involved and the timing and location of a spill, impacts could be short-term, chronic, or lethal. In order for bear population reproduction or survival to be impacted, a large-volume oil spill would have to take place. The following section analyzes the likelihood and potential effects of such a large-volume oil spill.

Oil Spill Risk Assessment of Potential Impacts to Polar Bears From a Large Oil Spill in the Beaufort Sea

Potential adverse impacts to polar bears and Pacific walruses from oil and waste-product spills as a result of industrial activities in the Beaufort Sea are a major concern. As part of the incidental take regulatory process, the Service evaluates potential impacts of oil spills within the proposed regulation area, even though the action of an oil spill and the possible lethal outcome to an animal are not authorized. Through experience and current data, the Service

has determined that the offshore environment is the area where its trust species will be most vulnerable to oil spill impacts. In this section, we assess the risk that polar bears may be oiled using various sources of information. This information includes: the description of offshore facilities; BOEMRE oil spill risk assessment for the Beaufort Sea; the overview of the Risk Assessment from the previous ITRs; and information from Service-supported polar bear aerial coastal surveys.

There is increasing interest in developing offshore oil reserves in the Beaufort and Chukchi seas, where the estimate of recoverable oil is up to approximately 19 billion barrels (BOEMRE 2010a). Development of offshore production facilities and pipelines increases the potential for large offshore spills. Oil spilled from an offshore facility or subsea pipeline is a scenario that has been considered in previous regulations (71 FR 43926). With the limited background information available regarding the effects of large oil spills in the offshore Arctic environment, the impact of a large oil spill is uncertain. As far as is known, polar bears have not been affected by oil spilled as a result of North Slope industrial activities to date.

As previously noted, walruses are rare in the Beaufort Sea. Therefore, they are unlikely to encounter oil spills there, and were not considered in this analysis. Several factors must be considered when developing an oil spill risk assessment for polar bears. They include:

1. The location of spill;
2. Magnitude of spill;
3. Oil viscosity and thickness;
4. Accessibility to spill site;
5. Spill trajectory;
6. Time of year;
7. Weather conditions (*i.e.,* wind, temperature, precipitation);
8. Environmental conditions (*i.e.,* presence and thickness of ice);
9. Number, age, and sex of polar bears that are (or are likely to be) affected;
10. Degree of contact;
11. Importance of affected habitat; and
12. Mitigation to limit bears from spilled oil.

Description of Offshore Facilities

Currently, there are three offshore Industry facilities producing oil in the Beaufort Sea: Endicott, Northstar, and Oooguruk. Two more, Liberty and Nikaitchuq, are expected to commence production during the 5-year period analyzed for these regulations. The Endicott oilfield is located approximately 16 km (10 mi) northeast of Prudhoe Bay. Endicott, which is connected by a causeway to the mainland, began production in 1986. The Liberty field is currently under development; the current project concept is to use ultra-extended-reach drilling technology to access the Liberty reservoir from existing facilities at the Endicott Satellite Drilling Island. The Northstar oilfield, which is located 10 km (6 mi) from Prudhoe Bay, began producing oil in 2001. Northstar oil is transported from a gravel island in the Beaufort Sea to shore via a 10-km (6-mi) subsea pipeline buried in a trench in the sea floor. Endicott and Liberty oils are medium-weight viscous crudes with American Petroleum Institute (API) gravities of 24 and 27 degrees, respectively. Northstar crude is a very light, low-viscosity oil with an API gravity of 42.

The Oooguruk Unit is located adjacent to the Kuparuk River Unit in shallow waters of Harrison Bay. Pioneer and its partner, Eni, constructed an offshore drill site there in 2006 on State of Alaska leases. A subsea flow line was also constructed to transfer produced fluids 9.2 km (5.7 mi) from the offshore drill site to shore. Oooguruk began production in 2008. The Oooguruk development has targeted two separate reservoirs from a single offshore drill site. The principal reservoir is the Nuiqsut, an Upper Jurassic, inner shelf sandstone that contains heavy to medium oil with 19–25° American Petroleum Institute (API) gravity. The secondary reservoir is the Kuparuk C sandstone, which consists of medium viscosity oil ranging from 24–26° API gravity. Peak oil production is anticipated to be approximately 18,000 to 20,000 barrels of oil per day. As described earlier, both Nikaitchuq and Oooguruk are located in shallow water (less than 10 feet). The offshore portion of Nikaitchuq is located south of the barrier islands, while Oooguruk is located southeast of Thetis Island in the Colville River outflow. Facilities for the Nikaitchuq Unit are located at Oliktok Point and at an offshore pad near Spy Island, 6.4 km (4 mi) north of Oliktok Point. The offshore pad is located in shallow water 3 meters (10 feet). Oil from the Nikaitchuq prospect is a heavy crude from the Schrader Bluff formation, sometimes with sand in it, found in a shallow reservoir (less than 4,000 feet). It requires an electrical submersible pump to produce oil. According to the operators, the flow can be stopped by turning off the pump. Oil production at Nikaitchuq is anticipated to begin in 2011.

Oil Spill Analysis

The oil-spill scenario for this analysis considers the potential impacts from large oil spills resulting from oil production at the four developments described above (Endicott and Liberty are considered to be a complex for analysis purposes). Estimating large oil-spill occurrence and behavior is a probability exercise. Uncertainty exists regarding the location and size of a large oil spill and the wind, ice, and current conditions at the time of a spill. Although some of the uncertainty reflects incomplete or imperfect data, a considerable amount of uncertainty exists simply because it is difficult to predict events over the next 5 years.

In order to address oil spill impacts to polar bears from the offshore sites, we analyzed quantitative and anecdotal information. The quantitative assessment of oil spill risk for the current request for incidental take regulations considered conditional oil spill probabilities from four offshore sites: Northstar, Oooguruk, Nikaitchuq, and the Endicott/Liberty prospect; oil spill trajectory models; and a polar bear distribution model. The analysis included information from the Bureau of Ocean and Enforcement (BOEMRE) Oil spill Risk analysis in regard to polar bears, reviewed previous risk assessment information of polar bears in prior ITRs, and analyzed polar bear distribution using the Service's coastal survey data for 2000 to present.

BOEMRE Oil Spill Risk Assessment

Because it provides the most current and rigorous treatment of potential oil spills in the Beaufort Sea, our analysis of potential oil spill impacts draws upon the BOEMRE's most recent Oil Spill Risk Analysis (OSRA) (MMS 2008a) to help elucidate potential impacts of an oil spill to polar bears. The OSRA is a computer model that analyzes how and where large offshore spills will likely move (Smith *et al.* 1982). To estimate the likely trajectory potential oil spills may follow, the OSRA model uses information about the physical environment, including data on wind, sea ice, and currents. Although the OSRA estimates that the statistical mean number of large spills is less than one over the life of most developments in the Beaufort Sea, for purposes of this analysis we assume one large spill occurs and then analyze its effects.

Large Spill Size and Source Assumptions

As stated in Appendix A of the Arctic Multi-sale DEIS (MMS 2008b), large spills are those spills of 1,000 barrels

(bbl) or more and would persist on the water long enough to follow in a trajectory analysis. Spills smaller than 1,000 bbl would not be expected to persist on the water long enough to warrant a trajectory analysis. Because no large spills have occurred on the Alaska OCS to date from oil and gas activities, the large spill-size assumptions used by BOEMRE are based on the reported spills from oil production in the Gulf of Mexico and Pacific OCS regions. BOEMRE uses the median spill size in the Gulf of Mexico and Pacific OCS from 1985 through 1999 as the likely large spill size for analysis purposes. The median size of a crude oil spill greater than or equal to 1,000 bbl from a pipeline from 1985 through 1999 on the U.S. OCS was 4,600 bbl, and the average was 6,700 bbl (Anderson and LaBelle 2000). The median spill size for a platform on the OCS over the entire record 1964–1999, based on analysis, is 1,500 bbl, and the average is 3,300 bbl (Anderson and LaBelle 2000). For purposes of analysis, we use the median spill size estimates from BOEMRE as the likely large spill size from platforms and pipelines.

Our analysis is predicated on the BOEMRE assumption that large spills would occur only during development and production in the Arctic (MMS 2008a). BOEMRE still considers assumptions from the DEIS of the Beaufort Sea and Chukchi Sea Planning Areas to be valid despite the Deepwater Horizon oil spill event in the summer of 2010. Currently, BOEMRE is working on a new large spill projection for the Arctic OCS in regard to new information gleaned from the Deepwater Horizon event. However, considering the low number of exploratory wells that have occurred in the Beaufort Sea OCS (31 wells since 1982 [BOEMRE 2010b]) and the low rate of exploratory drilling blowouts per well drilled, it is reasonable to conclude that the risk of a large spill occurring during exploration of the Arctic OCS is very small. In addition, it is important to note that Industry does not plan to conduct drilling operations at more than three exploration sites in the Beaufort Sea OCS for the duration of the 5-year regulatory period.

Between 1971 and 2007, OCS operators have produced almost 15 billion barrels (Bbbl) of oil in the United States. During this period, there were 2,645 spills that totaled approximately 164,100 barrels spilled (equal to 0.001 percent of barrels produced), or about 1 bbl spilled for every 91,400 bbl produced. Between 1993 and 2007, the most recent 15-year period analyzed, almost 7.5 Bbbl of oil were produced. During this period, there were 651 spills that totaled approximately 47,800 bbl spilled (equal to 0.0006 percent of barrels produced), or approximately 1 bbl spilled for every 156,900 bbl produced.

Within the duration of the previous ITRs, two large onshore terrestrial oil spills occurred as a result of failures in the oil production transport system. In the spring of 2006, an oil spill of approximately 260,000 gallons occurred near an oil gathering center facility from a corroded pipeline operated by BP Exploration (Alaska). The spill impacted approximately 2 acres (8 square meters). In November 2009, a 48,000-gallon spill from a "common line" carrying oil, water, and natural gas operated by BP occurred as well, impacting approximately 8,400 square feet (780 square meters). Neither spill appeared to impact polar bears, in part due to the locations: Both sites were within or near industrial facilities not frequented by bears; and timing: Polar bears are not typically observed in the affected areas during the time of the spills and subsequent cleanup.

Trajectory Estimates of a Large Offshore Oil Spill

Although it is reasonable to assume that the chance of one or more large spills occurring during the period of these regulations on the Alaskan OCS from production activities is low, for analysis purposes, we assume that a large spill does occur in order to evaluate potential impacts to polar bears. The BOEMRE OSRA model analyzes the likely paths of over two million simulated oil spills in relation to biological, physical, and sociocultural resource areas specific to the Beaufort Sea, which are generically called environmental resource areas (ERAs). The chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (launch area or pipeline segment) is termed a *conditional probability.* We used the BOEMRE OSRA analysis from the Arctic Multi-sale DEIS to estimate the conditional probabilities of a large spill contacting sensitive ERAs pertinent to polar bears.

Oil-Spill Persistence

How long an oil spill persists on water or on the shoreline can vary, depending upon the size of the oil spill, the environmental conditions at the time of the spill, and the substrate of the shoreline. In its oil spill analysis, BOEMRE conservatively assumes 1,500- and 4,600-bbl spills could last up to 30 days on the water as a coherent slick. To be even more conservative, we considered BOEMRE conditional probabilities out to 60 days for an open water (July–September) spill. We assume that a spill could last longer as a coherent slick if it became entrained in the ice and melts out in the spring. Therefore, we assume that winter spills (October–June) could last up to 180 days as a coherent slick.

We used the BOEMRE maps of launch areas (LAs) and pipeline segments (PLs) from Appendix A of the Arctic Multi-sale DEIS (Map A.1–4) to represent the location of oil spills originating from the four OCS developments described previously. Specifically, we assigned LA 08 and PL 10 to Oooguruk, LA 10 and PL 10 to Nikaitchuq, LA 12 and PL 11 to Northstar, and LA 12 and PL 12 to Endicott/Liberty. Conditional probabilities for contact from spills from LAs and PLs should be considered slightly higher for Oooguruk and Nikaitchuq because the hypothetical pipelines used by BOEMRE in their OSRA model are much longer than actual existing offshore pipelines in the Beaufort Sea (*i.e.,* the model pipelines extend beyond the barrier islands).

Oil-Spill-Trajectory Model Assumptions

For purposes of this oil spill trajectory simulation, BOEMRE made the following assumptions:

- All spills occur instantaneously;
- Large oil spills occur in the hypothetical launch areas or along the hypothetical pipeline segments noted above;
- Large spills do not weather for purposes of OSRA analysis;
- The model does not simulate cleanup scenarios. The oil spill trajectories move as though no oil spill response action is taken; and
- Large oil spills stop when they contact the mainland coastline.

Analysis of the Oil-Spill-Trajectory Model

As noted above, the chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (LA or PL) is termed a *conditional probability.* From the DEIS, Appendix A, we chose ERAs and Land Segments (LSs) to represent areas of concern pertinent to polar bears (MMS 2008a). Those ERAs and LSs, and the conditional probabilities that an oil spill originating from one of the four existing OCS developments would contact them, are presented in Table 1. From Table 1 we were able to estimate the highest probability and the range of probabilities that could occur should a

spill contact the selected land segments from launch areas or pipeline segments.

Environmental Resource Area and Land Segments

Conditional Probabilities of an ERA or LS of concern 2011–2016

Development (Launch Areas, Pipeline Segments)	Season of Spill (Duration of Spill)	ERA 55	ERA 92	ERA 93	ERA 94	ERA 95	ERA 96	ERA 100	LS 85	LS 97	LS 102	LS 107	LS 138	LS 144	LS 145
Oooguruk LA 08 (PL 10)	Summer (60 days)	5 (3)	5(8)	*(2)	*(*)	*(*)	1(3)	*(1)	2(1)	1(2)	*(*)	*(*)	*(1)	54(34)	*(*)
	Winter (180 days)	1(1)	2(3)	*(*)	*(*)	*(*)	*(1)	*(*)	2(4)	*(1)	*(*)	*(*)	1(2)	39(29)	*(1)
Nikaitchuq LA10 (PL 10)	Summer (60 days)	3(3)	11(8)	2(2)	*(*)	*(*)	4(3)	1(1)	1(1)	5(2)	*(*)	*(*)	2(1)	33(34)	*(*)
	Winter (180 days)	1(1)	2(3)	*(*)	*(*)	*(*)	1(1)	*(*)	3(4)	2(1)	*(*)	*(*)	2(2)	29(29)	1(1)
Northstar LA 12 (PL 11)	Summer (60 days)	*(2)	12(12)	7(3)	2(1)	1(*)	13(6)	3(2)	*(*)	7(6)	1(1)	1 (1)	9(3)	33(29)	1(*)
	Winter (180 days)	1(1)	11(8)	1(*)	1(*)	*(*)	12(2)	1(*)	3(3)	4(4)	*(*)	*(*)	3(2)	31(28)	2(1)
Endicott/Liberty LA 12 (PL 12)	Summer (60 days)	*(*)	12(9)	7(7)	2(3)	1(1)	13(12)	3(5)	*(*)	7(5)	1(2)	1(3)	9(11)	33(32)	1(1)

Definitions of ERAs and LSs, from Tables A.1-13, A.1-20, and A.1-22 (MMS, 2008)

ERA 55: Point Barrow, Plover Islands
ERA 92: Thetis, Jones, Cottle and Return Islands, West Dock
ERA 93: Cross and No Name Island
ERA 94: Maguire Islands, Flaxman Island, Barrier Islands
ERA 95: Arey and Barter Islands and Bernard Spit
ERA 96: Midway, Cross and Bartlett Islands
ERA 100: Jago and Tapkaurak Spits
LS 85: Barrow, Browerville, Elson Lagoon
LS 97: Beechey Point, Bertoncini, Bodfish, Cottle and, Jones Islands, Milne Point, Simpson Lagoon
LS 102: Flaxman Island, Maguire Islands, North Star Island, Point Hopson, Point Sweeney, Point Thomson, Staines River
LS 107: Bernard Harbor, Jago Lagoon, Kaktovik, Kaktovik Lagoon
LS 138: Arctic National Wildlife Refuge
LS 144: United States Beaufort Coast
LS 145: Canada Beaufort Coast

Table 1. Conditional oil spill probabilities in regard to Environmental Resource Areas and Land Segments for four OCS oil and gas industry sites. Values in parentheses are for pipeline segments. * = Less than one percent.

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Polar bears are most vulnerable to an oil spill during the open water period when bears aggregate on shore. In the Beaufort Sea these aggregations often form in the fall near subsistence-harvested bowhead whale carcasses. Specific aggregation areas include Point Barrow, Cross Island, and Kaktovik. In recent years, more than 60 polar bears have been observed feeding on whale carcasses just outside of Kaktovik, and in the autumn of 2002, NSB and Service biologists documented more than 100 polar bears in and around Barrow. In order for significant impacts on polar bears to occur, an oil spill would have to contact an aggregation of polar bears. We believe the probability of this occurring is low. For example, in the unlikely event of an oil spill, the probability of it contacting a polar bear aggregation in resource areas or land segments (ERA 55, 93, 95, 96, 100; LS 85, 107) is 13 percent or less (Table 1). The greatest probability would be oil spilled from Northstar or Endicott/Liberty Launch Areas contacting ERA 96 (Midway, Cross, and Bartlett islands). Some polar bears will aggregate at these sites during a 3-month portion of the year (August–October). If an oil spill occurred and contacted those aggregation sites outside of that timeframe of use by polar bears, potential impacts to polar bears would be minimized.

Coastal areas provide important denning habitat for polar bears, such as the Arctic National Wildlife Refuge (ANWR) and nearshore barrier islands exhibiting relief (containing tundra habitat) (Amstrup 1993, Amstrup and Gardner 1994, Durner *et al.* 2006, USFWS unpubl. data). Considering that 65 percent of confirmed terrestrial dens found in Alaska from 1981 through 2005 were on coastal or island bluffs (Durner *et al.* 2006), oiling of such habitats could have a negative impact on polar bears, although specific nature and ramifications of such effects are unknown.

If an oil spill does occur, tundra relief barrier islands (ERA 92, 93, and 94, LS 97 and 102) would have up to a 12 percent conditional probability of spill contact (range: Less than 1 percent to 12 percent) from either Northstar or the Endicott/Liberty complex (Table 1). The highest conditional probability of a spill contacting the coastline of the ANWR (LS 138) would be 11 percent. The Kaktovik area (ERA 95 and 100, LS 107) has up to a 5 percent chance of spill contact, assuming spills occur during the summer season and contact the coastline within 60 days. The chance of a spill contacting the coast near Barrow (ERA 55, LS 85) would be as high as 5 percent (Table 1).

All barrier islands are important resting and travel corridors for polar bears, larger barrier islands that contain tundra relief are also important denning habitat. Tundra-bearing barrier islands within the geographic region and near oil field development are the Jones Island group of Pingok, Bertoncini, Bodfish, Cottle, Howe, Foggy, Tigvariak, and Flaxman islands. In addition, Cross Island has gravel relief and polar bears have previously denned on it. The Jones Island group is located in ERA 92 and LS 97. If a spill were to originate from Oooguruk during the summer months, the probability that this spill would contact these land segments could be as great as 8 percent from a pipeline segment. The probability that a spill from Nikaitchuq would contact the Jones Island group would range from 1 percent to as high as 11 percent. Likewise, for Northstar and the Endicott/Liberty complex, the range would be from 4 percent to as high as 12 percent and from 3 percent to as high as 12 percent, respectively.

Risk Assessment From Prior Incidental Take Regulations (ITRs)

In previous ITRs, we used a risk assessment method that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a polar bear distribution model based on location of satellite-collared females during September and October. To support the analysis for this proposed action, we reviewed the previous analysis and used the data to compare the potential effects of an oil spill in a nearshore production facility (less than 5 miles), such as Liberty, and a facility located further offshore, such as Northstar (greater than 5 miles). Although Liberty was originally designed as an offshore production island, it is currently being developed as an onshore production facility (connected to the mainland by a causeway) using ultra-extended reach technology to drill directionally into the oil prospect. Even though the risk assessment of 2006 did not specifically model spills from the Oooguruk or Nikaitchuq sites, we believed it was reasonable to assume that the analysis for Liberty, and indirectly Northstar, adequately reflected the potential impacts likely to occur from an oil spill at either of these additional locations due to the similarity in the nearshore locations.

Methodology of Prior Risk Assessment

The first step in the risk assessment analysis was to examine oil spill probabilities at offshore production sites for the summer (July–October) and winter (November–June) seasons based on information presented in the original Northstar and Liberty EIS. We assumed that one spill occurred during the 5-year period covered by the regulations. A detailed description of the methodology can be found at 71 FR 43926 (August 2, 2006). The second step in the risk assessment was to estimate the number of polar bears that could be impacted by a spill. If a bear contacted oil, it was assumed to be a lethal contact. This involved estimating the distribution of bears that could be in the area and overlapping polar bear distributions and seasonal aggregations with oil spill trajectories. The trajectories previously calculated for Northstar and Liberty sites were used, as well as BOEMRE estimates of where oil spills from other production facilities were likely to go. The trajectories for Northstar and Liberty were provided by the BOEMRE and reported in Amstrup *et al.* (2006). BOEMRE estimated probable sizes of oil spills from the transportation pipeline and production platforms. These spill sizes ranged from a minimum of 125 to a catastrophic release event of 5,912 barrels. Hence, researchers set the size of the modeled spill at the worst-case scenario of 5,912 barrels, simulating rupture and drainage of a pipeline.

The second component incorporated polar bear densities overlapped with the oil spill trajectories. To accomplish this, in 2004, USGS completed analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information was derived from radio and satellite relocations of collared adult females. Density estimates were used to determine the distribution of polar bears in the Beaufort Sea. Researchers then created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1 km^2 grid cell. Each of the simulated oil spills were overlaid with the polar bear distribution grid. Finally, the likelihood of occurrence of bears oiled during the duration of the 5-year incidental take regulations was estimated. This was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year, and summing these probabilities.

In summary, the maximum numbers of bears potentially oiled by a 5,912-barrel spill during September open water seasons from Northstar was 27, and the maximum from Liberty was 23. Potentially oiled bears ranged up to 74 polar bears and up to 55 polar bears in

October mixed-ice conditions for Northstar and Liberty, respectively. Median number of bears oiled by the 5,912-barrel spill in September and October were 3 and 11 bears from Northstar simulation site, respectively. Median numbers of bears oiled for September and October for the Liberty simulation site were 1 and 3 bears, respectively. Variation occurred among oil spill scenarios and was the result of differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. For example, in October, 75 percent of trajectories from the 5,912-barrel spilled oil affected 20 or fewer polar bears from spills originating at the Northstar simulation site and 9 or fewer bears from spills originating at the Liberty simulation site.

When calculating the probability that a spill would oil 5 or more bears during the annual fall period, we found that oil spills and trajectories were more likely to affect small numbers of bears (less than 5 bears) than larger numbers of bears. Thus, for Northstar, the probability of spilled oil that affected (resulting in mortality) 5 or more bears is 1.0–3.4 percent; for 10 or more bears is 0.7–2.3 percent; and for 20 or more bears is 0.2–0.8 percent. For Liberty, the probability of a spill that will cause a mortality of 5 or more bears was 0.3–7.4 percent; for 10 or more bears, 0.1–0.4 percent; and for 20 or more bears, 0.1–0.2 percent.

Discussion of Prior Risk Assessment

Location of Industry sites within the marine environment is important when analyzing the potential for polar bears to contact an oil spill. Simulations from the prior risk assessment suggested that bears have a higher probability of being oiled from facilities located further offshore, such as Northstar. Northstar Island is nearer the active ice flaw zone and in deeper water than Endicott/Liberty, Oooguruk, and Nikaitchuq. Furthermore, it is not sheltered from deep water by barrier islands. These characteristics associated with Industry developments located further offshore would potentially attract more polar bears into close proximity with the island and would also allow oil to spread more effectively and more consistently into surrounding areas. By comparison through the model, the land-fast ice inside the shelter of the islands appeared to dramatically restrict the extent of most oil spills in comparison to Northstar, which lies outside the barrier islands and in deeper water. From the standpoint of polar bears and based on the simulations, a nearshore island production site (less than 5 miles) would potentially involve less risk to being oiled than a facility located further offshore, such as Northstar Island. Shell may develop an offshore site (Suvulliq) in the active flaw zone during the period of the proposed action. If developed, future scenarios for this prospect will be similar to Northstar and would influence polar bears in a similar manner.

Discussion of Polar Bear Aerial Coastal Surveys for Current Analysis

The Service has an ongoing project to monitor polar bear distribution and numbers along the Beaufort Sea coastline during the fall season. These aerial surveys were conducted between 2000 to 2009. From 2000 to 2005, the Service investigated the relationship between sea ice conditions, food availability, and the fall distribution of polar bears in terrestrial habitats of the SBS via weekly aerial surveys. Aerial surveys were conducted weekly during September and October along the SBS coastline and barrier islands between Barrow and the Canadian border to determine polar bear density during the peak use of terrestrial habitat by bears. The Service observed that the number of bears on land increased when sea-ice retreated farthest from the shore. The distribution of bears also appeared to be related to the availability of subsistence-harvested bowhead whale carcasses and the density of ringed seals in offshore waters.

Between 2000 and 2005, the maximum density estimate of bears observed during any single survey was 8.6 bears/100 km or 122 bears total. Across all years (2000 to 2005) and survey dates between mid-September and the end of October, an average of 4 bears/100 km (57 bears total) were observed. The Service estimated that a maximum of 8.0 percent and an average of 3.7 percent of the estimated 1,526 bears in the SBS population were observed on land during the late open-water and broken-ice period. This period coincides with increased aggregations of bears in the nearshore at feeding sites and the peak observation period (August through October) of bears observed from Industry as reported through their bear monitoring programs. This would be the period posing the greatest risk to the largest number of bears from an oil spill.

The number of bears observed per kilometer of survey flown was higher between Cape Halkett and Jago Spit (4 bears/100 km) than the area surveyed between Barrow and the Canadian border (3 bears/100 km) during the 2003–2005 surveys. The Service reported that this difference was largely driven by a major concentration of bears (69 percent of total bears onshore) at Barter Island (17.0 polar bears/100 km). In addition, annual surveys were also conducted in 2007, 2008, and 2009. The number of bears observed during weekly surveys ranged between 2 to 51, 2 to 78, and 7 to 75, respectively. The highest concentrations continued to be in the area of Barter Island and the community of Kaktovik. Using the above information, if a spill occurred during the fall open-water or broken-ice period, up to 8 percent of the SBS population could potentially contact oil.

Conclusion of Risk Assessment

In summary, documented oil spill-related impacts in the marine environment to polar bears to date in the Beaufort Sea by the oil and gas Industry are minimal. To date, no large spills in the marine environment have occurred in Arctic Alaska. Nevertheless, the possibility of oil spills from Industry activities and the subsequent impacts on polar bears that contact oil remain a major concern.

With the limited background information available regarding oil spills in the Arctic environment, it is unknown what the outcome of such a spill would be if one were to occur. Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although the majority of the SBS polar bear population spends a large amount of their time offshore on the pack ice, it is likely that some bears would encounter oil from a spill regardless of the season and location.

Although the extent of oil spill impacts would depend on the size, location, and timing of spills relative to polar bear distributions and on the effectiveness of spill response and cleanup efforts, under some scenarios, population-level impacts could be expected. A large spill could have significant impacts on polar bears if an oil spill contacted an aggregation of polar bears, which generally occur in discrete areas in the terrestrial environment. A spill occurring during the broken-ice period could significantly impact the SBS polar bear population, in part because effective techniques for containing, recovering, and cleaning up oil spills in Arctic marine environments, particularly during poor weather and broken-ice conditions has not been proven; however, deterrence of polar bears away from areas affected by an oil spill could help minimize the impact of a spill to the SBS population. In the event that an offshore oil spill contacted numerous

bears, a potentially significant impact to the SBS population could result, initially to the percentage of the population directly contacted by oil. This effect would be magnified in and around areas of polar bear aggregations. Bears would also be affected indirectly either by food contamination or by chronic lasting effects caused by exposure to oil. During the 5 year period of these regulations, however, the chance of a large spill occurring is extremely low.

While there is uncertainty in the analysis, certain vectors have to align for polar bears to be impacted by an oil spill in the marine environment. First, a spill has to occur. Second, the spill has to contact areas where bears may be located. BOEMRE's most recent Oil Spill Risk Analysis suggests that if a large oil spill does occur, there is as much as a 13 percent conditional probability that oil from the five analyzed sites would contact Cross Island (ERA 96) (from simulated spills originating either at Northstar or the Endicott/Liberty complex), and as much as an 11 percent conditional probability that it would contact Barter Island and/or the coast of the ANWR (ERA 95 and 100, LS 107 and 138) (from simulated spills originating at the Endicott/Liberty complex). Similarly, there is as much as a 5 percent chance that an oil spill would contact the coast near Barrow (ERA 55, LS 85) (from simulated spills originating at Oooguruk). Third, polar bears will have to be seasonally distributed within the affected region to be impacted by oil. Data from the polar bear coastal surveys suggested that, while polar bears are not uniformly distributed, an average of 3.7 percent with maximum of 8 percent (sample size of 122 bears) of the estimated 1,526 bears in the SBS population were distributed along the Beaufort Sea coastline between the Alaska/Canada border and Barrow.

As a result of the information considered here, the Service concludes that the probability of an offshore spill from Oooguruk, Nikaitchuq, Northstar, or Endicott/Liberty is low. Moreover, in the unlikely event of a spill, the probability that spills would contact areas, or habitat important to bears appears low. Third, while individual bears could be affected by a spill, the potential for a population-level effect would be minimal unless the spill contacted an aggregation of bears. Known aggregations tend to be seasonal during the late open-water and broken-ice season, further minimizing the potential of a spill to impact bears. Therefore, we conclude that only small numbers of polar bears are likely to be affected by a large oil spill in the Arctic waters with only a negligible impact to the SBS population.

Documented Impacts of the Oil and Gas Industry on Pacific Walruses and Polar Bears

In order to document potential impacts to polar bears and walruses, we analyzed potential effects that could have more than a negligible impact to both species. The effects analyzed included the loss or preclusion of habitat, lethal take, harassment, and oil spills.

Pacific Walrus

During the history of the incidental take regulations, the actual impacts from Industry activities on Pacific walruses, documented through monitoring, were minimal. From 1994 to 2004, Industry recorded nine sightings, involving a total of ten Pacific walruses, during the open-water season. From 2005 to 2009, an additional eight individual walruses were observed during Industry operations in the Beaufort Sea. In most cases, walruses appeared undisturbed by human interactions; however, three sightings during the early 2000s involved potential disturbance to the walruses. Two of three sightings involved walruses hauling out on the armor of Northstar Island and one sighting occurred at the SDC on the McCovey prospect, where the walruses reacted to helicopter noise. With the additional sightings in the Beaufort Sea, walruses were observed during exploration (eight sightings; five during recent aerial surveys; 2009), development (three sightings), and production (six sightings) activities. There is no evidence that there were any physical effects or impacts to these individual walruses based on the interaction with Industry. We know of no other interactions that occurred between walrus and Industry during the duration of the incidental take program. Furthermore, there have been no other documented impacts to walruses from Industry.

Cumulative Impacts

Pacific walruses do not normally range into the Beaufort Sea, and documented interactions between oil and gas activities and walruses have been minimal. The proposed Industry activities identified by the petitioners are likely to result in some incremental cumulative effects to the small number of walruses exposed to these activities through the potential exclusion or avoidance of walruses from resting areas and disruption of associated biological behaviors. However, based on the habitat use patterns of walruses and their close association with seasonal pack ice, relatively small numbers of walruses are likely to be encountered during the open-water season when proposed marine activities are expected to occur. Required monitoring and mitigation measures designed to minimize interactions between authorized projects and concentrations of resting or feeding walruses are also expected to limit the severity of any behavioral responses. As a population, hunting pressure, climate change, and the expansion of commercial activities into walrus habitat all have potential to impact walruses. Combined, these factors are expected to present significant challenges to future walrus conservation and management efforts. Therefore, we conclude that the proposed exploration activities, especially as mitigated through the regulatory process, are not at this time expected to add significantly to the cumulative impacts on the Pacific walrus population from past, present, and future activities that are reasonably likely to occur within the 5-year period covered by the regulations, if adopted.

Polar Bear

Documented impacts on polar bears by the oil and gas Industry during the past 40 years appear to be minimal. Historically, polar bears spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. With the changing of their distribution based on the changing ice environment, the Service anticipates that bears will remain on land longer. At times, fall storms deposit bears along the coastline where the bears remain until the ice returns. For this reason, polar bears have mainly been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During those periods, the likelihood of interactions between polar bears and Industry activities increases. We have found that the polar bear interaction planning and training requirements set forth in these regulations and required through the LOA process have increased polar bear awareness and minimized the number of these encounters. LOA requirements have also increased our knowledge of polar bear activity in the developed areas.

No known lethal take associated with Industry has occurred during the period covered by incidental take regulations. Prior to issuance of regulations, lethal takes by Industry were rare. Since 1968, there have been two documented cases of lethal take of polar bears associated

with oil and gas activities. In both instances, the lethal take was reported to be in defense of human life. In winter 1968–1969, an Industry employee shot and killed a polar bear. In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories from 1976 to 1986 due to encounters with Industry. Since the beginning of the incidental take program, which includes measures that minimize impacts to the species, no polar bears have been killed due to encounters associated with current Industry activities on the North Slope. For this reason, Industry has requested that these regulations cover only nonlethal, incidental take.

To date, most impacts to polar bears from industry operations have been the result of direct bear-human encounters, some of which have led to deterrence events. Monitoring efforts by Industry required under previous regulations for the incidental take of polar bears documented various types of interactions between polar bears and Industry. Between 2006 to 2009, a total of 73 LOAs have been issued to Industry, with an average of 18 LOAs annually. Not all Industry activities observe or interact with polar bears. Polar bear observations were recorded for 56 percent of the LOAs (41 of 73 LOAs).

From 2006 through 2009, an average of 306 polar bears was observed and reported per year. (range: 170 to 420 bears annually). During 2007, 7 companies observed 321 polar bears from 177 sightings. In 2008, 10 companies observed 313 polar bears from 186 sightings. In 2009, 420 polar bears were observed during 245 sightings. In all 3 years, the highest number of bears observed was recorded in the fall season in August and September. In 2007, the highest number of bears was recorded in August, where 90 sightings totaling 148 bears were observed; in 2008, 87 sightings totaling 162 bears were recorded in August; while in 2009, 77 bear sightings were reported. Sightings of polar bears have increased from previous regulatory time periods due to a combination of variables. The high number of bear sightings for these years was most likely the result of an increased number of bears using the terrestrial habitat as a result of changes in sea ice habitat, multiple marine-based projects occurring near barrier islands (where multiple sightings were reported), as well as increased compliance and monitoring of Industry projects, especially during August and September, where some repeat sightings of individual bears and family groups occurred. This trend in observations is consistent with the hypothesis of increasing use of coastal habitats by polar bears during the summer months.

Industry activities that occur on or near the Beaufort Sea coast continue to have the greatest potential for encountering polar bears rather than Industry activities occurring inland. According to AOGA figures, the offshore facilities of Endicott, Liberty, Northstar, and Oooguruk accounted for 47 percent of all bear observations between 2005 and 2008 (182 of 390 sightings).

Intentional take of polar bears (through separate Service authorizations under sections 101(a)(4)(A), 109(h), and 112(c) of the MMPA) occurs on the North Slope as well. It is used as a mitigation measure to allow citizens conducting activities in polar bear habitat to take polar bears by harassment (nonlethal deterrence activities) for the protection of both human life and polar bears. The Service provides guidance and training as to the appropriate harassment response necessary for polar bears. The largest operator on the North Slope, BPXA, has documented an increase in the total number of bear observations for their oil units since 2006 (39, 62, 96, and 205 bears for the years 2006, 2007, 2008, and 2009, respectively). However, the percentage of Level B deterrence events reported by BPXA has decreased from 64 percent in 2006 to 21 percent in 2009 of total observations. BPXA attributes this decrease to an increase in polar bear awareness and deterrence training of personnel. A similar trend appears in the slope-wide data presented by AOGA, which encapsulates multiple operators. The percentage of Level B deterrence events appeared to have decreased from 39 percent of all reported polar bear sightings in 2005 to 23 percent in 2008. We currently have no indication that these encounters, which alter the behavior and movement of individual bears, have an effect on survival and recruitment in the SBS polar bear population.

Cumulative Impacts

Cumulative impacts of oil and gas activities are assessed, in part, through the information we gain in monitoring reports, which are required for each operator under the authorizations. Incidental take regulations have been in place in the Arctic oil and gas fields for the past 17 years.

Information from these reports provides a history of past effects on polar bears from interactions with oil and gas activities, including intentional take. Information on previous levels of impact are used to evaluate future impacts from existing and proposed Industry activities and facilities. In addition, information used in our cumulative effects assessment includes: polar bear research leading to publications and data, such as polar bear population assessments by USGS; information from legislative actions, including the listing of the polar bear as a threatened species under the ESA in 2008; traditional knowledge of polar bear habitat use; anecdotal observations; and professional judgment.

While the number of LOAs being requested does not represent the potential for direct impact to polar bears, they do offer an index as to the effort and type of Industry work that is currently being conducted. LOA trend data also helps the Service track progress on various projects as they move through the stages of oil field development. An increase in slope-wide projects has the ability to expose more people to the Arctic and increase bear-human interactions.

The Polar Bear Status Review describes cumulative effects of oil and gas development on polar bears in Alaska (see pages 175 to 181 of the status review). This document can be found at *http://www.regulations.gov;* search for Docket No. FWS–R7–FHC–2010–0098. In addition, in 2003 the National Research Council published a description of the cumulative effects that oil and gas development would have on polar bears and seals in Alaska. They concluded the following:

(1) "Industrial activity in the marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious cumulative effects to ringed seals or polar bears."

(2) "Careful mitigation can help to reduce the effects of oil and gas development and their accumulation, especially if there is no major oil spill. However, the effects of full-scale industrial development off the North Slope would accumulate through the displacement of polar bears and ringed seals from their habitats, increased mortality, and decreased reproductive success."

(3) "A major Beaufort Sea oil spill would have major effects on polar bears and ringed seals."

(4) "Climatic warming at predicted rates in the Beaufort and Chukchi sea regions is likely to have serious consequences for ringed seals and polar bears, and those effects will accumulate with the effects of oil and gas activities in the region."

(5) "Unless studies to address the potential accumulation of effects on North Slope polar bears or ringed seals

are designed, funded, and conducted over long periods of time, it will be impossible to verify whether such effects occur, to measure them, or to explain their causes."

A detailed description of climate change and its potential effects on polar bears, prepared by the Service, can be found in the "Polar Bear Status Review" (pages 72 to 108) at: *http://www.regulations.gov;* search for Docket No. FWS–R7–FHC–2010–0098. Additional detailed information by the USGS regarding the status of the SBS stock in relation to climate change, projections of habitat and populations, and forecasts of rangewide status can be found at: *http://www.usgs.gov/newsroom/special/polar_bears/.* Climate change could alter polar bear habitat because seasonal changes, such as extended duration of open water, may preclude sea ice habitat and restrict some bears to coastal areas. Biological effects on the worldwide population of polar bears are expected to include increased movements, changes in bear distributions, changes to the access and allocation of denning areas, and increased energy expenditure from open water swimming, and possible decreased fitness. Demographic effects that may occur due to climate change include changes in prey availability to polar bears, a potential reduction in the access to prey, and changes in seal productivity.

The Service anticipates negligible effects on polar bears due to Industry activity, even though there may be an increased use of terrestrial habitat in the fall period by polar bears on the coast of Alaska and an increased use of terrestrial habitat by denning bears in the same area. Polar bears are not residents of the oil fields, but use the habitat in a transitory nature, which limits potential impacts from Industry. Furthermore, no known Level A harassment or lethal takes on polar bears have occurred throughout the duration of the incidental take program, which was initiated in 1994. The last known Industry-caused death of a bear by Industry occurred in 1990. This documented information suggests that Industry will have no more than a negligible effect on polar bears for the 5-year regulatory period even though there may be more bears onshore. The Service also believes that current and proposed mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distributions of the increased use by bears of terrestrial habitats and denning polar bears during the 5-year timeframe of the regulations as has occurred in the past. It is likely that, due to potential seasonal changes in abundance and distribution of polar bears during the fall, more frequent encounters may occur and that Industry may have to implement mitigation measures more often, for example, increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities, may be instituted more frequently during the 5-year period of the rule.

The proposed activities identified by Industry are likely to result in incremental cumulative effects to polar bears during the 5-year regulatory period. Based on Industry monitoring information, for example, deflection from travel routes along the coast appears to be a common occurrence, where bears move around coastal facilities rather than traveling through them. Incremental cumulative effects could also occur through the potential exclusion or temporary avoidance of polar bears from feeding, resting, or denning areas and disruption of associated biological behaviors. However, based on monitoring results acquired from past ITRs, the level of cumulative effects, including those of climate change, during the 5-year regulatory period would result in negligible effects on the bear population.

Monitoring results from Industry, analyzed by the Service, indicate that little to no short-term impacts on polar bears have resulted from oil and gas activities. We evaluated both subtle and acute impacts likely to occur from industrial activity and we determined that all direct and indirect effects, including cumulative effects, of industrial activities have not adversely affected the species through effects on rates of recruitment or survival. Based on past monitoring reports, the level of interaction between Industry and polar bears has been minimal. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, provide evidence that these populations have not been adversely affected. For the next 5 years, we anticipate the level of oil and gas Industry interactions with polar bears will likely increase in response to more bears on shore and more activity along the coast, however we do not anticipate significant impacts on bears to occur.

Summary of Take Estimates for Pacific Walruses and Polar Bears

Small Numbers Determination

As discussed in the "Biological Information" section, the dynamic nature of sea ice habitat influences the seasonal and annual distribution and abundance of polar bears and walruses in the specified geographical region. The following analysis concludes that only small numbers of Pacific walruses and polar bears are likely to be taken incidental to the described Industry activities relative to the number of walruses and polar bears that are expected to be unaffected by those activities. This conclusion is based upon known distribution patterns and habitat use of Pacific walruses and polar bears.

1. *The number of polar bears and walruses utilizing the described geographic region during Industry operations is expected to be small relative to the number of animals in the respective populations utilizing pack ice habitats in the Beaufort and Chukchi seas for polar bears or the Chukchi and Bering seas habitats for the Pacific walrus.* As stated before, the Pacific walrus is extralimital in the Beaufort Sea, since the majority of the walrus population is found exclusively in the Chukchi and Bering seas. There is no expectation that even discrete movements, such as foraging, by some individual walruses into the Beaufort Sea as a result of climate change will increase the number of walruses observed by Industry during the regulatory period.

Polar bears are expected to remain closely associated with either the sea ice or coastal zones throughout the year on the North Slope of Alaska. As a result of coastal surveys, the Service estimates a maximum of 8.0 percent and an average of 3.7 percent of the estimated 1,526 bears in the SBS population have been observed on land during the late open-water and broken-ice period. This period coincides with the peak period (August through October) of bears observed from Industry as reported through their bear monitoring programs. If not all bears were counted, this suggests that at the peak of terrestrial habitat use in early fall prior to freeze-up, up to 10 percent of the SBS polar bear population can be found near the coastal environments, while 90 percent of the bears continue to be associated with the existing pack ice.

2. *Within the specified geographical region, the footprint of authorized projects is expected to be small relative to the range of polar bear and walrus in the region.* Again, the fact that the

Pacific walrus is extralimital to the Beaufort Sea suggests that any marine operations working in the geographic area will have minimal walrus interactions within the geographic region. Indeed, only 9 walruses have been sighted by Industry operations since 1994.

Polar bears range well beyond the boundaries of the geographic region of these proposed regulations (approximately 68.9 million acres) and are transient through the regions of Industry infrastructure. As reported by AOGA, the total infrastructure area on the North Slope as of 2007 was 18,129 acres, which is a small proportion of the requested geographic region.

3. *Monitoring requirements and adaptive mitigation measures are expected to significantly limit the number of incidental takes of animals.* Holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce potential impacts of their operations on walruses and polar bears. Monitoring programs are required to inform operators of the presence of polar bears or walrus. Adaptive management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears. For Industry activities in terrestrial environments, where denning polar bears may be a factor, mitigation measures will require that den detection surveys be conducted and Industry will maintain at least a 1-mile distance from any known polar bear den. A full description of the mitigation, monitoring, and reporting requirements associated with an LOA, which will be requirements for Industry, can be found in 50 CFR 18.128.

We expect that only a small proportion of the Pacific walrus population or the CS and SBS polar bear populations will likely to be impacted by any individual project because: (1) Only small numbers of walruses or polar bears will occur in the marine or terrestrial environments where Industry activities will occur; (2) only small numbers will be impacted because walrus are extralimital in the Beaufort Sea and polar bears are widely distributed throughout their expansive ranges, which encompasses area outside of the geographic region of the regulations; and (3) the monitoring requirements and mitigation measures described below that will be imposed on Industry will further reduce impacts.

Negligible Effects Determination

Based upon our review of the nature, scope, and timing of the proposed oil and gas activities and mitigation measures, and in consideration of the best available scientific information, we have determined that the proposed activities will have a negligible impact on Pacific walrus and on polar bears. Factors considered in our negligible effects determination include:

1. *The behavior and distribution of walruses and polar bears utilizing areas that overlap with Industry is expected to limit the amount of interactions between walruses, polar bears, and Industry.* The distribution and habitat use patterns of walruses and polar bears in conjunction with the likely area of Industrial activity results in relatively few animals in the area of operations and, therefore, likely to be affected. As discussed in the section "Biological Information" (*see* Pacific Walrus section), only small numbers of walruses are likely to be found in Beaufort Sea open water habitats where offshore Industry activities will occur.

Throughout the year, polar bears are closely associated with pack ice and are unlikely to interact with open-water industrial activities for the same reasons discussed in the Small Numbers Determination. Likewise, polar bears from the SBS and CS populations are widely distributed and range outside of the geographic region of these regulations. In addition, through fall coastal surveys we estimated that a small proportion of the SBS population, approximately 8–10 percent, is distributed along the coastal areas during the late-summer–early-fall season.

2. *The predicted effects of proposed activities on walruses and polar bears will be nonlethal, temporary passive takes of animals.* The documented impacts of previous Industry activities on walruses and polar bears, taking into consideration cumulative effects, provides direct information that the types of activities analyzed for this rule will have minimal effects and will be short-term, temporary behavioral changes.

3. *The footprint of authorized projects is expected to be small relative to the range of polar bear and walrus populations.* As with the small numbers determination, this factor will also help minimize negligible effects of Industry on Pacific walrus and polar bears. A limited area of activity will reduce the potential to exposure of animals to Industry activities and limit potential interactions of those animals using the area, such as walrus feeding in the area or polar bears or walruses moving through the area.

4. *Mitigation measures will limit potential effects of industry activities.* As described in the Small Numbers Determination, holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce potential impacts of their operations on walruses and polar bears. Seasonal restrictions, monitoring programs required to inform operators of the presence of marine mammals and environmental conditions, den detection surveys for polar bears, and adaptive management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with polar bears and walruses and, therefore, limit Industry effects on these animals.

5. *The potential impacts of climate change for the duration of the regulations (2011–2016) has the potential to displace polar bears and walruses from the geographic region and during the season of Industry activity.* Climate change is likely to result in significant impacts to polar bear and walrus populations in the future. Recent models indicate that the persistence of Alaska's polar bear stocks are in doubt and will possibly disappear within 50 to 100 years due to the changing Arctic ice conditions as a result of climate change. Recent trends in the Arctic have resulted in seasonal sea-ice retreat off the continental shelf and over deep Arctic Ocean waters, presenting significant adaptive challenges to walruses. Reasonably foreseeable impacts to the Pacific walrus population as a result of diminishing sea ice cover include: Shifts in range and abundance, possibly into the Beaufort Sea; increased reliance on coastal haulouts in the Chukchi Sea; and increased mortality associated with predation and disturbance events at coastal haulouts.

Although climate change is a pressing conservation issue for ice-dependent species, such as polar bears and walruses, we have concluded that the activities proposed by Industry and addressed in this 5-year rule will not adversely impact the survival of these species. One likely response to near-term climate-driven change (retreat of sea ice) will result in each species utilizing areas, such as coastal haulouts by walrus and the ice shelf by a continued majority of the polar bear population, outside of the geographic region and proposed areas of Industrial activity. While the Service suspects that a certain portion of the bear population using coastal habitats (currently 8–10 percent of the SBS population) will increase and associate with terrestrial habitats longer, the types of effects as a

result of Industry interaction will be short-term behavioral changes.

We, therefore, conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of carrying out any of the activities authorized under these regulations will have no more than a negligible effect on polar bears and Pacific walruses using the Beaufort Sea region, and we do not expect any resulting disturbances to negatively impact the rates of recruitment or survival for the polar bears and Pacific walrus populations. These regulations do not authorize lethal take, and we do not anticipate that any lethal take will occur.

Findings

We propose the following findings regarding this action:

Small Numbers

Pacific Walrus

Pacific walruses are extralimital in the SBS and, hence, there is a very low probability that Industry activities, including offshore drilling operations, seismic, and coastal activities, will adversely affect the Pacific walrus population. Given the low numbers in the region, we anticipate no more than a small number of walruses are likely to be taken during the length of this rule. We do not anticipate the potential for any lethal take from normal Industry activities. Therefore, we do not anticipate any detrimental effects on recruitment or survival.

We estimate that the projected number of takes of Pacific walruses by Industry will be no more than 10 takes by harassment per year. Takes will be Level B harassment, manifested as short-term behavioral changes. This take estimate is based on historic Industry monitoring observations. In addition, based on the projected level of exploration activity, it is unlikely that the number of takes will increase significantly in the next 5 years.

Polar Bear

Standard operating conditions for Industry exploration, development, and production activities have the potential to incidentally take polar bears. Recent reporting data from the current ITRs indicates that an annual average of 306 polar bears have been observed during Industry activities. Some of these observations are likely sightings of the same bears due to the inability to distinguish between animals in some observations. While the majority of observations are sightings where no interaction between bears and Industry occurs (81 percent of all bear observations from 2006 to 2009: USFWS unpubl. data), takes by harassment do occur. Takes by harassment can be described as either: (1) Deterrence events (15 percent of all bear observations from 2006 to 2009: USFWS unpubl. data); and (2) those occasions when there is clear evidence that the bear's behavior has been altered through events other than deterrence (4 percent of all bear observations from 2006 to 2009: USFWS unpubl. data).

Small takes of this nature are allowed through LOAs. According to industry monitoring data, the number of Level B takes (deterrence events and behavioral change events), averaged 66 occurrences per year from 2006 to 2009 (67 takes in 2006, 64 takes in 2007, 33 takes in 2008, and 101 takes in 2009).

Using this data, we anticipate that the total number of takes of polar bears by all Level B harassment events will not exceed 150 per year. All anticipated takes will be nonlethal Level B harassment, involving only temporary changes in bear behavior. The required mitigation and monitoring measures described in the regulations are expected to prevent injurious Level A takes. The number of lethal takes is projected to be zero. We do not expect the total of these disturbances to affect rates of recruitment or survival in the SBS polar bear population.

Negligible Impact

Based on the best scientific information available, the results of monitoring data from our previous regulations (16 years of monitoring and reporting data), the review of the information generated by the listing of the polar bear as a threatened species and the designation of polar bear critical habitat, the ongoing analysis of the petition to list the Pacific walrus as a threatened species under the ESA, the results of our modeling assessments, and the status of the population, we find that any incidental take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities during the period of the rule, in the Beaufort Sea and adjacent northern coast of Alaska, will have no more than a negligible impact on polar bears and Pacific walruses. In making this finding, we considered the following:

(1) The distribution of the species (through 10 years of aerial surveys and studies of feeding ecology, and a regression analysis of pack ice position and polar bear distribution);

(2) The biological characteristics of the species (through bio-monitoring for toxic chemicals, studies of den site behavior, radio-telemetry data);

(3) The nature of oil and gas Industry activities;

(4) The potential effects of Industry activities and potential oil spills on the species;

(5) The probability of oil spills occurring;

(6) The documented impacts of Industry activities on the species taking into consideration cumulative effects (through FLIR surveys, the use of trained dogs to detect occupied dens, a bear–human conflicts workshop, a study assessing sound levels and of industrial noise and potential noise and vibration exposure for dens, and data mapping den habitat);

(7) The potential impacts of climate change, where both walruses and polar bears can potentially be displaced from preferred habitat;

(8) The existing and proposed mitigation measures designed to minimize Industry impacts through adaptive management; and

(9) Other data provided by Industry monitoring programs in the Beaufort and Chukchi Seas.

We also considered the specific Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information [53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16305 (October 15, 1986)].

Pacific walruses are only occasionally found during the open-water season in the Beaufort Sea. The Beaufort Sea polar bear population is widely distributed throughout its range. A small percentage (less than 10 percent) of the SBS polar bear population typically occurs in coastal and nearshore areas where most Industry activities happen.

We reviewed the effects of the oil and gas Industry activities on polar bears and Pacific walruses, including impacts from noise, physical obstructions, human encounters, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of Pacific walrus and polar bear, we

conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on polar bear and Pacific walrus populations. Furthermore, we do not expect these disturbances to affect the rates of recruitment or survival for the Pacific walrus and polar bear populations. These regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

The probability of an oil spill that will cause significant impacts to Pacific walruses and polar bears appears extremely low. We have included potential spill information from Oooguruk, Nikaitchuq, Northstar, and Endicott/Liberty offshore projects in our oil spill analysis to analyze multiple offshore sites. We have analyzed the likelihood of an oil spill in the marine environment of the magnitude necessary to kill a significant number of polar bears for offshore projects and, through a risk assessment analysis, found that it is unlikely that there will be any lethal take. In the unlikely event of a catastrophic spill, we will take immediate action to minimize the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the MMPA.

After considering the cumulative effects of existing and proposed development, production, and exploration activities, and the likelihood of any impacts, both onshore and offshore, we find that the total expected takings resulting from oil and gas Industry activities will affect no more than small numbers and will have no more than a negligible impact on the SBS polar bear and Pacific walrus populations inhabiting the Beaufort Sea area on the North Slope coast of Alaska.

Our finding of "negligible impact" applies to incidental take associated with proposed oil and gas exploration, development, and production activities as mitigated through the regulatory process. The regulations establish monitoring and reporting requirements to evaluate the potential impacts of authorized activities, as well as mitigation measures designed to minimize interactions with and impacts to walruses and polar bears. We will evaluate each request for an LOA based on the specific activity and the specific geographic location where the proposed activities are projected to occur to ensure that the level of activity and potential take is consistent with our finding of negligible impact. Depending on the results of the evaluation, we may grant the authorization, add further operating restrictions, or deny the authorization.

Conditions are attached to each LOA. These conditions minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. Conditions include: (1) These regulations do not authorize intentional taking of polar bear or Pacific walruses or lethal incidental take; (2) for the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known denning areas, Industry activities may be restricted in specific locations during specified times of the year; and (3) each activity covered by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. We may add additional measures depending upon site-specific and species-specific concerns. Restrictions in denning areas will be applied on a case-by-case basis after assessing each LOA request and may require pre-activity surveys (*e.g.,* aerial surveys, FLIR surveys, or polar bear scent-trained dogs) to determine the presence or absence of denning activity and, in known denning areas, may require enhanced monitoring or flight restrictions, such as minimum flight elevations, if necessary. We will analyze the required plan of operation and interaction plans to ensure that the level of activity and possible take are consistent with our finding that total incidental takes will have a negligible impact on polar bear and Pacific walruses and, where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

We have evaluated climate change in regard to polar bears and walruses. Although climate change is a worldwide phenomenon, it was analyzed as a contributing effect that could alter polar bear and walrus habitat and behavior. Climate change could alter polar bear habitat because seasonal changes, such as extended duration of open water, may preclude sea-ice habitat use and restrict some bears to coastal areas. The reduction of sea ice extent, caused by climate change, may also affect the timing of polar bear seasonal movements between the coastal regions and the pack ice. If the sea ice continues to recede as predicted, it is hypothesized that polar bears may spend more time on land rather than on sea ice similar to what has been recorded in the Hudson Bay. Climate change could also alter terrestrial denning habitat through coastal erosion brought about by accelerated wave action. The challenge in the Beaufort Sea will be predicting changes in ice habitat, barrier islands, and coastal habitats in relation to changes in polar bear distribution and use of habitat.

Within the described geographic region of this rule, Industry effects on Pacific walruses and polar bears are expected to occur at a level similar to what has taken place under previous regulations. We anticipate that there will be an increased use of terrestrial habitat in the fall period by polar bears. We also anticipate a slight increased use of terrestrial habitat by denning bears. Nevertheless, we expect no significant impact to these species as a result of these anticipated changes. The mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distribution or denning polar bears during the 5-year timeframe of the regulations. It is likely that, due to potential seasonal changes in abundance and distribution of polar bears during the fall, more frequent encounters may occur and that Industry may have to implement mitigation measures more often, for example, increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities, may be instituted more frequently during the 5-year period of the rule.

Climate change over time continues to be a major concern to the Service, and we are currently involved in the collection of baseline data to help us understand how the effects of climate change will be manifested in the SBS polar bear population. As we gain a better understanding of climate change effects on the SBS population, we will incorporate the information in future actions. Ongoing studies include those led by the Service and the USGS Alaska Science Center to examine polar bear habitat use, reproduction, and survival relative to a changing sea ice environment. Specific objectives of the project include: an enhanced understanding of polar bear habitat availability and quality influenced by ongoing climate changes and the response by polar bears; the effects of polar bear responses to climate-induced changes to the sea ice environment on body condition of adults, numbers and sizes of offspring, and survival of offspring to weaning (recruitment); and population age structure.

Although Pacific walruses are relatively rare in the Beaufort Sea, the Service and USGS are conducting multiyear studies on the population to investigate movements and habitat use

patterns. It is possible that as sea ice diminishes in the Chukchi Sea beyond the 5-year period of this rule, more walruses will migrate east into the Beaufort Sea.

Impact on Subsistence Take

Based on community consultations, locations of hunting areas, the potential overlap of hunting areas and Industry projects, the best scientific information available, and the results of monitoring data, we find that take caused by oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of polar bears and Pacific walruses for taking for subsistence uses during the period of the rule. In making this finding, we considered the following: (1) Records on subsistence harvest from the Service's Marking, Tagging and Reporting Program; (2) community consultations; (3) effectiveness of the POCs between Industry and affected Native communities; and (4) anticipated 5-year effects of Industry activities on subsistence hunting. In addition, our findings also incorporated the results of coastal aerial surveys conducted within the area during the past 7 years, upon direct observations of polar bears occurring near bowhead whale carcasses on Barter Island and on Cross Island during the villages of Kaktovik and Nuiqsut's annual fall bowhead whaling efforts, respectively, and upon anecdotal reports of North Slope residents.

Polar bear and Pacific walruses represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, the low numbers do not mean that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that community consultations have occurred or that an adequate POC has been presented to the subsistence communities. Industry will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bear or Pacific walruses are minimized. Although multiple meetings for multiple projects from numerous operators have already taken place, no official concerns have been voiced by the Native communities with regard to Industry activities limiting availability of polar bears or walruses for subsistence uses. However, should such a concern be voiced as Industry continues to reach out to the Native communities, development of Plans of Cooperation, which must identify measures to minimize any adverse effects, will be required. The POC will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walruses, as warranted.

The Service has not received any reports and is aware of no information that indicates that bears or walruses are being or will be deflected from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of oil and gas activity. If there is evidence during the 5-year period of the regulations that oil and gas activities are affecting the availability of polar bear or walruses for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of industrial activities on polar bears and walruses to ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and to detect any unanticipated effects on the species. Monitoring plans document when and how bears and walruses are encountered, the number of bears and walruses, and their behavior during the encounter. This information allows the Service to measure encounter rates and trends of bear and walrus activity in the industrial areas (such as numbers and gender, activity, seasonal use) and to estimate numbers of animals potentially affected by Industry. Monitoring plans are site-specific, dependent on the proximity of the activity to important habitat areas, such as den sites, travel corridors, and food sources; however, all activities are required to report all sightings of polar bears and walruses. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry. Activities within the coast of the geographic region may incorporate daily watch logs as well, which record 24-hour animal observations throughout the duration of the project. Polar bear monitors will be incorporated into the monitoring plan if bears are known to frequent the area or known polar bear dens are present in the area. At offshore Industry sites, systematic monitoring protocols will be implemented to statistically monitor observation trends of walruses or polar bears in the nearshore areas where they usually occur.

Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas Industry exploration, development, and production activities on polar bear and walruses prior to issuance of an LOA. Since production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

Treaty Obligations

The ITRs are consistent with the Bilateral Agreement for the Conservation and Management of the Polar Bear between the United States and Russia. Article II of the Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat:

(1) "Take appropriate action to protect the ecosystem of which polar bears are a part;"

(2) "Give special attention to habitat components such as denning and feeding sites and migration patterns;" and

(3) "Manage polar bear populations in accordance with sound conservation practices based on the best available scientific data."

This rule is also consistent with the Service's treaty obligations because it incorporates mitigation measures that ensure the protection of polar bear habitat. LOAs for industrial activities are conditioned to include area or seasonal timing limitations or prohibitions, such as placing 1-mile

avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den), building roads perpendicular to the coast to allow for polar bear movements along the coast, and monitoring the effects of the activities on polar bears. Available denning habitat maps are provided by the USGS.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods, as listed above in **ADDRESSES**. If you submit comments by e-mail, please submit them as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: Docket No. FWS–R7–FHC–2010–0098" and your name and return address in your e-mail message. Please note that this e-mail address will be closed out at the termination of the public comment period. Before including your address, phone number, e-mail 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 view, we cannot guarantee that we will be able to do so.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "Sec." and a numbered heading; for example, § 18.123. When is this subpart effective?)

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Before including your address, phone number, e-mail 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 view, we cannot guarantee that we will be able to do so.

Required Determinations

National Environmental Policy Act (NEPA) Considerations

We have prepared a draft Environmental Assessment (EA) in conjunction with this rulemaking. Subsequent to closure of the comment period for this proposed rule, we will decide whether this rulemaking is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA of 1969. For a copy of the draft EA, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–FHC–2010–0098 or contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

Endangered Species Act

On May 15, 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212) and on December 7, 2010 (75 FR 76086), the Service designated critical habitat for polar bear populations in the United States, effective January 6, 2011. Section 7(a)(1) and (2) of the ESA (16 U.S.C. 1536(a)(1) and (2)) direct the Service to review its programs and to utilize such programs in the furtherance of the purposes of the ESA and to ensure that a proposed action is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of critical habitat. Consistent with these statutory requirements, the Service's Marine Mammal Management Office has initiated Intra-Service section 7 consultation over these regulations with the Service's Fairbanks' Ecological Services Field Office.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. Therefore, a Regulatory Flexibility Analysis is not required. In addition, these potential applicants have not been identified as small businesses and, therefore, a Small Entity Compliance Guide is not required. The analysis for this rule is available from the individual identified above in **FOR FURTHER INFORMATION CONTACT**.

Takings Implications

This rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of walruses and polar bears by oil and gas Industry companies and thereby exempts these companies from civil and criminal liability as long as they operate in compliance with the

terms of their LOAs. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect walruses and polar bears.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

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, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Alaska Native tribes. Through the LOA process identified in the regulations, Industry presents a POC with the Native communities most likely to be affected and engages these communities in numerous informational meetings.

To facilitate co-management activities, cooperative agreements have been completed by the Service, the Alaska Nanuuq Commission (ANC) and the Eskimo Walrus Commission (EWC). The cooperative agreements fund a wide variety of management issues, including: commission co-management operations; biological sampling programs; harvest monitoring; collection of Native knowledge in management; international coordination on management issues; cooperative enforcement of the MMPA; and development of local conservation plans. To help realize mutual management goals, the Service, ANC, and EWC regularly hold meetings to discuss future expectations and outline a shared vision of co-management.

The Service also has ongoing cooperative relationships with the North Slope Borough and the Inupiat-Inuvialuit Game Commission where we work cooperatively to ensure that data collected from harvest and research are used to ensure that polar bears are available for harvest in the future; provide information to co-management partners that allows them to evaluate harvest relative to their management agreements and objectives; and provide information that allows evaluation of the status, trends, and health of polar bear populations.

Civil Justice Reform

The Departmental Solicitor's Office has determined that these regulations do not unduly burden the judicial system and meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule contains information collection requirements. 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 Office of Management and Budget (OMB) control number. The Information collection requirements included in this rule are approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB control number assigned to these information collection requirements is 1018–0070, which expires on January 31, 2014. This control number covers the information collection, recordkeeping, and reporting requirements in 50 CFR 18, subpart J, which are associated with the development and issuance of specific regulations and LOAs.

Energy Effects

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule provides exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration of oil and gas in the Beaufort Sea and adjacent coast of Alaska. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

References

For a list of the references cited in this rule, see Docket No. FWS–R7–FHC–2010–0098, available at *http://www.regulations.gov.*

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend part 18 by revising subpart J to read as follows:

Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.
18.121 What specified activities does this subpart cover?
18.122 In what specified geographic region does this subpart apply?
18.123 When is this subpart effective?
18.124 How do I obtain a Letter of Authorization?
18.125 What criteria does the Service use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the mitigation, monitoring, and reporting requirements?
18.129 What are the information collection requirements?

Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

§ 18.121 What specified activities does this subpart cover?

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of

polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.122 In what specified geographic region does this subpart apply?

This subpart applies to the specified geographic region defined by all Beaufort Sea waters east of a north-south line through Point Barrow (71°23′29″ N., −156 °28′30″ W., BGN 1944), and up to 200 miles north of Point Barrow, including all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is not included in the area covered by this subpart. Figure 1 shows the area where this subpart applies.

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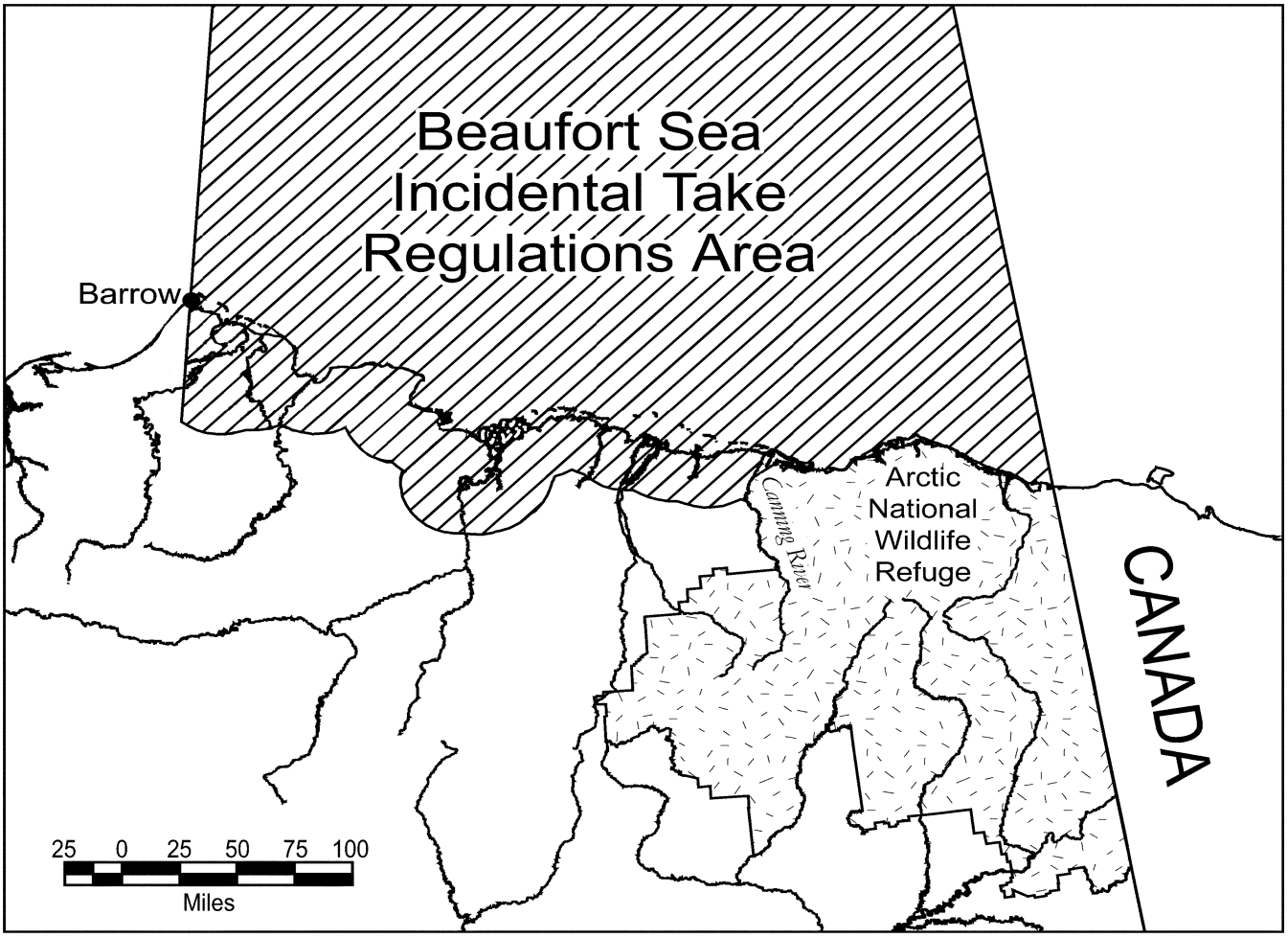

Figure 1. Specific geographic area covered by the Beaufort Sea incidental take regulations.

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§ 18.123 When is this subpart effective?

Regulations in this subpart are effective from [*Insert effective date of the final rule*] through [Insert *date 5 years from the effective date of the final rule*] for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do I obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c).

(b) If you are conducting an oil and gas exploration, development, or production activity in the specified geographic region described in § 18.122 that may cause the taking of polar bears or Pacific walruses in execution of those activities and you want nonlethal incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for activities in each development or production area. You must submit the application for authorization to our Alaska Regional Director (see 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the

specific location, and the estimated area affected by that activity, *i.e.,* a plan of operation.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bears and Pacific walruses that may be present during the ongoing activities (*i.e.,* marine mammal monitoring and mitigation plan). Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements provided by the Service will vary depending on the activity, the location, and the time of year.

(3) A site-specific polar bear and/or walrus awareness and interaction plan. A polar bear interaction plan for each operation will outline the steps the applicant will take to limit human-bear interactions, increase site safety, and minimize impacts to bear.

(4) A Plan of Cooperation (POC) to mitigate potential conflicts between the proposed activity and subsistence hunting, where relevant. Applicants must consult with potentially affected subsistence communities along the Beaufort Sea coast (Kaktovik, Nuiqsut, and Barrow) and appropriate subsistence user organizations (the Eskimo Walrus Commission and the Alaska Nanuuq (polar bear) Commission) to discuss the location, timing, and methods of proposed operations and support activities and identify any potential conflicts with subsistence walrus and polar bear hunting activities in the communities. Applications for Letters of Authorization must include documentation of all consultations with potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter organizations, and the applicant's responses to identified concerns. Some of these measures may include, but are not limited to, mitigation measures described in § 18.128.

§ 18.125 What criteria does the Service use to evaluate Letter of Authorization requests?

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals likely to be taken and evaluating whether there will be a negligible impact on the species or an adverse impact on the availability of the species for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of polar bears or Pacific walruses.

§ 18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the nonlethal incidental, but not intentional, take of polar bears and Pacific walruses when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations;

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine specific impacts of each activity;

(6) Conducting restoration, remediation, demobilization programs, and associated activities.

(b) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

§ 18.127 What activities are prohibited?

(a) Intentional take and lethal incidental take of polar bears or Pacific walruses; and

(b) Any take that fails to comply with this part or with the terms and conditions of your Letter of Authorization.

§ 18.128 What are the mitigation, monitoring, and reporting requirements?

(a) *Mitigation.* Holders of a Letter of Authorization must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on walruses and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses. Dynamic management approaches, such as temporal or spatial limitations in response to the presence of marine mammals in a particular place or time or the occurrence of marine mammals engaged in a particularly sensitive activity (such as feeding), must be used to avoid or minimize interactions with polar bears, walruses, and subsistence users of these resources.

(1) *All applicants.* (i) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bears and Pacific walruses.

(ii) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bears and Pacific walruses.

(iii) Holders of Letters of Authorization must have an approved polar bear and/or walrus interaction plan on file with the Service and onsite, and polar bear awareness training will also be required of certain personnel. Interaction plans must include:

(A) The type of activity and, where and when the activity will occur, *i.e.,* a plan of operation;

(B) A food and waste management plan;

(C) Personnel training materials and procedures;

(D) Site at-risk locations and situations;

(E) Walrus and bear observation and reporting procedures; and

(F) Bear and walrus avoidance and encounter procedures.

(iv) All applicants for a Letter of Authorization must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations and submit to us a record of communication that documents these discussions. If appropriate, the applicant for a Letter of Authorization must also submit to us a POC that ensures that activities will not interfere with subsistence hunting and that adverse effects on the availability of polar bear or Pacific walruses are minimized (see § 18.124(c)(4)).

(v) If deemed appropriate by the Service, holders of a Letter of Authorization will be required to hire and train polar bear monitors to alert crew of the presence of polar bears and initiate adaptive mitigation responses.

(2) *Onshore activities. Efforts to minimize disturbance around known polar bear dens.*—Holders of a Letter of Authorization must take efforts to limit

disturbance around known polar bear dens.

(i) *Efforts to locate polar bear dens.*—Holders of a Letter of Authorization seeking to carry out onshore exploration activities in known or suspected polar bear denning habitat during the denning season (November–April) must make efforts to locate occupied polar bear dens within and near proposed areas of operation, utilizing appropriate tools, such as, forward looking infrared (FLIR) imagery and/or polar bear scent-trained dogs. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.

(ii) *Exclusion zone around known polar bear dens.*—Operators must observe a 1-mile operational exclusion zone around all known polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work in the immediate area must cease and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(iii) The use of den habitat map developed by the USGS. A map of potential coastal polar bear denning habitat can be found at: *http://alaska.usgs.gov/science/biology/polar_bears/pubs.html.* This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(iv) Restricting the timing of the activity to limit disturbance around dens.

(3) *Operating conditions for operational and support vessels.* (i) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses.

(ii) At all times, vessels must maintain the maximum distance possible from concentrations of walruses or polar bears. Under no circumstances, other than an emergency, should any vessel approach within a 805-m (0.5-mi) radius of walruses or polar bears observed on land or ice.

(iii) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walruses when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walruses from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walruses.

(iv) The transit of operational and support vessels through the specified geographic region is not authorized prior to July 1. This operating condition is intended to allow walruses the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence walrus hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(v) All vessels shall avoid areas of active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(vi) The use of trained marine mammal monitors associated with marine activities. We may require a monitor on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of Industry's activity on polar bear and Pacific walruses.

(4) *Operating conditions for aircraft.* (i) Operators of support aircraft should, at all times, conduct their activities at the maximum distance possible from concentrations of walruses or polar bears.

(ii) Under no circumstances, other than an emergency, should aircraft operate at an altitude lower than 305 m (1,000 ft) within 805 m (0.5 mi) of walruses or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mile) of such areas. When weather conditions do not allow a 305-m (1,000-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below the 305-m (1,000-ft) altitude stipulated above. However, when aircraft are operated at altitudes below 305 m (1,000 ft) because of weather conditions, the operator must avoid areas of known walrus and polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(iii) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(5) *Additional mitigation measures for offshore seismic surveys.* Any offshore exploration activity expected to include the production of pulsed underwater sounds with sound source levels ≥160 dB re 1 μPa will be required to establish and monitor acoustic exclusion and disturbance zones and implement adaptive mitigation measures as follows:

(i) *Monitor zones.* Establish and monitor with trained marine mammal observers an acoustically verified exclusion zone for walruses surrounding seismic airgun arrays where the received level would be ≥ 180 dB re 1 μPa; an acoustically verified exclusion zone for polar bear surrounding seismic airgun arrays where the received level would be ≥ 190 dB re 1 μPa; and an acoustically verified walrus disturbance zone ahead of and perpendicular to the seismic vessel track where the received level would be ≥ 160 dB re 1 μPa.

(ii) *Ramp-up procedures.* For all seismic surveys, including airgun testing, use the following ramp-up procedures to allow marine mammals to depart the exclusion zone before seismic surveying begins:

(A) Visually monitor the exclusion zone and adjacent waters for the absence of polar bears and walruses for at least 30 minutes before initiating ramp-up procedures. If no polar bears or walruses are detected, you may initiate ramp-up procedures. Do not initiate ramp-up procedures at night or when you cannot visually monitor the exclusion zone for marine mammals.

(B) Initiate ramp-up procedures by firing a single airgun. The preferred airgun to begin with should be the smallest airgun, in terms of energy output (dB) and volume (in^3).

(C) Continue ramp-up by gradually activating additional airguns over a period of at least 20 minutes, but no longer than 40 minutes, until the desired operating level of the airgun array is obtained.

(iii) *Power down/Shut down.* Immediately power down or shut down the seismic airgun array and/or other acoustic sources whenever any walruses are sighted approaching close to or within the area delineated by the 180-dB re 1 μPa walrus exclusion zone, or polar bears are sighted approaching close to or within the area delineated by the 190-dB re 1 μPa polar bear exclusion zone. If the power down operation cannot reduce the received sound pressure level to 180-dB re 1 μPa (walrus) or 190-dB re 1 μPa (polar bears), the operator must immediately

shut down the seismic airgun array and/or other acoustic sources.

(iv) *Emergency shut down.* If observations are made or credible reports are received that one or more walruses and/or polar bears are within the area of the seismic survey and are in an injured or mortal state, or are indicating acute distress due to seismic noise, the seismic airgun array will be immediately shut down and the Service contacted. The airgun array will not be restarted until review and approval has been given by the Service. The ramp-up procedures provided in paragraph (a)(5)(ii) of this section must be followed when restarting.

(v) *Adaptive response for walrus aggregations.* Whenever an aggregation of 12 or more walruses are detected within an acoustically verified 160-dB re 1 μPa disturbance zone ahead of or perpendicular to the seismic vessel track, the holder of this Authorization must:

(A) Immediately power down or shutdown the seismic airgun array and/or other acoustic sources to ensure sound pressure levels at the shortest distance to the aggregation do not exceed 160-dB re 1 μPa; and

(B) Not proceed with powering up the seismic airgun array until it can be established that there are no walrus aggregations within the 160-dB zone based upon ship course, direction, and distance from last sighting. If shutdown was required, the ramp-up procedures provided in paragraph (a)(5)(ii) of this section must be followed when restarting.

(6) *Mitigation measures for the subsistence use of walruses and polar bears.* Holders of Letters of Authorization must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walruses and polar bears for subsistence uses.

(i) *Community Consultation.* Prior to receipt of a Letter of Authorization, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence walrus and polar bear hunting caused by the location, timing, and methods of proposed operations and support activities (*see* 18.114(c)(4) for details). If community concerns suggest that the proposed activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a POC as described below.

(ii) *Plan of Cooperation (POC).* Where prescribed, holders of Letters of Authorization will be required to develop and implement a Service-approved POC. The POC must include:

(A) A description of the procedures by which the holder of the Letter of Authorization will work and consult with potentially affected subsistence hunters; and

(B) A description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use.

(C) The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

(b) *Monitoring.* Depending on the location, timing, and nature of proposed activities, holders of Letters of Authorization will be required to:

(1) Maintain trained, Service-approved, on-site observers to carry out monitoring programs for polar bears and walruses necessary for initiating adaptive mitigation responses.

(i) For offshore activities, Marine Mammal Observers (MMOs) will be required on board all operational and support vessels to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses identified in paragraph (a) of this section, and to carry out specified monitoring activities identified in the marine mammal monitoring and mitigation plan (see paragraph (b)(2) of this section) necessary to evaluate the impact of authorized activities on walruses, polar bears, and the subsistence use of these subsistence resources. The MMOs must have completed a marine mammal observer training course approved by the Service.

(ii) Polar bear monitors—Polar bear monitors will be required under the monitoring plan if polar bears are known to frequent the area or known polar bear dens are present in the area. Monitors will act as an early detection system in regards to proximate bear activity to Industry facilities.

(2) Develop and implement a site-specific, Service approved, marine mammal monitoring and mitigation plan to monitor and evaluate the effects of authorized activities on polar bears, walruses, and the subsistence use of these resources. The marine mammal monitoring and mitigation plan must enumerate the number of walruses and polar bears encountered during specified activities, estimate the number of incidental takes that occurred during specified exploration activities, and evaluate the effectiveness of prescribed mitigation measures.

(3) Cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of oil and gas activities in the Beaufort Sea on walruses or polar bears. Where insufficient information exists to evaluate the potential effects of proposed activities on walruses, polar bears, and the subsistence use of these resources, holders of Letters of Authorization may be required to participate in joint monitoring and/or research efforts to address these information needs and insure the least practicable impact to these resources. Information needs in the Beaufort Sea include, but are not limited to:

(i) Distribution, abundance, and habitat use patterns of polar bears, and to a lesser extent walruses in offshore environments; and

(ii) Cumulative effects of multiple simultaneous operations on polar bears and to a lesser extent walruses.

(c) *Reporting requirements.* Holders of Letters of Authorization must report the results of specified monitoring activities to the Service's Alaska Regional director (*see* 50 CFR 2.2 for address).

(1) For exploratory and development activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director (Attn: Marine Mammals Management Office) within 90 days after completion of activities. For production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director (Attn: Marine Mammals Management Office) by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(i) Dates and times of activity;

(ii) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(iii) Results of the monitoring activities required under subsection (iv) of this section, including an estimated level of take.

(iv) Monitoring requirements include, but are not limited to:

(A) For all activities, all sightings of polar bears must be recorded. Information within the sighting report will include, but is not limited to:

(1) Date, time, and location of observation;

(2) Number of bears: sex and age;

(3) Observer name and contact information;

(4) Weather, visibility, and ice conditions at the time of observation;

(5) Estimated closest point of approach for bears from personnel and facilities;

(6) Industry activity at time of sighting, possible attractants present;

(7) Bear behavior;

(8) Description of the encounter;

(9) Duration of the encounter; and

(10) Actions taken.

(v) Activities within the coast of the geographic region may incorporate daily polar bear watch logs.

(2) *In-season monitoring reports for offshore exploration activities*—(i) *Activity progress reports.* Operators must keep the Service informed on the progress of authorized activities by:

(A) Notifying the Service at least 48 hours prior to the onset of activities;

(B) Providing weekly progress reports of authorized activities noting any significant changes in operating state and or location; and

(C) Notifying the Service within 48 hrs of ending activity.

(ii) *Walrus observation reports.* The operator must report, on a weekly basis, all observations of walruses during any Industry operation. Information within the observation report will include, but is not limited to:

(A) Date, time, and location of each walrus sighting;

(B) Number of walruses: sex and age;

(C) Observer name and contact information;

(D) Weather, visibility, and ice conditions at the time of observation;

(E) Estimated range at closest approach;

(F) Industry activity at time of sighting;

(G) Behavior of animals sighted;

(H) Description of the encounter;

(I) Duration of the encounter; and

(J) Actions taken.

(iii) *Polar bear observation reports.* The operator must report, within 24 hours, all observations of polar bears during any Industry operation. Information within the observation report will include, but is not limited to:

(A) Date, time, and location of observation;

(B) Number of bears: sex and age;

(C) Observer name and contact information;

(D) Weather, visibility, and ice conditions at the time of observation;

(E) Estimated closest point of approach for bears from personnel and facilities;

(F) Industry activity at time of sighting, possible attractants present;

(G) Bear behavior;

(H) Description of the encounter;

(I) Duration of the encounter; and

(J) Actions taken.

(iv) *Notification of incident report.* Reports should include all information specified under the species observation report, as well as a full written description of the encounter and actions taken by the operator. The operator must report:

(A) Any incidental lethal take or injury of a polar bear or walrus immediately; and

(B) Observations of walruses or polar bears within prescribed mitigation-monitoring zones to the Service within 24 hours.

(3) *After-action monitoring reports.* The results of monitoring efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of completing the year's activities. Results must include, but are not limited to the following information:

(i) A summary of monitoring effort including: total hours, total distances, and distribution through study period;

(ii) Analysis of factors affecting the visibility and detectability of polar bears and walruses by specified monitoring;

(iii) Analysis of the distribution, abundance, and behavior of polar bear and walrus sightings in relation to date, location, ice conditions and operational state; and

(iv) Estimates of take based on density estimates derived from monitoring and survey efforts.

§ 18.129 What are the information collection requirements?

(a) 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. The Office of Management and Budget has approved the collection of information contained in this subpart and assigned control number 1018–0070. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. We will use the information to:

(1) Evaluate the application and determine whether or not to issue specific Letters of Authorization; and

(2) Monitor impacts of activities conducted under the Letters of Authorization.

(b) You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240.

Date: February 2, 2011.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–5035 Filed 3–10–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Friday,

No. 48 March 11, 2011

Part III

The President

Executive Order 13568—Extending Provisions of the International Organizations Immunities Act to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo

Memorandum of March 8, 2011—Designation of Officers of the Office of the Director of National Intelligence To Act as Director of National Intelligence

Federal Register
Vol. 76, No. 48
Friday, March 11, 2011

Presidential Documents

Title 3—

The President

Executive Order 13568 of March 8, 2011

Extending Provisions of the International Organizations Immunities Act to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), and the Extending Immunities to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo Act of 2010 (Public Law 111–177, 124 Stat. 1260), it is hereby ordered that all privileges, exemptions, and immunities provided by the International Organizations Act be extended to the Office of the High Representative in Bosnia and Herzegovina and to its officers and employees, and to the International Civilian Office in Kosovo and to its officers and employees. In the event either the Office of the High Representative in Bosnia and Herzegovina or the International Civilian Office in Kosovo is dissolved, the privileges, exemptions, and immunities of that organization under the International Organizations and Immunities Act, as well as those of its officers and employees, shall continue to subsist.

This extension is not intended to abridge in any respect privileges, exemptions, or immunities that the Office of the High Representative in Bosnia and Herzegovina or the International Civilian Office in Kosovo, or the officers and employees thereof, otherwise may have acquired or may acquire by law.

THE WHITE HOUSE,
March 8, 2011.

[FR Doc. 2011–5903
Filed 3–10–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Memorandum of March 8, 2011

Designation of Officers of the Office of the Director of National Intelligence To Act as Director of National Intelligence

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of sections 3 and 4 of this memorandum, the officers of the Office of the Director of National Intelligence named in section 2, in the order listed, shall act as and perform the functions and duties of the Director of National Intelligence (DNI), during any period in which the DNI and the Principal Deputy Director of National Intelligence have died, resigned, or otherwise become unable to perform the functions and duties of the DNI, until such time as the DNI or the Principal Deputy Director of National Intelligence is able to perform the functions and duties of the DNI.

Sec. 2. *Order of Succession.*

(a) Deputy Director of National Intelligence for Intelligence Integration;

(b) Director of the National Counterterrorism Center; and

(c) National Counterintelligence Executive.

Sec. 3. *National Security Act of 1947.* This memorandum shall not supersede the authority of the Principal Deputy Director of National Intelligence to act for, and exercise the powers of, the DNI during the absence or disability of the DNI or during a vacancy in the position of the DNI (National Security Act of 1947, as amended, 50 U.S.C. 403–3a).

Sec. 4. *Exceptions.* (a) No individual who is serving in an office listed in section 2 of this memorandum in an acting capacity shall act as the DNI pursuant to this memorandum.

(b) No individual listed in section 1 of this memorandum shall act as the DNI unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting DNI.

(d) In the event that the Director of the National Counterterrorism Center acts as and performs the functions and duties of the DNI pursuant to section 1 of this memorandum, that individual shall not simultaneously serve as Director of the National Counterterrorism Center during that time, in accordance with 50 U.S.C. 404o(b)(2).

Sec. 5. *Revocation.* The Presidential Memorandum of October 3, 2008 (Designation of Officers of the Office of the Director of National Intelligence to Act as Director of National Intelligence), is hereby revoked.

Sec. 6. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 7. You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 8, 2011

[FR Doc. 2011–5904
Filed 3–10–11; 11:15 am]
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Vol. 76, No. 48

Friday, March 11, 2011

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FEDERAL REGISTER PAGES AND DATE, MARCH

11075–11314 1
11315–11666 2
11667–11936 3
11937–12268 4
12269–12548 7
12549–12816 8
12817–13058 9
13059–13284 10
13285–13500 11

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revison date of each title.

2 CFR

Proposed Rules:
Ch. XXIV 11395
Ch. XXVII 11163

3 CFR

Proclamations:
8628 11927
8629 11929
8630 11931
8631 11933
8632 11935
8633 12265
8634 12817
8635 12819
8636 12821

Executive Orders:
13566 11315
13567 13277
13568 13497

Administrative Orders:
Memorandums:
Memorandum of March 4, 2011 12823
Memorandum of March 8, 2011 13499
Notice of March 2, 2011 12267
Notice of March 8, 2011 13283

4 CFR

81 12549

5 CFR

Proposed Rules:
315 13100
831 11684
842 11684
Ch. XXVIII 11163
Ch. LXV 11395

6 CFR

37 12269

Proposed Rules:
5 12609

7 CFR

1 11667
932 11937
1218 11939

Proposed Rules:
59 12887
985 11971

8 CFR

Proposed Rules:
214 11686
299 11686
Ch. V 11163

10 CFR

72 12825
429 12422
430 .....12422, 12825
431 12422
712 12271

Proposed Rules:
50 12295
430 13101
431 11396
600 13300
603 13300
609 13300
611 13300

12 CFR

226 11319
932 11668
1225 11668

Proposed Rules:
226 11598
567 12611
703 11164
704 11164
709 11164
742 11164
Ch. XVII 11395

13 CFR

124 12273

Proposed Rules:
Ch. III 12616

14 CFR

21 12250
25 12250
27 12274
39 .....11324, 11940, 12277, 12556, 12845, 13059, 13061, 13063, 13065, 13067, 13069, 13072, 13074, 13075, 13078, 13080
71 .....12278, 13082, 13083, 13084, 13086
73 12558
95 11675
97 .....11942, 11944
121 .....12550, 12559
129 12550

Proposed Rules:
Ch. I 11699
33 11172
39 .....11174, 12617, 12619, 12624, 12627, 12629, 12634
71 .....11978, 12298, 12643, 12645
73 11399
121 11176
139 12300
Ch. II 11699
Ch. III 11699

15 CFR

750 12279

Proposed Rules:
400 12887

17 CFR

240 11327
Proposed Rules:
3 12888
4 11701
23 13101
37 13101
38 13101
39 13101
239 12896
242 12645
270 12896
274 12896

18 CFR

Proposed Rules:
35 11177

20 CFR

Proposed Rules:
404 ..... 11402, 13111
405 13111
408 11402
416 ..... 11402, 13111
422 11402

21 CFR

1 12563
14 12563
17 12563
113 11892
173 11328
201 12847
510 11330
516 11331
520 ..... 11330, 12563
558 11330
1308 11075
Proposed Rules:
310 12916
Ch. II 11163

23 CFR

460 12847
Proposed Rules:
Ch. I 11699
Ch. II 11699
Ch. III 11699

24 CFR

Ch. XV 11946
Proposed Rules:
Ch. I 11395
Ch. II 11395
Ch. III 11395
Ch. IV 11395
Ch. V 11395
Ch. VI 11395
Ch. VIII 11395
Ch. IX 11395
Ch. X 11395
Ch. XII 11395

26 CFR

1 11956

27 CFR

Proposed Rules:
Ch. II 11163

28 CFR

35 13285
36 13286
541 11078
Proposed Rules:
Ch. I 11163
26 11705
Ch. III 11163
Ch. V 11163
Ch. VI 11163

29 CFR

Proposed Rules:
4022 13304

30 CFR

250 11079
917 12849
918 12852
926 12857
Proposed Rules:
70 12648
71 12648
72 12648
75 ..... 11187, 12648
90 12648
920 13112
938 12920

31 CFR

356 11079
Proposed Rules:
Ch. IX 11163

32 CFR

706 12859

33 CFR

117 ..... 11332, 11679, 11959, 11960, 13288, 13289
165 ..... 11334, 11337, 11961
401 13088
Proposed Rules:
117 13312

36 CFR

242 12564
1281 11337

37 CFR

380 13026

38 CFR

17 11338
51 11339
Proposed Rules:
59 11187

39 CFR

Proposed Rules:
172 13313
177 13313

40 CFR

52 ..... 11080, 11082, 11083, 11963, 12280, 12587, 12860
63 12863
81 ..... 12587, 13289
180 ..... 11340, 11344, 11965, 12873, 12877
271 12283
272 12283
300 ..... 11350, 13089
Proposed Rules:
Ch. I 11980
52 ..... 11190, 11983, 12302, 12305, 12306, 12651
63 12923
70 12926
141 11713
142 11713
271 12307
272 12307
281 11404
300 13113
Ch. IV 11163

41 CFR

Proposed Rules:
Ch. 128 11163

42 CFR

Proposed Rules:
5 12307
71 13120
410 13292
416 13292
419 13292

44 CFR

64 12596
Proposed Rules:
67 ..... 12308, 12665

45 CFR

1180 13097
Proposed Rules:
Ch. V 11163

46 CFR

520 11351
530 11680
531 11680
532 11351
Proposed Rules:
Ch. II 11699

47 CFR

1 ..... 13295, 13296
11 12600
63 ..... 13295, 13296
73 ..... 11680, 12292
74 11680
90 11681
Proposed Rules:
1 12308
20 12308
36 11632
43 12308
51 11407
53 11407
54 11632
61 11632
63 11407
64 ..... 11407, 11632
69 11632
73 11737

48 CFR

Ch. 2 11969
207 11361
209 11363
212 11371
215 13297
227 11363
232 11371
252 ..... 11363, 11371
Ch. 34 12796
Proposed Rules:
203 13327
211 ..... 11190, 11985, 12666
212 ..... 11190, 11985, 12666
216 11410
217 11411
231 11414
252 ..... 11190, 11985, 12666, 13327
532 13329
908 11985
945 11985
970 11985
Ch. 12 11699
Ch. 24 11395
Ch. 28 11163

49 CFR

109 11570
Proposed Rules:
Ch. I 11699
171 11191
173 11191
178 11191
180 11191
Ch. II 11699
234 11992
Ch. III 11699
385 13121
390 13121
395 13121
Ch. V 11699
571 ..... 11415, 11417, 11418
585 11418
Ch. VI 11699
Ch. VII 11699
Ch. VIII 11699
Ch. X 11699
Ch. XI 11699

50 CFR

17 11086
100 12564
223 12292
622 ..... 12604, 12605, 12882, 12883
648 11373
660 ..... 11381, 11969
665 13297
679 ..... 11111, 11139, 11161, 11393, 11394, 12293, 12606, 12607, 12883, 12884, 13097, 13098
Proposed Rules:
17 ..... 12667, 12683, 13121
18 13454
223 12308
224 12308
622 13122
648 ..... 11737, 11858
665 13330
679 13331

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 662/P.L. 112–5

Surface Transportation Extension Act of 2011 (Mar. 4, 2011; 125 Stat. 14)

Last List March 4, 2011

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