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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 48

[Docket ID OCC–2011–0010]

RIN 1557–AD42

Retail Foreign Exchange Transactions

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting a final rule authorizing national banks, Federal branches and agencies of foreign banks, and their operating subsidiaries to engage in off-exchange transactions in foreign currency with retail customers. The rule also describes various requirements with which national banks, Federal branches and agencies of foreign banks, and their operating subsidiaries must comply to conduct such transactions.

DATES: This rule is effective July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Tena Alexander, Senior Counsel, or Roman Goldstein, Attorney, Securities and Corporate Practices Division, (202) 874–5120.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] As amended by the Dodd-Frank Act,[2] the Commodity Exchange Act (CEA) provides that a United States financial institution[3] for which there is a Federal regulatory agency[4] shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer[5] except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe[6] (a ''retail forex rule''). Section 2(c)(2)(B)(i)(I) includes ''an agreement, contract, or transaction in foreign currency that * * * is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).''[7] A Federal regulatory agency's retail forex rule must treat similarly all such futures and options and all agreements, contracts, or transactions that are functionally or economically similar to such futures and options.[8]

Retail forex rules must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.[9] This Dodd-Frank Act amendment to the CEA takes effect 360 days from the enactment of the Act.[10] Therefore, as of July 16, 2011, national banks, Federal branches and agencies of foreign banks, and operating subsidiaries of the foregoing (collectively, national banks) may not engage in a retail forex transaction except pursuant to retail forex rules issued by the OCC.

In addition, on July 21, 2011, the OCC will become the appropriate Federal banking agency for Federal savings associations.[11] The OCC plans to regulate retail forex transactions conducted by Federal savings associations under the same terms as in this rule. However, the OCC cannot issue regulations governing Federal savings associations until July 21, 2011. Therefore, the OCC anticipates issuing on that date an interim final rule with request for public comment that would expand the scope of this regulation to cover Federal savings associations.

II. Overview of the Proposed Rule and Related Actions

On September 10, 2010, the Commodity Futures Trading Commission (CFTC) issued a retail forex rule for persons subject to its jurisdiction.[12] On April 22, 2011, the OCC proposed a retail forex rule for national banks modeled on the CFTC's retail forex rule.[13] The OCC decided to model its retail forex rule on the CFTC's rule to promote regulatory comparability and because the CFTC developed its retail forex rule with the benefit of over 9,100 comments from a range of commenters, including individuals who trade forex, intermediaries, CFTC registrants currently serving as counterparties in retail forex transactions, trade associations or coalitions of industry participants, one committee of a county lawyers' association, a registered futures association, and numerous law firms representing institutional clients. The OCC proposed to authorize national banks to engage in retail forex transactions and subject those transactions to requirements relating to disclosure, record keeping, capital and margin, reporting, business conduct, and documentation.

On May 17, 2011, the Federal Deposit Insurance Corporation (FDIC) proposed

[1] Public Law 111–203, 124 Stat. 1376.

[2] Dodd-Frank Act § 742(c)(2) (to be codified at 7 U.S.C. 2(c)(2)(E)). In this preamble, citations to the retail forex statutory provisions are to the sections in which the provisions will be codified in the CEA.

[3] The CEA defines ''financial institution'' as including ''a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).'' 7 U.S.C. 1a(21)(E). National banks are depository institutions. *See* 12 U.S.C. 1813(a)(1) and (c)(1).

[4] For purposes of the retail forex rules, ''Federal regulatory agency'' includes ''an appropriate Federal banking agency.'' 7 U.S.C. 2(c)(2)(E)(i)(III). The OCC is the appropriate Federal banking agency for national banks and Federal branches and agencies of foreign banks. 12 U.S.C. 1813(q)(1); Dodd-Frank Act § 721(a)(2) (amending 7 U.S.C. 1a to define ''appropriate Federal banking agency'' by reference to 12 U.S.C. 1813).

[5] A retail customer is a person that is not an ''eligible contract participant'' under the CEA.

[6] 7 U.S.C. 2(c)(2)(E)(ii)(I).

[7] 7 U.S.C. 2(c)(2)(B)(i)(II).

[8] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[9] 7 U.S.C. 2(c)(2)(E)(iii)(I).

[10] *See* Dodd-Frank Act § 754.

[11] Dodd-Frank Act § 312.

[12] *Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 55409 (Sept. 10, 2010) (Final CFTC Retail Forex Rule). The CFTC proposed these rules prior to the enactment of the Dodd-Frank Act. *Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 3281 (Jan. 20, 2010) (Proposed CFTC Retail Forex Rule).

[13] Retail Foreign Exchange Transactions, 76 FR 22633 (Apr. 22, 2011) (Proposed OCC Retail Forex Rule).

a retail forex rule for entities for which it is the appropriate Federal banking agency under the Federal Deposit Insurance Act.[14] The OCC's and the FDIC's proposals were substantially similar.

III. Comments on the Proposed Rule

The comment period for the proposed OCC retail forex rule ended on May 23, 2011. The OCC received a total of three comments by that date. Of these, one was submitted by a large bank that engages in retail forex transactions (the commenter) and two were submitted by individuals. The latter two comments did not relate to the proposal. The commenter generally supported the OCC's proposed rule while requesting certain clarifications and changes. The commenter's comments to specific sections of the proposal are addressed in the Section-by-Section Analysis below. In light of the comments received, the final rule, for the most part, is similar to the proposed rule; the significant changes are described in the Section-by-Section analysis.

In the preamble to the proposal, the OCC indicated that retail forex transactions are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (NDIP Policy Statement).[15] The NDIP Policy Statement sets out guidance regarding the OCC's expectations when a national bank engages in the sale of nondeposit investment products to retail customers. The NDIP Policy Statement addresses issues such as disclosure, suitability, sales practices, compensation, and compliance.

In the proposal, the OCC asked for comment on whether application of the NDIP Policy Statement created issues that the OCC should address.

The commenter said that the NDIP Policy Statement should not apply to retail forex transactions, asserting that the retail forex rule, alone, would be sufficient to protect retail customers, and the imposition of the NDIP Policy Statement on retail forex transactions would create confusion and ambiguity. No specific provisions were identified, however, that create confusion or ambiguity. The commenter further argued that because the NDIP Policy Statement does not apply to CFTC registrants, its application to retail forex transactions would not promote consistent regulatory treatment of retail forex transactions.

The OCC believes that it is appropriate to apply the NDIP Policy Statement to retail forex transactions. The consumer protections that the NDIP Policy Statement provides are no less important for retail forex transactions than for other nondeposit investment products. Moreover, there is no direct conflict between this rule and the NDIP Policy Statement because the statement requires national banks to develop policies and procedures to ensure that nondeposit investment product sales are conducted in compliance with applicable laws and regulations.[16] If a national bank has questions regarding how the NDIP Policy Statement applies to its retail forex business, it should seek clarification from its examiners.

IV. Section-by-Section Analysis

Section 48.1—Authority, Purpose, and Scope

This section authorizes a national bank to conduct retail forex transactions.

The OCC requested comment on whether the retail forex rule should apply to national banks' foreign branches conducting retail forex transactions abroad, whether with U.S. or foreign customers.

The commenter responded that there is no U.S. policy interest in applying U.S. consumer protection rules to transactions with non-U.S. residents conducted by foreign branches. Those transactions are subject to foreign regulatory requirements that could be inconsistent with the retail forex rule. Subjecting those transactions to two sets of regulatory requirements would also place national banks at a competitive disadvantage abroad.

The OCC recognizes the concerns raised by the commenter.

Retail forex transactions between a foreign branch of a national bank and a non-U.S. customer are subject to any applicable disclosure, recordkeeping, capital, margin, reporting, business conduct, documentation, and other requirements of applicable foreign law. Therefore, those transactions are not subject to the requirements of §§ 48.3 and 48.5 to 48.16.

Section 48.2—Definitions

This section defines terms specific to retail forex transactions and to the regulatory requirements that apply to retail forex transactions.

The definition of ''retail forex transaction'' generally includes the following transactions in foreign currency between a national bank and a person that is not an eligible contract participant:[17] (i) A future or option on such a future;[18] (ii) options not traded on a registered national securities exchange;[19] and (iii) certain leveraged, margined, or bank-financed transactions,[20] including rolling spot forex transactions. The definition generally tracks the statutory language in section 2(c)(2)(B) and (C) of the CEA.[21]

Certain transactions in foreign currency are not ''retail forex transactions.'' For example, a spot forex transaction in which one currency is bought for another and the two currencies are exchanged within two days would not meet the definition of ''retail forex transaction.''[22] Similarly, ''retail forex transaction'' does not include a forward contract that creates an enforceable obligation to make or take delivery, provided that each counterparty has the ability to deliver and accept delivery in connection with its line of business.[23] In addition, the definition does not include transactions conducted through an exchange, because in those cases the exchange

[14] Retail Foreign Exchange Transactions, 76 FR 28358 (May 17, 2011) (Proposed FDIC Retail Forex Rule).

[15] *See* OCC Bulletin 94–13 (Feb. 24, 1994); *see also* OCC Bulletin 1995–52 (Sept. 22, 1995).

[16] There are, of course, differences in the regulations that generally govern national banks versus those that govern CFTC registrants, such as capital rules. The NDIP Policy Statement, because it governs bank activities more generally, is similar to capital rules.

[17] The definition of ''eligible contract participant'' is found in the CEA and is discussed below.

[18] 7 U.S.C. 2(c)(2)(B)(i)(I).

[19] 7 U.S.C. 2(c)(2)(B)(i)(I).

[20] 7 U.S.C. 2(c)(2)(C).

[21] 7 U.S.C. 2(c)(2)(B) and (C).

[22] *See generally CFTC* v. *Int'l Fin. Servs. (New York), Inc.,* 323 F. Supp. 2d 482, 495 (S.D.N.Y. 2004) (distinguishing between foreign exchange futures contracts and spot contracts in foreign exchange, and noting that foreign currency trades settled within two days are ordinarily spot transactions rather than futures contracts); *see also Bank Brussels Lambert* v. *Intermetals Corp.,* 779 F. Supp. 741, 748 (S.D.N.Y. 1991).

[23] *See* 7 U.S.C. 2(c)(2)(C)(i)(II)(bb)(BB); *CFTC* v. *Int'l Fin. Servs. (New York), Inc.,* 323 F. Supp. 2d 482, 495 (S.D.N.Y. 2004) (distinguishing between forward contracts in foreign exchange and foreign exchange futures contracts); *see also* William L. Stein, *The Exchange-Trading Requirement of the Commodity Exchange Act,* 41 Vand. L. Rev. 473, 491 (1988). In contrast to forward contracts, futures contracts generally include several or all of the following characteristics: (i) Standardized nonnegotiable terms (other than price and quantity); (ii) parties are required to deposit initial margin to secure their obligations under the contract; (iii) parties are obligated and entitled to pay or receive variation margin in the amount of gain or loss on the position periodically over the period the contract is outstanding; (iv) purchasers and sellers are permitted to close out their positions by selling or purchasing offsetting contracts; and (v) settlement may be provided for by either (a) cash payment through a clearing entity that acts as the counterparty to both sides of the contract without delivery of the underlying commodity; or (b) physical delivery of the underlying commodity. *See* Edward F. Greene et al., *U.S. Regulation of International Securities and Derivatives Markets* § 14.08[2] (8th ed. 2006).

would be the counterparty to both the national bank and the retail forex customer, rather than the national bank directly facing the retail forex customer.

The proposed rule sought comment on whether leveraged, margined, or bank-financed forex transactions, including rolling spot forex transactions (so-called *Zelener*[24] contracts), should be regulated as retail forex transactions; the OCC preliminary believed that they should.[25]

The commenter supported the inclusion of rolling spot forex transactions in the definition of ''retail forex transaction.'' A rolling spot forex transaction nominally requires delivery of currency within two days, like spot transactions. However, in practice, the contracts are indefinitely renewed every other day and no currency is actually delivered until one party affirmatively closes out the position.[26] Therefore, the contracts are economically more like futures than spot contracts, although courts have held them to be spot contracts in form.[27] Like the CFTC's retail forex rule and the FDIC's proposed retail forex rule, the final rule's definition of ''retail forex transaction'' includes leveraged, margined, or bank-financed rolling spot forex transactions, as well as certain other leveraged, margined, or bank-financed forex transactions.

The commenter sought clarification that forex forwards would not be included in the definition, because transactions that convert or exchange actual currencies for any commercial or investment purpose are a traditional product offered by national banks and do not raise the consumer protection issues associated with futures or rolling spot forex transactions.

The OCC agrees that a forex forward that is not leveraged, margined, or financed by the national bank does not meet the definition of ''retail forex transaction.'' However, a leveraged, margined, or bank-financed forex forward is a retail forex transaction unless it creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business[28] or the OCC determines that the forward is not functionally or economically similar to a forex future or option, as described below.

The final rule contains a provision that allows the OCC to exempt specific transactions or kinds of transaction from the third prong of the ''retail forex transaction'' definition. The OCC is concerned that certain traditional banking products, which are distinguishable from speculative rolling spot forex transactions, may inadvertently fall within the definition of ''retail forex transaction'' as leveraged, margined, or bank-financed forex transactions. This result was not intended by the Dodd-Frank Act, which requires retail forex rules to treat similarly transactions that are functionally or economically similar to forex futures or options.[29] National banks may seek a determination that a given transaction or kind of transaction does not fall within the third prong of the ''retail forex transaction'' definition by submitting a written request to the OCC.

The commenter asked for confirmation that deposit accounts with foreign exchange features are outside the scope of the rule.

The Legal Certainty for Bank Products Act of 2000, as amended by the Dodd-Frank Act, generally exempts ''identified banking products'' from the CEA.[30] Identified banking products include: Deposit accounts, savings accounts, certificates of deposit, or other deposit instruments issued by a bank; banker's acceptances; letters of credit issued or loans made by a bank; debit accounts at a bank arising from a credit card or similar arrangement; and certain loan participations.[31] Because identified banking products are not subject to the CEA, they are not prohibited by section 2(c)(2)(E)(ii) of the CEA. To provide clarity, the final rule excludes identified banking products from the definition of ''retail forex transaction.'' Identified banking products that have embedded foreign exchange features, for example a deposit account in which the customer may deposit funds in one currency and withdraw funds in another, are not retail forex transactions.

This section defines several terms by reference to the CEA, the most important of which is ''eligible contract participant.'' Foreign currency transactions with eligible contract participants are not considered retail forex transactions and are therefore not subject to this rule. In addition to a variety of financial entities, certain governmental entities, businesses, and individuals may be eligible contract participants.[32]

Section 48.3—Prohibited Transactions

This section prohibits a national bank and its institution-affiliated parties from engaging in fraudulent conduct in connection with retail forex transactions. This section also prohibits a national bank from acting as a counterparty to a retail forex transaction if the national bank or its affiliate exercises discretion over the customer's retail forex account because the OCC views such self-dealing as inappropriate.

The OCC received no comments to this section and adopts it as proposed.

[24] *CFTC* v. *Zelener,* 373 F.3d 861 (7th Cir. 2004); *see also CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008).

[25] 7 U.S.C. 2(c)(2)(E)(iii) (requiring that retail forex rules treat all functionally or economically similar transactions similarly); *see* 17 CFR 5.1(m) (defining ''retail forex transaction'' for CFTC-registered retail forex dealers).

[26] For example, in *Zelener,* the retail forex dealer retained the right, at the date of delivery of the currency to deliver the currency, roll the transaction over, or offset all or a portion of the transaction with another open position held by the customer. *See CFTC* v. *Zelener,* 373 F.3d 861, 868 (7th Cir. 2004).

[27] *See, e.g., CFTC* v. *Erskine,* 512 F.3d 309, 326 (6th Cir. 2008); *CFTC* v. *Zelener,* 373 F.3d 861, 869 (7th Cir. 2004).

[28] *See* 7 U.S.C. 2(c)(2)(C)(i)(II)(bb)(BB).

[29] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[30] 7 U.S.C. 27a(a)(1). An identified banking product offered by a national bank could become subject to the CEA if the OCC determines, in consultation with the CFTC and the Securities and Exchange Commission, that the product would meet the definition of a ''swap'' under the CEA or a ''security-based swap'' under Securities Exchange Act of 1934 and has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the CEA, the Securities Act of 1933, or the Securities Exchange Act of 1934. 7 U.S.C. 27a(b).

[31] 7 U.S.C. 27(b) (citing Gramm-Leach-Bliley Act § 206(a)(1) to (5)).

[32] The term ''eligible contract participant'' is defined at 7 U.S.C. 1a(18), and for purposes most relevant to this rule generally includes:

(a) A corporation, partnership, proprietorship, organization, trust, or other entity—

(1) That has total assets exceeding $10,000,000;

(2) The obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by certain other eligible contract participants; or

(3) That—

(i) Has a net worth exceeding $1,000,000; and

(ii) Enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(b) Subject to certain exclusions,

(1) A governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(2) A multinational or supranational governmental entity; and

(3) An instrumentality, agency, or department of an entity described in (b)(1) or (2); and

(c) An individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(1) $10,000,000; or

(2) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

Section 48.4—Supervisory Non-Objection

This section requires a national bank to obtain a written supervisory non-objection prior to engaging in a retail forex business. To obtain such non-objection, the national bank will have to provide such information as the OCC deems necessary to determine that the national bank would satisfy the requirements of the rule. This information will include information on: Customer due diligence (including credit evaluations, customer appropriateness, and ''know your customer'' documentation); new product approvals; haircuts for noncash margin; and conflicts of interest. In addition, the national bank must establish that it has adequate written policies, procedures, and risk measurement and management systems and controls.

National banks engaged in retail forex transactions as of the effective date of this rule that promptly request the OCC's review of their retail forex business will have six months, or a longer period provided by the OCC, to bring their operations into conformance with the rule. Under this rule, a national bank that requests the OCC's review within 30 days of the effective date of the final retail forex rule and submits such information as the OCC may request within the timeframe the OCC provides will be deemed to be operating its retail forex business pursuant to a rule or regulation of a Federal regulatory agency, as required under the CEA, for such period.[33]

A national bank need not join a futures self-regulatory organization as a condition of conducting a retail forex business.

The commenter supported the adoption of this section, and the OCC adopts it as proposed.

Section 48.5—Application and Closing Out of Offsetting Long and Short Positions

This section requires a national bank to close out offsetting long and short positions in a retail forex account. The national bank would have to offset such positions regardless of whether the customer has instructed otherwise. The CFTC concluded that keeping open long and short positions in a retail forex customer's account removes the opportunity for the customer to profit on the transactions, increases the fees paid by the customer, and invites abuse.[34] The OCC agreed with this concern in the notice of proposed rulemaking.

The commenter stated that a customer should be permitted to provide instructions with respect to the manner in which the customer's retail forex transaction are offset when: (i) The customer maintains separate accounts managed by different advisors; (ii) the customer maintains separate accounts using different trading strategies; or (iii) the customer employs different trading strategies in one account and applies certain orders to risk-manage that exposure. The commenter also sought clarification that a customer could provide specific offset instructions in writing or orally, and that those instructions can be made on a blanket basis.

The OCC agrees that a customer should be able to offset retail forex transactions in a particular manner, if he or she so chooses. Paragraph (c) has been modified to provide that, notwithstanding the default offset rules in paragraphs (a) and (b), the national bank must offset retail forex transactions pursuant to a customer's specific instructions. Blanket instructions are not sufficient for this purpose, as they could obviate the default rule. However, offset instructions need not be given separately for each pair of orders in order to be ''specific.'' Instructions that apply to sufficiently defined sets of transactions could be specific enough. Finally, consistent with the changes to § 48.12, retail forex customers may make offset instructions in writing or orally. The national bank must create and maintain a record of each offset instruction.[35]

Section 48.6—Disclosure

This section requires a national bank to provide retail forex customers with a risk disclosure statement similar to the one required by the CFTC's retail forex rule but tailored to address certain unique characteristics of retail forex in national banks. The prescribed risk disclosure statement would describe the risks associated with retail forex transactions.

The commenter agreed with the need for a robust risk disclosure statement but suggested that a shorter, clearer, more direct, and less redundant statement would be more effective. The final rule incorporates several changes to the disclosures to eliminate redundancies, address ambiguities, and convey the information more clearly.

The proposal requested comment on whether the risk disclosure statement should disclose the percentage of profitable retail forex accounts.

The commenter said that disclosing the ratio of profitable to nonprofitable retail forex accounts is not useful because those ratios depend on many factors (including the trading expertise of customers) and could suggest one national bank is a more attractive retail forex counterparty than another.

In its retail forex rule, the CFTC requires its registrants to disclose to retail customers the percentage of retail forex accounts that earned a profit and the percentage of such accounts that experienced a loss during each of the most recent four calendar quarters.[36] The CFTC explained that the vast majority of retail customers who enter these transactions do so solely for speculative purposes and that relatively few of these participants trade profitably.[37] In its final rule, the CFTC found this requirement appropriate to protect retail customers from inherent conflicts embedded in the operations of the retail over-the-counter forex industry.[38] The OCC agrees with the CFTC and the final rule requires this disclosure.

The proposal requested comment on whether the risk disclosure statement should include a disclosure that when a retail customer loses money trading, the dealer makes money.

The commenter said that this disclosure is inaccurate because the bank immediately hedges retail forex transactions or nets them with similar transactions and therefore does not profit from exchange rate fluctuations. The commenter argued it is more accurate to inform customers that the bank may or does mark-up (or mark-down) transactions or apply commission rates to transactions that will create income for the bank.

The OCC understands that the economic model of a retail forex business may be to profit from spreads, fees, and commissions. Nonetheless, because a national bank engaging in retail forex transactions is trading as principal, by definition, when the retail forex customer loses money on a retail forex transaction, the national bank makes money on that transaction. The OCC therefore believes that this disclosure is accurate and helps potential retail forex customers understand the nature of retail forex transactions. Similarly, the CFTC's retail forex rule requires a disclosure that when a retail customer loses money

[33] 7 U.S.C. 2(c)(2)(E)(ii)(I).

[34] Proposed CFTC Retail Forex Rule, 75 FR at 3287 n.54.

[35] *See* § 48.7(a)(6) and (g).

[36] 17 CFR 5.5(e)(1).

[37] Proposed CFTC Retail Forex Rule, 75 FR at 3289.

[38] Final CFTC Retail Forex Rule, 75 FR at 55412.

trading, the dealer makes money on such trades, in addition to any fees, commissions, or spreads.[39] The final rule includes this disclosure requirement.

The proposal asked whether it would be convenient to national banks and retail forex customers to allow the retail forex risk disclosure to be combined with other disclosures that national banks make to their customers.

The commenter asked the OCC to confirm that national banks may add topics to the risk disclosure statement.

The OCC is concerned that the effectiveness of the disclosure could be diminished if surrounded by other topics. Therefore, the final rule requires the risk disclosure statement to be given to potential retail forex customers as set forth in the rule. National banks may describe and provide additional information on retail forex transactions in a separate document.

The commenter further asked the OCC to confirm that the risk disclosure statement may be appended to account opening agreements or forms and that a single signature by the customer on a combined account agreement and disclosure form can be used as long as the customer is directed to and acknowledges the risk disclosure statement immediately prior to the signature line.

The OCC believes that a separate risk disclosure document appropriately highlights the risks in retail forex transactions and that requiring a separate signature for the separate risk disclosure appropriately calls a potential retail forex customer's attention to the risk disclosure statement. However, a national bank may attach the risk disclosure to a related document, such as the account agreement.

The proposal requested comment on whether the risk disclosure statement should include a disclosure of fees that the national bank charges to retail forex customers.

The commenter agreed that the disclosure of fees is appropriate, but should not include income from hedging retail forex customers' positions or income streams not charged to the customer. Moreover, the commenter stated that it is impractical to numerically state the bid/ask spread given that it may vary.

The final rule, like the proposed rule, does not require national banks to disclose income streams not charged to the retail forex customer. However, a national bank must do more than simply describe the means by which it earns revenue. To the extent practical, it must quantify the fees, charges, spreads, or commissions that the national bank may impose on the retail forex customer in connection with the customer's retail forex account or a retail forex transaction.[40] The OCC further believes that disclosure of the bid/ask spread is possible in a variety of ways. If a national bank bases its prices off of the prices provided by a third party, then the national bank may disclose the use of the third party's pricing and the markup charged to retail forex customers. Alternatively, the national bank may disclose the bid/ask spread by quoting both the bid and ask prices to retail forex customers prior to entering into a retail forex transaction. These quotes may be provided as part of an electronic trading platform or, after a retail forex customer calls the national bank for a retail forex transaction, by providing both a bid and ask price for the transaction.

The commenter read the disclosure to suggest that the national bank cannot seek to recover losses not covered by a customer's margin account via an appropriate dispute resolution forum and asked the OCC to confirm that this was not the case.

Section 48.9(d)(4) requires a national bank, in the event that a retail forex customer's margin falls below the amount needed to satisfy the margin requirement to either: (1) Collect sufficient margin from the retail forex customer; or (2) liquidate the retail forex customer's retail forex transactions. The final rule does not forbid a national bank from seeking to recover a deficiency from a retail forex customer in an appropriate venue. The disclosure has been revised to make this fact clear.

Finally, the commenter said that the disclosure regarding the availability of FDIC-insurance for retail forex transactions should be clarified.

The disclosure requires a national bank to state that retail forex transactions are not FDIC-insured. The commenter agreed with that statement. It noted, however, that margin funds may be insured deposits. The FDIC-insured status of funds held in a retail forex margin account will depend on whether such funds are held in a manner that meets the requirements of the Federal Deposit Insurance Act and its implementing regulations. National banks may accurately disclose the availability of FDIC insurance for retail forex margin accounts in a separate document as permitted by law.

Section 48.7—Recordkeeping

This section specifies which documents and records that a national bank engaged in retail forex transactions must retain for examination by the OCC. This section also prescribes document maintenance standards. The OCC notes that records may be kept electronically as permitted under the Electronic Signatures in Global and National Commerce Act.[41]

The OCC received no comments on this section. Recordkeeping requirements found in § 48.13(a)(3) of the proposed rule were moved into this section to centralize recordkeeping requirements in one section. Furthermore, the recordkeeping requirements have been modified to accommodate oral orders and offset instructions. A national bank must create an audio recording of oral orders and offset instructions.

Section 48.8—Capital Requirements

This section requires that a national bank that offers or enters into retail forex transactions must be ''well capitalized'' as defined in the OCC's prompt corrective action regulation.[42] In addition, a national bank must continue to hold capital against retail forex transactions as provided in the OCC's capital regulation.[43] This rule does not amend the OCC's prompt corrective action regulation or capital regulation.

The proposed rule contained a provision allowing the OCC to exempt a national bank from the well-capitalized requirement. This provision has been removed in light of the general reservation of authority in § 48.17.

Section 48.9—Margin Requirements

Paragraph (a) requires a national bank that engages in retail forex transactions, in advance of any such transaction, to collect from the retail forex customer margin equal to at least 2 percent of the notional value of the retail forex transaction if the transaction is in a major currency pair and at least 5 percent of the notional value of the retail forex transaction otherwise. These margin requirements are identical to the requirements imposed by the CFTC's retail forex rule.

The proposal requested comments on whether it should define the major currencies in the final rule but did not receive any. The final rule adopts the proposal's approach to identifying the major currencies.

A major currency pair is a currency pair with two major currencies. The

[39] 17 CFR 5.5(b).

[40] The final rule clarifies that a national bank must disclose spreads in addition to fees, commissions, and charges.

[41] 15 U.S.C. 7001(d).

[42] 12 CFR part 6.

[43] 12 CFR part 3.

major currencies currently are the U.S. Dollar (USD), Canadian Dollar (CAD), Euro (EUR), United Kingdom Pound (GBP), Japanese Yen (JPY), Swiss Franc (CHF), New Zealand Dollar (NZD), Australian Dollar (AUD), Swedish Kronor (SEK), Danish Kroner (DKK), and Norwegian Krone (NOK).[44] An evolving market could change the major currencies, so the OCC is not proposing to define the term ''major currency,'' but rather expects that national banks will obtain an interpretive letter from the OCC prior to treating any currency other than those listed above as a ''major currency.''[45]

For retail forex transactions, margin protects the retail forex customer from the risks related to trading with excessive leverage. The volatility of the foreign currency markets exposes retail forex customers to substantial risk of loss. High leverage ratios can significantly increase a customer's losses and gains. Even a small move against a customer's position can result in a substantial loss. Even with required margin, losses can exceed the margin posted and, if the account is not closed out, and, depending on the specific circumstances, the customer could be liable for additional losses. Given the risks that are inherent in the trading of retail forex transactions by retail customers, the only funds that should be invested in such transactions are those that the customer can afford to lose.

Prior to the CFTC's rule, nonbank dealers routinely permitted customers to trade with 1 percent margin (leverage of 100:1) and sometimes with as little as 0.25 percent margin (leverage of 400:1). When the CFTC proposed its retail forex rule in January 2010, it proposed a margin requirement of 10 percent (leverage of 10:1). In response to comments, the CFTC reduced the required margin in the final rule to 2 percent (leverage of 50:1) for trades involving major currencies and 5 percent (leverage of 20:1) for trades involving non-major currencies.

The proposal requested comment on whether these margin requirements were appropriate to protect retail forex customers.

The commenter did not object to the amount of margin required. However, the commenter suggested that the margin required by this paragraph should be initial margin rather than maintenance margin. The commenter also suggested that national banks be allowed to set maintenance margin levels as a matter of the banks' credit and risk policies in a manner that balances (i) protecting customers from a forced close-put of their positions as soon as an adverse market move erodes margin under the 2 or 5 percent minimum level with (ii) the need to promptly collect margin and close out positions when a customer fails to meet a margin call. The commenter also suggested that customers should have some reasonable time to meet margin calls before they are deemed to have defaulted and face a forced liquidation of their positions.

Subject to reasonable collection times as described below, a national bank must ensure that there is always sufficient margin in a retail forex customer's margin account for the customer's open retail forex transactions. If the amount of margin in a retail forex customer's margin account is insufficient to meet the requirements of paragraph (a), then § 48.9(d)(4) requires the national bank to make a margin call to replenish the margin account to an acceptable level and, if the customer does not comply with the margin call, to liquidate the retail forex customer's retail forex transactions. Retail forex customers should have a reasonable amount of time to post required margin for retail forex transactions. Market practice is for retail forex counterparties to make margin calls at the close of trading on a trading day based on margin levels at the end of that day or at the open of trading on the next trading day based on margin levels at the end of that prior day. If the retail forex customer does not post sufficient margin by the end of the next close of trading, then the retail forex counterparty liquidates the customer's retail forex account. In other words, by the close of business on a given trading day, the margin account must be sufficient to meet the margin requirements as at the end of the prior trading day.

Paragraph (b) specifies the acceptable forms of margin that customers may post. National banks must establish policies and procedures providing for haircuts for noncash margin collected from customers and must review these haircuts annually. It may be prudent for national banks to review and modify the size of the haircuts more frequently. The OCC requested comment on whether the final rule should specify haircuts for noncash margin. The OCC received no comments on this paragraph and adopts this paragraph as proposed.

Paragraph (c) requires a national bank to hold each retail forex customer's retail forex transaction margin in a separate account. This paragraph is designed to work with the prohibition on set-off in paragraph (e), so that a national bank may not have an account agreement that treats all of a retail forex customer's assets held by a bank as margin for retail forex transactions.

The commenter requested clarification that this paragraph allows national banks to place margin into an omnibus or commingled account for operational convenience, provided that the bank keeps records of each customer's margin balance.

A national bank may place margin collected from retail forex customers into an omnibus or commingled account if the bank keeps records of each retail forex customer's margin balance. A ''separate account'' is one separate from the retail forex customer's other accounts at the bank. For example, margin for retail forex transactions cannot be held in a retail forex customer's savings account. Funds in a savings account pledged as retail forex margin must be transferred to a separate margin account, which could be an individual or an omnibus margin account. The final rule contains slightly modified language to clarify this intent. The FDIC-insured status of funds held in an omnibus account will depend on whether such funds are held in a manner that meets the requirements of the Federal Deposit Insurance Act and its implementing regulations.

Paragraph (d) requires a national bank to collect additional margin from the customer or to liquidate the customer's position if the amount of margin held by the national bank fails to meet the requirements of paragraph (a). The proposed rule would have required the national bank to mark the customer's open retail forex positions and the value of the customer's margin to the market daily to ensure that a retail forex customer does not accumulate substantial losses not covered by margin.

The proposal requested comment on how frequently retail forex customers' margin accounts should be marked to market.

The commenter asked that the final rules permit marking to market more frequently than daily if the national bank's systems and customer agreements permit. The final rule, like the proposed rule, requires marking to market at least once per day. Nothing in paragraph (d) forbids a more frequent schedule.

[44] *See* National Futures Association, *Forex Transactions: A Regulatory Guide* 17 (Feb. 2011); Federal Reserve Bank of New York, *Survey of North American Foreign Exchange Volume* tbl. 3e (Jan. 2011); Bank for International Settlements, *Report on Global Foreign Exchange Market Activity in 2010* at 15 tbl. B.6 (Dec. 2010).

[45] The Final CFTC Retail Forex Rule similarly does not define ''major currency.''

Paragraph (e) prohibits a national bank from applying a retail forex customer's retail forex obligations against any asset or liability of the retail forex customer other than money or property pledged as margin.[46] A national bank's relationship with a retail forex customer may evolve out of a prior relationship of providing financial services or may evolve into such a relationship. Thus, it is more likely that a national bank acting as a retail forex counterparty will hold other assets or liabilities of a retail forex customer, for example a deposit account or mortgage, than a retail forex dealer regulated by the CFTC. The OCC believes that it is inappropriate to allow a national bank to leave trades open and allow additional obligations to accrue that can be applied against a retail forex customer's other assets or liabilities held by the national bank. However, should a retail forex customer's retail forex obligations exceed the amount of margin he or she has pledged, this rule does not forbid a national bank from seeking to recover the deficiency in an appropriate forum, such as a court of law. Paragraph (e) does not apply to debts a retail forex customer owes to a national bank as recognized in a judgment of a court of competent jurisdiction.

The commenter suggested that retail forex customers should be able to pledge assets other than those held in the customer's margin account. For example, a customer could nominate a deposit account as containing margin for its retail forex transactions.

Nothing in this rule prevents retail forex customers from pledging other assets they have at the bank as margin for retail forex transactions. However, once those assets are pledged as margin, the national bank must transfer them to the separate margin account. For example, if a retail forex customer pledges $500 in her checking account as margin, then the bank must deduct $500 from the checking account and place $500 in the margin account. The OCC believes this transfer appropriately alerts retail forex customers to the nature of the pledge. A national bank may not evade this requirement by merely taking a security interest in assets pledged as margin: pledged assets must be placed in a separate margin account.

[46] The final rule clarifies that the prohibition on setting off retail forex ''losses'' in the proposed rule was meant to include costs related to retail forex transactions, such as fees, spreads, charges, and commissions.

Section 48.10—Required Reporting to Customers

This section requires a national bank engaging in retail forex transactions to provide each retail forex customer a monthly statement and confirmation statements.

The proposal sought comment on whether this section provides for statements that would be useful and meaningful to retail forex customers or whether other information would be more appropriate.

The commenter sought clarification that the statements may be provided electronically, and also suggested that retail forex customers would be better served with continuous online access to account information rather than monthly statements.

The OCC encourages national banks to provide real-time, continuous access to account information. This rule does not prevent national banks from doing so. However, the OCC believes it is valuable to require national banks to provide retail forex account information to retail forex customers at least once per month. Monthly statements may be provided electronically as permitted under the Electronic Signatures in Global and National Commerce Act.[47]

Section 48.11—Unlawful Representations

This section prohibits a national bank and its institution-affiliated parties from representing that the Federal government, the OCC, or any other Federal agency has sponsored, recommended, or approved retail forex transactions or products in any way. This section also prohibits a national bank from implying or representing that it will guarantee against or limit retail forex customer losses or not collect margin as required by § 48.9. This section does not prohibit a national bank from sharing in a loss resulting from error or mishandling of an order. Guaranties entered into prior to effectiveness of the prohibition would only be affected if an attempt is made to extend, modify, or renew them. This section also does not prohibit a national bank from hedging or otherwise mitigating its own exposure to retail forex transactions or any other foreign exchange risk.

The OCC received no comments to this section and adopts it as proposed.

Section 48.12—Authorization to Trade

The proposed rule required national banks to have specific written authorization from a retail forex customer before effecting a retail forex transaction.

[47] 15 U.S.C. 7001(c).

The commenter said that requiring specific written authorization from a retail forex customer before effecting a retail forex transaction for that customer would be burdensome and detrimental to the customer's interests, if, for example, the customer cannot convey written instructions because of technical difficulties.

The OCC agrees with this concern and further notes that the CFTC's retail forex rule does not require written authorization for each retail forex transaction. The final rule requires a national bank to obtain a retail forex customer's specific authorization (written or oral) to effect a particular trade. National banks must keep records of authorizations to trade pursuant to this rule.

Section 48.13—Trading and Operational Standards

This section largely follows the trading standards of the CFTC's retail forex rule, which were developed to prevent some of the deceptive or unfair practices identified by the CFTC and the National Futures Association.

Under paragraph (a), a national bank engaging in retail forex transactions is required to establish and enforce internal rules, procedures, and controls (1) to prevent front running, a practice in which transactions in accounts of the national bank or its related persons are executed before a similar customer order; and (2) to establish settlement prices fairly and objectively.

The commenter requested clarification that the prohibition on front running applies only when the person entering orders for the bank's account or the account of related persons has knowledge of unexecuted retail customer orders, and that a national bank may comply with this provision by erecting a firewall between the retail forex order book and other forex trading desks.

The final rule requires national banks to establish reasonable policies, procedures, and controls to address front running. This provision is designed to prevent the national banks from unfairly taking advantage of information they gain from customer trades. Effective firewalls and information barriers are reasonable policies, procedures, and controls to ensure that a national bank does not take unfair advantage of its retail forex customers. The final rule clarifies paragraph (a) accordingly.

Paragraph (b) prohibits a national bank engaging in retail forex transactions from disclosing that it

holds another person's order unless disclosure is necessary for execution or is made at the OCC's request. The OCC received no comments on this paragraph and adopts this paragraph as proposed.

Paragraph (c) ensures that related persons of another retail forex counterparty do not open accounts with a national bank without the knowledge and authorization of the account surveillance personnel of the other retail forex counterparty with which they are affiliated. Similarly, paragraph (d) ensures that related persons of a national bank do not open accounts with other retail forex counterparties without the knowledge and authorization of the account surveillance personnel of the national bank with which they are affiliated.

The commenter requested confirmation that national banks may rely on a representation of potential customers that they are not affiliated with a retail forex counterparty. Paragraph (c) prohibits a national bank from *knowingly* handling the retail forex account of a related person of a retail forex counterparty. To the extent reasonable, national banks may rely on representations of potential retail forex customers. If, however, a national bank has actual knowledge that a retail forex customer is a related person of a retail forex counterparty, then no representation by the customer will allow the bank to handle that retail forex account. A national bank should inquire as to whether a potential retail forex customer is related to a retail forex counterparty to avoid violating paragraph (c) through willful ignorance.

The commenter also requested clarification that these paragraphs apply only to employees of firms that offer retail forex transactions, and, in the case of banks, only employees of the retail forex business and not any employee of the bank that offers retail forex transactions. The OCC agrees that the prohibitions in paragraph (c) and (d) should only apply to employees working in the retail forex business; paragraphs (c) and (d) are designed to prevent evasion of the prohibition against front running. The final rule clarifies this point.

Paragraph (e) prohibits a national bank engaging in retail forex transactions from (1) entering a retail forex transaction to be executed at a price that is not at or near prices at which other retail forex customers have executed materially similar transactions with the national bank during the same time period, (2) changing prices after confirmation, (3) providing a retail forex customer with a new bid price that is higher (or lower) than previously provided without providing a new ask price that is similarly higher (or lower) as well, and (4) establishing a new position for a retail forex customer (except to offset an existing position) if the national bank holds one or more outstanding orders of other retail forex customers for the same currency pair at a comparable price.

Paragraph (e)(3) does not prevent a national bank from changing the bid or ask prices of a retail forex transaction to respond to market events. The OCC understands that market practice among CFTC-registrants is not to offer requotes but to simply reject orders and advise customers they may submit a new order (which the dealer may or may not accept). Similarly, a national bank may reject an order and advise customers that they may submit a new order.

The proposal sought comment on whether paragraph (e)(3) appropriately protected retail forex customers or whether a prohibition on re-quoting would be simpler.

The commenter argued that the prohibition on re-quoting in paragraph (e)(3) is overly broad and should permit new bids or offers to reflect updated spreads. In the alternative, the commenter suggested prohibiting re-quoting and requiring that, in the event an order is not confirmed, the customer must submit a new order at the then-currently displayed price. As stated above, rather than allowing requotes, a national bank may reject orders and request that customers submit a new order. Paragraph (e)(3) is consistent with the CFTC's retail forex rule and the OCC adopts it as proposed.

Paragraph (e)(4) requires a national bank engaging in retail forex transactions to execute similar orders in the order they are received. The prohibition prevents a national bank from offering preferred execution to some of its retail forex customers but not others.

Section 48.14—Supervision

This section imposes on a national bank and its agents, officers, and employees a duty to supervise subordinates with responsibility for retail forex transactions to ensure compliance with the OCC's retail forex rule.

The proposal requested comment on whether this section imposed requirements not already encompassed by safety and soundness standards. Having received no comments to this section, the OCC adopts it as proposed.

Section 48.15—Notice of Transfers

This section describes the requirements for transferring a retail forex account. Generally, a national bank must provide retail forex customers 30 days' prior notice before transferring or assigning their account. Affected customers may then instruct the national bank to transfer the account to an institution of their choosing or liquidate the account. There are three exceptions to the above notice requirement: a transfer in connection with the receivership or conservatorship under the Federal Deposit Insurance Act; a transfer pursuant to a retail forex customer's specific request; and a transfer otherwise allowed by applicable law. A national bank that is the transferee of retail forex accounts must generally provide the transferred customers with the risk disclosure statement of § 48.6 and obtain each affected customer's written acknowledgement within 60 days.

The OCC received no comments to this section and adopts it as proposed.

Section 48.16—Customer Dispute Resolution

This section imposes limitations on how a national bank may handle disputes arising out of a retail forex transaction. For example, this section would restrict a national bank's ability to require mandatory arbitration for such disputes.

The OCC received no comments to this section and adopts is as proposed.

Section 48.17—Reservation of Authority

This section allows the OCC to modify certain requirements of this rule consistent with safety and soundness and the protection of retail forex customers. The OCC understands the need for flexibility as foreign exchange products or foreign exchange trading procedures develop and to ensure that such products or trading procedures are subject to appropriate customer protection and safety and soundness standards.

V. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA provides that an agency is not required to prepare and publish an initial regulatory flexibility analysis if the agency certifies that the proposed rule will not, if promulgated as a final rule, have a significant economic impact on a substantial number of small entities. Under regulations issued by the

Small Business Administration, a small entity includes a commercial bank with assets of $175 million or less.[48] This rule as proposed would impose recordkeeping and disclosure requirements on banks, including small banks, which engage in retail forex transactions with their customers.

Pursuant to section 605(b) of the RFA, the OCC certified that this rule, as proposed, would not have a significant economic impact on a substantial number of the small entities it supervises. Accordingly, a regulatory flexibility analysis was not required. In making this determination, the OCC estimated that there were no small banking organizations currently engaging in retail forex transactions with their customers. Therefore, the OCC estimates that no small banking organizations under its supervision would be affected by this final rule.

B. Paperwork Reduction Act

In conjunction with the Notice of Proposed Rulemaking (NPRM),[49] the OCC submitted the information collection requirements contained therein to OMB for review under the Paperwork Reduction Act (PRA). In response, the Office of Management and Budget (OMB) filed comments with the OCC in accordance with 5 CFR 1320.11(c). The comments indicated that OMB was withholding approval at that time. The Agencies were directed to examine public comment in response to the NPRM and include in the supporting statement of the information collection request (ICR) to be filed at the final rule stage a description of how the agency has responded to any public comments on the ICR, including comments maximizing the practical utility of the collection and minimizing the burden. The OCC received one comment addressing the substance and/or method of the disclosure and reporting requirements contained in the proposed rule. This comment and the OCC's response to the comment is included in the preamble discussion and in a revised Supporting Statement submitted to OMB.

The information collection requirements contained in this final rule have been submitted by the OCC to OMB for review and approval under 44 U.S.C. 3506 and 5 CFR part 1320. In accordance with section 3512 of the PRA, 44 U.S.C. 3512, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The information collection requirements are found in §§ 48.4–48.7, 48.9–48.10, 48.13, and 48.15–48.16.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments should be addressed to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, *Attention:* 1557–0250, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling 202–874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to the OMB Desk Officer, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., 10235, Washington, DC 20503, or by fax to 202–395–6974.

Proposed Information Collection

Title of Information Collection: Retail Foreign Exchange Transactions.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents: National banks and Federal branches and agencies of foreign banks.

Reporting Requirements

The reporting requirements in § 48.4 require that, prior to initiating a retail forex business, a national bank provide the OCC with prior notice and obtain a written supervisory non-objection letter. In order to obtain a supervisory non-objection letter, a national bank must have written policies and procedures and risk measurement and management systems and controls in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank must also provide other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins. A national bank already engaging in a retail forex business may continue to do so, provided it requests an extension of time.

Disclosure Requirements

Section 48.5, regarding the application and closing out of offsetting long and short positions, requires a national bank to promptly provide the customer with a statement reflecting the financial result of the transactions and the name of the introducing broker to the account. The customer provides specific written instructions on how the offsetting transaction should be applied.

Section 48.6 requires that a national bank furnish a retail forex customer with a written disclosure before opening an account that will engage in retail forex transactions for a retail forex customer and receive an acknowledgment from the customer that it was received and understood. It also requires the disclosure by a national bank of its fees and other charges and its profitable accounts ratio.

Section 48.10 requires a national bank to issue monthly statements to each retail forex customer and to send confirmation statements following transactions.

Section 48.13(b) allows disclosure by a national bank that an order of another person is being held by them only when necessary to the effective execution of the order or when the disclosure is requested by the OCC. Section 48.13(c) prohibits a national bank engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization, promptly prepares a written record of the order, and transmits to the counterparty copies all statements and written records. Section 48.13(d) prohibits a related person of a national bank engaging in forex transactions from having an account with another retail forex counterparty unless the counterparty receives proper written authorization and transmits copies of all statements

[48] Small Business Administration regulations define ''small entities'' to include banks with a four-quarter average of total assets of $175 million or less. 13 CFR 121.201.

[49] 76 FR 22633 (April 22, 2011).

and written records for the related person's retail forex accounts to the national bank.

Section 48.15 requires a national bank to provide a retail forex customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail forex customer. It also requires a national bank to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and receive the signed acknowledgments within 60 days.

The customer dispute resolution provisions in § 48.16 requires certain endorsements, acknowledgments, and signature language. Section 48.16 also requires that within 10 days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, the national bank provides to the customer a list of persons qualified in the dispute resolution, and that the customer must notify the national bank of the person selected within 45 days of receipt of such list.

Policies and Procedures; Recordkeeping

Sections 48.7 and 48.13(a) require that a national bank engaging in retail forex transactions keep full, complete, and systematic records and establish and implement internal rules, procedures, and controls. Section 48.7 also requires that a national bank keep account, financial ledger, transaction and daily records; price logs; records of methods used to determine bids or asked prices; memorandum orders; post-execution allocation of bunched orders; records regarding its ratio of profitable accounts and possible violations of law; records for noncash margin; order tickets; and monthly statements and confirmations. Section 48.9 requires policies and procedures for haircuts for noncash margin collected under the rule's margin requirements and annual evaluations and modifications of the haircuts.

Estimated PRA Burden

Estimated Number of Respondents: 42 national banks; 3 service providers.

Total Reporting Burden: 672 hours.

Total Disclosure Burden: 54,166 hours.

Total Recordkeeping Burden: 12,416 hours.

Total Annual Burden: 67,254 hours.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.[50] Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

D. Effective Date Under the Administrative Procedures Act

This final rule takes effect on July 15, 2011. 5 U.S.C. 553(d)(1) requires publication of a substantive rule not less than 30 days before its effective date, except in cases in which the rule grants or recognizes an exemption or relieves a restriction. Section 2(c)(2)(E)(ii) of the CEA would prohibit national banks from engaging in retail forex transactions unless this final rule becomes effective on July 16, 2011. This final rule would relieve that restriction and allow national banks to continue to engage in retail forex transactions without delay. Furthermore, under 5 U.S.C. 553(d)(3), an agency may find good cause to publish a rule less than 30 days before its effective date. The OCC finds such good cause, as the 30-day delayed effective date is unnecessary under the provisions of the final rule. In § 48.4(c) of the final rule, the OCC allows national banks a 30-day grace period to inform the OCC of its retail forex activity, along with up to a six-month window to comply with the provisions of the retail forex rule.

E. Effective Date Under the CDRI Act

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4801 *et seq.,* provides that new regulations that impose additional reporting or disclosure requirements on insured depository institutions do not take effect until the first day of a calendar quarter after the regulation is published, unless the agency determines there is good cause for the regulation to become effective at an earlier date. The OCC finds good cause that this final rule should become effective on July 15, 2011, as it would be in the public interest to require the disclosure and consumer protection provisions in this rule to take effect at this earlier date. If the rule did not become effective until October 1, 2011, then national banks would not be able to provide retail forex transactions to customers to meet their financial needs.

[50] In particular, the OCC notes that forex transactions between national banks and governmental entities are not retail forex transactions subject to this rule, because governmental entities are eligible contract participants. *See* 7 U.S.C. 1a(18)(A)(vii).

List of Subjects in 12 CFR Part 48

Banks, Consumer protection, Definitions, Federal branches and agencies, Foreign currencies, Foreign exchange, National banks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 48 to Title 12, Chapter I of the Code of Federal Regulations is added to read as follows:

PART 48—RETAIL FOREIGN EXCHANGE TRANSACTIONS

Sec.

48.1 Authority, purpose, and scope.
48.2 Definitions.
48.3 Prohibited transactions.
48.4 Supervisory non-objection.
48.5 Application and closing out of offsetting long and short positions.
48.6 Disclosure.
48.7 Recordkeeping.
48.8 Capital requirements.
48.9 Margin requirements.
48.10 Required reporting to customers.
48.11 Unlawful representations.
48.12 Authorization to trade.
48.13 Trading and operational standards.
48.14 Supervision.
48.15 Notice of transfers.
48.16 Customer dispute resolution.
48.17 Reservation of authority.

Authority: 7 U.S.C. 27 *et seq.;* 12 U.S.C. 1 *et seq.,* 24, 93a, 161, 1813(q), 1818, 1831o, 3102, 3106a, 3108.

§ 48.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may engage in retail foreign exchange transactions. A national bank engaging in such transactions must comply with the requirements of this part.

(b) *Purpose.* This part establishes rules applicable to retail foreign exchange transactions engaged in by national banks and applies on or after the effective date.

(c) *Scope.* Except as provided in paragraph (d) of this section, this part applies to national banks.

(d) *International applicability.* Sections 48.3 and 48.5 to 48.16 do not apply to retail foreign exchange transactions between a foreign branch of a national bank and a non-U.S. customer. With respect to those transactions, the foreign branch remains

subject to any disclosure, recordkeeping, capital, margin, reporting, business conduct, documentation, and other requirements of foreign law applicable to the branch.

§ 48.2 Definitions.

In addition to the definitions in this section, for purposes of this part, the following terms have the same meaning as in the Commodity Exchange Act: ''Affiliated person of a futures commission merchant''; ''associated person''; ''contract of sale''; ''commodity''; ''eligible contract participant''; ''futures commission merchant''; ''future delivery''; ''option''; ''security''; and ''security futures product''.

Affiliate has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

Commodity Exchange Act means the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

Forex means foreign exchange.

Identified banking product has the same meaning as in section 401(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

Institution-affiliated party or *IAP* has the same meaning as in section 3(u)(1), (2), or (3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)(1), (2), or (3)).

Introducing broker means any person that solicits or accepts orders from a retail forex customer in connection with retail forex transactions.

National bank means:

(1) A national bank;

(2) A Federal branch or agency of a foreign bank, each as defined in 12 U.S.C. 3101; and

(3) An operating subsidiary of a national bank or an operating subsidiary of a Federal branch or agency of a foreign bank.

Related person, when used in reference to a retail forex counterparty, means:

(1) Any general partner, officer, director, or owner of 10 percent or more of the capital stock of the retail forex counterparty;

(2) An associated person or employee of the retail forex counterparty, if the retail forex counterparty is not a national bank;

(3) An IAP of the retail forex counterparty, if the retail forex counterparty is a national bank; and

(4) A relative or spouse of any of the foregoing persons, or a relative of such spouse, who shares the same home as any of the foregoing persons.

Retail foreign exchange dealer means any person other than a retail forex customer that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in item (aa), (bb), (cc)(AA), (dd), or (ff) of section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)).

Retail forex account means the account of a retail forex customer, established with a national bank, in which retail forex transactions with the national bank as counterparty are undertaken, or the account of a retail forex customer that is established in order to enter into such transactions.

Retail forex account agreement means the contractual agreement between a national bank and a retail forex customer that contains the terms governing the customer's retail forex account with the national bank.

Retail forex business means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

Retail forex counterparty includes, as appropriate:

(1) A national bank;

(2) A retail foreign exchange dealer;

(3) A futures commission merchant; and

(4) An affiliated person of a futures commission merchant.

Retail forex customer means a customer that is not an eligible contract participant, acting on his, her, or its own behalf and engaging in retail forex transactions.

Retail forex obligation means an obligation of a retail forex customer with respect to a retail forex transaction, including trading losses, fees, spreads, charges, and commissions.

Retail forex proprietary account means: A retail forex account carried on the books of a national bank for one of the following persons; a retail forex account of which 10 percent or more is owned by one of the following persons; or a retail forex account of which an aggregate of 10 percent or more of which is owned by more than one of the following persons:

(1) The national bank;

(2) An officer, director, or owner of 10 percent or more of the capital stock of the national bank; or

(3) An employee of the national bank, whose duties include:

(i) The management of the national bank's business;

(ii) The handling of the national bank's retail forex transactions;

(iii) The keeping of records, including without limitation the software used to make or maintain those records, pertaining to the national bank's retail forex transactions; or

(iv) The signing or co-signing of checks or drafts on behalf of the national bank;

(4) A spouse or minor dependent living in the same household as any of the foregoing persons; or

(5) An affiliate of the national bank.

Retail forex transaction means an agreement, contract, or transaction in foreign currency, other than an identified banking product or a part of an identified banking product, that is offered or entered into by a national bank with a person that is not an eligible contract participant and that is:

(1) A contract of sale of a commodity for future delivery or an option on such a contract;

(2) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)); or

(3) Offered or entered into on a leveraged or margined basis, or financed by a national bank, its affiliate, or any person acting in concert with the national bank or its affiliate on a similar basis, other than:

(i) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or

(ii) A contract of sale that:

(A) Results in actual delivery within two days; or

(B) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business; or

(iii) An agreement, contract, or transaction that the OCC determines is not functionally or economically similar to:

(A) A contract of sale of a commodity for future delivery or an option on such a contract; or

(B) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)).

§ 48.3 Prohibited transactions.

(a) *Fraudulent conduct prohibited.* No national bank or its IAPs may, directly or indirectly, in or in connection with any retail forex transaction:

(1) Cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) Willfully deceive or attempt to deceive any person by any means whatsoever.

(b) *Acting as counterparty and exercising discretion prohibited.* If a national bank can cause retail forex transactions to be effected for a retail forex customer without the retail forex customer's specific authorization, then neither the national bank nor its affiliates may act as the counterparty for any retail forex transaction with that retail forex customer.

§ 48.4 Supervisory non-objection.

(a) *Supervisory non-objection required.* Before commencing a retail forex business, a national bank must provide the OCC with prior notice and obtain from the OCC a written supervisory non-objection.

(b) *Requirements for obtaining supervisory non-objection.*

(1) In order to obtain a written supervisory non-objection, a national bank must:

(i) Establish to the satisfaction of the OCC that the national bank has established and implemented written policies, procedures, and risk measurement and management systems and controls for the purpose of ensuring that it conducts retail forex transactions in a safe and sound manner and in compliance with this part; and

(ii) Provide such other information as the OCC may require.

(2) The information provided under paragraph (b)(1) of this section must include, without limitation, information regarding:

(i) Customer due diligence, including without limitation credit evaluations, customer appropriateness, and ''know your customer'' documentation;

(ii) New product approvals;

(iii) The haircuts that the national bank will apply to noncash margin as provided in § 48.9(b)(2); and

(iv) Conflicts of interest.

(c) *Treatment of existing retail forex businesses.* A national bank that is engaged in a retail forex business on July 15, 2011, may continue to do so for up to six months, subject to an extension of time by the OCC, if it requests the supervisory non-objection required by paragraph (a) of this section within 30 days of July 15, 2011, and submits the information required to be submitted under paragraph (b) of this section.

(d) *Compliance with the Commodity Exchange Act.* A national bank that is engaged in a retail forex business on July 15, 2011 and complies with paragraph (c) of this section will be deemed, during the six-month or extended period described in paragraph (c) of this section, to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)(ii)(I)).

§ 48.5 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Any national bank that—

(1) Engages in a retail forex transaction involving the purchase of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has an open retail forex transaction for the sale of the same currency;

(2) Engages in a retail forex transaction involving the sale of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has an open retail forex transaction for the purchase of the same currency;

(3) Purchases a put or call option involving foreign currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or

(4) Sells a put or call option involving foreign currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold must:

(i) Immediately apply such purchase or sale against such previously held opposite transaction; and

(ii) Promptly furnish such retail forex customer with a statement showing the financial result of the transactions involved and the name of any introducing broker to the account.

(b) *Close-out against oldest open position.* In all instances in which the short or long position in a customer's retail forex account immediately prior to an offsetting purchase or sale is greater than the quantity purchased or sold, the national bank must apply such offsetting purchase or sale to the oldest portion of the previously held short or long position.

(c) *Transactions to be applied as directed by customer.* Notwithstanding paragraphs (a) and (b) of this section, to the extent the national bank allows retail forex customers to use other methods of offsetting retail forex transactions, the offsetting transaction must be applied as directed by a retail forex customer's specific instructions. These instructions may not be made by the national bank or an IAP of the national bank.

§ 48.6 Disclosure.

(a) *Risk disclosure statement required.* No national bank may open or maintain open an account that will engage in retail forex transactions for a retail forex customer unless the national bank has furnished the retail forex customer with a separate written disclosure statement containing only the language set forth in paragraph (d) of this section and the disclosures required by paragraphs (e) and (f) of this section.

(b) *Acknowledgment of risk disclosure statement required.* The national bank must receive from the retail forex customer a written acknowledgment signed and dated by the customer that the customer received and understood the written disclosure statement required by paragraph (a) of this section.

(c) *Placement of risk disclosure statement.* The disclosure statement may be attached to other documents as the initial page(s) of such documents and as the only material on such page(s).

(d) *Content of risk disclosure statement.* The language set forth in the written disclosure statement required by paragraph (a) of this section is as follows:

Risk Disclosure Statement

Retail forex transactions involve the leveraged trading of contracts denominated in foreign currency with a national bank as your counterparty. Because of the leverage and the other risks disclosed here, you can rapidly lose all of the funds or property you pledge to the national bank as margin for retail forex trading. You may lose more than you pledge as margin.

If your margin falls below the required amount, and you fail to provide the required additional margin, your national bank is required to liquidate your retail forex transactions. Your national bank cannot apply your retail forex losses to any of your assets or liabilities at the bank other than funds or property that you have pledged as margin for retail forex transactions. However, if you lose more money than you have pledged as margin, the bank may seek to recover that deficiency in an appropriate forum, such as a court of law.

You should be aware of and carefully consider the following points before determining whether retail forex trading is appropriate for you.

(1) Trading is not on a regulated market or exchange—your national bank is your trading counterparty and has conflicting interests. The retail forex transaction you are entering into is not conducted on an interbank market nor is it conducted on a futures exchange subject to regulation as a designated contract market by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with your national bank as

the counterparty. When you sell, the national bank is the buyer. When you buy, the national bank is the seller. As a result, when you lose money trading, your national bank is making money on such trades, in addition to any fees, commissions, or spreads the national bank may charge.

(2) An electronic trading platform for retail foreign currency transactions is not an exchange. It is an electronic connection for accessing your national bank. The terms of availability of such a platform are governed only by your contract with your national bank. Any trading platform that you may use to enter into off-exchange foreign currency transactions is only connected to your national bank. You are accessing that trading platform only to transact with your national bank. You are not trading with any other entities or customers of the national bank by accessing such platform. The availability and operation of any such platform, including the consequences of the unavailability of the trading platform for any reason, is governed only by the terms of your account agreement with the national bank.

(3) You may be able to offset or liquidate any trading positions only through your banking entity because the transactions are not made on an exchange or regulated contract market, and your national bank may set its own prices. Your ability to close your transactions or offset positions is limited to what your national bank will offer to you, as there is no other market for these transactions. Your national bank may offer any prices it wishes, including prices derived from outside sources or not in its discretion. Your national bank may establish its prices by offering spreads from third-party prices, but it is under no obligation to do so or to continue to do so. Your national bank may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obligations your national bank has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by your national bank may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

(4) Paid solicitors may have undisclosed conflicts. The national bank may compensate introducing brokers for introducing your account in ways that are not disclosed to you. Such paid solicitors are not required to have, and may not have, any special expertise in trading and may have conflicts of interest based on the method by which they are compensated. You should thoroughly investigate the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from your national bank in making any trading or account decisions.

(5) Retail forex transactions are not insured by the Federal Deposit Insurance Corporation.

(6) Retail forex transactions are not a deposit in, or guaranteed by, a national bank.

(7) Retail forex transactions are subject to investment risks, including possible loss of all amounts invested.

Finally, you should thoroughly investigate any statements by any national bank that minimize the importance of, or contradict, any of the terms of this risk disclosure. These statements may indicate sales fraud.

This brief statement cannot, of course, disclose all the risks and other aspects of trading off-exchange foreign currency with a national bank.

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

(e)(1) *Disclosure of profitable accounts ratio.* Immediately following the language set forth in paragraph (d) of this section, the statement required by paragraph (a) of this section must include, for each of the most recent four calendar quarters during which the national bank maintained retail forex customer accounts:

(i) The total number of retail forex customer accounts maintained by the national bank over which the national bank does not exercise investment discretion;

(ii) The percentage of such accounts that were profitable for retail forex customer accounts during the quarter; and

(iii) The percentage of such accounts that were not profitable for retail forex customer accounts during the quarter.

(2) The national bank's statement of profitable trades must include the following legend: ''Past performance is not necessarily indicative of future results.'' Each national bank must provide, upon request, to any retail forex customer or prospective retail forex customer the total number of retail forex accounts maintained by the national bank for which the national bank does not exercise investment discretion, the percentage of such accounts that were profitable, and the percentage of such accounts that were not profitable for each calendar quarter during the most recent five-year period during which the national bank maintained such accounts.

(f) *Disclosure of fees and other charges.* Immediately following the language required by paragraph (e) of this section, the statement required by paragraph (a) of this section must include:

(1) The amount of any fee, charge, spread, or commission that the national bank may impose on the retail forex customer in connection with a retail forex account or retail forex transaction;

(2) An explanation of how the national bank will determine the amount of such fees, charges, spreads, or commissions; and

(3) The circumstances under which the national bank may impose such fees, charges, spreads, or commissions.

(g) *Future disclosure requirements.* If, with regard to a retail forex customer, the national bank changes any fee, charge, or commission required to be disclosed under paragraph (f) of this section, then the national bank must mail or deliver to the retail forex customer a notice of the changes at least 15 days prior to the effective date of the change.

(h) *Form of disclosure requirements.* The disclosures required by this section must be clear and conspicuous and designed to call attention to the nature and significance of the information provided.

(i) *Other disclosure requirements unaffected.* This section does not relieve a national bank from any other disclosure obligation it may have under applicable law.

§ 48.7 Recordkeeping.

(a) *General rule.* A national bank engaging in retail forex transactions must keep full, complete, and systematic records, together with all pertinent data and memoranda, pertaining to its retail forex business, including the following 6 types of records:

(1) *Retail forex account records.* For each retail forex account:

(i) The name and address of the person for whom the account is carried or introduced and the principal occupation or business of the person;

(ii) The name of any other person guaranteeing the account or exercising trading control with respect to the account;

(iii) The establishment or termination of the account;

(iv) A means to identify the person that has solicited and is responsible for the account;

(v) The funds in the account, net of any commissions and fees;

(vi) The account's net profits and losses on open trades;

(vii) The funds in the account plus or minus the net profits and losses on open trades, adjusted for the net option value in the case of open options positions;

(viii) Financial ledger records that show all charges against and credits to the account, including deposits, withdrawals, and transfers, and charges or credits resulting from losses or gains on closed transactions; and

(ix) A list of all retail forex transactions executed for the account,

with the details specified in paragraph (a)(2) of this section.

(2) *Retail forex transaction records.* For each retail forex transaction:

(i) The date and time the national bank received the order;

(ii) The price at which the national bank placed the order, or, in the case of an option, the premium that the retail forex customer paid;

(iii) The customer account identification information;

(iv) The currency pair;

(v) The size or quantity of the order;

(vi) Whether the order was a buy or sell order;

(vii) The type of order, if the order was not a market order;

(viii) The size and price at which the order is executed, or in the case of an option, the amount of the premium paid for each option purchased, or the amount credited for each option sold;

(ix) For options, whether the option is a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission, and fees; and

(x) For futures, the delivery date; and

(xi) If the order was made on a trading platform:

(A) The price quoted on the trading platform when the order was placed, or, in the case of an option, the premium quoted;

(B) The date and time the order was transmitted to the trading platform; and

(C) The date and time the order was executed.

(3) *Price changes on a trading platform.* If a trading platform is used, daily logs showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price.

(4) *Methods or algorithms.* Any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which customer orders are executed, including, but not limited to, any markups, fees, commissions or other items which affect the profitability or risk of loss of a retail forex customer's transaction.

(5) *Daily records* which show for each business day complete details of:

(i) All retail forex transactions that are futures transactions executed on that day, including the date, price, quantity, market, currency pair, delivery date, and the person for whom such transaction was made;

(ii) All retail forex transactions that are option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, currency pair, delivery date, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom the transaction was made; and

(iii) All other retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made.

(6) *Other records.* Written acknowledgments of receipt of the risk disclosure statement required by § 48.6(b), offset instructions pursuant to § 48.5(c), records required under paragraphs (b) through (f) of this section, trading cards, signature cards, street books, journals, ledgers, payment records, copies of statements of purchase, and all other records, data, and memoranda that have been prepared in the course of the national bank's retail forex business.

(b) *Ratio of profitable accounts.*

(1) With respect to its active retail forex customer accounts over which it did not exercise investment discretion and that are not retail forex proprietary accounts open for any period of time during the quarter, a national bank must prepare and maintain on a quarterly basis (calendar quarter):

(i) A calculation of the percentage of such accounts that were profitable;

(ii) A calculation of the percentage of such accounts that were not profitable; and

(iii) Data supporting the calculations described in paragraphs (b)(1)(i) and (ii) of this section.

(2) In calculating whether a retail forex account was profitable or not profitable during the quarter, the national bank must compute the realized and unrealized gains or losses on all retail forex transactions carried in the retail forex account at any time during the quarter, subtract all fees, commissions, and any other charges posted to the retail forex account during the quarter, and add any interest income and other income or rebates credited to the retail forex account during the quarter. All deposits and withdrawals of funds made by the retail forex customer during the quarter must be excluded from the computation of whether the retail forex account was profitable or not profitable during the quarter. Computations that result in a zero or negative number must be considered a retail forex account that was not profitable. Computations that result in a positive number must be considered a retail forex account that was profitable.

(3) A retail forex account must be considered ''active'' for purposes of paragraph (b)(1) of this section if and only if for the relevant calendar quarter a retail forex transaction was executed in that account or the retail forex account contained an open position resulting from a retail forex transaction.

(c) *Records related to violations of law.* A national bank engaging in retail forex transactions must make a record of all communications received by the national bank or its IAPs concerning facts giving rise to possible violations of law related to the national bank's retail forex business. The record must contain: The name of the complainant, if provided; the date of the communication; the relevant agreement, contract, or transaction; the substance of the communication; the name of the person that received the communication; and the final disposition of the matter.

(d) *Records for noncash margin.* A national bank must maintain a record of all noncash margin collected pursuant to § 48.9. The record must show separately for each retail forex customer:

(1) A description of the securities or property received;

(2) The name and address of such retail forex customer;

(3) The dates when the securities or property were received;

(4) The identity of the depositories or other places where such securities or property are segregated or held, if applicable;

(5) The dates in which the national bank placed or removed such securities or property into or from such depositories; and

(6) The dates of return of such securities or property to such retail forex customer, or other disposition thereof, together with the facts and circumstances of such other disposition.

(e) *Order Tickets.*

(1) Except as provided in paragraph (e)(2) of this section, immediately upon the receipt of a retail forex transaction order, a national bank must prepare an order ticket for the order (whether unfulfilled, executed, or canceled). The order ticket must include:

(i) Account identification (account or customer name with which the retail forex transaction was effected);

(ii) Order number;

(iii) Type of order (market order, limit order, or subject to special instructions);

(iv) Date and time, to the nearest minute, that the retail forex transaction order was received (as evidenced by time-stamp or other timing device);

(v) Time, to the nearest minute, that the retail forex transaction order was executed; and

(vi) Price at which the retail forex transaction was executed.

(2) *Post-execution allocation of bunched orders.* Specific identifiers for

retail forex accounts included in bunched orders need not be recorded at time of order placement or upon report of execution as required under paragraph (e)(1) of this section if the following requirements are met:

(i) The national bank placing and directing the allocation of an order eligible for post-execution allocation has been granted written investment discretion with regard to participating customer accounts and makes the following information available to retail forex customers upon request:

(A) The general nature of the post-execution allocation methodology the national bank will use;

(B) Whether the national bank has any interest in accounts that may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare the customer's results with those of other comparable customers and, if applicable, any account in which the national bank has an interest.

(ii) Post-execution allocations are made as soon as practicable after the entire transaction is executed;

(iii) Post-execution allocations are fair and equitable, with no account or group of accounts receiving consistently favorable or unfavorable treatment; and

(iv) The post-execution allocation methodology is sufficiently objective and specific to permit the OCC to verify the fairness of the allocations using that methodology.

(f) *Record of monthly statements and confirmations.* A national bank must retain a copy of each monthly statement and confirmation required by § 48.10.

(g) *Form of record and manner of maintenance.* The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. A national bank must create and maintain audio recordings of oral orders and oral offset instructions. Record maintenance may include the use of automated or electronic records provided that the records are easily retrievable and readily available for inspection.

(h) *Length of maintenance.* A national bank must keep each record required by this section for at least five years from the date the record is created.

§ 48.8 Capital requirements.

A national bank offering or entering into retail forex transactions must be well capitalized as defined by 12 CFR part 6.

§ 48.9 Margin requirements.

(a) *Margin required.* A national bank engaging, or offering to engage, in retail forex transactions must collect from each retail forex customer an amount of margin not less than:

(1) Two percent of the notional value of the retail forex transaction for major currency pairs and 5 percent of the notional value of the retail forex transaction for all other currency pairs;

(2) For short options, 2 percent for major currency pairs and 5 percent for all other currency pairs of the notional value of the retail forex transaction, plus the premium received by the retail forex customer; or

(3) For long options, the full premium charged and received by the national bank.

(b)(1) *Form of margin.* Margin collected under paragraph (a) of this section or pledged by a retail forex customer for retail forex transactions must be in the form of cash or the following financial instruments:

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States;

(ii) General obligations of any State or of any political subdivision thereof;

(iii) General obligations issued or guaranteed by any enterprise, as defined in 12 U.S.C. 4502(10);

(iv) Certificates of deposit issued by an insured depository institution, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

(v) Commercial paper;

(vi) Corporate notes or bonds;

(vii) General obligations of a sovereign nation;

(viii) Interests in money market mutual funds; and

(ix) Such other financial instruments as the OCC deems appropriate.

(2) *Haircuts.* A national bank must establish written policies and procedures that include:

(i) Haircuts for noncash margin collected under this section; and

(ii) Annual evaluation, and, if appropriate, modification, of the haircuts.

(c) *Separate margin account.* Margin collected by the national bank from a retail forex customer for retail forex transactions or pledged by a retail forex customer for retail forex transactions must be placed into a separate account.

(d) *Margin calls; liquidation of position.*

(1) For each retail forex customer, at least once per day, a national bank must:

(i) Mark the value of the retail forex customer's open retail forex positions to market;

(ii) Mark the value of the margin collected under this section from the retail forex customer to market; and

(iii) Determine whether, based on the marks in paragraphs (d)(1)(i) and (ii) of this section, the national bank has collected margin from the retail forex customer sufficient to satisfy the requirements of this section.

(2) If, pursuant to paragraph (d)(1)(iii) of this section, the national bank determines that it has not collected margin from the retail forex customer sufficient to satisfy the requirements of this section then, within a reasonable period of time, the national bank must either:

(i) Collect margin from the retail forex customer sufficient to satisfy the requirements of this section; or

(ii) Liquidate the retail forex customer's retail forex transactions.

(e) *Set-off prohibited.* A national bank may not:

(1) Apply a retail forex customer's retail forex obligations against any funds or other asset of the retail forex customer other than margin in the separate margin account described in paragraph (c) of this section;

(2) Apply a retail forex customer's retail forex obligations to increase the amount owed by the retail forex customer to the national bank under any loan; or

(3) Collect the margin required under this section by use of any right of set-off.

§ 48.10 Required reporting to customers.

(a) *Monthly statements.* Each national bank must promptly furnish to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period but, in any event, not less frequently than once every three months, a statement that clearly shows:

(1) For each retail forex customer:

(i) The open retail forex transactions with prices at which acquired;

(ii) The net unrealized profits or losses in all open retail forex transactions marked to the market;

(iii) Any money, securities, or other property in the separate margin account required by § 48.9(c); and

(iv) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: Money, securities, or property received from or disbursed to such customer; realized profits and losses; and fees, charges, spreads, and commissions.

(2) For each retail forex customer engaging in retail forex transactions that are options:

(i) All such options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(ii) The open option positions carried for such customer and arising as of the end of the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(iii) All such option positions marked to the market and the amount each position is in the money, if any;

(iv) Any money, securities, or other property in the separate margin account required by § 48.9(c); and

(v) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: Money, securities, or property received from or disbursed to such customer; realized profits and losses; premiums and mark-ups; and fees, charges, and commissions.

(b) *Confirmation statement.* Each national bank must, not later than the next business day after any retail forex transaction, send:

(1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day;

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

(i) The retail forex customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each markup thereon, if applicable, and all other commissions, costs, fees, and other charges incurred in connection with the forex option transaction;

(iii) The strike price;

(iv) The underlying retail forex transaction or underlying currency;

(v) The final exercise date of the forex option purchased or sold; and

(vi) The date that the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any option, a written confirmation statement thereof, which statement must include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the retail forex or physical currency position that resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(c) Notwithstanding paragraph (b) of this section, a retail forex transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(d) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer for whom such account is carried, each national bank must promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the national bank was introduced by an introducing broker and the name of the introducing broker.

§ 48.11 Unlawful representations.

(a) *No implication or representation of limiting losses.* No national bank engaged in retail foreign exchange transactions or its IAPs may imply or represent that it will, with respect to any retail customer forex account, for or on behalf of any person:

(1) Guarantee such person or account against loss;

(2) Limit the loss of such person or account; or

(3) Not call for or attempt to collect margin as established for retail forex customers.

(b) *No implication of representation of engaging in prohibited acts.* No national bank or its IAPs may in any way imply or represent that it will engage in any of the acts or practices described in paragraph (a) of this section.

(c) *No Federal government endorsement.* No national bank or its IAPs may represent or imply in any manner whatsoever that any retail forex transaction or retail forex product has been sponsored, recommended, or approved by the OCC, the Federal government, or any agency thereof.

(d) *Assuming or sharing of liability from bank error.* This section does not prevent a national bank from assuming or sharing in the losses resulting from the national bank's error or mishandling of a retail forex transaction.

(e) *Certain guaranties unaffected.* This section does not affect any guarantee entered into prior to the effective date of this part, but this section does apply to any extension, modification, or renewal thereof entered into after such date.

§ 48.12 Authorization to trade.

(a) *Specific authorization required.* No national bank may directly or indirectly effect a retail forex transaction for the account of any retail forex customer unless, before the retail forex transaction occurs, the retail forex customer specifically authorized the national bank to effect the retail forex transaction.

(b) *Requirements for specific authorization.* A retail forex transaction is ''specifically authorized'' for purposes of this section if the retail forex customer specifies:

(1) The precise retail forex transaction to be effected;

(2) The exact amount of the foreign currency to be purchased or sold; and

(3) In the case of an option, the identity of the foreign currency or contract that underlies the option.

§ 48.13 Trading and operational standards.

(a) *Internal rules, procedures, and controls required.* A national bank engaging in retail forex transactions must establish and implement internal policies, procedures, and controls designed, at a minimum, to:

(1) Ensure, to the extent reasonable, that each retail forex transaction that is executable at or near the price that the national bank has quoted to the retail forex customer is entered for execution before any retail forex transaction for:

(i) A proprietary account;

(ii) An account for which a related person may originate orders without the prior specific consent of the account owner, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account;

(iii) An account in which a related person has an interest, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account; or

(iv) An account in which a related person may originate orders without the prior specific consent of the account owner, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account;

(2) Prevent national-bank related persons from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of paragraph (a)(1) of this section; and

(3) Fairly and objectively establish settlement prices for retail forex transactions.

(b) *Disclosure of retail forex transactions.* No national bank engaging in retail forex transactions may disclose that an order of another person is being held by the national bank, unless the disclosure is necessary to the effective execution of such order or the disclosure is made at the request of the OCC.

(c) *Handling of retail forex accounts of related persons of retail forex counterparties.* No national bank engaging in retail forex transactions may knowingly handle the retail forex account of an employee of another retail forex counterparty's retail forex business unless the national bank:

(1) Receives written authorization from a person designated by the other retail forex counterparty with responsibility for the surveillance over the account pursuant to paragraph (a)(2) of this section;

(2) Prepares immediately upon receipt of an order for the account a written record of the order, including the account identification and order number, and records thereon to the nearest minute, by time-stamp or other timing device, the date and time the order was received; and

(3) Transmits on a regular basis to the other retail forex counterparty copies of all statements for the account and of all written records prepared upon the receipt of orders for the account pursuant to paragraph (c)(2) of this section.

(d) *Related person of national bank establishing account at another retail forex counterparty.* No related person of a national bank working in the national bank's retail forex business may have an account, directly or indirectly, with another retail forex counterparty unless the other retail forex counterparty:

(1) Receives written authorization to open and maintain the account from a person designated by the national bank with responsibility for the surveillance over the account pursuant to paragraph (a)(2) of this section; and

(2) Transmits on a regular basis to the national bank copies of all statements for the account and of all written records prepared by the other retail forex counterparty upon receipt of orders for the account pursuant to paragraph (a)(2) of this section.

(e) *Prohibited trading practices.* No national bank engaging in retail forex transactions may:

(1) Enter into a retail forex transaction, to be executed pursuant to a market or limit order at a price that is not at or near the price at which other retail forex customers, during that same time period, have executed retail forex transactions with the national bank;

(2) Adjust or alter prices for a retail forex transaction after the transaction has been confirmed to the retail forex customer;

(3) Provide to a retail forex customer a new bid price for a retail forex transaction that is higher than its previous bid without providing a new asked price that is also higher than its previous asked price by a similar amount;

(4) Provide to a retail forex customer a new bid price for a retail forex transaction that is lower than its previous bid without providing a new asked price that is also lower than its previous asked price by a similar amount; or

(5) Establish a new position for a retail forex customer (except one that offsets an existing position for that retail forex customer) where the national bank holds outstanding orders of other retail forex customers for the same currency pair at a comparable price.

§ 48.14 Supervision.

(a) *Supervision by the national bank.* A national bank engaging in retail forex transactions must diligently supervise the handling by its officers, employees, and agents (or persons occupying a similar status or performing a similar function) of all retail forex accounts carried, operated, or advised by at the national bank and all activities of its officers, employees, and agents (or persons occupying a similar status or performing a similar function) relating to its retail forex business.

(b) *Supervision by officers, employees, or agents.* An officer, employee, or agent of a national bank must diligently supervise his or her subordinates' handling of all retail forex accounts at the national bank and all the subordinates' activities relating to the national bank's retail forex business.

§ 48.15 Notice of transfers.

(a) *Prior notice generally required.* Except as provided in paragraph (b) of this section, a national bank must provide a retail forex customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail forex customer. The notice must include a statement that the retail forex customer is not required to accept the proposed assignment or transfer and may direct the national bank to liquidate the positions of the retail forex customer or transfer the account to a retail forex counterparty of the retail forex customer's selection.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to transfers:

(1) Requested by the retail forex customer;

(2) Made by the Federal Deposit Insurance Corporation as receiver or conservator under the Federal Deposit Insurance Act; or

(3) Otherwise authorized by applicable law.

(c) *Obligations of transferee national bank.* A national bank to which retail forex accounts or positions are assigned or transferred under paragraph (a) of this section must provide to the affected retail forex customers the risk disclosure statements and forms of acknowledgment required by this part and receive the required signed acknowledgments within 60 days of such assignments or transfers. This requirement does not apply if the national bank has clear written evidence that the retail forex customer has received and acknowledged receipt of the required disclosure statements.

§ 48.16 Customer dispute resolution.

(a) *Voluntary submission of claims to dispute or settlement procedures.* No national bank may enter into any agreement or understanding with a retail forex customer in which the customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure unless the following conditions are satisfied:

(1) Signing the agreement is not a condition for the customer to use the services offered by the national bank.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer separately endorses the clause or clauses.

(3) The agreement advises the retail forex customer that, at such time as the customer notifies the national bank that the customer intends to submit a claim to arbitration, or at such time the national bank notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to choose a person qualified in dispute resolution to conduct the proceeding.

(4) The agreement must acknowledge that the national bank will pay any incremental fees that may be assessed in connection with the dispute resolution, unless it is determined in the proceeding that the retail forex customer has acted in bad faith in initiating the proceeding.

(5) The agreement must include the following language printed in large boldface type:

Two forums exist for the resolution of disputes related to retail forex transactions: Civil court litigation and arbitration conducted by a private

organization. The opportunity to settle disputes by arbitration may in some cases provide benefits to customers, including the ability to obtain an expeditious and final resolution of disputes without incurring substantial cost. Each customer must individually examine the relative merits of arbitration and consent to this arbitration agreement must be voluntary.

By signing this agreement, you: (1) May be waiving your right to sue in a court of law; and (2) are agreeing to be bound by arbitration of any claims or counterclaims that you or [insert name of national bank] may submit to arbitration under this agreement. In the event a dispute arises, you will be notified if [insert name of national bank] intends to submit the dispute to arbitration.

You need not sign this agreement to open or maintain a retail forex account with [insert name of national bank].

(b) *Election of forum.*

(1) Within 10 business days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, the national bank must provide the customer with a list of persons qualified in dispute resolution.

(2) The customer must, within 45 days after receipt of such list, notify the national bank of the person selected. The customer's failure to provide such notice must give the national bank the right to select a person from the list.

(c) *Enforceability.* A dispute settlement procedure may require parties using the procedure to agree, under applicable state law, submission agreement, or otherwise, to be bound by an award rendered in the procedure if the agreement to submit the claim or grievance to the procedure complies with paragraph (a) of this section or the agreement to submit the claim or grievance to the procedure was made after the claim or grievance arose. Any award so rendered by the procedure will be enforceable in accordance with applicable law.

(d) *Time limits for submission of claims.* The dispute settlement procedure used by the parties may not include any unreasonably short limitation period foreclosing submission of a customer's claims or grievances or counterclaims.

(e) *Counterclaims.* A procedure for the settlement of a retail forex customer's claims or grievances against a national bank or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought if the counterclaim:

(1) Arises out of the transaction or occurrence that is the subject of the retail forex customer's claim or grievance; and

(2) Does not require for adjudication the presence of essential witnesses, parties, or third persons over which the settlement process lacks jurisdiction.

§ 48.17 Reservation of authority.

The OCC may modify the disclosure, recordkeeping, capital and margin, reporting, business conduct, documentation, or other standards or requirements under this part for a specific retail forex transaction or a class of retail forex transactions if the OCC determines that the modification is consistent with safety and soundness and the protection of retail forex customers.

Dated: July 7, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–17514 Filed 7–13–11; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 329 and 330

RIN 3064–AD78

Interest on Deposits; Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing a final rule amending its regulations to reflect section 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA),[1] repealing the prohibition against the payment of interest on demand deposit accounts effective July 21, 2011.

DATES: The final rule is effective July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Martin Becker, Senior Consumer Affairs Specialist, Division of Consumer and Depositor Protection, (703) 254–2233, Mark Mellon, Counsel, Legal Division, (202) 898–3884, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 627 of the DFA repealed the statutory prohibition against the payment of interest on demand deposits, effective one year from the date of the DFA's enactment, July 21, 2011. Section 343 of the DFA amended section 11(a)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(a)(1), to provide full insurance coverage for depository institution noninterest-bearing transaction accounts from December 31, 2010, through December 31, 2012.

In light of the prospective repeal of the demand deposit interest prohibition, the FDIC proposed to rescind 12 CFR part 329, the regulation which implements that prohibition with respect to state-chartered, nonmember (SNM) banks to be effective on the same date as the statutory repeal, July 21, 2011. 76 FR 21265 (Apr. 15, 2011) (NPR). At the same time, however, a regulatory definition of the term ''interest'' would still be useful in interpreting the requirements of section 343 of the DFA providing temporary, unlimited deposit insurance coverage for noninterest-bearing transaction accounts. For this reason, in the NPR the FDIC also proposed to transfer the definition of ''interest'' found at 12 CFR 329.1(c) to Part 330, specifically the definitions section at 12 CFR 330.1. The FDIC also specifically solicited comment on whether other parts of Part 329 could also prove useful and therefore should be moved into Part 330 as well. In addition, the FDIC sought comment on every other aspect of the proposed rule.[2]

II. Comment Summary and Discussion

The FDIC received eight comments on the NPR. Three were from community banks, one was from a large depository institution, two were from depository institution trade groups, one from a financial consulting firm, and one was from a legal representative for a money market fund.

The chief points were:

1. The FDIC should stop or delay repeal of the prohibition (four commenters);

2. Community banks will be harmed by repeal of the prohibition (four commenters);

3. The FDIC should add the Part 329 section concerning premiums to Part 330 (three commenters); and

4. The FDIC should adopt or incorporate all Federal Reserve interpretations and advisory opinions

[1] Public Law 111–203, 124 Stat. 1376.

[2] In counterpart to this rulemaking, the Board of Governors of the Federal Reserve System (the Federal Reserve) have issued a notice of proposed rulemaking to repeal 12 CFR Part 217, Prohibition Against Payment of Interest on Demand Deposits (Regulation Q). See 76 **Federal Register** 20892 (Apr. 14, 2011). Regulation Q implements the prohibition against the payment of interest on demand deposits with respect to member banks.

pertaining to Regulation Q (two commenters).

Repeal or Delay Prohibition

Commenters opposed to immediate implementation of the repeal of the prohibition made several arguments. All four commenters stated that repeal would result in increased deposit volatility as depository institutions competed for an increased share of business deposits by offering continually higher rates of interest. Three of the four contended this would severely affect community banks. One commenter called for delay until the safety and soundness consequences of repeal are understood, arguing that the FDIC and the Federal Reserve have the authority to issue a statement of policy that would prevent interest payments on deposits. Another commenter recommended a phase-in with immediate implementation of the repeal followed by a twelve- to eighteen-month grandfather for Federal Reserve interpretations and advisory opinions concerning Regulation Q. Another commenter stated that efforts to repeal the prohibition should either cease or be delayed until its impact is understood.

In response to these comments, the FDIC notes that, as previously observed, pursuant to section 627 of the DFA, as of July 21, 2011, the prohibition against the payment of interest on demand deposits will be repealed by operation of statute, as a matter of law.

Harm to Community Banks

As noted previously, several commenters contended repeal would result in heightened competition for deposits. They reasoned that large banks will offer high rates of interest and lure away business depositors previously content to do business with community banks based on personal services (relationship deposits). Community banks would then be pressured to offer higher rates of interests in order to stay competitive, further cutting already thin marginal rates of return. Increased deposits might also mean added pressure for depository institutions to loan these new funds out, possibly leading to unsafe and unsound lending and further weakening depository institutions' fiscal health.

As potential responses to these anticipated negative consequences, one commenter recommended that the FDIC take a number of steps: (a) The FDIC should consider issuing a statement of policy to warn depository institutions about the need for interest rate risk management; (b) interest rate risk should be quantified and an increased capital charge should be imposed on depository institutions with heightened risk due to repeal of the statutory prohibition; (c) stress tests should be performed on depository institutions before they are allowed to pay interest on business checking accounts; (d) call reports should be modified to provide for the reporting of interest rate risk; and (e) reserve requirements should be increased to reduce competition for deposits.

Another commenter recommended that the FDIC hold roundtables prior to the July 21, 2011, repeal date, urged the FDIC and the Federal Reserve to work together to clarify issues in connection with the repeal, and requested that the FDIC provide more time for compliance by depository institutions. This commenter noted that while the FDIC has no authority to delay or to phase in the statutory repeal, efforts still need to be made to provide depository institutions with clarity. The commenter noted the need to revise call reports and thrift financial reports to indicate interest-bearing demand deposit accounts. It also noted the need for clarity with respect to so-called ''hybrid products,'' deposit accounts that both pay interest and offer earnings credits.

A third commenter urged that the Financial Stability Oversight Council (the FSOC) should address the systemic threat which the upcoming repeal poses to the ''U.S. banking and financial system and the economy as a whole.'' [3]

After carefully considering these comments, the FDIC has concluded that the commenters raise valid concerns about potential risks arising from the repeal of the prohibition against paying interest on demand deposits. Based on currently available information, however, there are also potential benefits which may balance out or outweigh those risks. While it is true that depository institutions may incur added expense by offering interest payments to accounts where it was previously unavailable (such as business checking), they may also save funds by no longer having to waive expenses on such accounts (*e.g.,* courier service), as an inducement to retain accountholders. Moreover, many institutions offer products to business customers that serve as a substitute for paying interest on demand deposit accounts. The most notable example is a repo sweep account in which funds are swept overnight from a demand deposit account to a repo account and swept back to the demand deposit account the next morning. The institution pays interest on the funds while they are in the repo account. Thus, for some institutions the repeal of the prohibition against paying interest on demand deposits will result in the replacement of indirect payments of interest on demand deposits with explicit, direct interest-bearing demand deposit accounts.

Repeal of the prohibition might directly benefit community banks by allowing them to attract more potentially stable deposits which could reduce their need for higher-cost, more volatile funding. This could lower community banks' funding costs and also allow them to plan business growth more dependably and rigorously. Interest rates are currently at a historic low. This should provide depository institutions with an adjustment period. If the cost of funds should increase, depository institutions should have time to make the necessary adjustments to protect profits and manage interest rate risk through measures such as changes to fee structures and rates to balance out increased interest expense. With regard to interest rate risk and potential liquidity issues, the FDIC and the other federal banking agencies have already provided depository institutions with detailed guidance which those institutions are expected to follow.

Add Part 329 Section on Premiums to Part 330

Three commenters stated that the Part 329 section pertaining to premiums should be added to Part 330 along with the definition of ''interest.'' Section 329.103 describes the circumstances under which a depository institution's provision of a premium to a depositor will not be considered a payment of interest. It is substantially identical to section 217.101 in Regulation Q. Commenters contended that retaining this section along with the definition of interest might prove useful in determining whether an account qualifies for unlimited insurance coverage as a noninterest-bearing transaction account.

In response to these comments, the FDIC agrees that there would be utility in importing section 329.103 into Part 330. The FDIC will therefore import section 329.103 into Part 330 as an interpretive rule, to be designated as section 330.101. This step is also consistent with the FDIC's decision, as explained in more detail below, to look to Regulation Q and Federal Reserve interpretations of that rule when construing section 343.

[3] Created by section 111 of the DFA, the FSOC is charged with identifying threats to the financial stability of the U.S., promoting market discipline, and responding to emerging risks to the stability of the U.S. financial system.

Retention of Federal Reserve Regulation Q Staff Opinions and Interpretive Letters

Two commenters called for retention of Federal Reserve staff opinions and interpretive letters concerning Regulation Q. They stated that these materials would continue to be useful in determining whether depository institutions may continue to rely on practices established pursuant to these documents (one example given was third party payment programs). One commenter recommended that, as of July 21, 2011, the materials be retained for a period of eighteen months or more.

As noted previously, section 217.101 of Regulation Q is substantially identical to section 329.103. Moreover, the FDIC, along with other federal banking agencies, has regularly interpreted issues arising from the prohibition against the payment of interest on demand deposits in the same manner as the Federal Reserve. In light of this agency consistency and the continued potential instrumental value of agency interpretations regarding this issue, the FDIC will continue to rely upon Regulation Q and Federal Reserve interpretations of that regulation for purposes of implementing temporary, unlimited deposit insurance coverage pursuant to section 343 of the DFA.

III. Final Rule

For the reasons set forth in the preceding section, the FDIC is issuing the final rule.

IV. Regulatory Analysis and Procedure

A. Effective Date

Absent a showing of ''good cause,'' the Administrative Procedure Act (5 U.S.C. 553(d)(3)) requires a 30-day delayed effective date before a final rule may become effective. The FDIC finds good cause for waiving this requirement because the final rule simply conforms the FDIC's regulations to reflect the statutory repeal of the prohibition against the payment of interest on demand deposit accounts. As discussed, that statutory repeal becomes effective July 21, 2011. Delaying the effective date of the final rule for thirty days would result in a gap between the effective date of the statutory repeal and the effective date of the amendments to the FDIC's regulations reflecting that statutory repeal. Also, the FDIC deems it unnecessary to provide a delayed effective date for the final rule because there are no actions SNM banks must take to implement the final rule; as noted, the final rule simply conforms the FDIC's regulations to reflect a statutory change.

The Riegle Community Development and Regulatory Improvement Act provides that any new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.[4] The final rule does not impose any additional reporting, disclosures, or other new requirements on insured depository institutions.

The final rule is therefore effective upon July 21, 2011, the date when the statutory prohibition against the payment of interest on demand deposits will be repealed under section 627 of the DFA.

B. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. Ch. 3501 *et seq.*) are contained in the final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be ''small entities.'' The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities. This is because the FDIC already applies the Part 329 definition of ''interest'' and the interpretive rule on premiums for purposes of determining whether an account qualifies for full deposit insurance coverage as a noninterest-bearing transaction account. The FDIC is only transferring the definition from Part 329 to Part 330 because the former regulation will become moot on July 21, 2011, pursuant to section 627 of the DFA and its repeal of the statutory ban on the payment of interest on demand deposits. There will therefore be no significant economic impact on a substantial number of small entities as a result of this change.

[4] 12 U.S.C. 4802.

D. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) (5 U.S.C. 801, *et seq.*).

As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. No commenter suggested that the NPR was materially unclear, and the FDIC believes that the final rule is substantively similar to the NPR.

List of Subjects

12 CFR Part 329

Banks, Banking, Interest rates.

12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

For the reasons set forth in the preamble, under the authority of section 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 329—INTEREST ON DEPOSITS

■ 1. Part 329 is removed and reserved.

PART 330—DEPOSIT INSURANCE COVERAGE

■ 2. The authority citation for part 330 continues to read as follows: 12 U.S.C. 1813(*l*), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

■ 3. In § 330.1, paragraphs (k) through (r) of § 330.1 are redesignated as paragraphs (l) through (s) respectively and new paragraph (k) is added to read as follows:

§ 330.1 Definitions.

* * * * *

(k) *Interest,* with respect to a deposit, means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a payment of interest.

* * * * *

■ 4. In § 330.6, in the first sentence of paragraph (b) remove ''§ 330.1(m)'' and add in its place ''§ 330.1(n)''.

■ 5. In § 330.9, in the first sentence of paragraph (c)(1) remove ''§ 330.1(k)'' and add in its place ''§ 330.1(l)''.

■ 6. In § 330.12:

■ a. In the first sentence of paragraph (a) remove ''§ 330.1(p)'' and add in its place ''§ 330.1(q)''.

■ b. In the first sentence of paragraph (b)(1) remove ''§ 330.1(o)'' and add in its place ''§ 330.1(p)''.

■ 7. In § 330.13, in the first sentence of paragraph (a) remove ''§ 330.1(l)'' and add in its place ''§ 330.1(m)''. In the last sentence of paragraph (a) remove ''§ 330.1(q)'' and add in its place ''§ 330.1(r)''.

■ 8. In § 330.16, in the first sentence of paragraph (a) remove ''§ 330.1(r)'' and add in its place ''§ 330.1(s)''.

■ 9. New § 330.101 is added to read as follows:

§ 330.101 Premiums.

This interpretive rule describes certain payments that are not deemed to be ''interest'' as defined in § 330.1(k).

(a) Premiums, whether in the form of merchandise, credit, or cash, given by a bank to the holder of a deposit will not be regarded as ''interest'' as defined in § 330.1(k) if:

(1) The premium is given to the depositor only at the time of the opening of a new account or an addition to an existing account;

(2) No more than two premiums per deposit are given in any twelve-month interval; and

(3) The value of the premium (in the case of merchandise, the total cost to the bank, including shipping, warehousing, packaging, and handling costs) does not exceed $10 for a deposit of less than $5,000 or $20 for a deposit of $5,000 or more.

(b) The costs of premiums may not be averaged.

(c) A bank may not solicit funds for deposit on the basis that the bank will divide the funds into several accounts for the purpose of enabling the bank to pay the depositor more than two premiums within a twelve-month interval on the solicited funds.

(d) The bank must retain sufficient information for examiners to determine that the requirements of this section have been satisfied.

(e) Notwithstanding paragraph (a) of this section, any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance shall not be considered the payment of interest on a demand deposit account and shall not be subject to the limitations in paragraph (a) of this section.

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of July 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–17686 Filed 7–13–11; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1024; Directorate Identifier 2010–NE–34–AD; Amendment 39–16753; AD 2011–15–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90–76B; GE90–77B; GE90–85B; GE90–90B; and GE90–94B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires initial and repetitive fluorescent penetrant inspections (FPIs) and eddy current inspections (ECIs) of the high-pressure compressor rotor (HPCR) 8–10 stage spool, part numbers (P/Ns) 1844M90G01 and 1844M90G02, for cracks between the 9–10 stages at each piece-part exposure. This AD was prompted by cracks discovered on one HPCR 8–10 spool between the 9–10 stages in the weld joint. We are issuing this AD to prevent failure of the HPCR 8–10 stage spool, uncontained engine failure, and damage to the airplane.

DATES: This AD is effective August 18, 2011.

ADDRESSES: For service information identified in this AD, contact GE–Aviation M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215, *phone:* 513–552–3272; *e-mail: geae.aoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7747; *fax:* 781–238–7199; *e-mail: jason.yang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on December 22, 2010 (75 FR 80370). That NPRM proposed to require initial and repetitive FPIs and ECIs of the HPCR 8–10 stage spool, P/Ns 1844M90G01 and 1844M90G02, for cracks between the 9–10 stages, at each piece-part exposure.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request

Two commenters, General Electric Company and The Boeing Company, requested that we remove the ''Unsafe

Condition'' paragraph from the AD, and reword the Summary section to resemble the Summary section of AD 2002–04–11. The commenters stated that, by their analyses, cracks in the weld joint would not develop into an uncontained failure. The commenters stated that HPCR 8–10 stage spools, P/Ns 1844M90G01 and 1844M90G02, be inspected by an enhanced inspection, similar to those parts covered in AD 2002–04–11.

Answer

We do not agree. AD 2002–04–11 was issued because of additional focused inspection procedures that had been developed by the manufacturer. Because cracks were discovered on one HPCR 8–10 spool between the 9–10 stages in the weld joint, this unsafe condition is likely to exist or develop in other products of the same type design. The unsafe condition could result in failure of the HPCR 8–10 stage spool, uncontained engine failure, and damage to the airplane. We determined that this unsafe condition requires mandatory repetitive inspections for cracks. We did not change the AD.

Request

China Southern Airlines requested that we specify any terminating actions to the repetitive inspections of the affected part numbers of HPCR 8–10 spools.

Answer

We disagree. Unless the part is replaced with a part not subject to this AD, no terminating actions to the repetitive inspections exist.

Question

China Southern Airlines asked if the initial and repetitive FPIs and ECIs of the HPCR 8–10 stage spool at each piece-part exposure in the shop effectively prevent failure during normal engine operation, since the high-pressure module overhaul interval is 48,000 hours or 6,000 cycles when the spool can have piece-part exposure per current GE90 Workscope Planning Guide.

Answer

Yes, the FAA has determined that the actions required by the AD will effectively prevent failure of the HPCR 8–10 stage spool by removing cracked parts from service.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 33 GE90–76B; GE90–77B; GE90–85B; GE90–90B; and GE90–94B engines, installed on airplanes of U.S. registry. We also estimate that it will take about 2 work-hours per engine to perform the inspection, and that the average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $5,610 for one inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–15–06 General Electric Company: Amendment 39–16753; Docket No. FAA–2010–1024; Directorate Identifier 2010–NE–34–AD.

Effective Date

(a) This AD is effective August 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company GE90–76B; GE90–77B; GE90–85B; GE90–90B; and GE90–94B turbofan engines with a high-pressure compressor rotor (HPCR) 8–10 stage spool, part number (P/N) 1844M90G01 or 1844M90G02, installed.

Unsafe Condition

(d) This AD was prompted by cracks discovered on one HPCR 8–10 spool between the 9–10 stages in the weld joint. We are issuing this AD to prevent failure of the HPCR 8–10 stage spool, uncontained engine failure, and damage to the airplane.

Compliance

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

Inspections of the HPCR 8–10 Stage Spool

(f)(1) At the next piece-part exposure of the HPCR 8–10 stage spool after the effective date of this AD, perform a fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of the weld joint between the 9–10 stages of the HPCR 8–10 stage spool for cracks.

(2) Thereafter, perform repetitive FPIs and ECIs of the weld joint between the 9–10 stages of the HPCR 8–10 stage spool for cracks at every piece-part exposure of the HPCR 8–10 stage spool.

(3) Remove from service any HPCR 8–10 stage spool found cracked.

(4) Guidance on performing the FPI can be found in GE90 (GEK100700) Engine Manual, Chapter 72–31–08, Inspection 001.

(5) Guidance on performing the ECI can be found in GE90 (GEK100700) Engine Manual, Chapter 72–31–08, Special Procedures 001.

Definition

(g) For the purpose of this AD, piece-part exposure is when the HPCR stage 8–10 spool is removed from the engine and completely disassembled.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i)(1) For more information about this AD, contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7747; *fax:* 781–238–7199; *e-mail: jason.yang@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, *phone:* 513–552–3272; *fax:* 513–552–3329; *e-mail: geae.aoc@ge.com.* For information on the availability of this material at the FAA, call 781–238–7125.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on July 7, 2011.

Peter A. White,

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

[FR Doc. 2011–17621 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0986; Airspace Docket No. 10–ANM–13]

Establishment of Class E Airspace; Florence, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Florence, OR, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Florence Municipal Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 15, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Florence, OR (76 FR 21269). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Florence Municipal Airport, Florence, OR, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Florence, OR [New]

Florence Municipal Airport, OR
(Lat. 43°58′58″ N., long. 124°06′41″ W.)

That airspace extending upward from 700 feet above the surface within 3-mile radius of Florence Municipal Airport.

Issued in Seattle, Washington, on July 6, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–17541 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

RIN Number 3038–AD27

Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is adopting final rules pursuant to section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), to implement amended subsections (c)(1) and (c)(3) of section 6 of the Commodity Exchange Act (''CEA''). These rules broadly prohibit fraud and manipulation in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity.

DATES: *Effective Date:* These final Rules will become effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: David Meister, Director, Division of Enforcement, 202–418–5624, or Mark D. Higgins, Counsel, Office of the General Counsel, 202–418–5864, *mhiggins@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law. Title VII of the Dodd-Frank Act amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authority with respect to, among others, all registered entities and intermediaries.

In the wake of the financial crisis of 2008, Congress adopted section 753 of the Dodd-Frank Act, which provided the Commission with additional and broad authority to prohibit fraud and manipulation. In the following paragraphs, the Commission summarizes Dodd-Frank Act section 753's amendments to CEA section 6(c).

New section 6(c)(1), the full text of which is provided in Section III below, broadly prohibits the use or employment of, or an attempt to use or employ, any ''manipulative or deceptive device or contrivance'' in contravention of such rules and regulations as the Commission ''shall promulgate no later than 1 year after the date of enactment'' of the Dodd-Frank Act.

As discussed below, final Rule 180.1 implements the provisions of CEA section 6(c)(1) by prohibiting, among other things, manipulative and deceptive devices, i.e., fraud and fraud-based manipulative devices and contrivances employed intentionally or recklessly, regardless of whether the conduct in question was intended to create or did create an artificial price. This final Rule will help promote the integrity of the markets, and protect market participants.

Section 6(c)(1)(A), a ''Special Provision for Manipulation by False Reporting,'' extends the Commission's prohibition against unlawful manipulation to include ''delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.'' [1] Importantly, section 6(c)(1)(C) provides a ''Good Faith Mistakes'' exception to this prohibition such that ''[m]istakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).''

Section 6(c)(2) prohibits the making of ''any false or misleading statement of a material fact to the Commission. * * *'' A prohibition regarding false statements to the Commission was previously included in section 6(c). Dodd-Frank Act section 753 expands the prohibition against false statements made in registration applications or reports filed with the Commission to include any statement of material fact made to the Commission in any context.

CEA section 6(c)(3), the full text of which is provided in Section III below, makes it unlawful to ''manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.'' Final Rule 180.2 codifies section 6(c)(3).

Section 753 of the Dodd-Frank Act also amends prior CEA section 6(c) to provide, in cases of manipulation or attempted manipulation in violation of sections 6(c) or 9(a)(2), for a civil penalty of up to the greater of $1,000,000 or triple the monetary gain to the person for each such violation; and restitution to customers of damages proximately caused by violations of the person. For other violations, section 6(c)(10)(C) provides for a civil penalty of not more than an amount equal to the greater of $140,000 or triple the monetary gain for each such violation.

Finally, section 753 of the Dodd-Frank Act provides that the above-summarized amendments to CEA section 6(c) ''shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.'' The final Rules will take effect 30 days after publication in the **Federal Register.**

II. The Rulemaking Proceeding Under CEA Section 6(c)

This rulemaking proceeding [2] began with the issuance of a Notice of Proposed Rulemaking (''NOPR'') on October 26, 2010, which was published in the **Federal Register** on November 3, 2010.[3] Pursuant to CEA section 6(c),[4] as amended by section 753 of the Dodd-Frank Act, the Commission proposed to add a new Part 180 to Title 17 of the Code of Federal Regulations. In the NOPR, the Commission solicited comments on all aspects of proposed Part 180. Twenty-seven parties filed comments, representing a variety of interested parties, including a member of the United States Congress, a law professor, economists, industry members and trade associations, energy news and price reporting organizations, designated contract markets

[1] Section 9(a)(2) of the CEA, 7 U.S.C. 13(a)(2), also expressly prohibits false reporting.

[2] Rulemaking documents are available at: (*http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/23_DFManipulation/index.htm*).

[3] Prohibition of Market Manipulation, 75 FR 67657 (Nov. 3, 2010).

[4] Section 753 of the Dodd-Frank Act directed the Commission to promulgate implementing rules and regulations by not later than one year after the date of enactment of the Dodd-Frank Act.

(exchanges), a government-sponsored enterprise, and members of the public.[5]

Upon careful review and consideration of the entire record in this rulemaking and based on its extensive market regulation experience, the Commission has determined that it is appropriate and in the public interest to adopt the final Rules, which among other things, define for the public the statutory prohibition under CEA section 6(c)(1) against using or employing ''any manipulative or deceptive device or contrivance'' in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity. Consistent with section 6(c)(1), the final Rule 180.1 prohibits, among other things, fraud and fraud-based manipulative schemes, employed intentionally or recklessly (as discussed below), regardless of whether the conduct in question was intended to or did create an artificial price. Final Rules 180.1 and 180.2 will help to promote the integrity of the markets, and protect market participants.

After carefully reviewing the entire rulemaking record, the Commission finds it unnecessary to change the wording of the proposed regulatory text, except in one respect: Adding ''inaccurate'' to section 180.1(a)(4) (''* * * no violation of this subsection shall exist where the person mistakenly transmits, in good faith, false or misleading or inaccurate information to a price reporting service.''). This change is necessary to ensure symmetry between final Rule 180.1 and CEA section 6(c)(1)(C). However, based on the public comments, the Commission has determined to provide clarification and interpretive guidance in this Preamble to final Rules 180.1 and 180.2.

The Commission's statutory and legal basis for promulgating the final Rules, their purpose, and the Commission's responses to comments filed in this rulemaking, are discussed below.

III. Statutory Basis for the Final Rules

CEA section 6(c)(1), entitled ''Prohibition Against Manipulation,'' is the statutory basis for final Rule 180.1, and provides that:

> It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the [Dodd-Frank Act], provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

CEA section 6(c)(3), entitled ''Other Manipulation,'' provides that:

> [I]t shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

CEA section 6(c)(3) and the Commission's general rulemaking authority pursuant to CEA section 8a(5) provide the statutory basis for final Rule 180.2.

Commenters are overwhelmingly supportive of the Commission's efforts to implement clear and fair rules designed to protect market participants and promote the integrity of the markets. In the following sections, the Commission summarizes and responds to the comments received in this rulemaking.

IV. Discussion of CEA Section 6(c)(1) and Final Rule 180.1

A. Overview

The language of CEA section 6(c)(1), particularly the operative phrase ''manipulative or deceptive device or contrivance,'' is virtually identical to the terms used in section 10(b) of the Securities Exchange Act of 1934 (''Exchange Act'').[6] The Supreme Court has interpreted these words to ''clearly connot[e] intentional misconduct.''[7] The Court has also stated that the statute was ''designed as a catchall clause to prevent fraudulent practices.''[8]

Based on the language in Exchange Act section 10(b), the Securities and Exchange Commission (''SEC'') promulgated SEC Rule 10b–5, which makes it unlawful for any person:

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.[9]

Given the similarities between CEA section 6(c)(1) and Exchange Act section 10(b), the Commission deems it appropriate and in the public interest to model final Rule 180.1 on SEC Rule 10b–5.[10] To account for the differences between the securities markets and the derivatives markets, the Commission will be guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of SEC Rule 10b–5.[11] Such extensive judicial review serves as an important benefit to the Commission and provides the public with increased certainty because the terms of Exchange Act Section 10(b) and SEC Rule 10b–5 have withstood challenges to their constitutionality in both civil and criminal matters.[12]

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[5] Attachment A contains a list of the 27 parties who submitted comments related to this rulemaking.

[6] 15 U.S.C. 78j(b). Differences between the wording of Exchange Act Section 10(b) and CEA section 6(c)(1) include, but are not limited to, the express prohibition of the ''attempt to use'' any ''manipulative or deceptive device or contrivance'' in CEA section 6(c)(1), and the absence of a ''purchase or sale'' requirement in CEA section 6(c)(1). The Commission understands that under SEC Rule 10b–5 a plaintiff is not required to prove that money was actually invested in a specific security. *See, e.g., SEC* v. *Zandford,* 535 U.S. 813, 819–21 (2002).

[7] *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 201 (1976).

[8] *Chiarella* v. *United States,* 445 U.S. 222, 226 (1980), *citing Hochfelder,* 425 U.S. at 202, 206.

[9] 17 CFR 240.10b–5.

[10] *See, e.g., Morissette* v. *United States,* 342 U.S. 246, 263 (1952) (noting that where Congress borrows terms of art it ''presumably knows and adopts the cluster of ideas that were attached to each borrowed word''); *Nat'l Treasury Employees Union* v. *Chertoff,* 452 F.3d 839, 857 (DC Cir. 2006) (stating that ''[t]here is a presumption that Congress uses the same term consistently in different statutes'').

[11] Further, by modeling final Rule 180.1 on SEC Rule 10b–5, the Commission takes an important step toward harmonization of regulation of the commodities, commodities futures, swaps and securities markets given that new CEA section 6(c)(1) and Exchange Act Section 10(b) include virtually identical prohibitions against ''any manipulative or deceptive device or contrivance.''

[12] *See, e.g., United States* v. *Persky,* 520 F.2d 283, 287 (2d Cir. 1975) (rejecting criminal defendant's argument that Exchange Act section 10(b) and SEC Rule 10b–5 are unconstitutionally vague); *SEC* v. *Pirate Investor LLC,* 580 F.3d 233, 254 (4th Cir. 2009) (upholding civil judgment and finding that ''[a]ppellants' reliance on any ambiguity in the [section 10(b)] phrase 'in connection with' as a reason to employ the canon of constitutional avoidance fails in light of the statute's purpose—providing a flexible regime for addressing new, perhaps unforeseen, types of fraud''), *cert. denied,* 130 S. Ct. 3506, 2010 U.S. LEXIS 5345 (2010). The Federal Energy Regulatory Commission and the Federal Trade Commission have relied upon a statutory framework largely identical to Exchange Act section 10(b) when promulgating rules similar to SEC Rule 10b–5. In so doing, both agencies have stated their intent to be guided by securities law precedent, as appropriate to their unique regulatory missions. FERC, *Prohibition of Energy Market Manipulation,* 71 FR 4244, 4250 (Jan. 26, 2006) (FERC final anti-manipulation rule); FTC, *Prohibitions on Market Manipulation,* 74 FR 40686, 40688–89 (Aug. 12, 2009) (FTC final anti-manipulation rule).

Final Rule 180.1 prohibits fraud and fraud-based manipulations, and attempts: (1) By any person (2) acting intentionally or recklessly (3) in connection with (4) any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity (as defined in the CEA). CEA section 6(c)(1) and final Rule 180.1, like Exchange Act section 10(b) and SEC Rule 10b–5 upon which they are modeled, focus on conduct involving manipulation or deception.[13]

In the following paragraphs, the Commission addresses the comments that pertain to final Rule 180.1 in the following categories: (1) Scope of application of the final Rule; (2) disclosure implications of the final Rule; (3) operation of the provision prohibiting material misstatements and omissions; (4) statutory exception for good faith mistakes; (5) required scienter for a violation of the final Rule; (6) scope of the phrase ''in connection with''; and (7) penalty, procedure, effect on automated trading systems, and a proposal to define manipulation.[14]

B. The Scope of the Application of Final Rule 180.1

1. Comments

The Commission received several comments on the scope of the application of proposed Rule 180.1. United States Senator Carl Levin (''Senator Levin''), Chairman of the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, believes that the CFTC and SEC should harmonize their regulatory structures for combating disruptive and manipulative activities.[15]

Better Markets, a non-profit public interest advocacy organization, states that the proposed Rules are critical to implementing the important expansion of the Commission's enforcement capability so that the transparent and reliable marketplace envisioned by the Dodd-Frank Act can be realized.[16] Similarly, the Council of Institutional Investors (''Council'') supports proposed Rule 180.1 and believes that it will help promote the integrity of the price discovery process and fair dealing between market participants. The Council believes that, if accompanied by robust enforcement, the proposed Rule would promote investor confidence in the markets and contribute to the overall safety and soundness of the financial system.[17] Likewise, the Petroleum Marketers Association of America (''PMAA'') believes that proposed Rules 180.1 and 180.2 will effectively implement the statutory and Congressional directive to clearly delineate and prevent impermissible conduct by market participants.[18]

University of Maryland School of Law Professor Michael Greenberger (''Professor Greenberger'') believes that proposed Rule 180.1 reflects an effective anti-manipulation rule mandated by section 753 of the Dodd-Frank Act. Professor Greenberger further believes that the Commission correctly asserts that proposed Rule 180.1 be given a broad, remedial reading similar to SEC Rule 10b–5.[19]

The CME Group, Inc. (''CME Group'') and the Commodity Markets Council (''CMC'') believe that proposed Rules 180.1 and 180.2 are vague and fail to provide market participants with sufficient notice of whether contemplated trading practices run afoul of a prohibition.[20] Further, CME Group and CMC believe that proposed Rule 180.1 is susceptible to constitutional challenge under the Due Process Clause.[21]

The Futures Industry Association (''FIA''), International Swaps and Derivatives Association, Inc. (''ISDA''), and the Securities Industry and Financial Markets Association (''SIFMA'') (together, ''the Associations'') believe that the Commission should clarify the scope of the proposed regulation, the Commission's existing anti-manipulation authority under CEA section 9(a)(2), and its anti-fraud authority under CEA section 4b.[22] The Associations urge the Commission to remove from all subparts of the proposed Rule language that prohibits an ''attempt'' to manipulate and to clarify that the requirements for attempted manipulation remain consistent with current law under CEA section 6(c).[23] The Managed Funds Association (''MFA'') believes that the Commission should interpret CEA section 6(c)(1) merely to clarify and refine the Commission's authority over swaps, and not to create any new antifraud authority or to create any new duties or obligations.[24]

The American Petroleum Institute (''API'') together with the National Petrochemical and Refiners Association (''NPRA''), and the Coalition of Physical Energy Companies (''COPE'') state that Congress intended the scope of section 753 of the Dodd-Frank Act to address only actual fraudulent manipulation of the commodities markets.[25] Absent a manipulative effect on the market, API and NPRA believe that there should be no liability under proposed Rule 180.1.[26] Further, API and NPRA state that the Commission should require proof that a party's deceptive or fraudulent conduct caused market conditions to deviate materially from the conditions that would have existed but for that conduct.[27] Similarly, the Derivatives and Futures Law Committee of the Business Law Section of the American Bar Association (''ABA Derivatives Committee'') states that any Commission rules under CEA section 6(c)(1) should expressly target intentional or extremely reckless deceitful conduct specifically intended to cause artificial prices by corrupting or disabling the integrity of market price-setting processes and mechanisms rather than by a general anti-fraud rule patterned on SEC Rule 10b–5.[28] The ABA Derivatives Committee believes that mere unfairness or impermissible overreaching without deception does not violate section 10(b) or SEC Rule 10b–5 thereunder.[29]

[13] *Santa Fe Industries* v. *Green,* 430 U.S. 462, 473–76 (1977); *Dirks* v. *SEC,* 463 U.S. 646, 667 n. 27 (1983) (concluding that ''to constitute a violation of Rule 10b–5, there must be fraud''); *Chiarella* v. *United States,* 445 U.S. 222, 234–35 (1980) (stating that Exchange Act ''section 10(b) is aptly described as a catchall provision, but what it catches must be fraud''); *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 199 (1976) (rejecting argument for imposition of negligence standard that ''simply ignore[d] the use of the words 'manipulative,' 'device,' and 'contrivance'—terms that make unmistakable a congressional intent to proscribe a type of conduct quite different from negligence. Use of the word 'manipulative' is especially significant. It is and was virtually a term of art when used in connection with securities markets. It connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities'') (internal citations omitted).

[14] The extent to which securities law precedent should apply is an issue that commenters often linked to more specific comments pertaining to the interpretation of the statute and proposed rule text. As such, the Commission considers commenters' views about securities law precedent in the specific contexts in which they arise.

[15] Senator Levin Comment Letter at pages 3–4.

[16] Better Markets Comment Letter at page 1.

[17] Council Comment Letter at pages 1–2.

[18] PMAA Comment Letter at page 1.

[19] Professor Greenberger Comment Letter at page 2.

[20] CME Group Comment Letter at pages 2–3; CMC Comment Letter at page 2.

[21] CME Group at page 3; CMC at page 2.

[22] Associations Comment Letter at page 9.

[23] Associations at page 8.

[24] MFA Comment Letter at pages 6–7.

[25] API and NPRA Comment Letter at page 3; COPE Comment Letter at page 2.

[26] API and NPRA at pages 2, 9, and 24.

[27] API and NPRA at page 10.

[28] ABA Derivatives Committee Comment Letter at pages 5 and 11–13. According to the ABA Derivatives Committee, ''[a] rule that does not require evidence of a specific intent to cause artificial market prices as an element of a violation would result in a dangerously vague rule * * * [which] could expose participants to the threat of arbitrary and unfair enforcement.'' *Id.* at page 12.

[29] ABA Derivatives Committee at page 6.

Freddie Mac recommends that the Commission strengthen the protection of customers by clarifying that CEA section 6(c), as amended by section 753 of the Dodd-Frank Act and implemented by proposed Rule 180.1, expressly prohibits ''front running'' and similar misuse of customer information by swap dealers as a form of fraud-based manipulation.[30]

2. Commission Determination

Upon review of the entire rulemaking record, the Commission determines that final Rule 180.1 is in the public interest and provides fair, reasonable, and adequate notice of the prohibited conduct. With respect to comments claiming that final Rule 180.1 is susceptible to a due process constitutional challenge because it purportedly does not give market participants fair notice of the prohibited conduct, the Commission notes that final Rule 180.1 is modeled on SEC Rule 10b–5, which has been subjected to extensive judicial review and has withstood constitutional challenges, including those based on a fair notice argument.[31]

In response to comments requesting clarification regarding the relationship among final Rule 180.1 and existing CEA sections 4b and 9(a)(2), the Commission notes that section 753(a) of the Dodd-Frank Act makes clear that nothing in new CEA section 6(c)(1) ''shall affect, or be construed to affect, the applicability of section 9(a)(2).'' Likewise, the Commission finds nothing in CEA section 6(c)(1) or final Rule 180.1 that affects, or should be construed to affect, the applicability of CEA section 4b.[32] Section 6(c)(1) and final Rule 180.1 augment the Commission's existing authority to prohibit fraud and manipulation.

The Commission declines to adopt the request of one commenter to remove language from proposed Rules 180.1 and 180.2 that make it a violation to ''attempt'' to engage in manipulation.[33] The Commission is controlled by the language of CEA section 6(c)(1), which specifically directs the Commission to prohibit the ''attempt[ed]'' use or employment of any manipulative or deceptive devices or contrivances.[34]

The Commission declines to adopt the request of certain commenters to interpret CEA section 6(c)(1) as merely extending the Commission's existing anti-fraud and anti-manipulation authority to cover swaps. Such an interpretation would be inconsistent with the language of CEA section 6(c)(1), as amended by section 753 of the Dodd-Frank Act, under which Congress granted the Commission broad new authority to prohibit ''any manipulative or deceptive device or contrivance'' in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

The Commission intends to interpret and apply CEA section 6(c)(1) and final Rule 180.1 ''not technically and restrictively, but flexibly to effectuate its remedial purposes.''[35] Comments that the Commission's use of the word ''commodity'' in proposed Rule 180.1 ''indicates that the rule will apply to virtually every commercial transaction in the economy'' are misplaced.[36] The final Rule requires a fraud or manipulation, or attempted fraud or manipulation, and that the fraud or manipulation or attempted fraud or manipulation, be ''in connection with'' any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity. The ''in connection with'' requirement is discussed in subsection G. below. And although CEA section 6(c)(1) and final Rule 180.1 give the Commission broad enforcement authority to prohibit fraud and manipulation in connection with a contract of sale for any commodity in interstate commerce, the Commission expects to exercise its authority under 6(c)(1) to cover transactions related to the futures or swaps markets, or prices of commodities in interstate commerce, or where the fraud or manipulation has the potential to affect cash commodity, futures, or swaps markets or participants in these markets.[37] This application of the final Rule respects the jurisdiction that Congress conferred upon the Commission and fulfills its core mission and the purposes of the Act to protect market participants and promote market integrity.

The foregoing should not be interpreted, however, to mean that a violation of final Rule 180.1 necessarily requires proof of a market or price effect, as some commenters' recommend. It does not.[38] A market or price effect may well be indicia of the use or employment of a manipulative or deceptive device or contrivance; nonetheless, a violation of final Rule 180.1 may exist in the absence of any market or price effect.[39]

In response to comments requesting that ''front-running'' and similar misuse of customer information be considered a form of fraud-based manipulation under final Rule 180.1, the Commission declines to adopt any per se rule in this regard, but clarifies that final Rule 180.1 reaches all manner of fraud and manipulation within the scope of the statute it implements, CEA section 6(c)(1).

C. The Disclosure Implications of Final Rule 180.1

1. Comments

Some commenters express concern regarding whether proposed Rule 180.1

[30] Freddie Mac Comment Letter at pages 1–5.

[31] The fair notice argument has been repeatedly rejected in the SEC Rule 10b–5 context in a wide variety of fact patterns. *See, e.g., United States* v. *Carpenter,* 791 F.2d 1024 (2d Cir. 1986), *aff'g in part and rev'g in part United States* v. *Winans,* 612 F. Supp. 827, 848 (S.D.N.Y. 1985); *United States* v. *Newman,* 664 F.2d 12, 18–19 (2d Cir. 1981), *aff'd after remand,* 722 F.2d 729 (2d Cir.), *cert. denied,* 464 U.S. 863 (1983); *United States* v. *Chiarella,* 588 F.2d 1358, 1369 (2d Cir. 1978); *United States* v. *Brown,* 555 F.2d 336, 339–40 (2d Cir. 1977); *United States* v. *Persky,* 520 F.2d 283, 286–88 (2d Cir. 1975); *SEC* v. *Shapiro,* 494 F.2d 1301, 1308 (2d Cir. 1974).

[32] Section 4b of the CEA, 7 U.S.C. 6b, prohibits, for example, a person from defrauding another person in connection with the making of commodity futures contracts for or on behalf of that other person. *Clayton Brokerage Co.* v. *CFTC,* 794 F.2d 573, 578 (11th Cir. 1986). Thus, a broker's misrepresentations to his customer about risk may subject the broker to liability under CEA section 4b. *Id.*

[33] Associations at page 8.

[34] The Commission understands that courts interpreting the statutory phrase ''any manipulative or deceptive device'' as it is used in Section 10(b) of the Exchange Act have deemed it broad enough to encompass an attempt. *See, e.g., SEC* v. *Martino,* 255 F. Supp. 2d 268, 287 (S.D.N.Y. 2003) (''[A]n attempted manipulation is as actionable as a successful one'').

[35] *See, e.g., Zandford,* 535 U.S. at 819 (where a statute has a remedial purpose such as the prevention of fraud, the statute should be construed ''not technically and restrictively, but flexibly to effectuate its remedial purposes'') (internal quotation marks and citations omitted). *See also R&W Technical Servs., Ltd.* v. *CFTC,* 205 F.3d 165, 173 (5th Cir. 2000) (In 1974, Congress gave the CFTC ''even greater enforcement powers in part because of the fear that unscrupulous individuals were encouraging amateurs to trade in the commodities markets through fraudulent advertising. Remedial statutes are to be construed liberally, and in an era of increasing individual participation in commodities markets, the need for such protection has not lessened'').

[36] API and NPRA at page 3.

[37] By way of non-exclusive example, if an entity employed a deceptive device to sell precious metals to customers as a way for the customers to speculate on the value of such commodities, or if an entity employed a deceptive device to sell an agricultural commodity to persons seeking to hedge price risk in that commodity, depending on the facts and circumstances, the Commission would exercise its authority against the entity under Section 6(c)(1) and final Rule 180.1.

[38] In interpreting Exchange Act section 10(b) and SEC Rule 10b–5, the Supreme Court has recognized that the interest in preserving the integrity of the securities markets was one of the purposes animating Exchange Act section 10(b), but rejected the notion that section 10(b) is limited to serving that objective alone. *See Superintendent of Ins. of N.Y.* v. *Bankers Life & Casualty Co.,* 404 U.S. 6, 11–13 (1971).

[39] *Id.*

would impose new disclosure obligations on commodities market participants.[40] According to the Associations, MFA, CME Group, CMC, COPE, and the Working Group of Commercial Energy Firms (''CEF''), futures, options, swaps, and physical commodity markets are different from securities markets, which have extensive disclosure obligations, and nothing in the CEA mandates disclosure of market conditions or facts pertaining to the markets for commodities.[41]

The Associations, CEF, and MFA state that proposed Rule 180.1 should not impose any new duties of disclosure, inquiry or diligence between two sophisticated parties to a bilateral transaction.[42] Likewise, the ABA Derivatives Committee believes the Commission should make clear that the anti-manipulation rule under section 6(c)(l) does not create any new duties of inquiry, diligence or disclosure to parties to futures, options, swaps or cash commodity transactions.[43] The ABA Derivatives Committee, the Associations, and MFA urge the Commission to make it explicit that any final Rule will be violated only if a party violates a pre-existing duty arising under contract, common law, or some other non-CEA source.[44]

API and NPRA urge the Commission to state explicitly that silence, pure omissions (omissions that do not relate to explicit representations), and ''no comment'' statements are not actionable. They also contend that ''[t]here should be no affirmative duty to convey information to a counterparty in the nature of the reporting and information requirements as under securities law.'' [45] Similarly, API and NPRA recommend that the Commission confirm that there is no duty to update statements that were truthful at the time that they were made.[46] CME Group states that the duty to correct inaccurate statements should be limited to circumstances where a futures market participant realizes a statement was incorrect when the statement was made.[47]

The Associations seek clarification that proposed Rule 180.1 will not impede the ability of market participants to take positions and trade on the basis of nonpublic information that they obtain legitimately (*i.e.,* not through the breach of a pre-existing duty to keep such information confidential or through another party's similar breach of a pre-existing duty).[48] CME Group further states that the Commission should not adopt a ''misappropriation'' theory of ''insider trading''—that is, where one misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information.[49] The ABA Derivatives Committee recommends the Commission make clear that securities law doctrines such as the prohibition on insider trading and the ''fraud-on-the-market'' theory do not apply under the final Rule.[50]

The West Virginia Oil Marketers & Grocers Association (''OMEGA'') states that trading based on inside information should be prohibited.[51]

Responding to other commenters that the CFTC should not incorporate the standards and case law under SEC Rule 10b–5, Professor Greenberger states that the anti-manipulation rules and regulations are not bound by the legal frameworks of the two markets. Professor Greenberger states that the focal point of these anti-manipulation rules is to maintain market integrity, which is a common goal shared by both the securities and futures markets.[52]

PMAA believes that the Commission, in relying on SEC Rule 10b–5, is cognizant of and more than capable of advancing its distinct regulatory responsibilities in ensuring a transparent marketplace free from manipulation.[53] PMAA believes that proposed Rule 180.1 will effectively implement the statutory and Congressional directive to clearly delineate and prevent impermissible conduct by market participants.[54]

2. Commission Determination

As a general matter, the Commission does not believe that final Rule 180.1, or the statute it implements, are problematic or will create uncertainty as to the existence of disclosure obligations when applied to the markets the Commission regulates. This is not to say that commenters did not raise valid concerns about how securities law precedent will be applied in the commodities markets with respect to disclosure obligations. The Commission believes that Congress addressed these concerns, however, by enacting CEA section 6(c)(1), which provides that ''no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.'' To be clear, the Commission is not, by this rulemaking, imposing any new affirmative duties of inquiry, diligence, or disclosure.[55]

Further, it is not a violation of final Rule 180.1 to withhold information that a market participant lawfully possesses about market conditions. The failure to disclose such market information prior to entering into a transaction, either in an anonymous market setting or in bilateral negotiations, will not, by itself, constitute a violation of final Rule 180.1. Therefore, the Commission clarifies that silence, absent a pre-existing duty to disclose, is not deceptive within the meaning of final Rule 180.1.[56] Similarly, the Commission interprets ''no comment'' statements as

[40] *See, e.g.,* Associations at pages 1–5; MFA at pages 2–4; CME Group at pages 2–3; CMC at page 2. The Associations assert, for example, that unlike the securities antifraud laws and rules, which are designed primarily for investor protection, the antifraud provisions in the futures markets are focused in large part, although not exclusively, on protections against manipulation. Associations at page 4.

[41] *See, e.g.,* Associations at pages 1–5; MFA at pages 2–5; CME Group at pages 2–3; CMC at page 2; COPE at page 3; CEF Comment Letter at pages 3 and 8.

[42] Associations at page 4; CEF at page 8; MFA at pages 2 and 4.

[43] ABA Derivatives Committee at page 15.

[44] ABA Derivatives Committee at page 15; Associations at pages 4–5; MFA at pages 4–5.

[45] API and NPRA at page 19.

[46] API and NPRA at page 24.

[47] CME Group at page 8.

[48] Associations at page 5.

[49] CME Group at pages 4–5.

[50] ABA Derivatives Committee at pages 8–9 (stating that the fraud-on-the-market theory ''establishes a rebuttable *presumption* in private rights of action under Exchange Act Section 10(b) and SEC Rule 10b-5 that in an efficient market for a security a plaintiff can be held to have relied on a defendant's fraudulent misrepresentation or omission in connection with the purchase or sale of a security—even if the plaintiff was not aware of the misrepresentation or omission—by virtue of the plaintiff's reliance on the fact that a security's price reflects the fraudulent misrepresentation and omission'') (citations omitted) (emphasis in original).

[51] OMEGA Comment Letter at page 3; *accord* Mr. Peter Carini Comment Letter at page 3; Pen Fern Oil Co., Inc. Comment Letter at page 3; Scullin Oil Co. Comment Letter at page 3.

[52] Professor Greenberger at pages 2–4. Professor Greenberger further states that the influx of capital from retail investors to the commodity markets through Exchange Traded Funds has changed the dynamics of the futures markets. *Id.*

[53] PMAA at page 1.

[54] PMAA at page 2.

[55] The derivatives markets are not, however, *caveat emptor* markets. The CEA has many provisions designed to protect market participants through disclosure requirements applicable to Commission registrants. *See, e.g.,* 17 CFR part 155 (risk disclosure obligations); 17 CFR 4.20–27 (duties and disclosure obligations on Commodity Pool Operators). Depending on the facts and circumstances, violation of such duties could constitute a violation of the final Rule.

[56] *Cf. Basic Inc.* v. *Levinson,* 485 U.S. 224, 239 n. 17 (1988) (''Silence, absent a duty to disclose, is not misleading under [SEC] Rule 10b–5'').

''generally the functional equivalent of silence.'' [57]

The Commission received comments regarding hedging or speculating (*i.e.*, trading) on the basis of material nonpublic information.[58] These comments use the label ''insider trading,'' which can mean different things in different contexts. The Commission recognizes that unlike securities markets, derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained material nonpublic information. This final Rule does not prohibit trading on the basis of material nonpublic information except as provided in the following paragraph or otherwise prohibited by law.[59] Further, the Commission reiterates that the final Rule does not create an affirmative duty of disclosure (except, as provided by section 6(c)(1), ''as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect'').

Depending on the facts and circumstances, a person who engages in deceptive or manipulative conduct in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, for example by trading on the basis of material nonpublic information in breach of a pre-existing duty (established by another law or rule, or agreement, understanding, or some other source), or by trading on the basis of material nonpublic information that was obtained through fraud or deception, may be in violation of final Rule 180.1. The Commission believes that this application of the final Rule would be consistent with our responsibility to protect market participants and promote market integrity and with our statement in the NOPR that section 6(c)(1) is a broad catch-all provision, reaching any manipulative or deceptive device or contrivance.'' [60]

The Commission declines to adopt comments recommending outright rejection of the potential application of the ''fraud-on-the-market'' theory under final Rule 180.1.[61] The ''fraud-on-the-market'' theory includes a presumption of reliance, which is a required element in private rights of action arising under SEC Rule 10b–5. Unlike a private litigant, however, the government is not required to prove reliance in an enforcement action under SEC Rule 10b–5 just as it is not required to demonstrate harm to investors.[62] Consistent with judicial interpretations of Exchange Act section 10(b) and SEC Rule 10b–5, the Commission does not interpret the final Rule as requiring a showing of reliance or harm to market participants in a government action brought under CEA section 6(c)(1) and final Rule 180.1. At the same time, we decline to opine on the required elements of a private right of action under CEA section 6(c)(1) and final Rule 180.1 as it is beyond the purview of this rulemaking.

D. The Operation of the Provision Prohibiting Material Misstatements and Omissions

1. Comments

COPE states that inclusion of the words ''attempt to make'' any untrue or misleading statement of a material fact in proposed Rule 180.1(a)(2) is vague and confusing. COPE requests that the Commission clarify proposed Rule 180.1(a)(2) to state that the proscribed acts must be done with the intent to deceive, manipulate, or defraud.[63]

API and NPRA believe that the Commission should clarify that only statements and acts pertaining to transactions in futures, swaps, or commodities markets underlying futures or swaps may give rise to liability under proposed Rule 180.1.[64] API and NPRA also believe that the Commission should exercise its discretion to exclude ''partial omissions'' from any final Rule.[65]

Mr. Chris Barnard (''Barnard'') believes the proposed rules should apply to both positive misconduct and misconduct by omission given the ongoing nature of the rights and obligations that may be created in a swap agreement.[66]

2. Commission Determination

The Commission declines to adopt comments recommending deletion of the phrase ''or attempt to make'' in final Rule subsection 180.1(a)(2). This phrase captures situations where a person attempts to employ a manipulative device or artifice to defraud. For example, when a supervisor attempts to have a subordinate make a fraudulent material misstatement or omission but that subordinate rebuffs the supervisor, the phrase ''or attempt to make'' would operate to reach the supervisor's attempted fraud.

The Commission declines to modify the proposed Rule in response to comments requesting that only statements and acts pertaining to ''transactions'' in futures, swaps, or commodities markets underlying futures or swaps may give rise to liability under proposed Rule 180.1.[67] Rather, CEA section 6(c)(1) prohibits manipulative or deceptive devices or contrivances in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.[68] The Commission also declines to make modifications in response to comments recommending that the Commission exercise its discretion to exclude ''partial omissions'' from the final Rule.[69] Fraud-by-partial-omission or half-truths could violate final Rule 180.1 if the facts and circumstances of a particular case so warrant. Finally, the Commission declines to impose any restriction on final Rule 180.1(a)(2) to misstatements or omissions that distort or, in the case of an attempted violation of 180.1(a)(2), are likely to distort market conditions. Such a restriction would be tantamount to requiring a price or market effect for a violation of final Rule 180.1. As stated above, the Commission rejects any such requirement for a violation of final Rule 180.1 because the statute it implements, CEA section 6(c)(1), imposes no such requirement.

E. The Statutory Exception for Good Faith Mistakes

1. Comments

When considering the application of final Rule 180.1(a)(2), several commenters asked the Commission to extend CEA section 6(c)(1)(C)'s provision for ''Good Faith Mistakes'' in the mistaken transmission of ''false or misleading or inaccurate information to a price reporting service'' to other

[57] *Id.* (internal quotation marks and citation omitted).

[58] *See, e.g.,* Associations at page 5; MFA at page 5.

[59] *See, e.g.,* Dodd-Frank Act section 746, amending CEA section 4c(a) (7 U.S.C. 6c(a)).

[60] 75 FR at 67658.

[61] In the securities context, ''the 'fraud-on-the-market' presumption helps investors who cannot demonstrate that they, themselves, relied on fraud that reached the market.'' *Stoneridge In* v. *Partners, LLC* v. *Scientific-Atlanta, Inc.,* 552 U.S. 148, 171 (2008).

[62] *See, e.g., Berko* v. *SEC,* 316 F.2d 137, 143 (2d Cir. 1963) (finding reliance and injury to private shareholders ''legally irrelevant'' to the SEC's Exchange Act section 10(b) and SEC Rule 10b–5 claim); *see also United States* v. *Haddy*, 134 F.3d 542 (3d Cir. 1998) (concluding that securities laws did not require proof of reliance in an Exchange Act section 10(b) action brought by government).

[63] COPE at page 5.

[64] API and NPRA at page 11.

[65] API and NPRA at page 23.

[66] Barnard Comment Letter at page 2.

[67] API and NPRA at page 11.

[68] *See* discussion in subsection G below.

[69] API and NPRA at page 23.

violations under CEA section 6(c)(1) and proposed Rule 180.1. API and NPRA request that the good faith exception be expanded to cover ''all public statements or reports by a market participant or other communications covered by the proposed rule.'' [70] Platts seeks extension of CEA section 6(c)(1)(C)'s good faith mistakes exception to proposed Rules 180.1 and 180.2, and Argus Media, Inc. (''Argus'') asks the Commission to extend CEA section 6(c)(1)(C) to CEA section 9(a)(2).[71]

2. Commission Determination

In crafting CEA section 6(c)(1)(C), Congress could have extended the exception for good faith mistakes to all of CEA sections 6(c) and 9(a)(2) but did not do so. Following the plain text of CEA section 6(c)(1)(C), the Commission limited the good faith exception in final Rule 180.1 to the mistaken transmission of false or misleading or inaccurate information to a price reporting service. The Commission also makes clear that the scienter requirement of final Rule 180.1, final Rule 180.2, and CEA section 9(a)(2) functions to ensure that good-faith mistakes or negligence will not constitute a violation of the final Rules under any circumstance. Thus, a person lacking the requisite scienter cannot be found to have engaged in a manipulative or deceptive device or contrivance within the meaning of CEA section 6(c)(1).

F. The Required Scienter for a Violation of Final Rule 180.1

1. Comments

Several commenters asked the Commission to clarify the standard of scienter under proposed Rule 180.1.

Senator Levin recommends that the Commission shift the burden of proof with respect to intent to market participants, which would require them to show that their conduct was not manipulative.[72]

API and NPRA state that the Commission should clarify that scienter may not be premised on the collective knowledge of an entire company, but instead must be based on the knowledge of the person participating in the deceptive or fraudulent conduct.[73]

The ABA Derivatives Committee, CEF, MFA, API and NPRA disagree with the Commission's proposal to adopt recklessness as the scienter requirement, believing instead that the language of the statute supports a specific intent standard.[74] In the alternative, API and NPRA, CMC, Edison Electric Institute (''EEI''), MFA, and the Associations propose a standard of ''extreme recklessness.'' [75] Additionally, commenter COPE states that the Commission should make clear that the type of recklessness contemplated is not recklessness in a tort sense, but rather a business activity that diverges so greatly from rational market behavior as to indicate a fraudulent intent.[76]

The ABA Derivatives Committee requests that in cases alleging manipulation under final Rule 180.1, the Commission must show a specific intent to cause an artificial price to satisfy the scienter requirement.[77]

CEF requests that if a recklessness standard is adopted, it should not extend to violations arising under CEA section 9(a)(2).[78] In addition, CEF suggests that the Commission confirm that it will not adopt a scienter requirement ''that creates an implied presumption that sophisticated traders understand and are aware of the effects of their actions taken in the normal course of business on other commodity or securities markets.'' [79]

PMAA supports and encourages the Commission to adopt ''recklessness'' as the level of scienter, particularly when evaluating issues relating to algorithmic market manipulation.[80] According to PMAA, the Commission's adoption of a ''recklessness'' standard in CEA section 4c(a)(7) and proposed Rules 180.1 and 180.2 should impose enhanced duties of diligence on those using or employing automated trading systems.[81]

Mr. Clarence Townsend (''Townsend'') believes the standard of scienter should be strengthened to ''reckless manipulation.'' [82]

Professor Greenberger states that section 6(c)(1) lowers the standard of manipulation from ''knowingly'' to ''reckless.'' [83] Professor Greenberger states that CEA section 6(c)(1) was designed to empower the Commission with ''the same anti-manipulation standard employed by the [SEC] for more than 75 years, which has been upheld and defined in many court cases, including the Supreme Court.'' [84]

The Air Transport Association (''ATA'') believes that the scienter standard should enable the Commission to police and punish a broader array of potentially manipulative conduct than is reachable under the CEA section 9(a)(2) anti-manipulation provision.[85]

2. Commission Determination

Upon consideration of all the comments in this rulemaking record, the Commission clarifies that a showing of recklessness is, at a minimum, necessary to prove the scienter element of final Rule 180.1.[86] Consistent with long-standing precedent under the commodities and securities laws, the Commission defines recklessness as an act or omission that ''departs so far from the standards of ordinary care that it is very difficult to believe the actor was not aware of what he or she was doing.'' [87] Proof of knowledge, however, is not required.[88] Certain commenter requests for a scienter standard of ''specific intent'' would unduly limit the scope of final Rule 180.1. Likewise,

[70] API and NPRA at page 25.

[71] Platts Comment Letter at pages 4–6; Argus Comment Letter at pages 1 and 5–6.

[72] Senator Levin at page 4.

[73] API and NPRA at page 18.

[74] ABA Derivatives Committee at pages 11–13; CEF at page 5; MFA at pages 6–7; API and NPRA at pages 12–16. API and NPRA also believe that a recklessness standard may be appropriate in the highly regulated securities context with its fiduciary duties and strict disclosure requirements, but a recklessness standard in this context would increase the costs of complying with a market manipulation rule and deter market participants from disclosing relevant information that helps markets to function more efficiently.

[75] API and NPRA at page 17; CMC at page 2; EEI Comment Letter at page 4; MFA at page 6; Associations at pages 2 and 6–9.

[76] COPE at page 7.

[77] ABA Derivatives Committee at pages 11–15.

[78] CEF at page 7.

[79] CEF at page 7. Rather, CEF believes that the CFTC should evaluate alleged manipulation on a case-by-case basis, taking into consideration the facts and circumstances of each case.

[80] PMAA at page 2.

[81] PMAA at page 2.

[82] Townsend Comment Letter at page 1.

[83] Professor Greenberger at page 2.

[84] Professor Greenberger at page 2 (internal quotation marks and citation omitted). Professor Greenberger states that the Commission correctly proposes that judicial precedent interpreting and applying Exchange Act Section 10(b) and SEC Rule 10b–5 in the context of the securities markets should guide application of the scienter standard relevant to proposed Rule 180.1 given that proposed Rule 180.1 is modeled on SEC Rule 10b–5. *Id.* In Professor Greenberger's view, such judicial precedent ''will provide regulatory certainty and will not disrupt the market function.'' *Id.*

[85] ATA Comment Letter at page 4.

[86] *See, e.g., SEC* v. *U.S. Envtl., Inc.,* 155 F.3d 107, 111 (2d Cir. 1998) (finding allegation of reckless participation in a market manipulation sufficient to state a claim of violation of Exchange Act section 10(b)).

[87] *Drexel Burnham Lambert Inc.* v. *CFTC,* 850 F.2d 742, 748 (DC Cir. 1988); *see also Sundstrand Corp.* v. *Sun Chem. Corp.,* 553 F.2d 1033, 1045 (7th Cir. 1977), *cert. denied,* 434 U.S. 875 (1977) (holding that recklessness under SEC Rule 10b–5 means ''an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it'') (internal quotation marks and citation omitted); *SEC* v. *Platforms Wireless Int'l Corp.,* 617 F.3d 1072, 1093–94 (9th Cir. 2010) (''scienter [under SEC Rule 10b–5] requires either deliberate recklessness or conscious recklessness, and [ ] it includes a subjective inquiry turning on the defendant's actual state of mind'') (internal quotation marks and citations omitted).

[88] *See, e.g. Hollinger*, v. *Titan Capital Corp.*, 914 F.2d 1564, 1568–96 (9th Cir. 1990) (en banc), *cert. denied*, 111 S. Ct. 1621 (1991).

in response to comments calling for a bifurcated approach to scienter under 6(c)(1) and final Rule 180.1, that is, specific intent to effect a price or price trend that does not reflect legitimate forces of supply and demand for non-fraud based manipulations, and ''extreme recklessness'' in fraud-based manipulations, the Commission states, as it did in the NOPR, that it will be guided, but not controlled by, judicial precedent interpreting and applying scienter under Exchange Act section 10(b) and SEC Rule 10b–5.[89] At the same time, the Commission makes clear that final Rule 180.1 does not reach inadvertent mistakes or negligence. Final Rule 180.1 will not affect market participants engaged in legitimate market activity undertaken in good faith.[90] Under final Rule 180.1, the plaintiff bears the burden of proving the violation by a preponderance of the evidence.[91]

With respect to comments requesting clarification that scienter may not be premised on the collective knowledge of an entire company, the Commission notes that there is disagreement among the circuits on the collective knowledge theory—that is, the courts disagree on whether the conduct of one corporate agent can be aggregated with another corporate agent's state of mind in holding a corporation liable for fraud.[92] The judicial decisions on the applicability of the collective knowledge theory under Exchange Act section 10(b) involve only private securities litigation; the Commission is unaware of any judicial decision applying the so-called collective knowledge theory under Exchange Act section 10(b) where the government is the plaintiff. Further, the Supreme Court has not spoken to the issue under Exchange Act section 10(b) or any other similar fraud-based prohibition.

Given that the collective knowledge theory of alleging and proving scienter against corporate defendants is permissible in certain circuits, and because the Commission finds the policy rationale underlying the theory to be in the public interest (*i.e.,* that it creates incentives for the corporate entity to create and maintain effective internal communications and controls to prevent wrongful and harmful conduct), the Commission declines to adopt comments requesting that the Commission foreclose the collective knowledge theory in any case. Rather, the Commission intends to follow the law of the various circuits and, in all cases, consider the totality of the facts and circumstances of a particular case before deciding whether enforcement action is appropriate and in the public interest.

G. The Scope of the Phrase ''In Connection With''

1. Comments

In response to the NOPR, Better Markets requested the Commission interpret the ''in connection with'' language of Proposed Rule 180.1 broadly to include not only the transaction giving rise to a swap agreement, but also all of the continuing performance obligations under such agreement.[93]

CME Group states that the Commission should interpret the ''in connection with'' standard to require a ''nexus'' between transactions (or offers to transact) subject to CFTC jurisdiction and prohibited fraudulent or deceptive conduct.[94] CEF expressed concern that a broad interpretation of the phrase ''in connection with'' may result in conflicting or duplicative regulation with other agencies, including the Federal Energy Regulatory Commission (''FERC''), SEC, Federal Trade Commission (''FTC'') and the Public Utility Commission of Texas.[95]

Senator Levin believes the Commission should employ its new authority under CEA section 6(c) to prevent manipulative and disruptive activities even where the impacts may only be felt in other markets—including markets regulated by the SEC.[96] Senator Levin expresses concern that, as currently drafted, the proposed rules may not allow the CFTC to effectively regulate market activity that is intended to or actually does artificially change prices in another market or product.[97]

2. Commission Determination

Upon careful consideration of the entire rulemaking record, the Commission finds it unnecessary to alter the text of final Rule 180.1. The Commission interprets the words ''in connection with'' broadly, not technically or restrictively. Section 6(c)(1) and final Rule 180.1 reach all manipulative or deceptive conduct in connection with the purchase, sale, solicitation, execution, pendency, or termination of any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity. Accordingly, final Rule 180.1 covers conduct including, but not limited to, all of the payment and other obligations arising under a swap.

While broad, the elasticity of the ''in connection with'' language is not limitless. In this regard, the Commission finds the Supreme Court's decision in *Zandford* interpreting SEC Rule 10b–5's ''in connection with'' language particularly instructive.[98] In its opinion, the Court gave the following example to

[89] 75 FR at 67659.

[90] Consistent with the Supreme Court's interpretation of Exchange Act section 10(b) in *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 206 (1976), the Commission finds no indication in CEA section 6(c)(1) that Congress intended anyone to be made liable for a violation of final Rule 180.1 unless he or she acted other than in good faith.

[91] *See, e.g., Herman & Maclean* v. *Huddleston*, 459 U.S. 375, 387–90 (1983), *citing SEC* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344, 355 (1943).

[92] *Compare, e.g., United States* v. *Bank of New England, N.A.*, 821 F.2d 844, 856 (1st Cir. 1987) (holding in a corporate criminal liability action arising under the Currency Transaction Reporting Act, that ''[c]orporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of those components constitutes the corporation's knowledge of a particular operation * * * [and the] corporation cannot plead innocence by asserting that the information obtained by several employees was not acquired by any one individual who then would have comprehended its full import''); *City of Monroe Employees Retirement System* v. *Bridgestone Corp.*, 387 F.3d 468, 690 (6th Cir. 2004) (finding that plaintiffs adequately pleaded securities fraud claims against a corporate defendant even though the complaint failed to allege that the corporate agent whose scienter was imputed to the corporation ''played any role in drafting, reviewing, or approving'' the allegedly false representations or ''that he was, as a matter of practice, or by job description, typically involved in the creation of such documents''); *with Nordstrom Inc.* v. *Chubb & Son Inc.*, 54 F. 3d 1424, 1435 (9th Cir. 1995) (''there is no case law supporting an independent 'collective scienter' theory,'' *i.e.*, the theory ''that a corporation's scienter could be different from that of an individual director or officer''); *Southland Sec. Corp.* v. *INSpire Ins. Solutions Inc.*, 365 F.3d 353, 364–65 (5th Cir. 2004) (quoting *In re Apple Computer Inc.,* 243 F. Supp. 2d 1012, 1023 (N.D. Cal. 2002)) (''A defendant corporation is deemed to have the requisite scienter for fraud only if the individual corporate officer making the statement has the requisite level of scienter * * * at the time he or she makes the statement' * * * [T]he required state of mind must actually exist in the individual making the misrepresentation and may not simply be imputed to that individual on general principles of agency''), *cited with approval in Makor Issues & Rights, Ltd.* v. *Tellabs Inc.*, 513 F.3d 702, 708 (7th Cir. 2008); *United States* v. *Sci. Applications Int'l Corp.*, 626 F.3d 1257, 1274–75 (DC Cir. 2010) (holding a ''collective knowledge'' jury instruction inconsistent with the scienter requirement under the False Claims Act and expressing doubt, in *dicta*, regarding the use of ''collective knowledge'' to establish corporate scienter in non-FCA cases).

[93] Better Markets at page 2. Better Markets notes that the SEC employed the language in connection with the ''offer, purchase or sale'' of any security-based swap, and also targeted a specific characteristic of swaps—the ongoing payments or deliveries between the parties throughout the life of the security-based swap in accordance with their rights and obligations.

[94] CME Group at pages 9–10.

[95] CEF at pages 3–4.

[96] Senator Levin at pages 5–6.

[97] Senator Levin at pages 5–6.

[98] *SEC* v. *Zandford*, 535 U.S. 813 (2002).

highlight the limits of SEC Rule 10b–5 applicability:

> If * * * a broker embezzles cash from a client's account or takes advantage of the fiduciary relationship to induce his client into a fraudulent real estate transaction, then the fraud would not include the requisite connection to a purchase or sale of securities. Likewise if the broker told his client he was stealing the client's assets, that breach of fiduciary duty might be in connection with a sale of securities, but it would not involve a deceptive device or fraud.[99]

The Commission intends to be guided by this and other precedent interpreting the words ''in connection with'' in the securities context.[100]

As to comments regarding cross-market manipulation, the Commission intends to apply final Rule 180.1 to the fullest extent allowed by law when determining whether conduct in one market is ''in connection with'' an activity or product subject to the jurisdiction of the Commission. Further, where the Commission's jurisdiction is not exclusive,[101] the Commission will, to the extent practicable and consistent with its longstanding practice, coordinate its enforcement efforts with other federal or state law enforcement authorities.

H. Penalty, Procedure, Effect on Automated Trading Systems, and a Proposal To Define Manipulation

1. Comments

With regard to the penalty for violating final Rule 180.1, API and NPRA state that if the Commission chooses to promulgate a catch-all anti-fraud rule without regard to whether the conduct had a manipulative purpose or effect (a proposal that API and NPRA submit would exceed the Commission's authority), then the Commission should clarify that the enhanced sanctions in section 753 of the Dodd-Frank Act apply only to cases of manipulation or attempted manipulation, and not to every alleged violation of the rule.[102] CEF seeks clarification that, in a case of a false reporting violation under CEA section 6(c)(1)(A), the Commission is not permitted to impose a penalty of an amount equal to the greater of $1 million or treble damages pursuant to CEA section 6(c)(10)(C)(ii).[103]

On the subject of implementation, API and NPRA ask that any final rule adopt a 180-day effective date to enable the industry to design and implement comprehensive compliance programs.[104] EEI and CEF recommend that the CFTC implement its new authority in a cooperative manner with FERC and further recommend that it hold a workshop, before the final Rule is issued, on a variety of subjects related to interpretation and application of the final Rule.[105] Professor Greenberger believes that the Commission correctly states in the NOPR that market participants should already have constructed and implemented procedures to guard against their employees' and agents' attempts at manipulation. As such, Professor Greenberger believes that there should not be any additional cost to the existing market participants.[106]

On the issue of use or employment of algorithmic or automated trading systems, the PMAA requests that the Commission establish standards governing the use of algorithmic trading technology by requiring internal controls such as logs and specific notification protocols, directed to the trading entity, when significant code modification of its algorithm takes place, including interpretation by the algorithm of digitized news and social networking sources.[107]

Finally, the Brattle Group economists state that the Commission should adopt its proposed definition of manipulation: ''Manipulation is engaging in anomalous price-making behavior intended to alter a price in order to profit in affected price-taking transactions.'' [108] The Brattle Group economists contend that manipulation thus defined can be interpreted as a form of fraud whereby anomalous behavior (non-economic, stand-alone transactions for the actor) injects false or misleading information into a market and consequently impairs its integrity.[109]

2. Commission Determination

With respect to penalties, the Commission will follow CEA section 6(c)(10)(C)(ii), which states that the Commission may assess ''in any case of manipulation or attempted manipulation in violation of [CEA section 6(c)] or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—(I) $1,000,000; or (II) triple the monetary gain to the person for each such violation.'' CEF's request that the penalties for manipulation not apply to violations of CEA section 6(c)(1)(A) is declined because such an outcome would conflict with the plain language of the statute. False or misleading or inaccurate reporting is a type of unlawful manipulation specifically prohibited by CEA section 6(c)(1)(A). Accordingly, where section 6(c)(1)(A) applies, the Commission may assess a penalty of an amount equal to the greater of $1 million or treble damages under CEA section 6(c)(10)(C)(ii) for each such violation.

The Commission declines to adopt comments recommending that it conduct further technical conferences on this rulemaking. The Commission has provided notice and opportunity to comment and has met with numerous groups to discuss this rulemaking.[110] Further, as noted above, there is extensive case law interpreting SEC Rule 10b–5 upon which final Rule 180.1 is modeled.[111]

The Commission declines to adopt comments requesting heightened supervision of algorithmic and automated trading systems as beyond the scope of this rulemaking. Nevertheless, as a general matter, a supervisory failure may be one of the facts and circumstances that the Commission considers in determining whether a violation of the final Rule exists.

The Commission declines to adopt comments proposing a new economics-based definition of manipulation. Instead, as stated above, all relevant

[99] *Id.* at 825 n. 4. The holding of *Zandford* is consistent with judicial interpretations of the phrase ''in or in connection with'' in the anti-fraud provisions of the CEA, particularly section 4b(a), which prohibits any person from defrauding another person ''in or in connection with'' a commodity futures transaction. For example, in *R & W Tech. Servs. Ltd.*, v. *CFTC*, 205 F.3d 165 (5th Cir. 2000), *cert. denied,* 531 U.S. 817 (2000), the Fifth Circuit, in affirming the liability of a defendant for defrauding another person, refused to construe ''in or in connection with'' and 4b(a) narrowly. *Id.* at 171–74. Rather, the court endorsed the Commission's position that fraud in the sale of investment advice will be ''in connection with'' the sale of a commodities futures contract ''if the fraud relates to'' the risk of trading and the primary purpose of the advice is to execute trades. *Id.* at 172–73. As a general matter, the Supreme Court has stated that anti-fraud and anti-manipulation provisions of the CEA are to be construed broadly. *See, e.g., CFTC* v. *Schor,* 478 U.S. 833, 836 (1986) (''The CEA broadly prohibits fraudulent and manipulative conduct in connection with commodity futures transactions.'').

[100] *Zandford,* 535 U.S. 813 (2002); *see also Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Dabit,* 547 U.S. 71, 85 (2006) (holding that the ''in connection with'' language of SEC Rule 10b–5 requires a nexus between fraudulent conduct and a securities transaction).

[101] 7 U.S.C. 2(a)(1)(A).

[102] API and NPRA at pages 10–11.

[103] CEF at page 8.

[104] API and NPRA at page 27.

[105] EEI at pages 2–4; CEF at pages 4–5.

[106] Greenberger at page 4.

[107] PMAA at pages 1–2.

[108] Brattle Group economists Comment Letter at page 6.

[109] Brattle Group economists at pages 6–7.

[110] A list of all external meetings held on Dodd-Frank Act section 753 is available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

[111] Similarly, the Commission has ample experience enforcing the predecessor provisions of final Rule 180.2.

facts and circumstances must be considered in determining whether a violation of final Rule 180.1 exists.

V. Discussion of CEA Section 6(c)(3) and Final Rule 180.2

The Commission proposed Rule 180.2 under its general rulemaking authority, CEA section 8a(5) and its statutory authority to prohibit manipulation under new CEA section 6(c)(3). Proposed Rule 180.2 mirrors the text of new CEA section 6(c)(3), by stating that ''[i]t shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.'' In the NOPR, the Commission proposed to continue ''interpreting the prohibition on price manipulation and attempted price manipulation to encompass every effort to improperly influence the price of a swap, commodity, or commodity futures contract.'' [112]

A. Comments

The CME Group believes that the Commission should employ a bright-line test under final Rule 180.2 that distinguishes prohibited manipulative conduct from legitimate competitive trading activities. To that end, CME Group urges the Commission to clarify what factors or types of activity the Commission considers to be ''intended to interfere with the legitimate forces of supply and demand.'' [113] The CME Group believes the Commission's statement in the NOPR that ''an illegal effect on price can often be conclusively presumed from the nature of the conduct in question and other factual circumstances not requiring expert economic analysis'' [114] is tantamount to a ''we-know-it-when-we-see-it-approach'' that impermissibly collapses the third and fourth elements of the traditional framework for manipulation outlined in Cox.[115]

COPE and EEI believe that the provisions in proposed Rule 180.1 are the same as proposed Rule 180.2 and thus the latter should be deleted.[116] EEI recommends that if the Commission chooses not to delete proposed Rule 180.2, it should carve this section out of the current rulemaking initiative and issue a separate and more detailed NOPR for public comment.[117]

EEI requests that the Commission affirm in regulatory text that the scienter requirement for proposed Rule 180.2 is specific intent under the Commission's four-prong test.[118] This four-part test is described in subsection B below. Likewise, the Associations believe that the Commission should not use CEA section 6(c)(3) as a mechanism to lower the specific intent standard traditionally required in manipulation cases. Instead, the Commission should issue clarifying guidance that conforms to the traditional framework of enforcement, including the theory of liability set forth in the *Di Placido* matter.[119]

With respect to the scope of application of proposed Rule 180.2, CMC recommends the Commission clarify that CEA section 6(c)(3) does not confer any additional enforcement authority beyond the holding in the *Di Placido* matter.[120]

CMC and MFA recommend that the Commission make clear that proposed Rule 180.2 does not create a presumption that a price is artificial merely because one or more isolated transactions are deemed uneconomic without proof of a specific intent to move prices.[121] The Associations and MFA believe that the Commission's statement in the NOPR ''that prices [are] affected by a factor not consistent with normal forces of supply and demand will often follow inescapably from proof of the actions of the alleged manipulator'' is an overly aggressive reading of judicial precedent like *Di Placido.* [122] MFA believes that the Commission should not create a ''conclusive presumption'' that a price is artificial without proof of specific intent to move prices.[123]

Professor Greenberger states that although the Commission has already interpreted the ''prohibition on price manipulation and attempted price manipulation to encompass every effort to influence the price of a swap, commodity, or commodity futures contract that is intended to interfere with the legitimate forces of supply and demand in the marketplace,'' it is important to reaffirm the relevance of that legal interpretation.[124] Professor Greenberger believes that Commission precedent supports the position that illegal effect on price can often be conclusively presumed from the nature of the conduct in question and other factual circumstances not requiring expert economic analysis.[125]

ATA believes that the Commission should consider whether its complete reliance on past precedent in interpreting manipulation under proposed Rule 180.2 needlessly narrows the potential reach of the amended anti-manipulation provision of section 6(c)(3), anchoring its interpretation to a past standard that has proven remarkably difficult to enforce.[126] ATA notes that section 6(c)(3) as amended is broader than both its prior version and section 9(a)(2) by its inclusion of the word ''indirectly,'' making it unlawful to indirectly manipulate or attempt to manipulate prices.[127]

B. Commission Determination

In response to the comments received regarding this matter, the Commission reiterates that, in applying final Rule 180.2, it will be guided by the traditional four-part test for manipulation that has developed in case law arising under 6(c) and 9(a)(2): (1) That the accused had the ability to influence market prices; (2) that the accused specifically intended to create or effect a price or price trend that does not reflect legitimate forces of supply and demand; [128] (3) that artificial prices existed; and (4) that the accused caused the artificial prices.[129]

The Commission reaffirms the requirement under final Rule 180.2 that a person must act with the requisite specific intent. In other words, recklessness will not suffice under final Rule 180.2 as it will under final Rule 180.1. The Commission finds this level of intent necessary to ensure that legitimate conduct is not captured by final Rule 180.2, which covers non-fraud based manipulation. Given the

[112] 75 FR at 67658.

[113] CME Group at page 11. CME Group states that the Commission also should clarify how to determine whether a price has been affected by illegitimate factors. CME Group at pages 11–12.

[114] 75 FR at 67660–61.

[115] *In the Matter of Cox,* [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 23,786 at 34,060–61 (CFTC July 15, 1987).

[116] COPE at pages 6–7; EEI at page 6.

[117] EEI at page 6.

[118] EEI at page 7.

[119] Associations at page 10 referring to *In re Di Placido,* 2008 WL 4831204 (CFTC 2008), *affd in pertinent part, Di Placido* v. *CFTC,* 364 Fed Appx. 657, 2009 WL 3326624 (2d Cir. 2009), *cert. denied,* 130 S. Ct. 1883 (Mar. 22, 2010).

[120] CMC at pages 2–3.

[121] CMC at pages 2–3; MFA at pages 7–8.

[122] Associations at page 11; MFA at pages 7–8.

[123] MFA at pages 7–8.

[124] Professor Greenberger at page 4.

[125] Professor Greenberger at page 4.

[126] ATA at page 1.

[127] ATA at page 4.

[128] *In re Indiana Farm Bureau Cooperative Assn., Inc.,* [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 (CFTC Dec. 17, 1982), *citing Volkart Bros., Inc.* v. *Freeman,* 311 F.2d 52 (5th Cir. 1962); *In re Hohenberg Bros. Co.,* [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271 (CFTC Feb. 18, 1977).

[129] *In re Cox* [1986–1987 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 23,786, 1987 CFTC LEXIS 325, at *9, 1987 WL 106879, at *3 (CFTC July 15, 1987). In cases of attempted manipulation under section 9(a)(2), the CFTC is required to show: (1) An intent to affect the market price; and (2) some overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.,* ¶ 20,271 at 21,477.

differences in scope of application between the final Rules, the Commission declines requests to consolidate them.

The Commission declines requests to limit the application of final Rule 180.2 to the circumstances set forth in the commenters' analysis of particular cases, including the *Di Placido* matter. Likewise, the Commission's statement in the NOPR that an artificial price may be ''conclusively presumed'' under certain facts and circumstances does not mean that an artificial price may be conclusively presumed in *all* cases. For example, where, as in *Di Placido,* a trader violates bids and offers in order to influence the volume-weighted average settlement price, an artificial price will be a ''reasonably probable consequence'' of the trader's intentional misconduct. Moreover, the Commission in the proposed Rule did not say that an artificial price will be conclusively presumed in the absence of any evidence, only that ''extensive economic analysis *may* not be necessary'' to prove that an artificial price existed.[130] To be clear, in some cases the conclusion that prices were affected by a factor not consistent with normal forces of supply and demand will require economic analysis, but in other cases, such a showing may, as the Commission stated in the proposed Rule, ''follow inescapably from proof of the actions of the alleged manipulator.'' [131] This is unsurprising given the fact and circumstance specific nature of manipulation cases. Accordingly, the Commission is not, as some commenters state, collapsing the third and fourth elements of the traditional four-part test for manipulation under section 6(c)(3) and final Rule 180.2.

The Commission interprets the terms ''directly or indirectly'' as describing the level of involvement necessary to establish a violation of final Rule 180.2. In this context, the Commission interprets ''indirectly'' to include the circumstance where a person uses a third party (*e.g.,* an executing broker) to execute trades designed to manipulate, so it will be no defense that the person did not himself execute the transaction.

Notwithstanding the fact that final Rule 180.2 mirrors the text of CEA section 6(c)(3), the Commission deems it appropriate and in the public interest to promulgate this rule and, in so doing, provide the above clarifications to the manner in which the Commission interprets and intends to apply final Rule 180.2.

[130] 75 FR at 67660 (emphasis added).

[131] 75 FR at 67660.

V. Administrative Compliance and Cost-Benefit Considerations

CEA section 15(a) [132] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. By its terms, CEA section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the regulation outweigh its costs; rather, it requires the Commission to ''consider'' the costs and benefits of its actions. CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

In the NOPR, the Commission stated that the proposed rules would enhance the authority of the Commission to ensure fair and equitable markets, and that market participants and the public will substantially benefit from such enhanced prevention and deterrence of manipulation. With respect to costs, the Commission also stated that participants in the markets should already have policies and procedures in place to ensure that their employees, affiliates and agents will refrain from attempting to manipulate the markets. The Commission invited public comment on its cost-benefit considerations.[133] Below, we summarize and respond to those comments.[134] Both in the response to comments and in the preamble, we address the areas of market and public concern for consideration of costs and benefits under CEA section 15(a).

API and NPRA commented that the potentially significant compliance costs and legal uncertainty must be weighed against the limited benefits of the proposed rules. Specifically, API and NPRA believe that it is problematic to expand the scope of the Commission's enforcement authority to cover routine cash market transactions in all areas of the economy, as it would potentially create inconsistencies with existing statutory and common law standards and would place a tremendous burden on the Commission's resources.[135] Further, API and NPRA comment that the risk of inconsistent standards with federal and state enforcement authorities may exacerbate market participants' regulatory and compliance risk and burden.[136] API and NPRA also believe that a recklessness standard under Section 753 would increase the costs of complying with a market manipulation rule and deter market participants from engaging in legitimate business activities and disclosing relevant information that helps markets to function more efficiently as price discovery venues.[137] API and NPRA contend that where market participants seek to comply with an omissions rule by disclosing more information, companies will have an incentive to exercise great caution to ensure that no affirmative statement may be subjectively considered misleading through any omission.[138]

MFA is concerned that ambiguity with respect to legal standards would increase transaction costs and chill legitimate trading practices, in turn decreasing market depth and liquidity.[139] The Associations state that no new duties of disclosure, inquiry, or diligence should be imposed between two sophisticated parties to a bilateral transaction. Any such new duties may discourage legitimate trading activities, increase transaction costs, and, as a result, reduce liquidity and market depth.[140] CME and Argus make similar comments as to the potential effects on markets as a whole, but do not express their concerns in terms of costs. The CME comments that the Commission must provide greater clarity as to the scope of prohibited conduct to maintain and promote fair and efficient markets and to protect market liquidity, price discovery, and the risk management functions of futures markets.[141] Argus states that absent clarification from the Commission, the proposed rules may unnecessarily chill the voluntary submission of transaction related data by market participants to compilers of price indices which, in turn, hinders the Dodd-Frank Act's goal of market transparency.[142] CEF comments that

[132] 7 U.S.C. 19(a).

[133] 75 FR at 67661.

[134] *See* note 2 for access to public comment file.

[135] API and NPRA at pages 4 and 8.

[136] API and NPRA at page 8.

[137] API and NPRA at pages 12–17.

[138] API and NPRA at page 22.

[139] MFA at pages 3–4.

[140] Associations at pages 1 and 4.

[141] CME at page 3.

[142] Argus at page 1.

market participants will face substantially more uncertainty with respect to their activities in energy markets and significant costs in attempting to comply with multiple regulatory regimes, thereby likely reducing participation in energy markets.[143] CEF also comments that jurisdictional overlap of agencies will result in increased litigation costs, depletion of scarce resources, and uncertainty for both the Commission and market participants.[144] CEF states the false reporting provision will place a heavy burden on all market participants as they attempt to comply with the new reporting requirements proposed by the Commission pursuant to the Act.[145]

In contrast, Barnard believes the implementation costs of the proposed rules should be minimal.[146] Professor Greenberger believes that the Commission correctly states that market participants should already have constructed and implemented procedures to guard against their employees' and agents' attempts at market manipulation. As such, Professor Greenberger believes that there should not be any additional costs to existing market participants.[147]

The Commission has carefully considered the concerns expressed by some of the commenters that the final Rules could substantially increase costs on market participants, reduce market liquidity or chill legitimate market activity. However, commenters provide no quantification of the potential costs or reliable data as a basis for conclusions that substantial costs will be incurred as a result of the final Rules. Furthermore, commenters have not shown how such rules have negatively impacted comparable markets that trade comparable instruments and operate under comparable anti-manipulation rules.

Specifically, regarding the comments received by API, NPRA, MFA, CME, Argus, and the Associations as to how the new rules may directly increase transaction costs, reduce market liquidity and depth, and hinder risk management functions of markets subject to the Commission's jurisdiction, the Commission notes that final Rule 180.1 is modeled on SEC Rule 10b–5. Many derivatives products in securities markets are traded on national securities exchanges under SEC regulation (*e.g.,* equity options, stock index options, and stock index exchange-traded funds (''ETFs'')) and are therefore subject to the SEC anti-manipulation rule.

Many of these SEC-regulated derivatives products exhibit high and growing volumes, narrow bid-ask spreads, and high levels of market depth. SEC-regulated stock index ETFs and stock-index options are economically similar to CFTC-regulated stock index futures and options on those futures and, like these CFTC-regulated derivatives, serve primarily as risk-shifting instruments rather than instruments for capital formation. Any argument that the SEC's anti-fraud and anti-manipulation regime has negatively affected the growth of SEC-regulated derivatives lacks a basis in fact and contradicts the generally accepted purpose of the SEC's anti-fraud and anti-manipulation rules, which is to protect investors and to promote market integrity.[148] Moreover, the FERC also promulgated a rule modeled on SEC Rule 10b–5 for FERC-jurisdictional markets in natural gas and electricity following the enactment of the Energy Policy Act of 2005. The FTC promulgated a comparable prohibition for petroleum markets. In the absence of any facts that anti-fraud and anti-manipulation rules negatively affect markets, the Commission does not find such assertions persuasive.

As to the concerns of API and NPRA regarding increased costs from the Commission's purported expansion of its authority to cover a plethora of routine cash market transactions in all areas of the economy, with respect to the scope of final Rule 180.1, as discussed above, the Commission intends to exercise its authority under 6(c)(1) to cover transactions related to the futures or swaps markets, or prices of commodities in interstate commerce, or where the fraud or manipulation has the potential to affect cash commodities, futures, or swaps markets or participants in these markets. Thus, concerns about purported increased costs are misplaced in that they rest on an incorrect assumption about the scope of the Commission's expanded authority.

In response to comments from CEF, the Commission re-iterates that the final Rules do not contain any requirement to create, retain, submit, or disclose any information. The final Rules impose no recordkeeping or related data retention or disclosure requirements on any person, including small businesses. Given that the final Rules impose no affirmative duties, it is unlikely that the final Rules will impose any additional ongoing costs beyond the existing costs associated with ensuring that behavior and statements are not fraudulent or manipulative. In that regard, the Commission believes that it will not be necessary for firms that currently have adequate compliance programs to hire additional staff or significantly upgrade their systems to comply with the new Rules. Firms may incur some one-time costs such as costs associated with training traders and staff in the new Rules.

The Commission believes the comments from API, NPRA, and CEF regarding increased costs pertaining to compliance, litigation, and uncertainty with respect to inconsistent standards with other regulatory agencies are misplaced. To the contrary, the Commission believes that market participants and the public will benefit from enhanced regulatory certainty that will arise from the Commission's adoption of an anti-manipulation rule that is more harmonized with existing anti-manipulation rules of the SEC, FERC, and FTC.

In the NOPR, the Commission stated, and re-iterates here, that with respect to benefits, the proposed rules would enhance the authority of the Commission to ensure fair and equitable markets. The Commission stated, *inter alia,* that market participants and the public will benefit substantially from enhanced prevention and deterrence of manipulation. In light of public considerations under CEA section 15(a) in promulgating this rule, the Commission concludes that market participants and the public will benefit substantially from increased protection through the prevention and deterrence of fraud and manipulation. The final Rules will help ensure the efficiency, competitiveness, and financial integrity of derivatives markets. Markets free from fraud and manipulation function better as venues for price discovery and risk management.

A. Paperwork Reduction Act

As discussed above, the provisions of Commission Regulations Part 180 would not result in new recordkeeping

[143] CEF at pages 2–3.

[144] CEF at page 4.

[145] CEF at page 7.

[146] Barnard at page 2.

[147] Professor Greenberger at page 4.

[148] *See, e.g., Chemical Bank* v. *Arthur Andersen & Co.,* 726 F.2d 930, 943 (2d Cir. 1984) (''The purpose of § 10(b) and Rule 10b–5 is to protect persons who are deceived in securities transactions—to make sure that buyers of securities get what they think they are getting * * *.'') (Friendly, J.); *Laird* v. *Integrated Res.,* 897 F.2d 826, 831 at n.10 (5th Cir. 1990), *quoting* 3 Fletcher Cyclopedia of Corporations, section 900.3 (perm. ed. 1986) (''The general purpose and intent of the broad anti-fraud provisions of Section 10(b) and Rule 10b–5 is to protect investors, to prevent inequitable and unfair practices and to insure fairness in securities transactions generally * * *'').

requirements within the meaning of the Paperwork Reduction Act of 1995.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [149] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting such impact.[150] The final Rules will not have a significant economic impact on a substantial number of small entities. As explained above, legitimate market participants should already have procedures in place to prevent their employees and agents from manipulating the markets. The Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the final Rules will not have a significant impact on a substantial number of small entities.

C. Effective Date

API and NPRA ask the Commission to adopt a 180-day delay in the effective date of the final Rules to enable the industry to design and implement comprehensive compliance programs.[151] The Commission declines this request. A 180-day delayed effective date would unduly limit the Agency's responsibility to protect market participants and promote the integrity of the markets. Rather, consistent with Dodd-Frank Act section 753(d) and Administrative Procedure Act section 553(d), 5 U.S.C. 553(d), the final Rules will take effect 30 days after they are published in the **Federal Register.**

List of Subjects in 17 CFR Part 180

Commodity futures.

Authority and Issuance

For the reasons stated in the preamble, the Commodity Futures Trading Commission adds a new 17 CFR Part 180 as set forth below:

PART 180—PROHIBITION AGAINST MANIPULATION

Sec.

180.1 Prohibition on the employment, or attempted employment, of manipulative and deceptive devices.
180.2 Prohibition on price manipulation.

Authority: 7 U.S.C. 6c(a), 9, 12(a)(5) and 15, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010); 5 U.S.C. 552 and 552(b), unless otherwise noted.

[149] 5 U.S.C. 601.

[150] *Id.*

[151] API and NPRA at page 27.

§ 180.1 Prohibition on the employment, or attempted employment, of manipulative and deceptive devices.

(a) It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

(1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;

(2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;

(3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; or,

(4) Deliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate. Notwithstanding the foregoing, no violation of this subsection shall exist where the person mistakenly transmits, in good faith, false or misleading or inaccurate information to a price reporting service.

(b) Nothing in this section shall be construed to require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(c) Nothing in this section shall affect, or be construed to affect, the applicability of Commodity Exchange Act section 9(a)(2).

§ 180.2 Prohibition on price manipulation.

It shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

Issued in Washington, DC, on July 7, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices; Prohibition on Price Manipulation—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O'Malia and Chilton voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to enhance the Commission's ability to protect against manipulation. Effective regulation requires an effective enforcement program. The Dodd-Frank Act enhances the Commission's enforcement authorities in the futures markets and expands them to the swaps markets. This rule implements new Dodd-Frank authorities to police against fraud and fraud-based manipulative schemes, based upon similar authority that the Securities and Exchange Commission, Federal Energy Regulatory Commission and Federal Trade Commission have for securities and certain energy commodities.

In the past, the CFTC had the ability to prosecute manipulation, but to prevail, it had to prove the specific intent of the accused to create an artificial price. Under the new law and one of the rules before us today, the Commission's anti-manipulation reach is extended to prohibit the reckless use of fraud-based manipulative schemes. This closes a significant gap, as it will broaden the types of cases we can pursue and improve the chances of prevailing over wrongdoers.

The rule also implements the Dodd-Frank Act's price-based manipulation authority to police against corners and squeezes. These new authorities expand the CFTC's arsenal of enforcement tools and strengthen the Commission's ability to effectively deal with threats to market integrity. We will use these tools to be a more effective cop on the beat, to promote market integrity and to protect market participants.

I thank Senator Maria Cantwell for her work to secure this important authority for the CFTC. As Senator Cantwell explained in proposing that this authority be included in the Commodity Exchange Act, ''It is a strong and clear legal standard that allows regulators to successfully go after reckless and manipulative behavior.''

Attachment A

Parties filing comments:

Air Transport Association (ATA)

American Bar Association, Derivatives and Futures Law Committee, Business Law Section (ABA Derivatives Committee)
American Petroleum Institute (API) and National Petrochemical and Refiners Association (NPRA)
Argus Media, Inc. (Argus)
Barnard, Chris (Barnard)
Better Markets
Brattle Group Economists (Brattle Group)
Carini, Peter*
CME Group, Inc. (CME Group)
Coalition of Physical Energy Companies (COPE)
Commodity Markets Council (CMC)
Council of Institutional Investors (Council)
Edison Electric Institute (EEI)
Freddie Mac
Futures Industry Association, International Swaps and Derivatives Association, Inc. (ISDA) and Securities Industry and Financial Markets Association (SIFMA) (together, the Associations)
Managed Funds Association (MFA)
Pen Fern Oil Co., Inc.*
Petroleum Marketers Association of America (PMAA)
Platts
Scullin Oil Co.*
Townsend, Clarence (Townsend)
U.S. Senator Carl Levin (Senator Levin)
University of Maryland School of Law, Professor Michael Greenberger (Professor Greenberger)
Weir, Bix
West Virginia Oil Marketers & Grocers Association (OMEGA)*
Working Group of Commercial Energy Firms (CEF)
Zwack, Joseph

* Denotes commenters filing identical comments which were consolidated.

[FR Doc. 2011–17549 Filed 7–13–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–117–FOR; OSM–2011–0006]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim rule; effective date.

SUMMARY: On June 29, 2011, OSM published an interim rule approving a program amendment submitted by the West Virginia Department of Environmental Protection (WVDEP). The interim rule provided an opportunity for public comment and gave the comment due date and tentative hearing date. The summary and preamble to the interim rule specified that it was effective upon publication; however, the **DATES** section of the rule failed to list an effective date. This final rule corrects that omission by providing an effective date.

DATES: The interim final rule published at 76 FR 37996 is effective July 14, 2011.

ADDRESSES: You may submit comments on the interim rule WV–117–FOR (76 FR 37996; June 29, 2011) by any of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The rule has been assigned Docket ID OSM–2011–0006. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, *Telephone:* (304) 347–7158. *E-mail: chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION: On June 29, 2011, we published an interim rule with request for comments at 76 FR 37996. The interim rule announced receipt of a proposed amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. On May 2, 2011, the WVDEP submitted a program amendment to OSM that included both statutory and regulatory revisions. West Virginia submitted proposed permit fee revisions to the Code of West Virginia as authorized by House Bill 2955 that passed during the State's regular 2011 legislative session. In addition, West Virginia amended its Code of State Regulations (CSR) to provide for the establishment of a minimum incremental bonding rate as authorized by Senate Bill 121. The changes, due to the passage of House Bill 2995, will increase the filing fee for the State's surface mining permit to $3,500 and establish various fees for other permitting actions. Senate Bill 121 authorizes regulatory revisions which includes, among other things, the establishment of a minimum incremental bonding rate of $10,000 per increment at CSR 38–2–11.4.a.2. Because the West Virginia revisions have an effective date of June 16, 2011, we approved the permit fees and the minimum incremental bonding rate on an interim basis. Our regulations at 30 CFR 732.17(h)(12) state that ''[a]ll decisions approving or not approving program amendments must be published in the **Federal Register** and will be effective upon publication unless the notice specifies a different effective date.'' Because our approval was published on June 29, 2011, and the notice did not specify a different effective date, for purposes of the West Virginia Regulatory Program, we consider the State's provisions approved effective June 29, 2011. Please see the **Federal Register** document published at 76 FR 37996 on June 29, 2011, for more details.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 5, 2011.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. 2011–17336 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 111

Group E Post Office Box Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service™ is revising the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 508.4.6 to clarify eligibility, simplify the standards, and facilitate uniform administration for Group E (free) Post Office™ (PO) box service.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Laurence Welling at 202–268–7792, Ken Hollies at 202–268–3083, or Richard Daigle at 202–268–6392.

SUPPLEMENTARY INFORMATION: On November 24, 2010, the Postal Service published a **Federal Register** proposed rule (75 FR 71642–71643) to clarify eligibility, simplify the standards, and facilitate uniform administration for Group E (free) PO Box™ service. The Postal Service received several comments in response to this proposed rule that are summarized later in this notice.

Group E PO Box service is provided free, with restrictions, to customers whose physical addresses are not eligible for *any* form of USPS carrier delivery service. This service is consistent with the USPS responsibility to provide universal mail delivery. This final rule simplifies and clarifies some of the language related to administering Group E PO Box service.

For this final rule, the Postal Service removes the descriptive term, ''business

location'', in favor of the general term ''physical address''. The latter describes residential locations as well as business locations and no distinction between the two terms was intended.

USPS further deletes the reference to ''out-of-bounds delivery receptacles'' in favor of language recognizing that Group E PO Box service is not available when a physical address receives *any* form of USPS carrier delivery. Confusion over the intent of the meaning of ''out-of-bounds'' obscured the larger context wherein Group E service should never supplement a physical location's carrier delivery service. Clarifying the intent and eliminating this confusion may cause existing Group E customers to lose Group E eligibility for their physical addresses, while others whose physical locations the USPS chooses not to provide carrier service to may become eligible for Group E service.

The Postal Service also revises the DMM to acknowledge carrier delivery service that, once established to a particular physical address, eliminates Group E eligibility. Improved language in this section illustrates situations where no eligibility for Group E arises either because carrier delivery is available or because action (or inaction) by third parties precludes USPS from extending carrier delivery.

Comments Received

Three comments were received regarding the proposed rule, addressing multiple issues.

One commenter expressed concerns about the vagueness of terminology in the proposal, for determining how close a ''physical address'' and delivery receptacle must be. In response, the Postal Service intends to add a sentence to clarify that ''at or near a physical address'' should be determined by how carrier delivery is already established in a particular locale or ZIP Code™.

Two separate comments expressed concern that local offices might misuse ''unsafe conditions'' and ''or other conditions'' to deny Group E eligibility. One of the commenters also expressed concern about the impact of local discretion on decisions. In response to these concerns, it is the Postal Service opinion that neither commenter was aware that the examples currently listed in the DMM reflect restrictions that are out of Postal Service control and are not all inclusive. Recognizing this lack of clarity, this final rule attempts to provide a better explanation.

With respect to ''unsafe conditions'', local Postmasters are best able to determine when mailbox placement might be unsafe for postal employees to attempt delivery or for customers to retrieve mail. Such decisions are made routinely by Postmasters while conforming with local practice, driving conditions, driver expectations, *etc.* Further, postmasters already make such decisions in contexts unrelated to Group E eligibility. Postmasters who determine that a proposed mailbox location is unsafe typically work with customers to find a solution that allows safe delivery.

One commenter expressed concern about the potential misuse of ''or other conditions'' is now addressed by the Postal Service as: (1) Clarifying that the examples contained in the current DMM consist of conditions outside the control of the Postal Service and, (2) by introducing the examples using ''such as'' so that it is understood that they are not all inclusive. By using these explanations, the ''or other conditions'' text is deleted from the final rule.

The foundation of Group E PO Box eligibility is a discretionary Postal Service decision not to extend carrier delivery to a specific carrier delivery point (*e.g.,* a house). When conditions prevent carrier delivery, where it would otherwise be operationally feasible, Group E eligibility is not an option. The DMM will continue to identify examples of conditions, including ''unsafe conditions'' that preclude the Postal Service from deciding whether or not to extend carrier delivery.

The same commenter expressed concern about the fair administration of Group E eligibility. The Postal Service agrees about the importance of Group E in the context of its universal service obligation and at the time of implementation, the Postal Service identified Group E service as one tool for offering universal service under an overarching policy of providing one free form of delivery to each customer.

The Postal Service adopts the following changes to the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

508 Recipient Services

* * * * *

4.0 Post Office Box Service

* * * * *

4.6 Fee Group Assignments

* * * * *

[Revise the title, introductory text and items 4.6.2a, b and c, and eliminate item d in its entirety as follows:]

4.6.2 Free PO Box Service (Group E)

Customers may qualify for Group E (free) PO Box service at a Post Office if their physical address location meets all of the following criteria:

a. The physical address is within the geographic delivery ZIP Code boundaries administered by a Post Office.

b. The physical address constitutes a potential carrier delivery point of service.

c. USPS does not provide carrier delivery to a mail receptacle at or near a physical address for reasons in 4.6.3b. ''At or near a physical address'' is defined by reference to how carrier delivery is already established in a particular locale or ZIP Code.

[Revise the title and introductory text of 4.6.3 and add new items a through d as follows:]

4.6.3 Additional Standards for Free PO Box Service

Only one Group E (free) PO Box may be obtained for each potential carrier delivery point of service, under the following conditions:

a. Group E PO Box customers are assigned the smallest available box that reasonably accommodates their daily mail volume.

b. Eligibility for Group E PO Boxes does not extend to:

1. Individual tenants, contractors, employees, or other individuals receiving or eligible to receive single-point delivery to a location such as a hotel, college, military installation, campground, or transient trailer park.

2. Locations served, or eligible to be served, by centralized delivery or grouped receptacles such as cluster box

units, apartment style receptacles, mailrooms, or clusters of roadside receptacles.

3. Locations where circumstances not within the control of the Postal Service prevent extension of carrier delivery, such as town ordinances, private roads, gated communities, unimproved or poorly maintained roadways, or unsafe conditions.

4. Locations served by a delivery receptacle that a customer chooses to locate along a carrier's line of travel and to which the Postal Service makes delivery.

c. A customer must pay the applicable fee for each PO Box requested in addition to the initial free Group E PO Box.

d. The online application tools described in 4.3.1b cannot be used for free PO Box service.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–17389 Filed 7–13–11; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending 39 CFR part 241 to improve the administration of the Post Office closing and consolidation process. In addition, certain procedures employed for the discontinuance of Post Offices are applied to the discontinuance of other types of retail facilities operated by Postal Service employees.

DATES: *Effective date:* July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268–6799.

SUPPLEMENTARY INFORMATION:

On March 31, 2011, the Postal Service published a proposed rule in the **Federal Register** (76 FR 17794) to improve the process for discontinuing Post Offices and other Postal Service-operated retail facilities. The proposed rule also reflected the Postal Service's determination, as a matter of policy, to apply the same discontinuance procedures to all retail facilities operated by Postal Service employees. The Postal Service requested comments on the proposed rule. Analysis of the various comments received appears below.

The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)–(d) about certain aspects of the proposed rule. Therefore, the relevant proposed changes and comments relative to those proposed changes are not included in this final rule, but may be addressed in a subsequent final rule. Under 39 U.S.C. 1004(b)–(d), the Postal Service is obliged to consult with certain supervisory and other managerial organizations about the planning and development of pay policies and schedules, fringe benefit programs, and other programs related to supervisory and other managerial employees. (The Postal Service understands ''other programs'' to constitute those concerning employment, of a piece with the other enumerated subjects of consultation, and not programs concerning facilities or the operating network more generally, which may have an indirect effect on employees.) Because the subject matter of this final rule does not itself comprise any program subject to 39 U.S.C. 1004(b)–(d), the Postal Service considers it to fall outside the scope of those provisions. Nevertheless, the Postal Service has taken into account comments by supervisory and other managerial organizations, as it has comments by other members of the public.

As explained in the proposed rule, this final rule is not retroactive. Therefore, any change in policy or regulations does not affect the procedures applicable to discontinuance processes initiated before the effective date of this final rule, when previous regulations may have been in effect.

The Postal Service is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553(d)) regarding final rules by 39 U.S.C. 410(a). Moreover, the chief substance of this final rule is to extend to Postal Service-operated stations and branches the notice and comment procedures applicable to the discontinuance of Post Offices, thereby relieving restrictions that had previously been placed on public participation in the discontinuance process for stations and branches.

I. Response to Comments Received

The Postal Service received approximately 257 comments in response to the proposed rule. Commenters included 34 Members of Congress, the Postal Regulatory Commission (''Commission'' or ''PRC''), five state legislators, three postmasters' and postal supervisors' organizations, one postal lessors' organization and various of its members, one mailing industry stakeholder, and numerous other postal customers. Although some comments were favorable about certain aspects of the proposed rule, almost all of the comments expressed concerns about various aspects of the proposed rule. Below we discuss the comments and our response to each.

A. Closure of Post Offices and Other Retail Facilities

1. Procedural Safeguards

The overwhelming majority of comments urged the Postal Service not to close Post Offices (as well as, presumably, stations and branches), especially in small and rural communities. These commenters stated that cost savings would be low, that there would be undue hardship on some customers, and other matters. Many expressed concern about a specific postal retail facility. Additionally, many appeared to believe that the proposed rule would eliminate procedures and make it easier to close retail facilities, including for reasons prohibited by statute. *See, e.g.,* 39 U.S.C. 101(b) (''No small post office shall be closed solely for operating at a deficit[.]''). To the contrary, the Postal Service has long been and remains focused on the need for customers in less populated locales to have regular and effective access to delivery and retail services, thereby helping to bind all customers and the nation together through written correspondence.

These comments seem to overlook the actual scope of the changes. This rulemaking does not reduce or abolish any transparency attained through, for example, public notice, public input, and consideration of all comments received before any Post Office may be discontinued. In fact, transparency will be enhanced. Nor does the rulemaking change any of the criteria for discontinuing a Post Office, which are set forth in the statute and include consideration of cost savings, the effects on employees and the community, and the prohibition on closing small Post Offices solely for financial reasons. It should be noted that the statutes in question apply only to the justifications for actually discontinuing a facility; they do not restrict Postal Service discretion to evaluate its retail network and identify specific facilities for formal study.

To highlight the distinction between initiation of a preliminary feasibility study and the development of an official proposal, the Postal Service is adding

language to 39 CFR 241.3(a)(4)(i) that specifies circumstances justifying a responsible Vice-President's decision to initiate a feasibility study, as specified elsewhere in 39 CFR 241.3(a)(4). At the same time, this language does not provide that officer an official decision-making role in any resulting discontinuance proposal.

An initial feasibility study need not lead to evaluation for potential discontinuance. If it does, the public will receive expanded opportunity for comment as the Postal Service considers all of the requisite factors en route to any final determination, just as it has in the past. Although this rulemaking expands the range of factors that can justify a discontinuance study, any formal discontinuance decisions must still be based upon the same considerations as before. Opportunity for public participation will actually increase, because the Postal Service will ensure broad public awareness by sending written notice in the form of a ''Dear Customer'' letter and questionnaire to all delivery points in the ZIP Code area served by the facility being studied.

As described in the proposed rule, the rulemaking will actually expand application of the most rigorous process for discontinuance of Postal Service-operated retail facilities beyond independent Post Offices. While Congress applied the criteria in 39 U.S.C. 101(b) and 404(d) only to independent Post Offices, and not to stations or branches, the Postal Service is making that same process applicable to the discontinuance of *all* Postal Service-operated retail facilities, thereby encompassing subordinate stations and branches. Contrary to many commenters' perception that the rulemaking would remove ''due process'' protections for stations and branches, the rulemaking will actually increase scrutiny and transparency for such facilities by using the process previously applicable only to independent Post Offices.

2. Role of Economic Indicators

While some commenters express concern about the possible evaluation by the Postal Service of discontinuance candidates using economic indicators like population or volume trends, applicable law (39 U.S.C. 404(d)) already requires that the Postal Service consider economic savings in any final determination to discontinue a Post Office. Of course, population and volume trends may also inform evaluation of likely impact on the community, which is another mandatory criterion for evaluation in the discontinuance process.

To be sure, Postal Service plans to close or consolidate Post Offices must be consistent with the statutory requirement in 39 U.S.C. 101(b) that ''[n]o small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.'' As a result, a proposed discontinuance of a small Post Office may not proceed to a final determination if the sole reason is that the facility operates at a loss. Consistent with this statutory prohibition, the Postal Service provided in proposed 39 CFR 241.3(a)(4)(ii)(D) that no initial feasibility study of a small Post Office may commence, absent other permissible criteria, if the sole justification is that the office operates at a deficit. This provision is maintained in the final rule.

Many comments offer general support for the continued existence of rural Post Offices; the Postal Service itself remains committed to serving customers in all areas, including rural ones, and Post Offices constitute one key tool for doing so. The primary customer need, however, is *access to postal services* to the extent consistent with reasonable economies of postal operations, which is possible today without using rural Post Offices alone. 39 U.S.C. 403(b)(3). By no means are Post Offices the sole conduit for access to postal services. The best example, well known to customers served by non-city delivery, consists of carriers themselves, who can and do provide retail services. The Postal Service recognizes that it may not close small Post Offices solely for operating at a deficit, just as it recognizes that access options continue to expand for all customers. Alternative channels for access to retail services continue their growth in all areas; wherever retail traffic in Post Offices drops below minimal levels, it follows that customers must be obtaining the access they need without utilizing Post Offices. The Postal Service accordingly maintains its focus upon providing all customers the access they require, whether it be via Post Offices or the available alternatives.

3. Discontinuance of Specific Facilities

Many commenters articulated concerns about particular retail facilities, thus reflecting a misunderstanding of the instant rulemaking's scope. Such comments are either premature or misdirected; they may become germane when the subject facilities are studied, or should be directed to those conducting studies affecting the subject facilities. This rulemaking concerns only nationwide criteria and procedures, not specific facilities. If and when a particular facility is evaluated in a discontinuance study, the public will have full notice and opportunity to provide input, as under the previous regulations.

B. Redefinition of ''Consolidation'' and Appeal Rights

Several commenters expressed concern about the proposed rule's reinterpretation of ''consolidation,'' such that the term would no longer apply to the conversion of an independent Post Office into a Postal Service-operated station or branch. In particular, these commenters claim that this approach, combined with the fact that 39 U.S.C. 404(d)(5) does not confer appeal rights for closings or consolidations of stations and branches, could result in an effective denial of appeal rights if the Postal Service were to convert a Post Office into a station or branch and then proceed to close or consolidate the facility.

1. Definition of ''Consolidation''

The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about the proposed reinterpretation of ''consolidation,'' among other aspects of the proposed rule. Therefore, the Postal Service is deferring the relevant changes for the time being. Comments on this aspect of the proposed rule will be taken into consideration and may be addressed in a subsequent final rule.

2. Appeal Rights and Notice Thereof

The Commission recommended that the Postal Service provide notice of appeal rights when proposing or determining to discontinue a station or branch. This Commission noted that the Postal Service proposed to apply procedures to facilities beyond the statutory scope of applicability and suggested that the Postal Service could similarly extend appeal rights.

With respect to notice of appeal rights concerning stations and branches, the Postal Service does not believe that the authority exists to extend the Commission's grant of jurisdiction in 39 U.S.C. 404(d)(5) to the closure or consolidation of a station or branch. This is true regardless of how ''consolidation'' is interpreted. This rulemaking does not and can not alter the scope of the Commission's jurisdiction, so it does not change when the public is entitled to notice of appeal rights. At the same time, it should be emphasized that this rulemaking does

not affect interested persons' extant opportunity to seek any administrative appeal. The Postal Service recognizes in the proposed rule that the Commission and other stakeholders interpret 39 U.S.C. 404(d)(5) differently. Notwithstanding the actual limits of statutory jurisdiction, discontinuances of stations and branches have been appealed to the Commission, and the Commission has entertained those appeals as though they concerned independent Post Offices subject to 39 U.S.C. 404(d)(5). *E.g.,* PRC Docket Nos. A2011–4 (University Station, Eugene, OR 97403), A2011–5 (Penobscot Station, Detroit, MI 48231); *see also* SBOC Opinion at 66 (''The Commission already believes it is required to accept such appeals.'').

This rulemaking does not change Postal Service regulations as to whether discontinuances of stations or branches may be appealed, nor does it add measures to preclude such appeals from being filed. While the Postal Service maintains that the Commission does not have appeal jurisdiction over stations and branches under current law, the rulemaking does introduce an explicit recognition that the Postal Service may, in its discretion, decline to challenge the Commission's jurisdiction in certain (or even, if it chooses, all) cases, which contrasts with its previous practice of asserting jurisdictional defenses in all cases. Accordingly, to the extent that commenters believe they would lose the practical ability to seek accountability of station and branch discontinuances through appeal (or through the Postal Service's awareness of the prospect of appeal) to the Commission, such criticisms are overstated.

One commenter stated a belief that the proposed rule would make the discontinuance process more ''administrative'' by empowering the Commission to modify the Postal Service's final determination. In actuality, however, these aspects of the proposed rule have not changed from prior regulations. Moreover, the nature of the Commission's appeal jurisdiction and the general administrative nature of the discontinuance process were established by Congress in the Postal Reorganization Act Amendments of 1976 (Pub. L. 94–421), the Postal Service's regulations merely track this language.

Finally, one commenter agreed with the Postal Service's analysis of 39 U.S.C. 404(d)(5), but objected to the proposed rule's ultimate framing of the matter in terms of a right to object or not to object to the Commission's assertion of jurisdiction. While the commenter's views are understood and appreciated, it is axiomatic that a party may decline to assert valid jurisdictional defenses in specific cases, without prejudicing its assertion of the same objections in other cases or contexts. To recognize Postal Service counsel's discretion over litigation strategy does not diminish the validity of the general principle that the Commission is without legal authority to entertain purported appeals of station and branch discontinuances.

C. Community Meetings

Several commenters took issue with proposed 39 CFR 241.3(d)(2), which provides that a community meeting is required unless otherwise instructed by the responsible Vice President or the Area Manager, Delivery Programs Support. These commenters expressed the belief that this would undermine a current standard of allowing public input through community meetings in all cases.

Previous Postal Service regulations, however, have not required a community meeting for every Post Office discontinuance. The most recent version of 39 CFR 241.3(d)(3) listed ''meeting with community groups'' as exemplifying options available if deemed ''necessary'' to a larger transparency effort. Moreover, sections 243 and 721 of Handbook PO–101, *Post Office Discontinuance Guide,* have provided only that community meetings are one option for public input, alongside questionnaires and other methods. The new regulations accordingly impel community meetings more forcefully than before, because community meetings will be required absent instructions to the contrary from senior management. In practice, it is expected that community meetings would be offered unless some exceptional circumstance (such as a community's demise) makes a meeting an impractical tool for gathering customer input. The final rule includes an additional clarification limiting exceptions from the community meeting requirement.

D. Role of Vice President

Several commenters also recommended against the proposed approach whereby a feasibility study could be initiated by a responsible Vice President, as well as by a District Manager. These commenters advised that a national-level Vice President is less likely than a District Manager to have an appropriately nuanced understanding of community-specific conditions.

To clarify, the Vice President's role in proposed 39 CFR 241.3(a)(2) and (a)(4) is to trigger an exploration of possible discontinuance. Thereafter, the District Manager oversees the follow-up investigation and determines whether to proceed with a formal proposal to discontinue the facility. As noted above, the final rule includes additional language in 39 CFR 241.3(a)(4)(i) to clarify the distinction between the initial feasibility study, which a responsible Vice President or a District Manager may initiate, and the formal proposal, for which a Vice President is not responsible.

Concern about the Vice President's role may have been driven by the inclusion of an erroneous reference to a Vice President's discretion in 39 CFR § 241.3(c)(1), which might have suggested that the Vice President could directly determine whether to post a proposal, independent from the District Manager. This error has been corrected in the final rule.

The District Manager evaluates public comments on the proposal and decides whether to forward a recommended final determination to the responsible Vice President for ultimate review and decision. As such, the local knowledge vested in district postal personnel becomes a strength of the foundation for any decision to pursue discontinuance of a retail facility. As such, a Vice President's role at this latter stage extends only to a final check on a District Manager's recommendation that a discontinuance move forward.

Thus, the proposed rule and final rule recognize the importance of the District Manager's assessment of local conditions. Under the final rule, the District Manager accordingly retains significant discretion to take account of local conditions before deciding whether to proceed with a proposal or final determination to discontinue a facility.

E. Staffing of Post Offices

Many commenters expressed the view that the Postmaster Equity Act, Public Law 108–86 (2003), precludes the proposed change to 39 CFR 241.1, such that, in their view, a Post Office may not be operated or managed by anyone but a postmaster. As codified in 39 U.S.C. 1004(i)(3), the Postmaster Equity Act defines a ''postmaster'' as ''an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors.'' The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)–(d) about this aspect of the proposed rule. Therefore, the Postal Service is deferring the relevant changes for the time being. Comments on this aspect of the proposed rule will be taken into

consideration and may be addressed in a subsequent final rule.

One commenter opined that a previous rule change required a postmaster to reside in the delivery area of the Post Office in which he or she served, and that the Postal Service's regulations should revert to that rule. It is true that local residence was a former requirement for postmaster eligibility, but this requirement did not derive from Postal Service regulations. Rather, it existed in a statute that Congress repealed when the Postal Reorganization Act established the current merit-based system for postmaster appointments. *See* Public Law 86–682, 74 Stat. 578, 710 (1960) (formerly codified at 39 U.S.C. 3312) (repealed 1970). The Postal Service does not intend to revisit such a policy in light of the Congressional repeal of the pertinent statute, so the commenter's proposed change is not included in this final rule.

F. Alternatives to Discontinuance

One commenter requested that the Postal Service include in 39 CFR 241.3 a provision to allow for the possibility that, where the financial viability of a retail facility is a factor in a discontinuance study, the local government can offer to make up the projected shortfall as a means for preserving retail service at the facility. This suggestion is already accounted for in existing discontinuance processes and practice, wherein communities have ample opportunity to offer views and alternatives that might address justifications for a specific discontinuance. The Postal Service takes that input into account as it determines whether a proposal is warranted. It is plausible that an agreement by a municipality or agency to incur certain costs or burdens can be decisive and lead the Postal Service to forgo a discontinuance study. Contractor-operated retail facilities or other arrangements are also possible. Because current practice and the proposed rule already address these concerns, no further revision to the final rule appears warranted.

Another commenter advised that customers should be ensured alternative access channels before the Postal Service proceeds with discontinuance. The Postal Service believes its processes adequately meet this concern. Under the proposed rule, the availability and use of alternative access channels would help inform local officials regarding the necessity for a fully staffed postal facility. Today, retail services are available to customers through a variety of channels beyond traditional brick-and-mortar facilities, such as the *http://www.usps.com* Web site, Automated Postal Centers, non-city delivery carriers, stamp consignment locations such as grocery stores, and Stamps by Mail, Fax, and Phone.

Moreover, before the Postal Service can reach any final determination on a proposed discontinuance, 39 U.S.C. 404(d) requires the Postal Service to consider (among other things) the effect on the community and the statutory policy of providing a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining. In virtually all cases, this means careful consideration of the utility provided by alternative access channels, including services available through letter carriers, particularly as this tends to be a focus of customer input. Therefore, the commenter and other customers may rest assured that the continued availability of retail services will remain a key point of consideration whenever the Postal Service studies a community's needs.

G. Redaction of Personally Identifiable Information

One commenter voiced suspicion that the Postal Service would impermissibly edit or conceal information in publicly available documents under cover of the proposed provision that would allow for redaction of personally identifiable information. Another commenter characterized this change as inappropriate because submitters of public comments to a public administrative record do not have a privacy interest in their identities.

Rather than being a substantive change that the Postal Service could somehow exploit to willfully edit an administrative record, the proposed provision merely updates 39 CFR 241.3 to reflect other statutes and regulations that authorize, on a discretionary basis, the withholding of personally identifiable information from public disclosure. *See* 39 U.S.C. 410(c)(1). Limited redaction, performed on a discretionary, as-needed basis to protect customers' personally identifiable information in the discontinuance and other contexts, is well-established and has been uncontroversial before the Commission. *See, e.g.,* United States Postal Service Notice of Filing and Application for Non-Public Status, PRC Docket No. A2011–1, January 6, 2011; Order Affirming Final Determination, PRC Docket No. A2011–1, February 15, 2011, at 3 n.7 (acknowledging the Postal Service's filing of administrative record with redactions of, among other things, personally identifiable information). However, the Postal Service is mindful of the limited purpose of this important privacy protection.

H. Notice to Customers Served by Suspended Facility

One commenter suggested that customers formerly served by a suspended retail facility should be notified of discontinuance-related actions by mail, not just by posting at other retail facilities. The Postal Service intends to mail notice and a questionnaire to customers formerly served by a Postal Service-operated retail facility whose operations have undergone an emergency suspension to the same extent that it would have if the facility were not suspended. Because this intention may not have been sufficiently clear, the Postal Service incorporates the commenter's suggestion with clarifying language in new paragraph 241.3(a)(4)(iii).

I. Inapplicability of Procedures to Contractor-Operated Facilities

One commenter notes that, in at least one case, postal customers were informed that a contractor-operated Community Post Office (CPO) would provide many of the same services as a Postal Service-operated retail facility, except for some services such as permit mailing acceptance. The commenter then advises that the same discontinuance procedures should apply to contractor-operated retail facilities, particularly in locations where a CPO may be the only postal retail facility.

Another commenter opined that services provided by a contractor-operated retail facility can, in certain cases, be equivalent to or better than services provided by a Post Office or other Postal Service-operated retail facility. As a result of more flexible office hours or parking, for example, contractor-operated retail facilities may offer more ready access to essential postal services and thereby a handier method to ensure compliance with 39 U.S.C. 403(b)(3). Hence, the commenter concludes that distinctions based on the identity of the retail facility operator might not have universal validity.

The Postal Service acknowledged in the proposed rule that customers of contractor-operated retail facilities may experience and expect comparable (or better) levels of service relative to those at Postal Service-operated retail facilities. However, the Postal Service also explained that exigencies of contracting relationships make it generally impractical to harmonize their discontinuance procedures with the deliberative timeframe and procedures

required for discontinuance of Postal Service-operated facilities. For example, management's ability to negotiate reasonable terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties were permitted to appeal those discontinuances for alleged procedural defects. Postal management's right of termination of a CPO operator's contract would be impaired, particularly in communities in which the CPO operator is the only person capable of operating a CPO. This would cause unnecessary delay prior to termination, and thereby force the Postal Service to continue a contract where sound business judgment and effective oversight would require otherwise.

CPO operators would also gain substantial bargaining leverage against the Postal Service, if the Postal Service's ability to change the contractual provision of postal services in the affected community were subject to the lengthy and costly discontinuance study, if not also litigation. Moreover, assuming a formal discontinuance study were required, the CPO operator might demand additional compensation for participating in the study. If a study were not conducted because replacement services would not provide the maximum degree of regular and effective service, a CPO operator might also gain a significant bargaining advantage for negotiating a price increase.

As noted throughout this rulemaking, the legislative history and text of 39 U.S.C. 404(d) limit that statute's scope to independent Post Offices. The Postal Service does not currently believe that it would be prudent to apply the same procedures, as a policy matter, to contractor-operated retail facilities. This policy distinction does not cast a value judgment on the quality of service available from contractor-operated retail facilities or on whether such facilities may be suitable replacements for Postal Service-operated retail facilities.

J. Status of Postmasters Affected by Facility Type Conversion

Two commenters asked whether a postmaster of an independent Post Office would become a station or branch manager where the Post Office is converted into another Postal Service-operated retail facility type, or whether the Postal Service would use such conversions to eliminate postmaster positions. Facility-specific staffing is outside the scope of this rulemaking and is subject to local management discretion, as guided by any applicable laws, regulations, policies and agreements.

K. Emergency Suspensions

One commenter recommended that, where a discontinuance study is related to expiration or cancellation of a lease without suitable alternative quarters in the community, the Postal Service should initiate the discontinuance study sufficiently in advance of the lease's end date to allow the lessor and customers an opportunity to explore alternatives and provide input. Alternatively, the commenter suggested that the retail facility in question could be kept open as long as necessary to gather information in a discontinuance study. The Postal Service agrees with the general thrust of this comment and includes a new paragraph 241.3(a)(4)(iii) in the final rule to encourage local management accordingly. This new provision is framed as guidance to be followed wherever possible, rather than a universal requirement, because a single solution can never be made to fit every challenge or suspension.

One commenter asserted numerous allegations about the Postal Service's handling of emergency suspensions: Disregard for existing rules, manipulation of lease renewal and termination processes, and maintenance of facilities in suspended status without undergoing a formal discontinuance. Allegations of failure to comply with regulations are beyond the scope of this rulemaking. The improved process for discontinuance actions provided in this final rule may, however, address the timely and final disposition of many suspended offices and diminish pressure to seek solutions outside current policy.

One commenter also noted that the emergency suspension form in Handbook PO–101, *Post Office Discontinuance Guide,* currently does not include a line item indicating that Postal Service management actually considered alternative access channels. The Postal Service is issuing a revised version of Handbook PO–101 that will, among other things, direct identification of available alternative access channels when conducting any emergency suspension and notification of customers about their availability. Additional tools may also be brought to bear on this set of issues.

L. Comment Periods and Waiting Periods

One commenter objected to the change from a 90-day waiting period to a 60-day waiting period after posting of the final determination. This commenter opined that the change would diminish the public's opportunity to provide input. The pertinent change to 39 CFR 251.3(g)(2) concerns the period between posting by the Postal Service of its final determination and when operational discontinuance takes effect (barring an appeal to the Commission). At that point, two rounds of public input on a possible discontinuance, and responses to each,will already have been undertaken before the Postal Service reached a final decision. Therefore, the need for additional public input does not affect, and is unrelated to, the length of time the final determination is posted or the duration before final action. This change by the Postal Service merely harmonizes the waiting period with the 60-day statutory posting requirement established by Congress in 39 U.S.C. 404(d)(4).

Three other commenters asked more generally that the Postal Service reverse proposed changes believed to shorten time periods for comment. Aside from the revision of the final determination posting period discussed above (which does not concern comment periods), the Postal Service has not proposed any adjustment to comment periods in 39 CFR 241.3. Nor is it evident that the existing 60-day comment period on discontinuance proposals, which has been in effect for decades, provides insufficient opportunity for public participation as envisioned by 39 U.S.C. 404(d). *See* 39 U.S.C. 404(d)(1) (''The Postal Service, prior to making a determination * * * as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation[.]''). While the proposed rule and final rule are aimed at enhancing opportunities for public input, there does not appear to be a need to expand comment periods at this time.

Finally, one commenter stated a belief that the 30-day period for appeals of Post Office discontinuances is too short and should be extended to a 60-day period. Congress has provided that a final determination to discontinue a Post Office can be appealed only within 30 days after the final determination is made available. 39 U.S.C. 404(d)(5). The Postal Service does not have the power to change a jurisdictional limitation set by Congress.

M. Relocations

One commenter urged the Postal Service to end relocations of retail facilities, which the commenter advised could result in curtailed services to customers near the original location. Relocations of existing facilities that do not result in an actual closure or

consolidation are not subject to 39 U.S.C. 404(d). The Postal Service regulations for relocations are at 39 CFR 241.4, and they include requirements for public outreach and input comparable to those applicable to discontinuance actions. Accordingly, the Postal Service finds that its relocation regulations are beyond the scope of this rulemaking.

N. Effect of Discontinuances on Overall Service Network

Two postal supervisors' organizations cautioned that extensive closures of Post Offices could result in gaps and delays in service and could erode public confidence in the Postal Service generally. In offering this advice, the commenters assume that the intent of the rulemaking is to usher in sweeping closures of small and rural Post Offices.

The rulemaking establishes and updates procedures and considerations for discontinuance of all Postal Service-operated retail facilities, not just small and rural Post Offices. The Postal Service does not believe that the proposed rule's innovations, such as allowing an initial feasibility study to commence on the basis of volume trends or upon the identification of a facility by a Headquarters Vice President, necessarily target small or rural Post Offices. A large or medium-sized urban Post Office can be equally subject to declining volume or population trends that warrant reconsideration of its role in the postal retail network.

Even if the Postal Service were, in the future, to develop a program to study the discontinuance of large numbers of retail facilities that had the potential to effect a nationwide or substantially nationwide change in service, the Postal Service would intend to seek an advisory opinion from the Commission under 39 U.S.C. 3661(b)–(c). Parties would have a full opportunity to raise their concerns and assess the impact of such a program on service levels and public confidence at that time. Unless and until such a program is developed and presented to the Commission, however, such concerns are speculative and premature. In the meantime, impact on service is necessarily taken into account in each discontinuance study.

O. Procedural Recommendations

In its comments, the Commission incorporated by reference all of the detailed recommendations in its SBOC Opinion, while highlighting certain of them. The Commission's recommendations have indeed had a major influence on the Postal Service's larger effort to revise its discontinuance procedures, of which this rulemaking is a part. Most of the resulting changes will be reflected in a corresponding revision to Handbook PO–101, which contains detailed internal regulations; the Postal Service does not necessarily consider 39 CFR part 241 to be a suitable repository for such extensive and fine-grained rules. As a more specific response to the Commission's comments, the Postal Service provides the following summation:

Commission recommendation: The Postal Service should mail actual notice to all potential retail customers in the vicinity of a facility under consideration for discontinuance, in addition to P.O. Box customers and customers that receive carrier delivery service based out of the facility.

Postal Service response: In consonance with the Commission's recommendation, the Postal Service is adding a new 39 CFR 241.3(a)(4)(iii) to broaden customer notice that the feasibility of a possible discontinuance is being explored. The rule requires that customer notices and questionnaires be mailed to all delivery addresses physically located in the ZIP Code of the retail facility under study, as well as any delivery addresses served by the studied facility for allied delivery services such as mail pick-up. For those retail customers who might visit the studied facility, notices and questionnaires will continue to be available in the facility lobby. Local management will also have the discretion to provide notice via local media outlets, where appropriate.

Commission recommendation: Notice should be posted at nearby retail facilities, not just the facility subject to potential discontinuance.

Postal Service response: Under the revised Handbook PO–101, the proposal and final determination will be posted at the retail facility under study, the retail facility proposed to serve as the supervising facility, and any facility likely to serve a significant number of customers of the retail facility under study.

Commission recommendation: Questionnaire forms should be posted online for customers to download and print.

Postal Service response: The Postal Service is exploring the feasibility of various electronic access tools for public input.

Commission recommendation: Discontinuance study notices or proposal notices should contain information about distance to nearby retail facilities, their hours, alternative access channels, and how to request curbside delivery.

Postal Service response: Information of this sort will become a standard feature of initial feasibility study notices and proposal notices. The Postal Service recently introduced online tools, to which affected customers will be directed, that provide more detailed information about alternate access channels in the vicinity of a customer's location.

Commission recommendation: The methodology for evaluating cost savings should be revised to address personnel costs not eliminated, revenue leakage, and costs inherent to the facility's discontinuance (*e.g.,* equipment disposal).

Postal Service response: The cost savings methodology used by management will be upgraded. The Postal Service is still examining the feasibility of including net labor cost savings and equipment disposal costs. The inclusion of these factors could be implemented without further change in the regulations at issue in this rulemaking. Although the Commission's input on these factors has been helpful, situation-dependent and speculative factors like revenue leakage are difficult to quantify.

Commission recommendation: The Postal Service should provide more information in its public notices about the analysis that management will use to evaluate discontinuance criteria.

Postal Service response: Because of the mixed qualitative and quantitative nature of local management's evaluation, it is difficult to determine how much analytical detail can reasonably be provided in a written notice while retaining the reader's interest and attention. However, the Postal Service's standard community meeting presentation materials will include a list of factors that local management will analyze, such as current office needs, proximity to other retail facilities and alternate access locations, lease terms and real estate market conditions, retail revenue, community input, impact on customers and the community, effect on employees, cost savings, environmental impact, and the long-term needs of the Postal Service. It should be noted that, as explained above, community meetings should be held in virtually all instances.

Commission recommendation: Discontinuance processes should be coordinated with evaluation of replacement retail options, and the availability of replacement retail options should be an express factor in discontinuance studies.

Postal Service response: Consideration of replacement retail and

other alternate access channels will be expressly incorporated in the processes set forth in Handbook PO–101.

Commission recommendation: Management should use uniform information-gathering and analysis tools.

Postal Service response: The discontinuance study process will be standardized through use of new electronic tools.

Commission recommendation: Community needs should be evaluated separately from ''other needs.''

Postal Service response: The final rule maintains the requirements in 39 CFR 241.3(c)(4)(i), (ii), and (v) for separate consideration of community needs, the effect on the community, and other factors. These distinct requirements will be reflected in the updated instructions in Handbook PO–101 as well. The updated customer questionnaire will solicit input on specific community factors, such as concentrations of senior citizens and proximity to bus stops.

Commission recommendation: Management should be instructed to conduct outreach with local elected officials, military and educational installation representatives, and community development organizations.

Postal Service response: The standard communications package provided to management will contain specific outreach materials for local elected officials. Other groups will receive notice in their capacity as local retail and delivery customers.

II. Explanation of Changes From Proposed Rule

The final rule includes the following changes to the proposed rule.

As explained in the preceding sections, certain issues are currently subject to consultation under 39 U.S.C. 1004(b)–(d) and further consideration by the Postal Service. These include the types of personnel that may be responsible for operations in a Post Office, and the definition of consolidation as not pertaining to personnel changes or to reclassification of Post Offices as other types of Postal Service-operated retail facilities. Therefore, the second sentence of 39 CFR 241.1(a) and the entirety of 39 CFR 241.3(a)(1)(iii), as proposed or modified, are not included in the final rule at this time. Other provisions pertinent to consolidations will, for the time being, remain as they were under previous regulations, with modifications only to reflect the inclusion of Postal Service-to-contractor conversions in the meaning of ''consolidation.'' The initially proposed modifications, or modifications thereto, may be included in the regulations upon the conclusion of the ongoing deliberations, in which case the Postal Service will issue a further final rule. Until then, the Postal Service will continue applying existing discontinuance procedures according to 39 CFR 241.3. A new clause 241.3(a)(1)(i)(D) is added to reflect this interim state of affairs.

Consistent with disclaimers in the proposed rule and this final rule, a new paragraph 241.3(a)(1)(iii) is added to clarify that the revised regulations are mandatory only for discontinuance actions commenced on or after the regulations' effective date. The previous regulations shall continue to apply to discontinuance actions initiated earlier, unless management directs utilization of the new rules.

For reference, a new paragraph 241.3(a)(2) is added to provide definitions of ''USPS-operated retail facility,'' ''contractor-operated retail facility,'' ''closing,'' ''consolidation,'' and ''discontinuance.'' ''USPS-operated retail facility'' and ''contractor-operated retail facility'' are defined as in the proposed rule. ''Closing'' and ''discontinuance'' are defined in accordance with the definitions in the most recent version of Handbook PO–101; these definitions do not represent a substantive change from previous regulations. ''Consolidation'' incorporates the meaning under both the previous regulations (conversion of a Post Office into a Classified Station or Classified Branch) and the proposed rule (conversion of a USPS-operated retail facility into a contractor-operated retail facility). The remaining paragraphs in subsection 241.3(a) are renumbered accordingly.

The introductory language to paragraph 241.3(a)(4) (renumbered as (a)(5)) has been reorganized and revised to clarify that the initial feasibility study constitutes a distinct phase preliminary to any development of a written proposal. The justification for initiating a feasibility study, and the Vice-President's discretion to direct such action, therefore pertain only to the initial phase. Other references throughout 39 CFR 241.3 have been changed to ''initial feasibility study,'' where appropriate, in order to clarify the intended scope of the relevant provision.

The phrase ''severe safety and health hazards'' in proposed clause 241.3(a)(4)(i)(B) (renumbered as (a)(5)(i)(B)) has been restated as ''irreparable damage when no suitable alternate quarters are available in the community,'' in order to avoid potentially conflicting implications under § 241.3(a)(5)(ii).

Section 241.3(a)(4)(ii) (renumbered as § 241.3(a)(5)(ii)) has been revised somewhat to express more clearly the distinction between the circumstances in clauses (A) through (C), none of which can justify an initial feasibility study, and those in clause (D), which can justify an initial feasibility study but only in the presence of one or more of the permissible circumstances listed in § 241.3(a)(5)(i). This distinction tracks that in the governing statute. *Compare* 39 U.S.C. 404(d)(2)(B) (barring the Postal Service from considering compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in making a determination to discontinue a Post Office), *with* 39 U.S.C. 101(b) (providing that no small post office may be closed *solely* for operating at a deficit).

A new § 241.3(a)(5)(iii) has been added to specify how customers will receive notice and questionnaires for the initial feasibility study. Notice and questionnaires will be provided to retail customers at the Postal Service-operated retail facility under study, as well as by mail to customers in the five-digit ZIP Code delivery area of the facility and to certain other customers. In addition, local management may determine whether notification through media outlets is appropriate.

A new § 241.3(a)(5)(iv) has been added with guidance to the effect that when an initial feasibility study is to be initiated due to an emergency suspension (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should, wherever possible, initiate the discontinuance process sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account prior to the suspension taking effect. If necessary to continue gathering information, responsible personnel should also seek to extend operations for the necessary duration, to the extent possible. Paragraph 241.3(a)(5)(iv) also clarifies that customers formerly served by a Postal Service-operated retail facility in suspension status should receive the same level of notice throughout the discontinuance process, including notice by mail, as they would have if the facility were not in suspension status.

Paragraph 241.3(b)(4) has been revised to acknowledge that a contractor-operated retail facility can, but need not necessarily, retain the name of the pre-consolidation Postal Service-operated retail facility, if appropriate. For example, some

contractor-operated retail facilities may be integrated into the contractor's business establishment, and the nature of the contract and level of service provided to customers might not be consistent with a separate name for the postal retail facility.

Paragraph 241.3(c)(1) has been amended to delete the reference to the responsible Vice President as having discretion to initiate a discontinuance proposal. This phrase had been erroneously included in the proposed rule.

Paragraph 241.3(c)(3) has been revised such that postmasters and officers in charge must be invited to submit comments, rather than indicating that they must do so. The previous phrasing gave rise to confusion as to whether such personnel have the option of avoiding submission of comments.

Paragraph 241.3(d)(1) has been revised to specify in greater detail the Postal Service-operated retail facilities at which the proposal and comment notice must be posted, and to require additional copies of the proposal and comment notice to be given to customers upon request. The description of the comment notice, which had also been in paragraph 241.3(d)(1), has been moved to a new paragraph 241.3(d)(2), and the succeeding paragraphs have been renumbered accordingly.

Paragraph 241.3(d)(2) (renumbered as (d)(3)) has been revised to clarify that a community meeting should be forgone only when exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere. The revised paragraph also explains that the purpose of the community meeting is to provide public outreach and to gain public input, and that it should occur during the comment period after a proposal has been posted. Finally, one class of personnel authorized to make exceptions to the community meeting requirement is changed from the Manager, Delivery Programs Support, to the applicable Vice President, Area Operations.

In the interest of consistency and clarity, references to locations where materials are to be posted in § 241.3(d)(3)(v) (renumbered as (d)(4)(v), (e)(2)(i), (f)(3), (g)(1)(i), (g)(1)(ii)(A), and (g)(1)(ii)(B) have been revised to refer back to the locations now specified in § 241.3(d)(1).

References throughout the proposed rule to ''responsible Vice President'' have been changed to ''responsible Headquarters Vice President,'' in order to avoid confusion with Vice Presidents, Area Operations.

The Postal Service has determined that the changes described herein are necessary to standardize and clarify the procedures of Part 241 with regard to the discontinuance of USPS-operated retail facilities and to eliminate potential confusion regarding the policies governing these matters. Accordingly, the Postal Service has determined that this final rule should take effect upon publication. The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR Part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR Part 241 is revised to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

■ 2. Revise § 241.1 to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries.

(b) *Classification.* As of October 1 of each year, Post Offices are categorized through a cost ascertainment grouping (CAG) process based on allowable postal revenue units for the second preceding fiscal year as follows:

(1) *CAG A–G.* Post offices having 950 or more revenue units.

(2) *CAG H–J.* Post offices having 190 but less than 950 revenue units.

(3) *CAG K.* Post offices having 36 but less than 190 revenue units.

(4) *CAG L.* Post offices having less than 36 revenue units.

■ 3. Revise § 241.3 to read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) *Introduction*—(1) *Coverage.* (i) This section establishes the rules governing the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:

(A) Replace a USPS-operated post office, station, or branch with a contractor-operated retail facility;

(B) Consolidate a USPS-operated post office, station, or branch by combining it with another USPS-operated retail facility; or

(C) Discontinue a USPS-operated post office, station, or branch without providing a replacement facility.

(ii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under section 241.3 as in effect prior to July 14, 2011 shall apply to discontinuance actions for which initial feasibility studies have been initiated prior to July 14, 2011.

(2) *Definitions.* As used in this section, the following terms have the following meanings:

(i) ''*USPS-operated retail facility*'' includes any Postal Service employee-operated post office, station, or branch, but does not include any station, branch, community post office, or other retail facility operated by a contractor.

(ii) ''*Contractor-operated retail facility*'' includes any station, branch, community post office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) ''*Closing*'' means an action in which Post Office operations are permanently discontinued without providing a replacement facility in the community.

(iv) ''*Consolidation*'' means either an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility, or an action that converts an independent Post Office into a Classified Station or Classified Branch. A resulting contractor-operated retail facility reports to a Postal Service-operated retail facility; a resulting Classified Station or Classified Branch reports to an administrative Post Office.

(v) ''*Discontinuance*'' means either a closure or a consolidation.

(3) *Requirements.* A District Manager or the responsible Headquarters Vice President, or a designee of either, may initiate a feasibility study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities,

and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a USPS-operated retail facility must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the USPS-operated retail facility at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals. For purposes of determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required to make any determination subject to 39 U.S.C. 404(d)(5) no later than 120 days after receiving the appeal.

(vii) The following table summarizes the notice and appeal periods defined by statute.

PUBLIC NOTICE OF PROPOSAL	
60-day notice	
PUBLIC NOTICE OF FINAL DETERMINATION	
30 days for filing any appeal Up to 120 days for appeal consideration and decision	Wait at least 60 days from first day after posting final determination before closing or consolidating USPS-operated retail facility.

(4) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(5) *Initial feasibility study.* A District Manager, the responsible Headquarters Vice President, or a designee of either may initiate a feasibility study of a USPS-operated retail facility's potential discontinuance, in order to assist the District Manager in determining whether to proceed with a written proposal to discontinue the facility.

(i) *Permissible circumstances.* The initial feasibility study may be based upon circumstances including, but not limited to, the following:

(A) A postmaster vacancy;

(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or natural disaster, irreparable damage when no suitable alternate quarters are available in the community, challenge to the sanctity of the mail, or similar reasons;

(C) Earned workload below the minimum established level for the lowest non-bargaining (EAS) employee grade;

(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;

(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or

(F) The incorporation of two communities into one or other special circumstances.

(ii) *Impermissible circumstances.* The following circumstances may not be used to justify initiation of an initial feasibility study:

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 et seq.);

(B) The absence of running water or restroom facilities;

(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); or

(D) In the absence of any circumstances identified in paragraph (a)(5)(i) of this section, the operation of a small Post Office at a deficit.

(iii) *Notice to customers.* Local management must provide notification and questionnaires to customers at the USPS-operated retail facility under study. Local management may determine whether notification is appropriate through media outlets. In addition, the following customers that receive delivery service from the USPS-operated retail facility must receive notification and questionnaires by mail:

(A) Post Office Box customers at the USPS-operated retail facility under study;

(B) Customers whose delivery carrier is stationed out of the USPS-operated retail facility under study;

(C) Customers in the delivery area of the same ZIP Code as the retail facility under study, regardless of whether the delivery carriers for those customers are stationed out of the retail facility under study or out of a nearby facility; and

(D) Customers whom the retail facility under study serves for allied delivery services such as mail pick-up.

(iv) *Initial feasibility study due to emergency suspension.* Wherever possible when an initial feasibility study is to be initiated under § 241.3(a)(4)(i)(B) (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should initiate the initial feasibility study sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account. If public input cannot be

sought sufficiently in advance of the end date of the lease or rental agreement, responsible personnel should endeavor, to the extent possible, to continue operation of the USPS-operated retail facility for the duration necessary to gather public input and make a more fully informed decision on whether to proceed with a discontinuance proposal. Customers formerly served by the suspended facility should receive notice under paragraph (a)(4)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination.

(b) *Preservation of community address*—(1) *Policy.* The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment.* The ZIP Code for each address formerly served from the discontinued USPS-operated retail facility should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued USPS-operated retail facility may be changed if the responsible District Manager receives approval from his or her Vice President, Area Operations, before any proposal to discontinue the USPS-operated retail facility is posted.

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility, classified station, or classified branch is the ZIP Code originally assigned to the discontinued facility.

(ii) If the ZIP Code is changed and the parent or gaining USPS-operated retail facility covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *USPS-operated retail facility's city name in address.* If all the delivery addresses using the city name of the USPS-operated retail facility being discontinued continue to use the same ZIP Code, customers may continue to use the discontinued facility's city name in their addresses, instead of that of the new delivering USPS-operated retail facility.

(4) *Name of facility established by consolidation.* If a post office is to be consolidated with one or more other post offices by establishing in its place a classified station or classified branch affiliated with another post office, the replacement unit is usually given the same name of the facility that is replaced. If a USPS-operated retail facility is to be consolidated by establishing in its place a contractor-operated retail facility, the replacement unit can be given the same name of the facility that is replaced, if appropriate in light of the nature of the contract and level of service provided.

(c) *Initial proposal*—(1) *In general.* If a District Manager believes that the discontinuance of a USPS-operated retail facility within his or her responsibility may be warranted, the District Manager:

(i) Must use the standards and procedures in § 241.3(c) and (d).

(ii) Must investigate the situation.

(iii) May propose the USPS-operated retail facility be discontinued.

(2) *Consolidation.* The proposed action may include a consolidation by replacement of a USPS-operated retail facility with a contractor-operated retail facility. The proposed action may also include a consolidation by replacement of a post office with a classified station or classified branch if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) *Views of postmasters.* Whether the discontinuance under consideration involves a consolidation or not, the District Manager must discuss the matter with the postmaster (or the officer in charge) of the USPS-operated retail facility considered for discontinuance, and with the postmaster of any other USPS-operated retail facility affected by the change. The District Manager should make sure that these officials are invited to submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal.* The District Manager, or a designee, must gather and preserve for the record all documentation used to assess the proposed change. If the District Manager thinks the proposed action is warranted, he or she, or a designee, must prepare a document titled ''Proposal to (Close) (Consolidate) the (Facility Name).'' This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs.* It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should:

(A) Contrast the services available before and after the proposed change;

(B) Describe how the changes respond to the postal needs of the affected customers; and

(C) Highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community.* The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees.* The written proposal must summarize the possible effects of the change on postmasters and other employees of the USPS-operated retail facility considered for discontinuance.

(iv) *Savings.* The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors.* The proposal should include an analysis of other factors that the District Manager determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary.* The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice.* The proposal must include the following notices:

(A) *Supporting materials.* ''Copies of all materials on which this proposal is based are available for public inspection at (Facility Name) during normal office hours.''

(B) *Nature of posting.* ''This is a proposal. It is not a final determination to (close) (consolidate) this facility.''

(C) *Posting of final determination.* ''If a final determination is made to close or consolidate this facility, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this facility.''

(D) *Appeal rights.* ''The final determination will contain instructions on how affected customers may appeal a decision to close or consolidate a post office to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final

determination.'' The notice in this clause is provided when the USPS-operated retail facility under study is a post office. For purposes of this clause, the date of receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently, with additional copies to be given to customers upon request, in the following locations:

(i) The USPS-operated retail facility under study, unless service at the facility has been suspended;

(ii) The USPS-operated retail facility proposed to serve as the supervising facility;

(iii) Any USPS-operated retail facility likely to serve a significant number of customers of the USPS-operated retail facility under study; and

(iv) If service at the facility under study has been suspended, any USPS-operated retail facility providing alternative service for former customers of the facility under study.

(2) *Contents of comment notice.* The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected USPS-operated retail facilities.

(iii) Provide a name and telephone number to call for information.

(3) *Other steps.* In addition to providing notice and inviting comment, the District Manager must take any other steps necessary to ensure that the persons served by affected USPS-operated retail facilities understand the nature and implications of the proposed action. A community meeting must be held to provide outreach and gain public input after the proposal is posted, unless otherwise instructed by the responsible Headquarters Vice President or the applicable Vice President, Area Operations. Authorization to forgo a community meeting should issue only where exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere.

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the District Manager should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the District Manager may not rely on communications received from anyone unless submitted in writing for the record.

(4) *Record.* The District Manager must keep, as part of the record for consideration and review, all documentation gathered about the proposed change.

(i) The record must include all information that the District Manager considered, and the decision must stand on the record. No written information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, beginning no later than the date on which notice is posted and extending through the posting period. When appropriate, certain personally identifiable information, such as individual names or residential addresses, may be redacted from the publicly accessible copy of the record.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in chapter 4 of Handbook AS–353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(e) *Consideration of public comments and final local recommendation*—(1) *Analysis of comments.* The District Manager or a designee must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the District Manager must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the District Manager decides against the proposed discontinuance, he or she must post, in the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the District Manager decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the District Manager must:

(A) Transmit the revised proposal and the entire record to the responsible Headquarters Vice President.

(B) Certify that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision.*—(1) *In general.* The responsible Headquarters Vice President or a designee must review the proposal of the District Manager and decide on the merits of the proposal. This review and the decision must be based on and supported by the record developed by the District Manager. The responsible Headquarters Vice President can instruct the District Manager to provide more information to supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the District Manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The responsible Headquarters Vice President or a designee may approve the proposed discontinuance, with or without further revisions. If approved without further revision, the term ''Final Determination'' is substituted for ''Proposal'' in the title. A copy of the Final Determination must be provided to the District Manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(d).

(i) *Supporting materials.* The Final Determination must include the following notice: ''Copies of all materials on which this Final Determination is based are available for

public inspection at the (Facility Name) during normal office hours.''

(ii) *Appeal rights.* If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: ''Pursuant to Public Law 94–421 (1976), this Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001. Any appeal must be received by the Commission within 30 days of the first day this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Regulatory Commission, or the parties to the appeal, must be made available for public inspection at the (Facility Name) during normal office hours.''

(3) *Disapproval.* The responsible Headquarters Vice President or a designee may disapprove the proposed discontinuance and return it and the record to the District Manager with written reasons for disapproval. The District Manager or a designee must post, in each affected USPS-operated retail facility where the proposal was posted under paragraph (d)(1) of this section, a notice that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The responsible Headquarters Vice President or a designee may return the proposal of the District Manager with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the responsible Headquarters Vice President must be placed on file in the Postal Service Headquarters library.

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue USPS-operated retail facility.* The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities in each affected USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, including the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: ''Date of posting.''

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in chapter 4 of Handbook AS–353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(2) *Implementation of determinations not appealed.* If no appeal is filed, the official closing date of the office must be published in the *Postal Bulletin* and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Headquarters Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the responsible Headquarters Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* The Office of General Counsel must provide the District Manager with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The District Manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be displayed for 30 days in all other USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office must be published in the Postal Bulletin, effective anytime after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the responsible Headquarters Vice President must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the responsible Headquarters Vice President may provide.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–1083; FRL–9434–7]

Finding of Substantial Inadequacy of Implementation Plan; Call for Iowa State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to the Environmental Protection Agency's (EPA) authority in the Clean Air Act (CAA or Act), section 110(k)(5), to call for plan revisions, EPA is making a finding that the Iowa State Implementation Plan (SIP) is substantially inadequate to maintain the 2006 24-hour National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter ($PM_{2.5}$) in Muscatine County, Iowa. The specific SIP deficiencies needing revision are described below. EPA is also finalizing

a timeline for Iowa to revise its SIP to correct these deficiencies by a date which is no later than 18 months after the effective date of this rule.

DATES: This final rule is effective on August 15, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2010–1083. All documents in the docket are listed on the *http://www.regulations.gov* Web site.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Steven Brown at (913) 551–7718 or by e-mail at *brown.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What action is EPA taking?
II. What is the background of this action?
III. How can Iowa correct the inadequacy and when must the correction be submitted?
IV. What are EPA's comment responses?
V. What action is EPA taking?

I. What action is EPA taking?

EPA is finding that the Iowa SIP is substantially inadequate to maintain the 2006 24-hour NAAQS for $PM_{2.5}$ in Muscatine County, Iowa. EPA is also finalizing a timeline for Iowa to revise its SIP to correct these deficiencies by a date no later than 18 months after the effective date of this rule. EPA proposed this rule on February 2, 2011 (76 FR 9706). EPA received comments from the State of Iowa Department of Natural Resources (IDNR), the Iowa Environmental Council, and 15 Iowa citizens. A summary of these comments on the proposed rule and EPA's responses are found in Section IV. EPA's finding is based on complete, quality-assured, quality controlled and certified ambient monitoring data from the 2007–2009 monitoring period. Based on the 2010 monitoring data in Iowa's Certification Request, the Muscatine area continues to violate the 2006 24-hour $PM_{2.5}$ standard based on the 2008–2010 monitoring data with a design value of 37 micrograms per cubic meter (μg/m³).

II. What is the background of this action?

EPA promulgated the 2006 24-hour NAAQS for $PM_{2.5}$ on October 17, 2006 (71 FR 61144) based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to fine particulate matter. The 2006 standard for 24-hour $PM_{2.5}$ was set at a level of 35 μg of particulate matter less than 2.5 micrometers (μm) in diameter, per cubic meter of air. The standard is met when the 3-year average of the 98th percentile of 24-hour concentrations is equal to or less than 35 μg/m³. The computation of this 3-year average of the 98th percentiles of 24-hour concentrations is commonly referred to as the design value and is based on the most recent three years of quality assured data.

Section 110(a)(2)(B) requires each state to establish and operate appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality. Pursuant to this authority, the state maintains a network of air quality monitors for $PM_{2.5}$ in accordance with 40 CFR Part 58 which meets applicable requirements. Monitors called State or Local Air Monitoring Stations (SLAMS) make up the ambient air quality monitoring sites whose data are primarily used for determining compliance with the NAAQS.

In accordance with section 107(d)(1)(B) of the CAA, no later than 2 years after promulgation of a new or revised NAAQS, the Administrator must designate all areas, or portions thereof, within each state as nonattainment, attainment or unclassifiable. This process is commonly referred to as the ''designations process.''

With respect to all pollutants, including $PM_{2.5}$, if monitoring data demonstrates that an area does not comply with the NAAQS, or contributes to a violation in a nearby area, that area is designated as nonattainment. If monitoring data demonstrates that an area complies with the NAAQS, and the area does not contribute to air quality problems in nearby areas that do not comply with the NAAQS, the area is designated attainment. If there is not enough information to determine if an area is compliant with the NAAQS it is designated as unclassifiable. On November 13, 2009, EPA promulgated its final designations for the 2006 24-hour $PM_{2.5}$ standards (74 FR 58688). These designations were determined based upon air quality monitoring data for calendar years 2006–2008 (which were the most recent three years of data prior to the initial designations). The entire State of Iowa was designated as unclassifiable/attainment (74 FR 58729) at that time based on that set of data.

On May 20, 2010, the State submitted certified SLAMS monitoring data, for calendar year 2009, in accordance with 40 CFR Part 58. When determining the design value for the current 24-hour $PM_{2.5}$ standard based upon air quality monitoring data for calendar years 2007–2009, EPA concluded that a monitor in the Muscatine area recorded data violating the standard. The monitor (site ID# 191390015) is located in the City of Muscatine, Muscatine County, Iowa, and is the only $PM_{2.5}$ SLAM station in the county. The SLAM stations make up the ambient air quality monitoring sites that are primarily needed for NAAQS comparisons. Site ID# 191390015 is often referred to as the ''Garfield School'' monitor and will be referred to as such in this rulemaking. The 2007–2009 design value for the Garfield School monitor is 38 μg/m³. Historically, the Garfield School monitoring location has recorded fluctuating $PM_{2.5}$ values very near or above the NAAQS. Historical values are shown in Table 1. The monitoring data in Iowa's Certification Request for 2010 indicates that the Muscatine area continues to violate the 2006 24-hour standard based on 2008–2010 monitoring data.

The area was not designated nonattainment at the time of EPA's initial designations rulemaking for the 2006 24-hour $PM_{2.5}$ standard in 2009, because, at that time, available certified monitoring data demonstrated that the design value was compliant with the standard.

TABLE 1—HISTORICAL DESIGN VALUES AT THE GARFIELD SCHOOL MONITOR

Monitoring years	Design value
2001–2003	35
2002–2004	35
2003–2005	38
2004–2006	34
2005–2007	36
2006–2008	35
2007–2009	38

TABLE 1—HISTORICAL DESIGN VALUES AT THE GARFIELD SCHOOL MONITOR—Continued

Monitoring years	Design value
2008–2010	37

Section 110(k)(5) of the CAA provides, in relevant part, that ''[w]henever the Administrator finds that the applicable implementation plan for an area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, * * * the Administrator shall require that state to revise the plan as necessary to correct such inadequacies.''

Because monitor data in the Muscatine area show violations of the 2006 24-hour $PM_{2.5}$ standard, based upon 2007–2009 data, and have shown violations of the standard in the past (based upon 2005–2007 data), EPA has determined that the SIP is substantially inadequate to maintain the 2006 24-hour NAAQS for $PM_{2.5}$ in this area. EPA received no comments on the monitoring data or proposed finding of substantial inadequacy. Accordingly, EPA is finalizing the proposed action and Iowa must revise the SIP as described herein.

III. How can the State correct the inadequacy and when must the correction be submitted?

The State must submit several specific plan elements to EPA in order to correct the inadequacy of the SIP identified above. These specific elements are: (1) A revised emissions inventory for all sources (including area sources, mobile sources and other significant sources) that could be expected to contribute to the violating monitor because of their size, proximity, or other relevant factors consistent with 40 CFR 51.114(a); (2) a modeling demonstration consistent with Appendix W to 40 CFR part 51 showing what reductions will be needed to attain and maintain the $PM_{2.5}$ NAAQS in the area; (3) adopted measures to achieve reductions determined necessary to attain and maintain the NAAQS, with enforceable schedules for implementing the measures as expeditiously as practicable; and (4) contingency measures as described below.

The Muscatine area is currently designated as attainment of the 2006 24-hour $PM_{2.5}$ standard, however, EPA finds the SIP substantially inadequate to maintain the 2006 24-hour NAAQS for $PM_{2.5}$, due to the monitor in the Muscatine area (Garfield School) recording data violating the standard (considering 2007–2009 monitoring data). In this instance, the CAA requirements relating to nonattainment areas are not expressly applicable. Therefore, consistent with the general SIP requirements in section 110 of the CAA, and as discussed in the February 2, 2011, proposed SIP Call. (76 FR 9706), EPA is requiring a SIP revision which includes adopted measures to achieve reductions determined necessary to attain and maintain the NAAQS, as well as contingency measures, as described below.

Consistent with the February 2, 2011, proposal, all adopted measures to achieve reductions, determined through the modeling demonstration to be necessary to attain and maintain the 2006 24-hour $PM_{2.5}$ standard, should be implemented no later than two years after the issuance of this final SIP Call. EPA believes that this schedule is reasonable, because IDNR has already performed a substantial portion of its analysis of the nature of the $PM_{2.5}$ problem in the area and the types of controls which might be necessary to address the problem.

EPA believes that it is reasonable to expect that the 98th percentile value for the calendar year after the necessary controls are implemented should be at or below the 24-hour $PM_{2.5}$ standard. Contingency measures will be triggered if that value is above the standard in the calendar year after the implementation of controls necessary for attainment, or in any subsequent year. The SIP revision must contain an enforceable commitment to adopt and implement sufficient contingency measures, once triggered, in an expeditious and timely fashion that is comparable and analogous to requirements for contingency measures in CAA section 175A(d). To do so, the SIP revision should clearly identify measures which could be timely adopted and implemented, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The schedule for adoption and implementation should be as expeditious as practicable, but no longer than 24 months after being triggered.

Section 110(k)(5) of the CAA provides that after EPA makes a finding that a plan is substantially inadequate, it may establish a reasonable deadline for the State to submit SIP revisions correcting the deficiencies, but the date cannot be later than 18 months after the State is notified of the finding. Consistent with this provision, EPA is requiring the submittal within 18 months following the final finding of substantial inadequacy. The 18-month period begins on the effective date of this rule.

This rule requires the State to establish a specific date in its SIP revision by which the Muscatine area will attain the standard. The date must be as expeditiously as practicable based upon implementation of Federal, State and local measures. As discussed previously, we expect that the date for attainment (for the purpose of this rule, the date by which the 98th percentile 24 hour $PM_{2.5}$ value must be at or below 35 $\mu g/m^3$) will be the first full calendar year following the required implementation of controls. In this case, the date will be the first full calendar year which begins after the two year anniversary of the effective date of this rule. EPA will establish a specific date for attainment at the same time it takes final action on the State's implementation plan revision in response to this final SIP Call. Notwithstanding the date for attainment, the 2006 24-hour $PM_{2.5}$ standard can only be achieved when the average of three consecutive years of data show those $PM_{2.5}$ concentrations are at or below the levels of the 2006 24-hour standard.

IV. What is EPA's response to comments?

As stated above, on February 22, 2011, EPA proposed to find that the Iowa SIP was substantially inadequate to maintain the 2006 24-hour $PM_{2.5}$ NAAQS (76 FR 9106). EPA received 17 comments on the proposed rule. We note that all of the comments related to the proposed remedy (the timing and content of the SIP to be required as a result of the SIP call). EPA received no comments on the underlying proposed finding of substantial inadequacy and we are finalizing that finding on the basis of the rationale stated in EPA's February 2, 2011, proposal and in section II, above. Below we set forth a summary of the comments regarding the proposed remedy and EPA's responses:

Comment 1: Fifteen citizens commented that the new SIP should be completed in less than 18 months.

Response: The CAA section 110(k)(5) requires that whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQS, the Administrator shall require the state to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the state of the inadequacies and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. EPA believes the 18 month deadline for Iowa to submit its revised SIP is appropriate.

In order to revise the SIP, the State must conduct modeling; analyze the modeling; and determine what emission reductions are needed and the appropriate emission controls to achieve those reductions. The rulemaking process includes the opportunity for the public to comment on the proposed SIP revisions, including the proposed emission controls, at the State level. Once the public has been given adequate opportunity to submit comments, the State must respond to those comments, finalize its plan, and then submit it to EPA for review and approval. In order to have a complete submittal for EPA review, the State must ensure EPA that all of the requirements in 40 CFR part 51, Appendix V are met, including for example, a control strategy demonstration with adequate justification which has been fully vetted through the public process.

As described above, the process for developing and finalizing the State's plan can take a significant amount of time, much of which is used to allow the public (as well as affected sources) time to comment on the proposal. Therefore, EPA has determined that the 18 month timeframe is reasonable for submission of the plan.

Comment 2: Fourteen citizens commented that the adopted measures to achieve reductions determined necessary to attain and maintain the 2006 24-hour $PM_{2.5}$ NAAQS should be implemented in less than two years.

Response: As stated in the response to Comment 1, section 110(k)(5) of the CAA requires the State to submit a revised SIP to EPA within 18 months of the date of this action, and EPA has determined that the 18 month deadline is reasonable for submission of the SIP. If, as anticipated, IDNR cannot complete the SIP sooner than 18 months after this final action, sources would then be required to implement controls within 6 months after the revised SIP has been developed and submitted. As discussed above, the State and affected sources will not know which specific controls will be required until the SIP has gone through the State rulemaking process, including opportunity for public comment. Depending on the nature of the final controls selected, it may not be reasonable to establish a deadline shorter than two years after EPA promulgates the final SIP call rule. In the proposal EPA stated that this two year deadline is an outside date, and that compliance with the control strategy necessary to achieve the standard should be as expeditious as practicable, but no later than that date. If, during the SIP development process, the State or EPA determines that compliance can be achieved earlier than the two year outside date, then compliance would be required by the earlier date. Therefore, EPA has determined that this deadline is reasonable.

Comment 3: Two citizens commented regarding the health effects of high levels of air pollution in Muscatine. One commenter states that Muscatine residents experience high incidences of lung disease, cardiac problems, renal and other serious life threatening illnesses, as well as death that may be caused by ''air toxicants'' including $PM_{2.5}$ and sulfur dioxide (SO_2).

Response: EPA acknowledges the health effects of high levels of $PM_{2.5}$ and SO_2. The adverse health effects of the high concentrations of these pollutants are the primary considerations EPA takes into account when setting the NAAQS levels. The primary NAAQS levels are intended to be protective of human health. EPA has determined that the Muscatine area is not meeting the current 24-hour NAAQS for $PM_{2.5}$ and, therefore, the current level of air quality is not protective of human health. This action will help ensure that the Muscatine area air quality returns to levels of $PM_{2.5}$ concentrations that are protective of human health.

EPA is also addressing air quality issues related to SO_2 through the new NAAQS standard promulgated on June 22, 2010, by EPA (72 FR 35520). The attainment status of the Muscatine area with respect to the SO_2 one-hour NAAQS is yet to be determined. Nonattainment areas will be required to develop plans addressing the CAA nonattainment area requirements for SO_2. In the preamble to the rule, EPA also describes how most areas not designated as nonattainment for the SO_2 NAAQS will be required to develop a plan to maintain the standard (72 FR 35520, 35552–35554). Therefore, the State will also need to address SO_2 emissions in the Muscatine area in implementing the applicable requirements for the SO_2 NAAQS.

Comment 4: Two citizens commented on the emissions seen at or near Grain Processing Corporation (GPC). A commenter stated that residents who live near GPC must either stay indoors or be exposed to air pollutants when the boilers are fired.

Response: As a result of this action, IDNR is required to submit a SIP that will demonstrate how the Muscatine area will reach attainment of the health-based $PM_{2.5}$ NAAQS. As part of the SIP development, Iowa will conduct an analysis of the sources contributing to exceedances of the standard, which will include GPC. The State will require emissions reductions from contributing sources sufficient to bring the area back into attainment with the health-based PM NAAQS. Further opportunity for public review of the State's plan will be provided by the State and EPA.

Comment 5: One citizen commented on the exceedances of the ambient air monitors at the Garfield monitor noting ongoing exceedances of the standard.

Response: As explained in Section II, EPA has analyzed the historical and current monitoring data and has reached the conclusion that the area is not achieving the standard. EPA agrees that the Garfield monitor has shown exceedances of the 2006 24-hour $PM_{2.5}$ standard. EPA is taking this action to address the resulting violations of the NAAQS to bring the Muscatine area into attainment.

Comment 6: IDNR commented that EPA should be more flexible regarding the modeling demonstration required as part of the SIP. IDNR stated that the modeling requirement for this SIP call should allow for the use of the modeling protocol developed by Iowa as well as future EPA guidance and procedures that may not be part of Appendix W.

Response: The proposed rule states that the modeling demonstration should be consistent with Appendix W. EPA does not read this language as precluding the use of Iowa's modeling protocol and any future guidance. Appendix W provides the guidelines to establish the modeling protocol and specifically allows for the use of alternative models. 40 CFR part 51, Appendix W, Section 3.2. EPA will approve the use of alternatives if appropriate and adequately justified. Any future guidance will be addressed at the time it is issued.

Comment 7: IDNR commented that it is not reasonable to expect that the design value during the calendar year after the necessary controls are implemented should be at or below the 24-hour $PM_{2.5}$ standard. Further, IDNR commented that the determination that the attainment date has been met should be based on data representative of conditions after the implementation of controls. IDNR also commented that the attainment date should be determined within two years following the implementation of controls and should be assessed using the 98th percentile concentrations. IDNR stated that if the 98th percentile concentrations for the first and second calendar years after controls are implemented are below the level of the NAAQS, a deferment or extension of the attainment date should occur, even if the design value is over the standard.

Response: EPA believes it is reasonable to expect the monitored values in the area to be below the level of the NAAQS in the year after installation of controls. IDNR has already done a substantial analysis of air quality and the sources that contribute to the $PM_{2.5}$ problems in the area. The modeling should identify all of the emissions reductions which are necessary to attain the standard. The SIP should also identify the controls which will result in the required emissions reductions. As discussed in Section III, above, the date for implementation of controls should be two years after the effective date of this final rule (in 2013), and the date for attainment will be the first full calendar year following the required implementation of controls, i.e. 2014. For clarification, the calculation of this value would only consider the air quality data in the calendar year after the controls are fully implemented, and thus would not include the data from the previous two years (prior to controls, i.e. 2012 and 2013). In other words, in the year after implementation of controls (2014), the 98th percentile of 24-hour concentrations should be equal to or less than 35 $\mu g/m^3$.

This action is a SIP Call under section 110(k)(5). The area has not yet been designated as nonattainment and therefore, there is no statutory process for extending the ''attainment date.'' Through this action, EPA is setting forth a date by which the area must meet the NAAQS standard.

Comment 8: IDNR commented that because Muscatine is not currently designated as a nonattainment area, therefore, it is not clear why contingency measures analogous to those specified in CAA section 175A(d) are appropriate for the area.

Response: Although this area is not designated as a nonattainment area, the area currently is not attaining the NAAQS, and appears in the past to have gone in and out of attainment. EPA is taking this action to call for a SIP which includes a control strategy to ensure that the area attains and then continues to maintain the standard. To ensure that the area continues to maintain the standard in the future, EPA has concluded that the State must develop contingency measures which would address any future violations after the control strategy to achieve attainment has been successfully implemented. The proposed rule states that the SIP submission must contain an enforceable commitment to adopt and implement sufficient contingency measures, once triggered (i.e., once the 98th percentile of 24-hour concentrations for a particular year exceeds 35 $\mu g/m^3$), in an expeditious and timely fashion that is comparable and analogous to requirements for contingency measures in CAA section 175A(d). EPA did not state or intend to imply that section 175A(d) is literally applicable to the Muscatine area, but rather provided that IDNR follow 175A(d) as a guide for developing and implementing its contingency measures. Contrary to commenter's contention, section 175A(d) contingency measures are not designed for implementation in nonattainment areas, but rather for implementation after areas have been redesignated to attainment. In other contexts as well, EPA has looked to section 175A as a guide for attainment area maintenance plan contingency measures. For example, EPA used section 175A(d) as a model for maintenance plan contingency measures for certain areas designated attainment for the 1997 8-hour ozone standard, see Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005 and attainment area section 110(a)(1) maintenance plans following this guidance. Thus EPA's invocation of section 175A(d) with respect to the Muscatine area is consistent with the purpose of that section and EPA's past practice. EPA did not receive comments on whether any additional contingency measure triggers would be appropriate, or whether contingency measures should be adopted in advance and implemented automatically once triggered. Therefore, EPA is adopting its proposed approach and requiring that the SIP submission include contingency measures using 175A(d) as a guide in developing the measures. The specific requirements for contingency measures for this plan are described in section III, above.

Comment 9: The Iowa Environmental Council (IEC) commented that EPA should issue its final SIP call at the earliest possible date so that corrective actions can be put into practice quickly. IEC also commented on the health effects of high levels of $PM_{2.5}$ in the Muscatine area. Finally, the commenter stated that it is imperative that IDNR assure that Muscatine reduces its $PM_{2.5}$ concentrations and prove that these reductions can at last be maintained in the long run.

Response: See responses to comments 1, 3, and 8 above.

V. What actions is EPA taking?

EPA is taking the following actions relating to the Iowa SIP for $PM_{2.5}$ for Muscatine County. EPA:

1. Finds that the SIP is substantially inadequate to maintain the NAAQS for 24-hour $PM_{2.5}$ in the area;
2. Requires that Iowa revise and submit to EPA a SIP to meet all of the applicable requirements of section 110 of the Act with respect to $PM_{2.5}$ in the area, including an emissions inventory, modeled attainment demonstration, adopted control measures and contingency measures as described in EPA's February 2, 2011, proposal;
3. Requires the State to submit revisions to the SIP within 18 months of the effective date of this rule;
4. Requires that all adopted measures to achieve reductions determined necessary to attain and maintain the 2006 24-hour $PM_{2.5}$ standard be implemented no later than two years after the issuance of this rule;
5. Requires that the SIP provide for attainment and maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in the Muscatine County, Iowa area as expeditiously as practicable, beginning (as described in response to Comment 7) no later than the calendar year after the implementation of controls necessary for attainment (two years after the effective date of this rule).

Statutory and Executive Order Reviews

Under the CAA, a finding of substantial inadequacy and subsequent obligation for a State to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and State obligation do not directly impose any new regulatory requirements. In addition, the State obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, this rule:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the finding of SIP inadequacy would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 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 action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Statutory Authority

The statutory authority for this action is provided by sections 110 and 301 of the CAA, as amended (42 U.S.C. 7410 and 7601).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Iowa, Particulate matter, State implementation plan.

Dated: June 28, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–17235 Filed 7–13–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 76, No. 135

Thursday, July 14, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0733; Directorate Identifier 2010–NE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division (PW) PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain PW4000 turbofan engines. This proposed AD was prompted by an updated low-cycle fatigue (LCF) life analysis performed by Pratt & Whitney. This proposed AD would require removing certain part number (P/N) high-pressure turbine (HPT) stage 1 and HPT stage 2 airseals and HPT stage 1 airseal rings before their published life limit, and establishes a new lower life limit for these parts. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 29, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7742; *fax:* 781–238–7199; *e-mail: james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0733; Directorate Identifier 2010–NE–36–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

A PW2000 field event led Pratt & Whitney to re-evaluate the low-cycle fatigue (LCF) lives of its PW2000 engine, and similar engines models, including the PW4000 engine and its high-pressure turbine (HPT). Pratt and Whitney's updated analysis indicated that the current certified life limits for the PW4000 HPT stage 1 and stage 2 air seals and air seal rings should be reduced to prevent failure of those life limited parts. The current certified life limits, if not reduced, present an unacceptable level of risk of part failure. This condition, if not corrected, could result in engine failure and damage to the airplane.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing the HPT stage 1 airseal, P/N 50L879; the HPT stage 2 airseal, P/N 53L030; and the HPT airseal ring, P/N 50L664, prior to their published life limits, using a drawdown plan.

Costs of Compliance

We estimate that this proposed AD would affect 869 engines installed on airplanes of U.S. registry. We also estimate that, because the removals would be performed at piece-part level, no additional work-hours would be required. Prorated life for the HPT would be about $46,835 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $40,699,615.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a

substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Division: Docket No. FAA–2011–0733; Directorate Identifier 2010–NE–36–AD.

(a) Comments Due Date

We must receive comments by August 29, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Pratt & Whitney Division (PW) turbofan engines, with high-pressure turbine (HPT) stage 1 airseal, part number (P/N) 50L879; HPT stage 2 airseal, P/N 53L030; or HPT stage 1 airseal ring, P/N 50L664, installed:

(1) PW4000–100'' Engines

PW4000–100'' engine models PW4164, PW4164C, PW4164C/B, PW4168, and PW4168A.

(2) PW4000–94'' Engines

(i) PW4000–94'' engine models PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4156A, PW4158, PW4160, PW4460, and PW4462 engines that have incorporated Pratt & Whitney Service Bulletins (SBs) PW4ENG 72–490, or PW4ENG 72–504, or PW4ENG 72–512, or PW4ENG 72–572, or PW4ENG 72–588, or PW4ENG 73–150, or Engineering Change Number EC92KK322G, H, I, J, and K, as indicated with a (–3), or (–3A), or (–3B) suffix on the engine data plate.

(ii) PW4000–94'' engines models PW4050, PW4052, PW4056, PW4152, PW4156, and PW4650 engines that have incorporated Pratt & Whitney SBs PW4ENG 72–490, or PW4ENG 72–504, or PW4ENG 72–512, or PW4ENG 72–572, or PW4ENG 72–588, or PW4ENG 73–150, or Engineering Change Number EC92KK322G, H, I, J, and K, as indicated with a (–3), or (–3A), or (–3B) suffix on the engine data plate.

(d) Unsafe Condition

This AD was prompted by an updated low-cycle fatigue (LCF) life analysis performed by Pratt & Whitney. We are issuing this AD to correct the unsafe condition on these products.

(e) Compliance

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

(f) Removing From Service, the Stage 1 HPT Airseal, P/N 50L879

Remove the stage 1 HPT airseal, P/N 50L879, at the next piece-part exposure after the effective date of this AD, or before accumulating the number of cycles listed in Table 1 of this AD, whichever occurs later.

TABLE 1—REMOVAL OF STAGE 1 HPT AIRSEALS, P/N 50L879, BY CYCLES-SINCE-NEW

For engine model . . .	Remove stage 1 HPT Airseal by . . .
(1) Listed in paragraph (c)(1) of the Applicability Section of this AD	12,600 cycles-since-new (CSN).
(2) Listed in paragraph (c)(2)(i) of the Applicability Section of this AD	13,900 CSN.
(3) Listed in paragraph (c)(2)(ii) of the Applicability Section of this AD	18,900 CSN.

(g) Removing From Service, the Stage 2 HPT Airseal, P/N 53L030

Remove the stage 2 HPT airseal, P/N 53L030, at the next piece-part exposure after the effective date of this AD, or before accumulating the number of cycles listed in Table 2 of this AD, whichever occurs later.

TABLE 2—REMOVAL OF STAGE 2 HPT AIRSEALS, P/N 53L030, BY CYCLES-SINCE-NEW

For engine model . . .	Remove stage 2 HPT Airseal by . . .
(1) Listed in paragraph (c)(1) of the Applicability Section of this AD	13,900 CSN.
(2) Listed in paragraph (c)(2)(i) of the Applicability Section of this AD	13,800 CSN.
(3) Listed in paragraph (c)(2)(ii) of the Applicability Section of this AD	15,900 CSN.

(h) Removing From Service, the Stage 1 HPT Airseal Ring, P/N 50L664

Remove the stage 1 HPT airseal ring, P/N 50L664, at the next piece-part exposure after the effective date of this AD, or before accumulating the number of cycles listed in Table 3 of this AD, whichever occurs later.

TABLE 3—REMOVAL OF STAGE 1 HPT AIRSEAL RING, P/N 50L664, BY CYCLES-SINCE-NEW

For engine model . . .	Remove stage 1 HPT Airseal Ring by . . .
(1) Listed in paragraph (c)(2)(i) of the Applicability Section of this AD	14,800 CSN.
(2) Listed in paragraph (c)(2)(ii) of the Applicability Section of this AD	16,800 CSN.

(i) Installation Prohibition

After the effective date of this AD, do not install any stage 1 HPT airseal, P/N 50L879, stage 2 HPT airseal, P/N 53L030, or stage 1 HPT airseal ring, P/N 50L664, that is at piece-part exposure and exceeds the new life limit listed in Table 1, Table 2, or Table 3, respectively, of this AD.

(j) Definitions

For the purpose of this AD, piece-part exposure means that the part is completely disassembled and removed from the engine.

(k) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

(l) Related Information

For more information about this AD, contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7742; *fax:* 781–238–7199; *e-mail: james.e.gray@faa.gov.*

Issued in Burlington, Massachusetts, on July 8, 2011.

Peter A. White,

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

[FR Doc. 2011–17648 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0716; Directorate Identifier 2011–NM–013–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Model Galaxy, Gulfstream G150, and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A broken aileron servo actuator centering spring rod was discovered on a model G100 aircraft during a routine scheduled maintenance inspection. * * * This latent failure of a centering spring rod, if not detected and corrected, in conjunction with the disconnection of the normal mechanical control system of the same servo actuator would lead to loss [of] control of the flight control surface [aileron or elevator]. This condition would reduce the control capability of the airplane and imposes a higher workload on the flight crew reducing their ability to cope with adverse operating conditions.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 29, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; e-mail *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0716; Directorate Identifier 2011–NM–013–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for Israel, has issued Airworthiness Directives 27–10–11–03, dated December 6, 2010; and 27–10–12–29, dated January 4, 2011 (referred to after this as ''the MCAI''); to correct an unsafe

condition for the specified products. The MCAI states:

A broken aileron servo actuator centering spring rod was discovered on a model G100 aircraft during a routine scheduled maintenance inspection. This centering spring rod is common to all Gulfstream Mid Cabin model (G100, G150 and G200) aileron control servo actuators and the G200 elevator control servo actuator too. The function of the centering spring rod is to maintain the affected servo actuator and its associated flight control surface in a centered position in the event of a disconnect of the normal mechanical control system input from the flight crew to the same servo actuator. This latent failure of a centering spring rod, if not detected and corrected, in conjunction with the disconnection of the normal mechanical control system of the same servo actuator would lead to loss [of] control of the flight control surface/aileron. This condition would reduce the control capability of the airplane and imposes a higher workload on the flight crew reducing their ability to cope with adverse operating conditions.

The required actions include a detailed inspection of the servo actuator centering spring rods for the aileron and elevator to detect fractured or broken rods, and replacing the rods if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gulfstream Aerospace LP has issued Gulfstream Service Bulletins 150–27–123; and 200–27–374; both Revision 1, both dated January 27, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 200 products of U.S. registry. We also estimate that it would take about 19 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $323,000, or $1,615 per product.

In addition, we estimate that any necessary follow-on actions would take up to 20 work-hours per product, and require parts costing $0, for a cost of $1,700 per product. We have no way of determining the number of products that may need these actions. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Docket No. FAA–2011–0716; Directorate Identifier 2011–NM–013–AD.

Comments Due Date

(a) We must receive comments by August 29, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the products identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Gulfstream G150 airplanes, serial numbers 201 through 286 inclusive.

(2) Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Galaxy airplanes; and Gulfstream Aerospace LP Model Gulfstream 200 airplanes; serial numbers 004 through 231 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A broken aileron servo actuator centering spring rod was discovered on a model G100 aircraft during a routine scheduled maintenance inspection. * * * This latent failure of a centering spring rod, if not detected and corrected, in conjunction with the disconnection of the normal mechanical control system of the same servo actuator would lead to loss [of] control of the flight control surface [aileron or elevator]. This condition would reduce the control capability of the airplane and imposes a higher workload on the flight crew reducing their ability to cope with adverse operating conditions.

Compliance

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

Inspection

(g) Within 12 months after the effective date of this AD, do the actions specified by paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model Gulfstream G150 airplanes: Do a one-time detailed inspection of the aileron control servo actuators to detect fractured or broken centering spring rods, in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 150–27–123, Revision 1, dated January 27, 2011.

(2) For Model Galaxy and Gulfstream 200 airplanes: Do a one-time detailed inspection of the aileron and elevator control servo actuators to detect fractured or broken centering spring rods, in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 200–27–374, Revision 1, dated January 27, 2011.

Corrective Actions

(h) If any centering spring rod is found fractured or broken during any inspection required by this AD: Before further flight, replace the centering spring rod in accordance with a method approved by the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA, or the Civil Aviation Authority of Israel (CAAI) (or its delegated agent).

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Actions done before the effective date of this AD in accordance with Gulfstream Service Bulletin 150–27–123 or 200–27–374, both dated October 27, 2010, are considered acceptable for the actions required by paragraph (g) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI AD does not specify a corrective action for fractured or broken rods; however, paragraph (h) of this AD requires corrective action.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(k) Refer to MCAI Civil Aviation Authority of Israel Airworthiness Directives 27–10–11–03, dated December 6, 2010, and 27–10–12–29, dated January 4, 2011; and Gulfstream Service Bulletins 150–27–123 and 200–27–374, both Revision 1, both dated January 27, 2011; for related information.

Issued in Renton, Washington, on July 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17697 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 203

[Docket No. FDA–2011–N–0446]

Removal of Certain Requirements Related to the Prescription Drug Marketing Act; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove a section of the Prescription Drug Marketing Act (PDMA) regulations requiring that prior to the completion of any wholesale distribution of a prescription drug, an unauthorized distributor must provide to the purchaser ''a statement identifying each prior sale, purchase, or trade of such drug,'' starting with the manufacturer, and that the identifying statement (also known as the ''pedigree'') must include certain information about the drug and each prior sale, purchase, or trade. This action is being taken in response to longstanding issues, including an injunction currently in effect, regarding the application of and compliance with this requirement. FDA is also announcing that it intends to exercise enforcement discretion with respect to certain requirements of the regulation while the rulemaking is pending and with respect to the statutory pedigree requirements of the PDMA, as long as the pedigree identifies the names and addresses of the last authorized distributor of record that handled the drug and the associated dates of transactions involving that last authorized distributor of record and the drug, as well as the names and addresses of all subsequent unauthorized distributors that handled the drug and the corresponding dates of those transactions.

DATES: Submit either electronic or written comments on the proposed rule by September 12, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0446, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Karen Rothschild, Center for Drug Evaluation and Research, Food Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3689, *e-mail: karen.rothschild@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The PDMA (Pub. L. 100–293) was enacted on April 22, 1988, and was modified by the PDA (Pub. L. 102–353) on August 26, 1992. The PDMA, as modified, amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish restrictions and requirements relating to various aspects of human prescription drug marketing and distribution. The primary purpose of the PDMA was to increase safeguards to prevent the introduction and retail sale of substandard, ineffective, and counterfeit drugs into the U.S. drug supply chain. Among other things, the PDMA, in section 503(e)(1)(A) of the FD&C Act (21 U.S.C. 353), requires a wholesale distributor ''who is not the manufacturer or authorized distributor of record'' to provide drug pedigrees to purchasers ''identifying each prior sale, purchase or trade of such drug (including the date of the transaction and the names and addresses of all parties to the transaction).''

On August 1, 1988, the Agency issued a letter that provided guidance on the PDMA for industry pending the issuance of implementing regulations (the 1988 guidance letter) (see attachment E of FDA's 2001 Report to Congress (*http://www.fda.gov/downloads/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/PrescriptionDrugMarketingActof1987/UCM203186.pdf*)). Among other issues, the 1988 guidance letter discussed drug pedigrees. The 1988 guidance letter stated that the necessary identifying information regarding all sales in the chain of distribution may start with the manufacturer or authorized distributor of record. As explained in an FDA 2001 Prescription Drug Marketing Act Report to Congress (2001 Report to Congress) (see *http://www.fda.gov/downloads/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/PrescriptionDrugMarketingActof1987/UCM203186.pdf*), it was the Agency's understanding at the time that the authorized distributor of record would be the distributor to whom the manufacturer first sold the drugs, not just any authorized distributor who happened to purchase the drugs somewhere along the distribution chain.

In the **Federal Register** of March 14, 1994 (59 FR 11842), we issued a proposed rule related to certain provisions of the PDMA. With respect to prescription drug pedigrees, the proposed rule provided in relevant part that the identifying statement for sales by unauthorized distributors must include ''the business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer.'' (59 FR 11865). A final rule was issued in the **Federal Register** of December 3, 1999 (64 FR 67720) (the December 1999 final rule), with an effective date of December 4, 2000. The final rule contained provisions on prescription drug reimportation; wholesale distribution of prescription drugs by unauthorized distributors; the resale of prescription drugs by hospitals, health care entities, and charitable institutions; and distribution of prescription drug samples. In the December 1999 final rule, FDA responded to a comment objecting to the pedigree requirement as proposed because it would require an unauthorized distributor to provide information about all prior sales, purchases, or trades of the drug, starting with the manufacturer, even in cases where the seller from whom the distributor received the drug was an authorized distributor of record and did not provide any pedigree for the drug. The comment recommended revising the proposed rule to require that the pedigree only go back to the last authorized distributor of record (64 FR 67720 at 67747). FDA declined to revise the rule, explaining that the statute requires that the pedigree identify ''each prior sale, purchase, or trade of the drug'' and ''[t]here is no indication in [the] PDMA that Congress intended that the statement include only those sales, purchases, or trades since the drug was last handled by an authorized distributor.'' (64 FR 67720 at 67747).

The December 1999 final rule thus codified § 203.50(a) (21 CFR 203.50(a)), which follows section 503(e)(1)(A) of the FD&C Act, requiring that, before the completion of any wholesale distribution by a wholesale distributor of a prescription drug for which the seller is not a manufacturer or an authorized distributor of record, the seller must provide to the purchaser a statement (also referred to as a pedigree) identifying each prior sale, purchase, or trade of the drug. According to § 203.50(a), the identifying statement must include: The proprietary and established name of the drug; dosage; container size; number of containers; the lot or control numbers of the drug being distributed; the business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and the date of each previous transaction.

After publication of the December 1999 final rule, we received many comments on, and held several meetings to discuss, the implications of the final regulations regarding, among other things, the pedigree provisions at § 203.50(a) requiring unauthorized distributors to provide a pedigree showing all prior sales going back to the manufacturer. Industry representatives of unauthorized distributors represented that they could not obtain the required pedigree showing all prior sales of the drugs they purchase because a large portion of these drugs are purchased from authorized distributors who are not required to provide pedigrees and who are unwilling to voluntarily provide them.[1] Industry representatives also claimed that implementation of this requirement could prevent as many as 4,000 smaller, unauthorized distributors from distributing many drugs to their

[1] FDA, The Prescription Drug Marketing Act Report to Congress, 2001 (*http://www.fda.gov/downloads/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/PrescriptionDrugMarketingActof1987/UCM203186.pdf*).

customers, putting the unauthorized distributors out of business.[2]

In the 2001 Report to Congress, we noted that we would be able to address some, but not all of the concerns raised by unauthorized distributors. We stated that we believed that ''the concerns related to continuing to exempt authorized distributors from the pedigree requirement and the exact meaning of the phrase *'each prior sale'* can be addressed only through statutory remedies.'' [3]

As a result of these comments, other informal communications that FDA had with industry, industry associations, and Congress, and the Agency's consideration of a petition for stay of action received on May 3, 2000, FDA delayed the effective date of several provisions of the December 1999 final rule until October 1, 2001, and reopened the administrative record to receive additional comments (65 FR 25639, May 3, 2000). In the **Federal Register** of March 1, 2001 (66 FR 12850), we announced our decision to further delay until April 1, 2002, the applicability of § 203.50, among other provisions. Further delays of the effective dates followed until December 1, 2006, to give us additional time to consider whether regulatory changes were appropriate and, if so, to initiate such changes (67 FR 6645, February 13, 2002; 69 FR 4912, January 23, 2003; 69 FR 8105, February 23, 2004).

While § 203.50 was stayed, the industry followed the advice given in the 1988 guidance letter, which, as noted previously, stated that the pedigree should include ''all necessary identifying information regarding all sales in the chain of distribution of the product, starting with the manufacturer or the authorized distributor.''

In the **Federal Register** of June 14, 2006 (71 FR 34249), we announced that FDA did not intend to further delay the effective date of certain regulations related to the PDMA, including § 203.50, and that the regulation would go into effect on December 1, 2006.

On September 20, 2006, a group of unauthorized wholesalers of prescription drugs filed a lawsuit against FDA in the U.S. District Court for the Eastern District of New York, seeking, among other things, a declaratory judgment that § 203.50(a) erroneously interprets the statutory requirement for pedigrees (21 U.S.C. 353(e)(1)(A)), and violates the U.S. Constitution's guarantees of equal protection and due process. (*RxUSA Wholesale, Inc.* v. *Dept. of Health and Human Servs.,* 467 F. Supp.2d 285 (E.D.N.Y. 2006)). On November 22, 2006, the plaintiffs moved for a preliminary injunction against implementation of the regulation, which, as noted previously, was scheduled to become effective on December 1, 2006. On December 8, 2006, the district court issued a preliminary injunction enjoining FDA from implementing § 203.50(a) (467 F.Supp. 2d at 292). The court concluded that the statute, unlike § 203.50(a), does not ''specifically or expressly require[] unauthorized distributors to provide pedigree information *all the way back to the manufacturer.''* 467 F. Supp. 2d at 290 (emphasis in original). The court stated that ''[u]nauthorized distributors would be unable to comply with'' the December 1999 final rule requirement to ''provide complete pedigree information for all prior sales up to the manufacturer'' because unauthorized distributors purchase drugs from authorized distributors ''who do not provide pedigree information.'' (467 F. Supp. 2d at 291). The district court concluded that plaintiffs had shown a likelihood of success on the merits of their claim because, in the court's view, the pedigree regulation undermined the purpose of the statute and was therefore arbitrary and capricious. (467 F. Supp. 2d at 291). The court also found that issuance of the preliminary injunction would benefit the public interest by preserving ''the status quo and the current practice in the industry.'' (467 F. Supp. 2d at 292).

The Agency appealed the district court's preliminary injunction order, but the district court's order was affirmed on July 10, 2008, by the U.S. Court of Appeals for the Second Circuit. (See *RxUSA Wholesale, Inc.,* v. *Dept. of Health and Human Servs.,* 285 Fed. Appx. 809 (2d Cir. 2008)). The appellate court explained that the PDMA ''does not specifically state whether'' a pedigree must ''extend back to the manufacturer, or whether it must only extend to the last authorized distributor. The parties offer differing textual interpretations, but we agree with the district court that for purposes of preliminary injunction the statute's language does not unambiguously compel one interpretation over another.'' (285 Fed. Appx. at 811). Moreover, the second circuit concluded that the district court had not abused its discretion in determining that the plaintiffs had shown a likelihood of success on the merits because § 203.50(a) requires unauthorized distributors to ''provide pedigree information that is currently held only by authorized distributors'' and the regulation is ''inconsistent with the position taken by the agency in its original 1988 guidance letter, and it runs directly counter to the 20-year history of industry reliance on the FDA's initial position.'' (285 Fed. Appx. at 811).

The district court's preliminary injunction, as affirmed by the circuit court, halted FDA's implementation of the requirements of § 203.50(a). Specifically, the order enjoins FDA from implementing the requirement in § 203.50(a) that a pedigree identify each prior sale or trade of a drug back to the drug's original manufacturer and the requirement that specifies the types of information that must be included in the pedigree, including lot numbers and container sizes.

Under the district court's order, unauthorized distributors are only required to provide pedigrees that include information regarding transactions going back to either the manufacturer or the last authorized distributor of record that handled the drugs. In addition, as specified in the FD&C Act, all pedigrees must include the dates of the listed transactions and the names and addresses of all parties to those transactions. We recognized that these circumstances resulting from the court's order could lead to confusion and possible disruptions or delays in the nation's drug distribution system for wholesale distributors operating outside of the court's jurisdiction and could provide an undue advantage to certain wholesaler distributors. Therefore, we announced that we would exercise enforcement discretion in a manner consistent with the court's opinion throughout the rest of the country.

II. Proposed Regulation

FDA is now proposing to remove § 203.50(a). Over the past 20 years, we have endeavored to ensure that the pedigree requirements in our regulations are consistent with congressional intent and provide appropriate accountability to protect our nation's drug supply. We have made a good faith effort to implement the requirements in § 203.50(a) consistent with the language of the PDMA through public meetings, **Federal Register** documents requesting comments, meetings with the wholesale industry, Members of Congress, and others, a Report to Congress, and other actions. For the various reasons discussed earlier, § 203.50(a) has been effective for only a total of 7 days since the finalization of the rule in 1999. As explained previously, there have been serious ongoing concerns about the

[2] (See footnote 1 of this document.)

[3] (See footnote 1 of this document.)

effect that full implementation of the statutory pedigree requirements, as codified in § 203.50(a), would have on the nation's drug supply and on wholesaler distributors. Therefore, in light of the courts' opinions, we are proposing to remove § 203.50(a).

By proposing to remove § 203.50(a), we would remove the requirement in the regulation that the pedigree identify each prior sale or trade of a drug back to the drug's manufacturer. In addition, this proposal would remove the requirement in the regulation that the identifying statement include certain information, such as the proprietary and established name of the drug, the dosage, container size, number of containers, the drug's lot or control number(s), the business name and address of all parties for each prior transaction, starting with the manufacturer, and the date of each previous transaction. While the rulemaking to remove the regulation is pending, we intend to exercise enforcement discretion with respect to all of these requirements in § 203.50(a).

We note that even with the removal of § 203.50(a), the pedigree requirements of section 503(e)(1)(A) of the FD&C Act would still be in effect. However, with respect to these statutory pedigree requirements, the Agency intends to exercise enforcement discretion and not initiate an enforcement action against any wholesalers for failing to provide a pedigree that goes back to the manufacturer or for failing to include the specific information listed in the regulation, as long as the pedigree otherwise identifies the last authorized distributor of record that handled the drugs and the associated dates of the transactions, as well as the names and addresses of all unauthorized distributors that handled the drug after the last authorized distributor, and the corresponding dates of those transactions.

In summary, unauthorized distributors need to be aware that their pedigree(s) must: (1) Include information regarding transactions going back to either the manufacturer or the last authorized distributor of record that handled the drugs, consistent with the preliminary injunction order previously referenced and (2) include the date of the transaction and the names and addresses of all parties to the transaction as explicitly required under section 503(e)(1)(A) of the FD&C Act. Furthermore, while FDA is proposing to remove § 203.50(a) and intends to exercise enforcement discretion under these described circumstances with respect to the statutory requirements for a pedigree, FDA encourages wholesalers to include the drug, dosage, container size, number of containers, and the drug's lot or control number(s) in the pedigree as well.

FDA continues to believe that drug supply chain security is of the utmost importance and that transparency of transactions and accountability are essential to further secure our nation's drug supply. Counterfeit and diverted drugs continue to be found in our drug supply chain and the action proposed in this document should not be interpreted to mean that there is not a problem with counterfeit and diverted drugs. Rather, FDA remains committed to the framework set forth in the 2004 FDA Counterfeit Drug Task Force Report (Task Force Report) and subsequent updates to that Task Force Report (*http://www.fda.gov/Drugs/DrugSafety/ucm169825.htm*) and will continue to move forward, working with the private and public sectors to improve the security of the drug supply chain and implement measures to further protect Americans from counterfeit and diverted drugs. We also will continue our efforts to implement the pharmaceutical security provisions contained in section 913 of the Food and Drug Administration Amendments Act of 2007.

As stated in the Task Force Report, such measures include implementation of tracking and tracing, which would help secure the integrity of the supply chain by providing an accurate electronic record of transactions in the drug supply chain. Such electronic records documenting the movement of a drug product from the manufacturer to the dispenser would be an important step in preventing counterfeit and diverted drugs from entering the drug supply chain. FDA will continue to develop standards for the purpose of securing the drug supply chain against counterfeit, diverted, subpotent, substandard, adulterated, misbranded, or expired drugs, including standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. We are not proposing any new provisions in lieu of § 203.50(a) at this time.

III. Legal Authority

FDA is issuing this proposed rule to remove the provisions in § 203.50(a) under its rulemaking authority under section 701(a) of the FD&C Act (21 U.S.C. 371) and based on those reasons provided in section II of this document. Specifically, FDA can issue regulations through its rulemaking authority to establish requirements for section 503(e) of the FD&C Act. As described in section I of this document, FDA previously issued a final rule establishing certain requirements for section 503(e)(1)(a). Similarly, under its rulemaking authority, FDA can propose to remove those specific requirements that have been established by regulation. FDA is basing the proposed removal of § 203.50(a) on the grounds described in section II of this document. As explained earlier, the statutory provisions of section 503(e) of the FD&C Act, as well as the other provisions of § 203.50 that would not be removed by this proposed rule, would remain legally effective.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the removal of the specified pedigree requirements for prescription drug distribution in § 203.50(a) would not measurably decrease the estimated compliance costs of the December 1999 final rule, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The Agency published a final rule on December 3, 1999, codified in § 203.50(a), that contained certain requirements concerning prescription drug distribution. Specifically, it required that before the wholesale distribution of any prescription drug to another wholesale distributor or retail pharmacy for which the seller is not an authorized distributor of record, the wholesale distributor must provide to the purchaser a statement identifying each prior sale, purchase or trade. Further, it contained a list of specific information to be contained in the identifying statement. As explained previously, this regulation is the subject of a preliminary injunction. In the December 1999 final rule, the Agency estimated that the wholesale distribution requirements, including the drug identifying (or origin) statement and a separate distributor list to be provided by manufacturers, would together impose $258,000 in annual recordkeeping costs. In making this estimate, the Agency judged that the marginal costs for the inclusion of the additional information that § 203.50(a) would have required beyond that information that would be required in the PDMA pedigree provision would be negligible, and did not increase its cost estimate to reflect this additional effort. The removal of § 203.50(a), therefore, is expected to reduce compliance costs by only that negligible amount that the Agency did not separately estimate for the final rule, as the pedigree provision of the PDMA still requires its own, slightly less expansive, pedigree provision. This regulatory action that removes a provision of the December 1999 final rule is expected to reduce the previously estimated annual compliance costs of $258,000 for this provision by a negligible, but unquantified, amount.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Environmental Impact

The Agency has determined under 21 CFR 25.30 this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Proposed Effective Date

The Agency is proposing that any final rule that may issue based upon this proposed rule become effective upon its publication in the **Federal Register**.

IX. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 203

Labeling, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 203 be amended as follows:

PART 203—PRESCRIPTION DRUG MARKETING

1. The authority citation for 21 CFR part 203 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381.

§ 203.50 [Amended]

2. Section 203.50 is amended by removing and reserving paragraph (a).

Dated: July 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–17696 Filed 7–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Part 123

RIN 1400–AC85

[Public Notice 7524]

International Traffic in Arms Regulations: International Import Certificate

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to remove reference to the International Import Certificate. This amendment will effectively cease the Department's current practice of accepting DSP–53 submissions, as there is no statutory, regulatory, or other authoritative basis for the Department to do so.

DATES: The Department of State will accept comments on this proposed rule until August 29, 2011.

ADDRESSES:

Interested parties may submit comments within 45 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with the subject line, ''International Import Certificate, ITAR Section 123.4.''
- *Internet:* View this notice by searching for its RIN number on the U.S. Government regulations Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Samuel C. Harmon, Office of Defense Trade Controls Policy, Department of State, by *telephone:* (202) 663–2728; *fax:* (202) 261–8199; or *e-mail: harmonsc@state.gov.* ATTN: International Import Certificate, ITAR Section 123.4.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act authorizes the President to control the import and export of defense articles. Executive Order 11958, as amended, delegated the authority to regulate permanent exports and temporary imports and exports of defense articles to the Department of State, and delegated the authority to regulate permanent imports to the Attorney General. The International Import Certificate (IIC), Form BIS–645P/ATF–4522/DPS–53, is identified as a form issued by the Department of Commerce's Bureau of Industry & Security; the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Department of State's Directorate of Defense Trade Controls (DDTC). It is meant to

standardize procedures used to facilitate international trade. However, while DDTC typically receives approximately 600 IIC submissions a year, there is no statutory, regulatory, or other authoritative basis for the Department of State to receive submission or pursue enforcement of the IIC. The Department of State's DSP–61 Application/License for Temporary Import of Unclassified Defense Articles and DSP–85 Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data account for its authority to control temporary imports of defense articles. The Department of State's retention of the IIC is duplicative and unnecessary. Therefore, DDTC proposes to revise § 123.4 to reflect its decision to no longer to accept submissions of the International Import Certificate (DSP–53). DDTC will also make conforming changes to § 120.28 to remove reference to the DSP–53. For temporary import exemptions in which the foreign exporter requires documentation, the U.S. importer will be required to obtain a DSP–61 or a DSP–85. The Bureau of Industry & Security and the Bureau of Alcohol, Tobacco, Firearms and Explosives will continue to adjudicate International Import Certificate submissions for items under their jurisdiction.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of the APA, the Department is publishing this proposed rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this proposed amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this proposed rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department of State does not consider this proposed rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this proposed rule in light of Section 1(b) of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed this proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Parts 120 and 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, chapter I, subchapter M, parts 120 and 123 are proposed to be amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Public Law 105–261, 112 Stat. 1920.

2. Section 120.28 is amended by redesignating paragraph (b)(3) as paragraph (c) and by revising paragraph (b)(1) to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(b) * * *

(1) International Import Certificate (Form BIS–645P/ATF–4522).

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

3. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Public Law 107–228.

4. Section 123.4 is amended by adding paragraph (c)(4) to read as follows:

§ 123.4 Temporary import license exemptions.

* * * * *

(c) * * *

(4) If the foreign exporter requires documentation for a temporary import

that qualifies for an exemption under this subchapter, the U.S. importer will not be able to claim the exemption and is required to obtain a DSP–61 Application/License for Temporary Import of Unclassified Defense Articles or, for classified defense articles, a DSP–85 Application for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data.

* * * * *

Dated: July 6, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–17804 Filed 7–13–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 123

RIN 1400–AC91

[Public Notice 7523]

International Traffic in Arms Regulations: Filing, Retention, and Return of Export Licenses and Filing of Export Information

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to reflect changes in the requirements for the return of licenses. Applicants will no longer be required to return certain expired or exhausted DSP–5s. This change will reduce administrative burden on applicants.

DATES: *Effective Date:* The Department of State will accept comments on this proposed rule until August 29, 2011.

ADDRESSES: Interested parties may submit comments within 45 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendment—License Return.''
- *Internet:* View this notice by searching for its RIN on the U.S. Government regulations Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Bureau of Political-Military Affairs, Department of State, (202) 663–2804 or FAX (202) 261–8199; E-mail *memosni@state.gov, Attn:* ITAR Amendment—License Return.

SUPPLEMENTARY INFORMATION: The Department of State proposes to amend § 123.22(c) to institute changes in the requirements for the return of licenses. With this proposed change, applicants with DSP–5 licenses that have been issued electronically by the Directorate of Defense Trade Controls (DDTC) and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) will no longer need to return them to DDTC. The return of these licenses is redundant and unnecessary as all of the export information has been captured and saved electronically.

All other DSP–5 licenses that do not meet the criteria described above must be returned by the applicant to DDTC. All DSP–61, DSP–73, and DSP–85 licenses, and DSP–94 authorizations, are to be returned by the applicant to DDTC as these licenses and authorizations are not decremented electronically, even if an Electronic Export Information is filed via AES.

Proposed § 123.22(c)(4) provides that licenses issued but not used by the applicant do not need to be returned to DDTC

Proposed § 123.22(c)(5) provides that licenses which have been revoked by DDTC are considered expired.

Section 123.21(b) is to be amended to conform to the proposed changes to § 123.22(c).

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a)

and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123 is proposed to be amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

2. Section 123.21 is amended by revising the heading and paragraph (b) to read as follows:

§ 123.21 Duration, renewal, and disposition of licenses.

* * * * *

(b) Unused, expired, suspended, or revoked licenses must be handled in accordance with § 123.22(c) of this subchapter.

3. Section 123.22 is amended by revising paragraph (c) to read as follows:

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

* * * * *

(c) *Return of licenses.* Per § 123.21 of this subchapter, all DSP licenses issued by the Directorate of Defense Trade Controls (DDTC) must be disposed of in accordance with the following:

(1) DSP–5 licenses issued electronically by DDTC and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) are not required to be returned to DDTC. The DSP–5 licenses, when fully decremented or expired, must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(2) DSP–5, DSP–61, DSP–73, and DSP–85 licenses issued by DDTC but not decremented electronically by the U.S. Customs and Border Protection through AES (*e.g.,* oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant to DDTC upon expiration, to include when the total value or quantity has been shipped. A copy must be maintained by the applicant in accordance with § 122.5 of this subchapter. AES does not decrement the DSP–61, DSP–73, and DSP–85 licenses. Submitting the Electronic Export Information is not considered to be decremented electronically for these licenses.

(3) A DSP–94 authorization filed with the U.S. Customs and Border Protection must be returned by the applicant to DDTC upon expiration, to include when the total value or quantity has been shipped. AES does not decrement the DSP–94 authorization. Submitting the Electronic Export Information is not considered to be decremented electronically for the DSP–94. A copy of the DSP–94 must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(4) Licenses issued but not used by the applicant do not need to be returned to DDTC, even when expired.

(5) Licenses which have been revoked by DDTC are considered expired and must be handled in accordance with paragraphs (c)(1) and (2) of this section.

Dated: July 7, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–17806 Filed 7–13–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–5458–P–01]

RIN 2502–AI96

Federal Housing Administration (FHA) Appraiser Roster: Appraiser Qualifications for Placement on the FHA Appraiser Roster

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

ACTION: Proposed rule.

SUMMARY: This proposed rule updates HUD's regulations to conform to the statutory requirement that appraisers must be certified, rather than licensed, by a state appraisal licensing board in order to appear on the FHA Appraiser Roster. This requirement was established by the Housing and Economic Recovery Act of 2008. Although current HUD practice is in compliance with the statutory mandate, the regulations reflect outdated prior policy of permitting state-licensed appraisers to be listed on the FHA Appraiser Roster. In addition, HUD has taken this opportunity to update the FHA Appraiser Roster by replacing the obsolete references to the Credit Alert Interactive Voice Response System with references to its successor, the online-based Credit Alert Verification Reporting System.

DATES: *Comment Due Date:* September 12, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance

appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9278, Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The FHA Appraiser Roster

To qualify for FHA insurance for a single-family mortgage, a lender must obtain an appraisal of the property that is to be the security for the loan. Only an appraiser listed on HUD's FHA Appraiser Roster may perform the appraisal. Under HUD's current regulation in 24 CFR 200.202(b), an applicant who wishes to be included on the FHA Appraiser Roster must be a state-licensed or state-certified appraiser under the minimum criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, a not-for-profit, private educational foundation. The applicant must not be listed on the General Services Administration's Suspension and Debarment list, on HUD's Limited Denial of Participation list, or in HUD's Credit Alert Interactive Voice Response System (CAIVRS). HUD's regulations for the Appraiser Roster are codified in subpart G of 24 CFR part 200 (consisting of §§ 200.200–200.206).

B. The Housing and Economic Recovery Act of 2008

Section 1404 of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008) amended section 202 of the National Housing Act (12 U.S.C. 1708) to revise qualification standards for FHA-approved appraisers. HERA amended what is now section 202(g) of the National Housing Act [1] to mandate that all appraisers chosen or approved to conduct appraisals of properties that will be security for FHA-insured mortgages must be ''certified'': (1) By the state in which the property to be appraised is located, *or* by a nationally recognized professional appraisal organization; *and* (2) have demonstrated verifiable education in the appraisal requirements established by FHA. Under amended section 202(g) of the National Housing Act, licensed appraisers are no longer authorized to conduct appraisals of properties securing an FHA-insured mortgage.

In order to comply with HERA's requirements governing who qualifies as an FHA-approved appraiser, HUD issued a Mortgagee Letter, ML 2008–39, on December 17, 2008. The mortgagee letter advised appraisers of the revised eligibility requirements to qualify for placement on the FHA Appraiser Roster and provided a timeline for implementation of those requirements. Despite the fact that HERA's provisions were made effective upon enactment, FHA determined that the loss of available FHA Roster appraisers in certain locations would impede its ability to support affordable mortgage financing in those areas and hinder use of FHA single-family programs at a time when use of those programs has increased significantly. Therefore, in order to implement this change in appraiser eligibility requirements in a manner that was not disruptive to the FHA mortgage lending process, ML 2008–39 provided a deadline of October 1, 2009, for all FHA appraisers on the Appraisal Roster to become state-certified. In addition, the mortgage letter indicated that FHA had ceased to accept applications by state-licensed appraisers on October 1, 2008, in order to comply with HERA.[2]

Given the need to implement the new HERA requirements as quickly as possible, HUD chose the HERA option that FHA appraisers must be state-certified rather than the option that would permit appraisers to be certified by appraisal organizations. HUD recognized that it would take time for HUD to decide upon which nationally recognized professional appraisal organizations HUD would designate as organizations acceptable for certification of appraisers who would be approved for the FHA Appraiser Roster. HUD would need to review the organization's appraiser approval criteria and ensure that the organization, in fact, issues certifications. Since HERA allowed for FHA-approved appraisers to be state-certified appraisers, HUD determined, as is more fully discussed in the next section, that state-certified appraisers not only meet the higher education and experience standards that HERA sought to be used for FHA-insured transactions (all states provide for higher education and experience standards for state-certified appraisers than are provided for state-licensed appraisers) but also that utilizing only state-certified appraisers is a more efficient and expedient approach to ensure the availability of highly qualified appraisers to serve as FHA-approved appraisers.

C. Nationally Recognized Professional Appraiser Organizations

HERA provides that appraisers may either be state-certified or certified by a ''nationally recognized professional appraisal organization'' in order to appear on the Roster. FHA recognizes the potential benefits of the flexibility of accepting either form of certification. However, FHA has determined that in order to prevent disruption and to ensure efficient processing of mortgage insurance, FHA will accept only state certification and not the certification of a ''nationally recognized professional appraisal organization.''

Currently, there are approximately 55,000 appraisers on the Roster, and all of these appraisers are state-certified and would already be in compliance with the changes this proposed rule would make. Accordingly, choice of appraisers who are state-certified would mean no interruption of processing mortgage insurance. FHA recognizes that in ML 2008–39 it was announced that FHA considered the Appraisal Foundation to be a nationally recognized professional appraisal organization and that FHA would publish a notice in the **Federal Register** requesting comments on what FHA should consider in examining nationally recognized professional appraisal organizations. Upon further consideration, FHA has determined that while the Appraisal Foundation may be a nationally recognized professional appraisal organization, it does not issue certifications. In addition, because state certification sufficiently accomplishes

[1] Before HERA was enacted on July 30, 2008, the statutory provisions regarding FHA appraiser qualifications were codified in section 202(e) of the National Housing Act. Besides amending the FHA appraiser qualifications, HERA, in section 2116, redesignated section 202(e) as 202(f). Section 203(b) of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111–22, approved May 20, 2009) added a new subsection (d) to section 202 of the National Housing Act entitled ''Limitations on Participation in Origination and Mortgagee Approval.'' Consequently, the provision regarding FHA appraisers was redesignated as section 202(g) of the National Housing Act, the section where the provision is contained at the time of this writing.

[2] Copies of the mortgagee letters referenced in this final rule may be downloaded from: *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/.*

the statutory purpose of ensuring higher quality appraisals, it is unnecessary to request comments on nationally recognized professional appraisal organizations.

D. Credit Alert Interactive Voice Response System (CAIVRS)

CAIVRS was implemented in 1988 as an FHA loan origination aid. CAIVRS is used to determine if a potential borrower has a federal debt that is currently in default or foreclosure or has had a claim paid by the reporting agency within the last 3 years. Federally approved lenders use CAIVRS to prescreen all applicants for federally insured loans. Since 1997, FHA-approved lenders have had Internet access to CAIVRS via the FHA Connection online system to check the Social Security Number of each borrower and coborrower or nonprofit agency acting as a borrower listed on a new FHA loan application. As noted above, under the existing FHA Appraiser Roster regulations, an appraiser will not be approved by FHA if the appraiser is listed on CAIVRS and thus has a federal debt that is currently in default or foreclosure or has had a claim paid by the reporting agency within the last 3 years.

On July 11, 2008, HUD issued ML 2008–18, stating that HUD was discontinuing telephone access to CAIVRS because the hardware supporting the telephone access was obsolete and could no longer be repaired or maintained. Access to CAIVRS is now available solely through the Internet, and CAIVRS is now known as the Credit Alert Verification Reporting System, although the acronym remains the same.

II. This Proposed Rule

This proposed rule conforms the FHA Appraiser Roster regulations regarding eligibility requirements of appraisers to qualify for placement and retention on the Appraiser Roster by making the regulations consistent with both HERA's mandate that all FHA approved appraisers be state-certified and HUD's current policy regarding state-certification of appraisers as set forth in ML 2008–39. In order to make the Appraiser Roster regulations consistent with current statute, all references to state licensing and state-licensed appraisers are removed from the regulations in § 200.202 and § 200.204. This final rule also eliminates the reference to the Credit Alert Interactive Voice Response System in § 200.202. Because the Credit Alert Interactive Voice Response System no longer exists, the phrase has been replaced with ''Credit Alert Verification Reporting System,'' the new appraiser alert system put in place by ML 2008–18.

III. Findings and Certification

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would not add any new regulatory burdens on FHA-approved appraisers or applicants for FHA approval. HERA requires that an appraiser be state-certified to be approved by FHA to be on the Appraiser Roster. HUD ceased accepting applications from state-licensed appraisers on October 1, 2008, and all appraisers already on the Appraiser Roster must have become state-certified by October 1, 2009, to remain on the Appraiser Roster. This proposed rule will not create new costs for small entities of appraisers or of lenders because the rule does not impose any new requirements on appraisers. In addition, FHA's Appraisal Roster pertains solely to individuals, not to entities. Individual appraisers must apply to be on the FHA Appraiser Roster. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Paperwork Reduction Act

The information collection requirements for this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0538. In accordance with the Paperwork Reduction Act, 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 currently valid OMB control number.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 200 to read as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715–z–21; 42 U.S.C. 3535(d).

2. In § 200.202, revise paragraphs (b)(1) and (b)(2)(iii) as follows:

§ 200.202 How do I apply for placement on the Appraiser Roster?

* * * * *

(b) * * *

(1) You must be a state-certified appraiser with credentials that complied with the applicable certification criteria established by the Appraiser Qualification Board (AQB) of the Appraisal Foundation and in effect at the time the certification was awarded by the issuing jurisdiction; and

(2) * * *

(iii) HUD's Credit Alert Verification Reporting System.

3. In § 200.204, revise paragraphs (a)(1)(ii), (c)(1) and (2) as follows:

§ 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

* * * * *

(a) * * *

(1) * * *

(ii) Losing standing as a state-certified appraiser due to disciplinary action in any state in which the appraiser is certified;

* * * * *

(c) * * *

(1) *Appraisers subject to state disciplinary action.* An appraiser whose state certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action is automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals in any state until HUD receives evidence demonstrating that the state-imposed sanction has been lifted.

(2) *Expirations not due to state disciplinary action.* An appraiser whose certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is certified.

* * * * *

Dated: June 14, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–17498 Filed 7–13–11; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0160; FRL–9438–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the Commonwealth of Virginia pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This proposed action is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof; and the following infrastructure elements for the 2006 $PM_{2.5}$ NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

DATES: Written comments must be received on or before August 15, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0160 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0160, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0160. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2380, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS (62 FR 38856) and a new $PM_{2.5}$ NAAQS (62 FR 38652). The revised ozone NAAQS is based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based $PM_{2.5}$ standard of 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from 65 μg/m³ to 35 μg/m³ on October 17, 2006 (71 FR 61144).

Section 110(a) of the CAA requires States to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. In March of 2004, Earthjustice initiated a lawsuit against EPA for failure to take action against States that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, *i.e.,* failure to make a ''finding of failure to submit the required SIP 110(a) SIP elements.'' On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether States have made required complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made such findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These completeness findings did not include findings relating to: (1) Section 110(a)(2)(C) to the extent that such subsection refers to a permit program as required by Part D of Title I of the CAA; (2) section 110(a)(2)(I); and (3) section 110(a)(2)(D)(i)(I), which has been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147). Therefore, this action does not cover these specific elements.

This action also does not include the portions of 110(a)(2)(C), (D)(i)(II), and (J) as they pertain to a permit program as required by Part C of Title I of the CAA, and the portion of 110(a)(2)(D)(i)(II) as it pertains to visibility. These portions of these elements will be addressed by separate actions.

II. Summary of State Submittal

Virginia provided multiple submittals to satisfy the section 110(a)(2) requirements that are the subject of this proposed action for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. The submittals shown in Table 1 address the infrastructure elements, or portions thereof, identified in section 110(a)(2) that EPA is proposing to approve.

TABLE 1—110(A)(2) ELEMENTS, OR PORTIONS THEREOF, EPA IS PROPOSING TO APPROVE FOR THE 1997 OZONE AND $PM_{2.5}$ NAAQS AND THE 2006 $PM_{2.5}$ NAAQS FOR VIRGINIA

Submittal date	1997 8-Hour ozone	1997 $PM_{2.5}$	2006 $PM_{2.5}$
December 10, 2007	B, E, G, H, J, M.		
December 13, 2007	A, C, D(ii), F, G, K, L.		
July 10, 2008		B, E, G, H, J, K, M.	
September 2, 2008		A, C, D(ii), F, G, K, L.	
June 8, 2010	E(ii)	E(ii).	
June 9, 2010	E(ii)	E(ii).	
August 30, 2010		G	G.
April 1, 2011			A, B, C, D(ii), E, F, G, H, J, K, L, M.

EPA analyzed the above identified submissions and is proposing to make a determination that such submittals meet the requirements of section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. A detailed summary of EPA's review of, and rationale for approving Virginia's submittals may be found in the Technical Support Document (TSD) for this action, which is available online at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2010–0160.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion

concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve Virginia's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Virginia's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 27, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–17766 Filed 7–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–BA81

Endangered and Threatened Wildlife and Plants; Public Hearings for Proposed Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals

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

ACTION: Notice of public hearings.

SUMMARY: We, National Marine Fisheries Service (NMFS), are announcing six public hearings to be held for the proposed rule to revise critical habitat for the Hawaiian monk seal, which was published in the **Federal Register** on June 2, 2011. See **SUPPLEMENTARY INFORMATION** for meeting dates and locations. As noted in the proposed rule, we will consider written comments received on or before August 31, 2011.

ADDRESSES:

See **SUPPLEMENTARY INFORMATION** for meeting dates and locations. You may submit written comments on the proposed rule identified by 0648–BA81 by any one of the following methods:

- *Electronic Submissions:* Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Submit written comments to Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu,

HI, 96814, *Attn.:* Hawaiian monk seal proposed critical habitat.

Instructions: Comments must be submitted to one of these 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) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter ''NA'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The petition, 90-day finding, 12-month finding, draft biological report, draft economic analysis report, draft ESA 4(b)(2) report, and other reference materials regarding this determination can be obtained via the NMFS Pacific Islands Regional Office Web site: *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html* or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, *Attn:* Hawaiian monk seal proposed critical habitat. Background documents on the biology of the Hawaiian monk seal, the July 2, 2008, petition requesting revision of its critical habitat, and documents explaining the critical habitat designation process, can be downloaded from *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html,* or requested by phone or e-mail from the NMFS staff in Honolulu (area code 808) listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 944–2157; Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944–2258; or Marta Nammack, NMFS, Office of Protected Resources (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

In the notice of the proposed rulemaking, we propose to revise the current critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*) by extending the current designation in the Northwestern Hawaiian Islands (NWHI) out to the 500-meter (m) depth contour and including Sand Island at Midway Islands; and by designating six new areas in the main Hawaiian Islands (MHI), pursuant to section 4 of the Endangered Species Act (ESA). Specific areas proposed for the MHI include terrestrial and marine habitat from 5 m inland from the shoreline extending seaward to the 500-m depth contour around: Kaula Island, Niihau, Kauai, Oahu, Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and Hawaii (except those areas that have been identified as not included in the designation). We propose to exclude the following areas from designation because the national security benefits of exclusion outweigh the benefits of inclusion, and exclusion will not result in extinction of the species: Kingfisher Underwater Training area in marine areas off the northeast coast of Niihau; Pacific Missile Range Facility Main Base at Barking Sands, Kauai; Pacific Missile Range Facility Offshore Areas in marine areas off the western coast of Kauai; the Naval Defensive Sea Area and Puuloa Underwater Training Range in marine areas outside Pearl Harbor, Oahu; and the Shallow Water Minefield Sonar Training Range off the western coast of Kahoolawe in the Maui Nui area. In addition we are soliciting comments on all aspects of the proposal, including information on the economic, national security, and other relevant impacts. We will consider additional information received prior to making a final decision on critical habitat designation.

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary of Commerce shall promptly hold at least one public hearing if any person requests one with 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16 (c)(3)). To allow the public an opportunity to provide comment on the proposed rule, we will hold six public hearings. We will accept oral and written comments on the proposed rule to revise Hawaiian monk seal critical habitat (76 FR 32026; June 2, 2011) during these hearings as described in this notice.

Dates and Locations of the Hearings

August 8, 2011—Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Molokai 96748—5:30–8 p.m.

August 9, 2011—Kihei Community Center, 303 E. Lipoa Street, Kihei, Maui 96753—5:30–8 p.m.

August 10, 2011—Kauai War Memorial Convention Hall, 4191 Hardy Street, Lihue, Kauai 96766—5:30–8 p.m.

August 11, 2011—McCoy Pavilion at Ala Moana Park, 1201 Ala Moana Blvd., Honolulu, Oahu 96814—5:30–8 p.m.

August 15, 2011—Mokupapapa Discovery Center, 308 Kamehameha Avenue, Suite 109, Hilo, Hawaii 96720—5:30–8 p.m.

August 16, 2011—Kahakai Elementary School, 76–147 Royal Poinciana Drive, Kailua Kona, Hawaii 96740—6:30–9 p.m.

Oral and written comments on the proposed rule to revise Hawaiian monk seal critical habitat (76 FR 32026; June 2, 2011) received during these hearings will be part of the administrative record. People wishing to make an oral statement for the record at a public hearing are encouraged to provide a written copy of the statement and present it to us at the hearing. In the event that attendance at the public hearings is large, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Special Accommodations

These meetings are physically accessible to people with disabilities. Persons requesting sign language interpretation or other reasonable accommodations to participate in the public meetings should contact Jean Higgins (808) 944–2157. To allow sufficient time to process requests, please call not later than 5 p.m. on July 28, 2011.

Authority: 16 U.S.C. 1533 *et seq.*

Dated: July 11, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–17763 Filed 7–13–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 135

Thursday, July 14, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 11, 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 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 Utilities Service

Title: RUS Form 87, Request for Mail List Data.

OMB Control Number: 0572–0051.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. The agency makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 as amended, (ReAct). RUS Electric Program provides support to the vast rural American electric infrastructure. RUS' Telecommunications Program makes loans to furnish and improve telephone services and other telecommunications purposes in rural areas.

Need and Use of the Information: RUS will collect information using RUS Form 87, Request for Mail List Data. The information is used for the RUS Electric and Telephone programs to obtain the name and addresses of the borrowers' officers/board of directors and corporate officials, who are authorized to sign official documents. RUS uses the information to assure that (1) Accurate, current, and verifiable information is available; (2) correspondence with borrowers is properly directed; and (3) the appropriate officials have signed the official documents submitted.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 288.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–17768 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 11, 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 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: 7 CFR 1951–E, ''Servicing of Community and Direct Business Programs Loans and Grants''.

OMB Control Number: 0575–0066.

Summary of Collection: Rural Development (Agency) is the credit agency for agriculture and rural development for the U.S. Department of Agriculture. The Community Facilities program is authorized to make loans and grants for the development of essential community facilities primarily serving rural residents. The Direct Business and Industry Program is authorized to make loans to improve, develop, or finance business, industry, and employment, and improve the economic and environmental climate in

rural communities. Section 331 and 335 of the Consolidated Farm and Rural Development Act, as amended, authorizes the Secretary of Agriculture, acting through the Agency, to establish provisions for security servicing policies for the loans and grants in questions. If there is a problem which exists, a recipient of the loan, grant, or loan guarantee must furnish financial information which is used to aid in resolving the problem through reamortization, sale, transfer, debt restructuring, liquidation, or other means provided in the regulations.

Need and Use of the Information: The Agency will use several different forms to collect information from applicants, borrowers, consultants, lenders and attorneys. This information is used to determine applicant/borrower eligibility and project feasibility for various servicing actions. The information enables field staff to ensure that borrowers operate on a sound basis and use loan and grant funds for authorized purposes.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 105.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 979.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–17770 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 8, 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 of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Certified State Mediation Program.

OMB Control Number: 0560–0165.

Summary of Collection: The Farm Service Agency (FSA) amended its agricultural loan mediation regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act) and the United States Grain Standards Act of 2000 (the Grain Standards Act). The regulation continues to provide a mechanism to States to apply for and obtain matching funds grants from USDA to supplement the expenses involved with the administration of an agricultural mediation program. FSA will collect information by mail, phone, fax, and in person.

Need and Use of the Information: FSA will collect information to determine whether the State meets the eligibility criteria to be recipients of grant funds, and secondly, to determine if the grant is being administered as provided by the Act. Lack of adequate information to make these determinations could result in the improper administration and appropriation of Federal grant funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 35.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,190.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–17774 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 8, 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 of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Study to Assess the Effect of Supplemental Nutrition Assistance Program Participation on Food Security in the Post-American Recovery and Reinvestment Act Environment.

OMB Control Number: 0584–New.

Summary of Collection: Section 17 (7 U.S.C. 2026) (a) (1) of the Food and Nutrition Act of 2008 provides general legislative authority for the planned data collection. This section authorizes the Secretary of Agriculture to enter into contracts with private institutions to undertake research that will help to improve the administration and effectiveness of SNAP in delivering nutrition related benefits. More specific legislative authority is found in the ARRA economic stimulus package implemented in April 2009 (Pub. L. No. 111–5, Section 101(c) (1)), which provides administrative funds to the Food and Nutrition Service (FNS) for management and oversight and for managing the integrity and evaluation of the stimulus changes. The implementation of ARRA presents a unique opportunity to measure the impact of increased benefits on food insecurity. Over the past few years, SNAP participation has increased over 26 percent and is now at record high levels with over 20.7 million households across the nation enrolled in the program in January 2011. The prevalence of food insecurity is also at a record high level, at 14.6 percent in 2009, as noted in the latest annual report on household food insecurity. A unique opportunity to measure the impact of increased benefits on food insecurity has been presented by the implementation of the ARRA economic stimulus package of 2009, which temporarily increased the maximum allotments provided to SNAP participants by 13.6 percent, eased eligibility requirements for childless adults without jobs, and provided additional funding to state agencies responsible for administering the program.

Need and Use of the Information: This evaluation of the effect of SNAP participants on food security will provide new information on the extent to which food insecurity declines with SNAP participation in a post-ARRA environment. This will produce important new evidence on the program's impact, will inform policy decisions regarding the size of SNAP allotments for eligible households, and inform related operational decisions regarding the likely impact of allotment changes on the propensity to participate. The purpose of this data is to allow analysis that will support the following study objectives: (1) To determine how, if at all, the prevalence of household food insecurity and amount of food expenditures vary with SNAP participation. (2) To determine how, if at all, the observed results vary by key household characteristics and circumstances. (3) To determine what factors distinguish between food secure and food insecure SNAP households with children.

Description of Respondents: Individuals or household.

Number of Respondents: 15,408.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,266.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–17773 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for Sugar Import Licensing Programs described in 7 CFR part 1530.

DATES: Comments should be received on or before September 12, 2011 to be assured of consideration.

ADDRESSES: Mail or deliver comments to William Janis, International Economist, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave., SW., Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: William Janis at the address stated above or telephone at (202) 720–2194, or by e-mail at: *William.Janis@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Sugar Imported for Export as Refined Sugar or as a Sugar-Containing Product, or used in the Production of Certain Polyhydric Alcohols.

OMB Number: 0551–0015.

Expiration Date of Approval: December 31, 2011.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the Sugar Import Licensing Program is to permit entry of raw cane sugar, unrestricted by the quantitative limit established by the sugar tariff-rate quota, for re-export in refined form or in a sugar containing product or for the production of certain polyhydric alcohols. These programs are in use by as many as 250 licensees currently eligible to participate. Under 7 CFR part 1530, licensees are required to submit the following: (1) ''Application for a license'' information required for participation as set forth in section 1530.104; (2) ''Regular reporting'' of import, export, transfer, or use for charges and credits to licenses under section 1530.109; and (3) ''Miscellaneous submission'' of bonds or letters of credit under section 1530.107, appeals to determinations by the licensing authority under section 1530.112, or requests to the licensing authority for waivers under section 1530.113.

In addition, each participant must maintain records on all program reports as set forth in section 1530.110. The information collected is used by the licensing authority to manage, plan, evaluate, and account for program activities. The reports and records are required to ensure the proper operations of these programs.

Estimate of Burden: (1) ''Application for a license'' would require 20 hours per response; (2) ''Regular reporting'' would require between 10 and 15 minutes per transaction with the number of transactions varying per respondent; and (3) ''miscellaneous submission'' would require between 1 to 2 hours per bond or letter of credit, 2 to 10 hours per waiver request, and 10 to 100 hours per appeal.

Respondents: Sugar refiners, manufacturers of sugar containing products, and producers of polyhydric alcohol.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: New/Renew License: 1; Regular reporting: 75 transactions, total; Miscellaneous: Bonds/letters of credit: 1; Waiver requests: 1; Appeals: 1.

Estimated Total Burden Hours on Respondents: 1,739 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Request of Comments: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other

aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but should be submitted no later than 60 days from the date of this publication to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record. Persons with disabilities who require an alternative means to communicate information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Dated: June 24, 2011.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service.

[FR Doc. 2011–17780 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for entry of specialty sugars into the United States as described in 7 CFR part 2011.

DATES: Comments should be received on or before September 12, 2011 to be assured of consideration.

ADDRESSES: Mail or deliver comments to William Janis, International Economist, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave. SW., Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: William Janis at the address stated above, or telephone at (202) 720–2194; or by e-mail at *William.Janis@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Specialty Sugar Certificate Application.

OMB Number: 0551–0025.

Expiration Date of Approval: December 31, 2011.

Type of Request: Extension of a currently approved information collection.

Abstract: The quota system established by Presidential Proclamation 4941 of May 5, 1982, prevented the importation of certain sugars used for specialized purposes which originated in countries which did not have quota allocations. Therefore, the regulation at 15 CFR part 2011 (Allocation of Tariff-Rate Quota on Imported Sugars, Syrups and Molasses, subpart B—Specialty Sugar) established terms and conditions under which certificates are issued permitting U.S. importers holding certificates to enter specialty sugars from specialty sugar source countries under the sugar tariff-rate quotas (TRQ). Nothing in this subpart affects the ability to enter specialty sugars at the over-TRQ duty rates. Applicants for certificates for the import of specialty sugars must supply the information required by 15 CFR 2011.205 to be eligible to receive a specialty sugar certificate. The specific information required on an application must be collected from those who wish to participate in the program in order to grant specialty sugar certificates, ensure that imported specialty sugar does not disrupt the current domestic sugar program, and administer the issuance of the certificates effectively.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 37.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 74 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Request for Comments: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but should be submitted no later than 60 days from the date of this publication to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Dated: June 24, 2011.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service.

[FR Doc. 2011–17771 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine-Nye Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The White Pine-Nye Resource Advisory Committee will meet in Eureka, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to decide on monitoring the implementation of projects, decide on consideration of additional projects and review and recommend funding allocation for any additional projects.

DATES: The meeting will be held August 8, 2011, 9 a.m.

ADDRESSES: The meeting will be held at Eureka County Annex, 701 S. Main Street, Eureka, Nevada 89316. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.**

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 Tonopah Ranger District Office, 1400 S. Erie Main Street, Tonopah, Nevada. Please call ahead to 775–482–6286 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Steven Williams, RAC Designated Federal Official, Austin Ranger District, 100 Midas Canyon Road, P.O. Box 130,

Austin, Nevada 89310, 775–964–2671, e-mail *swilliams01@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. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review and approve previous meeting's minutes and business expenses, Recommend funding allocation for proposed projects, and Public Comment. More information is available at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 2, 2011 to be scheduled on the agenda.

Written comments and requests for time for oral comments must be sent to Tonopah Ranger District, P.O. Box 3940, Tonopah, Nevada 89049, or by e-mail to *lebernardi@fs.fed.us* or via facsimile to 775–482–3053.

Dated: July 5, 2011.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2011–17705 Filed 7–13–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socio-Economic Surveys of Vessel (SESV) Owners and Crew in New England and Mid-Atlantic Fisheries.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 1,400.

Average Hours per Response: 30 minutes.

Burden Hours: 700.

Needs and Uses: The purpose of this survey is to provide for the ongoing collection of social and economic data related to fisheries and their communities in the Northeast and Mid-Atlantic states. These data are needed to support fishery performance measures recently developed by NOAA's Northeast Science Center's Social Science Branch (SSB) in Woods Hole, MA. The measures are: financial viability, distributional outcomes, stewardship, governance and well-being. Data to support some indicators for these measures are already routinely collected by National Marine Fisheries Service (NMFS). This survey will fill in the gaps, and allow the SBB to collect trend data needed for more thorough analysis of changes in the fisheries, including impacts from changes in regulations. The National Environmental Policy Act (NEPA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, both contain requirements for considering the social and economic impacts of fishery management decisions. Currently, however, no data exist that allow for tracking the social impacts of fishery management policy and decisions over time in the Northeast and Mid-Atlantic states, and insufficient economic trend data are available. In implementing policies and management programs, and in meeting the social and economic impact assessment requirements of NEPA and MSA, there is a need to understand how such policies and programs will affect the social and economic characteristics of those involved in the commercial fishing industry. Under this survey, the SSB intends to collect socio-economic data from vessel owners, permit holders, hired captains, and crew involved in commercial fishing in New England and the Mid-Atlantic states. Data to be collected include information on crew, wage calculation systems, individual and community well-being, fishing practices, job satisfaction, job opportunities, and attitudes toward fisheries management. SSB intends to collect these data on an ongoing (*e.g.,* annually or biennially) basis in order to track how socio-economic characteristics of fisheries are changing over time and to track the impact of fishery policies and management programs implemented in New England and the Mid-Atlantic.

NMFS is aware of a survey begun by the University of Rhode Island (URI) in 2009/2010 in New England under a grant from the Commercial Fisheries Research Foundation, that seeks Paperwork Reduction Act clearance for a follow-up in the Mid-Atlantic in summer 2011 under NOAA funding (Social Impacts of the Implementation of Catch Shares Programs in the Mid-Atlantic, OMB Control No. 0648–xxxx). The current request has learned from some elements of the URI and follow-on survey. However, this request (1) Is focused on fisheries management in general while the earlier study is focused solely on catch shares, (2) is an ongoing survey rather than a one-time effort, and (3) specifically targets performance indicators for which data are not currently being collected.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 11, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–17700 Filed 7–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China; Notice of Rescission of the 2010–2011 Antidumping Duty Administrative Review

AGENCY: Department of Commerce, International Trade Administration, Import Administration.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC) for the period of review (POR) of March 1, 2010, to February 28, 2011, with respect to Max

Fortune Industrial Limited (Max Fortune Industrial), Max Fortune (FZ) Paper Products Co., Ltd. (formerly known as Max Fortune (FETDE) Paper Products Co., Ltd.) (Max Fortune Fuzhou), Max Fortune (Vietnam) Paper Products Company Limited (Max Fortune Vietnam), and Fujian Tian Jun Trading Co., Ltd. (also known as Fuzhou Tianjun Foreign Trade Co., Ltd.) (Tian Jun). This rescission is based on the timely withdrawal of the requests for review by the only interested party that requested the review of these companies.

DATES: *Effective Date:* July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain tissue paper products from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 11197 (March 1, 2011). In response, on March 31, 2011, the petitioner [1] timely requested an administrative review of entries of the subject merchandise during the POR from Max Fortune Industrial, Max Fortune Fuzhou, Max Fortune Vietnam, and Tian Jun. Therefore, on April 19, 2011, the Department initiated a review of Max Fortune Industrial, Max Fortune Fuzhou, Max Fortune Vietnam, and Tian Jun. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011).

In a letter dated June 10, 2011, the petitioner withdrew its request for review of Max Fortune Industrial, Max Fortune Fuzhou, Max Fortune Vietnam, and Tian Jun, and requested that the Department rescind the review with respect to these companies. No other parties requested a review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Accordingly, the petitioner timely withdrew its request for review of Max Fortune Industrial, Max Fortune Fuzhou, Max Fortune Vietnam, and Tian Jun. Because no other party requested a review, pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the entire administrative review of the antidumping duty order on certain tissue paper products from the PRC for the period March 1, 2010, to February 28, 2011.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a 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.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 6, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations .

[FR Doc. 2011–17724 Filed 7–13–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioner is Seaman Paper Company of Massachusetts, Inc.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XL85]

Supplemental Environmental Impact Statement for Replacement of NOAA National Marine Fisheries Service Southwest Fisheries Science Center in La Jolla, CA

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

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); request for comments.

SUMMARY: NOAA announces its intention to prepare an SEIS in accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations, and NOAA Administrative Order 216–6 *Environmental Review Procedures for Implementing the National Environmental Policy Act.* This SEIS is being prepared to reflect substantial changes in the proposed action that are relevant to environmental concerns. The proposed changes to be analyzed in the SEIS are related to the replacement of the facilities and were not previously analyzed in the Final EIS/Environmental Impact Report (EIR) dated April 2009. The University of California San Diego may also prepare an Addendum to the Final EIS/EIR in accordance with the California Environmental Quality Act (CEQA).

DATES: Written comments and input will be accepted on or before August 15, 2011.

ADDRESSES: Written comments should be sent to Robb Gries, Project Engineer, NOAA, Project Planning & Management—Western Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115; e-mail *robb.gries@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robb Gries, NOAA Project Engineer, at the address provided above.

SUPPLEMENTARY INFORMATION: Since completion of the Final EIS/EIR, substantial changes are being made to the scope of actions originally proposed

by NOAA on property currently occupied and managed by NOAA. The proposed changes involve demolition of the majority of the NOAA Southwest West Fisheries Science Center Building A and establishment of a geohazard stabilization system consisting of tie-backs to secure foundations for the remaining structure (Building D) and access areas. The tie-back system requires more substantial excavation to be installed within a geologically sensitive coastal bluff.

Consistent with 40 CFR 1502.9(c)(1)(i), this SEIS will focus on the environmental effects of the proposed changes and feasible alternatives including the no-action alternative, and analyze the potential effects to affected resources such as: Geological conditions, hydraulic processes, construction noise, traffic/pedestrian circulation, air emissions, and protected wildlife. While scoping meetings are not being held for the SEIS, NOAA is requesting written comments and input, including, but not limited to, technical information related to the proposed actions, information regarding potentially affected resources in the area, and community interests or concerns on the potential for environmental effects of the proposed action and alternatives. NOAA will also rely on prior scoping documents and comments received during preparation of the original FEIS/EIR. Additional public involvement opportunities associated with this SEIS will occur, including a public comment period on the Supplemental Draft EIS to be announced as a Notice of Availability in the **Federal Register**.

Dated: July 8, 2011.

William F. Broglie,

Chief Administrative Officer, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–17764 Filed 7–13–11; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA565]

Caribbean Fishery Management Council; Scoping Meetings

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

ACTION: Notice of public hearings.

SUMMARY: The Caribbean Fishery Management Council will hold public hearings to obtain input from fishers, the general public, and the local agencies representatives on the Draft Comprehensive Amendment to the FMPs establishing annual catch limits (ACL) and accountability measures (AMs) for species not overfished or undergoing overfishing.

DATES AND ADDRESSES: The scoping meetings will be held on the following dates and locations:

For Puerto Rico

August 2, 2011, DoubleTree by Hilton San Juan, De Diego Avenue, San Juan, Puerto Rico.

August 3, 2011, Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

August 4, 2011, Mayagüez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico.

For the U.S. Virgin Islands

August 3, 2011, The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

August 4, 2011, Holiday Inn (Windward Passage Hotel) Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

All meetings will be held from 7 to 10 p.m.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council will hold public hearings to receive public input on the following management options. The complete document is available at: *http://www.caribbeanfmc.com* or you may contact Ms. Livia Montalvo at *livia_montalvo_cfmc@yahoo.com,* or the Council office at (787) 766–5926 to obtain copies.

4.0 Actions and Alternatives

4.1 Action 1: Management Reference Points for Species not Undergoing Overfishing within the Reef Fish FMP

4.1.1 Action 1(a). Establish a year sequence for determining average annual landings for each species or species group within the Reef Fish Fishery Management Plan (FMP).

Alternative 1. No action. Retain the year sequence as defined in the 2005 Comprehensive Sustainable Fisheries Act Amendment (Caribbean SFA Amendment).

Alternative 2. Redefine management reference points or proxies for the Reef Fish FMP based on the longest year sequence of reliable landings data.

TABLE 4.1.1—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 2

Reference point	Year sequence
Puerto Rico Commercial	1988–2009
Puerto Rico Recreational	2000–2009
St. Croix	1999–2008
St. Thomas/St. John	2000–2008

Alternative 3. Redefine management reference points or proxies for the Reef Fish FMP based on the longest year sequence of pre-Caribbean SFA Amendment landings data that is considered consistently reliable across all islands.

TABLE 4.1.2—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 3

Reference point	Year sequence
Puerto Rico Commercial	1999–2005
Puerto Rico Recreational	2000–2005
St. Croix	1999–2005
St. Thomas/St. John	2000–2005

Alternative 4. Redefine management reference points or proxies for the Reef Fish FMP based on the longest year sequence of recent reliable landings data.

TABLE 4.1.3—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 4

Reference point	Year sequence
Puerto Rico Commercial	1999–2009
Puerto Rico Recreational	2000–2009
St. Croix	1999–2008
St. Thomas/St. John	2000–2008

Alternative 5. Redefine management reference points or proxies for the Reef Fish FMP based on the most recent five years of available landings data.

TABLE 4.1.4—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 5

Reference point	Year sequence
Puerto Rico Commercial	2005–2009
Puerto Rico Recreational	2005–2009
St. Croix	2004–2008
St. Thomas/St. John	2004–2008

4.1.2 Action 1(b). Establish management reference points for the reef fish species not undergoing overfishing.

Sub-Action 1. Establish management reference points for the reef fish species not undergoing overfishing in Puerto Rico.

Alternative 1: No action. Retain current management reference points or proxies for species/species groups.

Alternative 2(a) through 2(o): Redefine management reference points or proxies based on the year sequence of landings data as defined in Action 1(a) Alternatives 1–5.

Sub-Action 2. Establish management reference points for the reef fish species not undergoing overfishing in St Croix.

Alternative 1: No action. Retain current management reference points or proxies for species/species groups.

Alternative 2(a) through 2(o): Redefine management reference points or proxies based on the year sequence of landings data as defined in Action 1(a) Alternatives 1–5.

Sub-Action 3. Establish management reference points for the reef fish species not undergoing overfishing in St. Thomas/St. John.

Alternative 1: No action. Retain current management reference points or proxies for species/species groups.

Alternative 2(a) through 2(o): Redefine management reference points or proxies based on the year sequence of landings data as defined in Action 1(a) Alternatives 1–5.

TABLE 4.1.4—CURRENT MSY PROXY, OY AND OVERFISHING THRESHOLD DEFINITIONS FOR SPECIES/SPECIES GROUPS

Reference point	Alternative 1—Status quo definition
Maximum Sustainable Yield	MSY proxy = $C/[(F_{CURR}/F_{MSY}) \times (B_{CURR}/B_{MSY})]$; where C is calculated based on commercial landings for the years 1997–2001 for Puerto Rico and 1994–2002 for the USVI, and on recreational landings for the years 2000–2001.
Overfishing Threshold	MFMT = F_{MSY}.
Optimum Yield	OY = average yield associated with fishing on a continuing basis at F_{OY}; where $F_{OY} = 0.75F_{MSY}$.

TABLE 4.1.5—MANAGEMENT REFERENCE POINTS OR PROXIES PROPOSED FOR THE REEF FISH SPECIES NOT UNDERGOING OVERFISHING UNDER ALTERNATIVE 2

Reference point	
Maximum Sustainable Yield:	
Alternative 2(a)	MSY proxy = Median annual landings selected by Council in Action 2(a).
Alternative 2(b)	MSY proxy = Mean annual landings selected by Council in Action 2(a).
Alternative 2(c)	MSY proxy = Maximum of a single year of recreational landings × 3.
Overfishing Threshold:	
Alternative 2(d)	OFL = MSY proxy adjusted according to the ORCS scalar; overfishing occurs when annual landings exceed the OFL.
Alternative 2(e)	OFL = MSY proxy adjusted according to the ORCS scalar; overfishing occurs when annual landings exceed the OFL, unless NOAA Fisheries' Southeast Fisheries Science Center (in consultation with the Caribbean Fishery Management Council and its SSC) determines the overage occurred because data collection/monitoring improved, rather than because landings actually increased.
Alternative 2(f)	OFL = MSY proxy; overfishing occurs when annual landings exceed the OFL.

TABLE 4.1.5—MANAGEMENT REFERENCE POINTS OR PROXIES PROPOSED FOR THE REEF FISH SPECIES NOT UNDERGOING OVERFISHING UNDER ALTERNATIVE 2—Continued

Reference point	
Alternative 2(g)	OFL = MSY proxy; overfishing occurs when annual landings exceed the OFL, unless NOAA Fisheries' Southeast Fisheries Science Center (in consultation with the Caribbean Fishery Management Council and its SSC) determines the overage occurred because data collection/monitoring improved, rather than because landings actually increased.
Acceptable Biological Catch/ABC Control Rule:	
Alternative 2(h)	ABC= OFL.
Alternative 2(i)	ABC= [OFL × 0.85].
Alternative 2(j)	ABC= [OFL × 0.75].
Alternative 2(k)	ABC= [OFL × 0.50].
Optimum Yield/Annual Catch Limit:	
Alternative 2(l)	OY = ACL = ABC.
Alternative 2(m)	OY = ACL = [ABC × (0.85)].
Alternative 2(n)	OY = ACL = [ABC × (0.75)].
Alternative 2(o)	OY = ACL = [ABC × (0.50)].

4.2 Action 2: Management Reference Points for the Caribbean Spiny Lobster

4.2.1 Action 2(a). Establish a year sequence for determining average annual landings for the Caribbean Spiny Lobster.

Alternative 1. No action. Retain the year sequence for Caribbean Spiny Lobster FMP landings as defined in the Caribbean SFA Amendment.

Alternative 2. Redefine management reference points or proxies for the Caribbean Spiny Lobster FMP based on the longest year sequence of reliable landings data.

TABLE 4.2.1—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 2

Reference point	Year sequence
Puerto Rico	1988–2009
St. Croix	1999–2008
St. Thomas/St. John	2000–2008

Alternative 3. Redefine management reference points or proxies for the Caribbean Spiny Lobster FMP based on the longest year sequence of pre-Caribbean SFA Amendment landings data that is considered consistently reliable across all islands.

TABLE 4.2.2—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 3

Reference point	Year sequence
Puerto Rico	1999–2005
St. Croix	1999–2005
St. Thomas/St. John	2000–2005

Alternative 4. Redefine management reference points or proxies for the Caribbean Spiny Lobster FMP based on the longest year sequence of recent reliable landings data.

TABLE 4.2.3—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 4

Reference point	Year sequence
Puerto Rico	1999–2009
St. Croix	1999–2008
St. Thomas/St. John	2000–2008

Alternative 5. Redefine management reference points or proxies for the Caribbean Spiny Lobster FMP based on the most recent five years of available landings data.

TABLE 4.2.4—YEAR SEQUENCES BY ISLAND GROUP UNDER ALTERNATIVE 5

Reference point	Year sequence
Puerto Rico	2005–2009
St. Croix	2004–2008
St. Thomas/St. John	2004–2008

4.2.2 Action 2(b). Establish management reference points for the Caribbean Spiny Lobster.

Sub-Action 1. Establish management reference points for the Caribbean Spiny Lobster in Puerto Rico.

Alternative 1: No action. Retain current management reference points or proxies for spiny losbter.

Alternative 2(a) through 2(n): Redefine management reference points or proxies based on the year sequence of landings data as defined in Action 2(a) Alternatives 1–5.

Sub-Action 2. Establish management reference points for the Caribbean Spiny Lobster in St. Croix.

Alternative 1: No action. Retain current management reference points or proxies for spiny lobster.

Alternative 2(a) through 2(n): Redefine management reference points or proxies based on the year sequence of landings data as defined in Action 2(a) Alternatives 1–5.

Sub-Action 3. Establish management reference points for the Caribbean Spiny Lobster in St. Thomas/St. John.

Alternative 1: No action. Retain current management reference points or proxies for spiny lobster groups.

Alternative 2(a) through 2(n): Redefine management reference points or proxies based on the year sequence of landings data as defined in Action 2(a) Alternatives 1–5.

TABLE 4.2.4—CURRENT MSY PROXY, OY AND OVERFISHING THRESHOLD DEFINITIONS FOR SPINY LOBSTER

Reference point	Alternative 1—Status quo definition
Maximum Sustainable Yield	MSY proxy = $C/[(F_{CURR}/F_{MSY}) \times (B_{CURR}/B_{MSY})]$; where C is calculated based on commercial landings for the years 1997–2001 for Puerto Rico and 1994–2002 for the USVI, and on recreational landings for the years 2000–2001.
Overfishing Threshold	MFMT = F_{MSY}.
Optimum Yield	OY = average yield associated with fishing on a continuing basis at F_{OY}; where $F_{OY} = 0.75F_{MSY}$.

TABLE 4.2.5—MANAGEMENT REFERENCE POINTS OR PROXIES PROPOSED FOR SPINY LOBSTER UNDER ALTERNATIVE 2

Reference point	
Maximum Sustainable Yield:	
Alternative 2(a)	MSY proxy = Median annual landings selected by Council in Action 2(a).
Alternative 2(b)	MSY proxy = Mean annual landings selected by Council in Action 2(a).
Overfishing Threshold:	
Alternative 2(c)	OFL = MSY proxy adjusted according the ORCS scalar; overfishing occurs when annual landings exceed the OFL.
Alternative 2(d)	OFL = MSY proxy adjusted according the ORCS scalar; overfishing occurs when annual landings exceed the OFL, unless NOAA Fisheries' Southeast Fisheries Science Center (in consultation with the Caribbean Fishery Management Council and its SSC) determines the overage occurred because data collection/monitoring improved, rather than because landings actually increased.
Alternative 2(e)	OFL = MSY proxy; overfishing occurs when annual landings exceed the OFL.
Alternative 2(f)	OFL = MSY proxy; overfishing occurs when annual landings exceed the OFL, unless NOAA Fisheries' Southeast Fisheries Science Center (in consultation with the Caribbean Fishery Management Council and its SSC) determines the overage occurred because data collection/monitoring improved, rather than because landings actually increased.
Acceptable Biological Catch/ABC Control Rule:	
Alternative 2(g)	ABC= OFL.
Alternative 2(h)	ABC= [OFL × 0.85].
Alternative 2(i)	ABC= [OFL × 0.75].
Alternative 2(j)	ABC= [OFL × 0.50].
Optimum Yield/Annual Catch Limit:	
Alternative 2(k)	OY = ACL = ABC.
Alternative 2(l)	OY = ACL = [ABC × (0.85)].
Alternative 2(m)	OY = ACL = [ABC × (0.75)].
Alternative 2(n)	OY = ACL = [ABC × (0.50)].

4.3 Action 3: Redefine Management of the Aquarium Trade Species Fishery Management Units (FMUs) Within the Reef Fish FMP and the Coral and Reef Associated Plants and Invertebrates FMP (Coral FMP)

4.3.1 Action 3(a): Redefine the management of aquarium trade species FMU.

Alternative 1: No action. Retain aquarium trade species in both the Corals and Reef Associated Plants and Invertebrates FMP (Coral FMP) and the Reef Fish FMP as defined in the Caribbean SFA Amendment.

Alternative 2: Consolidate all aquarium trade species listed in the FMP for Coral FMP and the Reef Fish FMP into a single FMP.

Alternative 2A: Move all aquarium trade species listed in the Coral FMP into the Reef Fish FMP.

Alternative 2B: Move all of the aquarium trade species listed in the Reef Fish FMP into the Coral FMP.

Alternative 2C: Move all of the aquarium trade species listed in both the Coral FMP and the Reef Fish FMPs into a new FMP specific to aquarium trade species.

Alternative 3: Remove all aquarium trade species from both the Coral FMP and from the Reef Fish FMPs.

Alternative 4: Manage only those aquarium trade species listed in either the Coral FMP or the Reef Fish FMP, for which landings data are available during the year sequence chosen in Action 1(a). Remove remaining aquarium trade species from the Coral FMP and the Reef Fish FMP.

Alternative 4A: Aquarium trade species that continue to be Federally-managed under this alternative will be retained in either the Coral FMP or the Reef Fish FMP as listed after the Caribbean SFA Amendment (Table 4.3.1).

Alternative 4B: Aquarium trade species that continue to be Federally-managed under this alternative will be consolidated and moved into the Coral FMP.

Alternative 4C: Aquarium trade species that continue to be Federally-managed under this alternative will be consolidated and moved into the Reef fish FMP.

Alternative 4D: Aquarium trade species that continue to be Federally-managed under this alternative will be consolidated and moved into a new FMP specific to aquarium trade species.

Alternative 5: Delegate management authority for all aquarium trade species listed in either the Coral FMP or the Reef Fish FMP to the jurisdiction of the appropriate commonwealth or territory as defined by Action 5 of this document.

Table 4.3.1. List of all species included in the Aquarium Trade category in both the Reef Fish and Coral FMPs. Table contents are extracted from Table 8 of the Comprehensive Amendment to the FMPs of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Caribbean SFA Amendment).

Reef Fish FMP

Clepticus parrae, Creole wrasse.
Halichoeres garnoti, Yellowhead wrasse.
Halichoeres cyanocephalus, Yellowcheek wrasse.
Halichoeres maculipinna, Clown wrasse.
Thalassoma bifasciatum, Bluehead wrasse.
Liopropoma rubre, Swissguard basslet.
Gramma loreto, Royal gramma.
Microspathodon chrysurus, Yellowtail damselfish.
Stegastes adustus, Dusky damselfish.
Stegastes partitus, Bicolor damselfish.
Stegastes planifrons, Threespot damselfish.
Stegastes leucostictus, Beaugregory.
Chaetodon capistratus, Foureye butterflyfish.
Chaetodon aculeatus, Longsnout butterflyfish.
Chaetodon ocellatus, Spotfin butterflyfish.
Chaetodon striatus, Banded butterflyfish.
Serranus baldwini, Lantern bass.
Serranus annularis, Orangeback bass.
Serranus tabacarius, Tobaccofish.
Serranus tigrinus, Harlequin bass.
Serranus tortugarum, Chalk bass.
Opistognathus aurifrons, Yellowhead jawfish.
Opistognathus whitehursti, Dusky jawfish.
Xyrichtys novacula, Pearly razorfish.
Xyrichtys splendens, Green razorfish.
Echidna catenata, Chain moray.
Gymnothorax funebris, Green moray.
Gymnothorax miliaris, Goldentail moray.
Elacatinus oceanops, Neon goby.
Priolepis hipoliti, Rusty goby.
Equetus lanceolatus, Jackknife-fish.
Equetus punctatus, Spotted drum.
Chromis cyanea, Blue chromis.
Chromis insolata, Sunshinefish.
Abudefduf saxatilis, Sergeant major.
Astrapogon stellatus, Conchfish.
Apogon maculatua, Flamefish.
Amblycirrhitus pinos, Redspotted hawkfish.
Antennarius spp., Frogfish.
Bothus lunatus, Peacock flounder.
Chaetodipterus faber, Atlantic spadefish.
Canthigaster rostrata, Sharpnose puffer.
Centropyge argi, Cherubfish.
Diodon hystrix, Porcupinefish.
Dactylopterus volitans, Flying gurnard.
Heteropriacanthus cruentatus, Glasseye snapper.
Hypoplectrus unicolor, Butter hamlet.
Holocanthus tricolor, Rock beauty.
Myrichthys ocellatus, Goldspotted eel.
Ophioblennius macclurei, Redlip blenny.
Pareques acuminatus, High-hat.
Rypticus saponaceus, Greater sopafish.
Synodus intermedius, Sand diver.
Symphurus diomedianus, Caribbean tonguefish.
Family *Syngnathidae,* Pipefishes and Seahorses.
Family *Ogcocephalidae,* Batfish.
Family *Scorpaenidae,* Scorpionfish.

Table 4.3.1. (continued). List of all species included in the Aquarium Trade category in both the Reef Fish and Coral FMPs. Table contents are extracted from Table 8 of the Comprehensive Amendment to the FMPs of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Caribbean SFA Amendment).

Coral FMP

Aphimedon compressa, Erect rope sponge
Astrophyton muricatum, Giant basket star
Alpheaus armatus, Snapping shrimp
Aiptasia tagetes, Pale anemone
Astropecten spp., Sand stars
Analcidometra armata, Swimming crinoid
Bartholomea annulata, Corkscrew anemone
Cynachirella alloclada, sponge (no common name)
Condylactis gigantea, Giant pink-tipped anemone
Cyphoma gibbosum, Flamingo tongue
Chondrilla nucula, Chicken liver sponge
Diadema antillarum, Long-spined urchin
Davidaster spp., Crinoids
Discosoma spp., False coral
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Gonodactylus (Neogonodactylus) spp., Smashing mantis shrimp
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Holothuria spp., Sea cucumbers
Hereractis lucida, Knobby anemone
Lima spp., Fileclams
Lima scabra, Rough fileclam
Lytechinus spp., Pin cushion urchin
Lysmata spp., Peppermint shrimp
Linckia guildingii, Common comet star
Lysiosquilla spp., Spearing mantis shrimp
Lebrunia spp., Staghorn anemone
Mithrax spp., Clinging crabs

Mithrax cinctimanus, Banded clinging crab
Mithrax sculptus, Green clinging crab
Myriastra sp., sponge (no common name)
Niphates digitalis, Pink vase sponge
Niphates erecta, Lavender rope sponge
Nemaster spp., Crinoids
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
Ophioderma rubicundum, Ruby brittlestar
Oreaster reticulatus, Cushion sea star
Ophidiaster guildingii, Comet star
Oliva reticularis, Netted olive
Octopus spp. (except the Common octopus, O. *vulgaris*)
Paguristes spp., Hermit crabs
Paguristes cadenati, Red reef hermit crab
Percnon gibbesi, Nimble spray crab
Periclimenes spp., Cleaner shrimp
Ricordia florida, Florida false coral
Stichodactyla helianthus, Sun anemone
Spirobranchus giganteus, Christmas tree worm
Sabellastarte magnifica, Magnificent duster
Sabellastarte spp., Tube worms
Stenopus scutellatus, Golden shrimp
Stenopus hispidus, Banded shrimp
Stenorhynchus seticornis, Yellowline arrow crab
Spondylus americanus, Atlantic thorny oyster
Spinosella plicifera, Iridescent tube sponge
Spinosella vaginalis, Lavendar tube sponge
Tripneustes ventricosus, Sea egg urchin
Thor amboinensis, Anemone shrimp
Tectitethya (Tethya) crypta, sponge (no common name)

Subphylum Urochordata, Tunicates

Tridachia crispata, Lettuce sea slug
Zoanthus spp., Sea mat

4.3.2 Action 3(b). Establish management reference points for the aquarium trade species FMU.

Alternative 1: No action. Keep the aquarium trade species in the ''data collection only'' category as defined in the Caribbean SFA Amendment.

Alternative 2(a) through 2(k): Establish management reference points or proxies for the aquarium trade species based on alternative selected in Action 3(a) and time series of landings data as defined in Action 1(a) in Alternatives 1–5.

TABLE 4.3.2—MANAGEMENT REFERENCE POINTS OR PROXIES PROPOSED FOR THE AQUARIUM TRADE SPECIES UNDER ALTERNATIVE 2

Reference Point	
Maximum Sustainable Yield:	
Alternative 2(a)	MSY proxy = Median annual landings selected by Council in Action 2(a).
Alternative 2(b)	MSY proxy = Mean annual landings selected by Council in Action 2(a).
Overfishing Threshold:	
Alternative 2(c)	OFL = MSY proxy; overfishing occurs when annual landings exceed the OFL.
Alternative 2(d)	OFL = MSY proxy; overfishing occurs when annual landings exceed the OFL, unless NOAA Fisheries' Southeast Fisheries Science Center (in consultation with the Caribbean Fishery Management Council and its SSC) determines the overage occurred because data collection/monitoring improved, rather than because landings actually increased.
Acceptable Biological Catch/ABC Control Rule:	
Alternative 2(e)	ABC = OFL.
Alternative 2(f)	ABC = [OFL × 0.85].
Alternative 2(g)	ABC = [OFL × 0.75].
Alternative 2(h)	ABC = [OFL × 0.50].
Optimum Yield/Annual Catch Limit:	
Alternative 2(i)	OY = ACL = ABC.
Alternative 2(j)	OY = ACL = [ABC × (0.85)].
Alternative 2(k)	OY = ACL = [ABC × (0.75)].
Alternative 2(l)	OY = ACL = [ABC × (0.50)].

4.4 Action 4: Redefine the Management of Conch Species FMU Within the Queen Conch FMP

Alternative 1: No action. Do not re-evaluate and revise the conch species FMU.

Alternative 2: Remove all conch species, except for the queen conch (*Strombus gigas*), from the Queen Conch FMP.

Alternative 3: Delegate management authority, for all conch species except queen conch (*Strombus gigas*), listed in the Queen Conch FMP, to the jurisdiction of the appropriate commonwealth or territory as defined by Action 5.

Alternative 4: Retain all conch species under the Queen Conch FMP and define management reference points or proxies based on the ACL established for queen conch in the 2010 Caribbean ACL Amendment public hearing draft.

TABLE 4.4.1—LIST OF CONCH SPECIES WITHIN THE QUEEN CONCH FMP NOT UNDERGOING OVERFISHING AS ESTABLISHED IN THE CARIBBEAN SFA AMENDMENT

Scientific names	Common names
Strombus gigas	Queen conch.
Strombus costatus	Milk conch.
Strombus pugilis	West Indian Fighting Conch.
Strombus gallus	Roostertail Conch.
Strombus raninus	Hawkwing Conch.
Fasciolaria tulipa	True Tulip.
Charonia variegata	Atlantic Triton's Trumpet.
Cassis madagascarensis.	Cameo Helmet.
Astrea tuber	Green Start Shell.

4.5 Action 5. Geographic Allocation/Management

Alternative 1. No Action. Maintain U.S. Caribbean-wide reference points.

Alternative 2. Divide and manage ACLs by island group (*i.e.,* Puerto Rico, St. Thomas/St. John, St. Croix) based on the preferred management reference point time series selected by the Council in Actions 1(a) and 2(a).

Alternative 2A. Use a mid-point or equidistant method for dividing the EEZ among islands.

Alternative 2B. Use a straight-line approach for dividing the EEZ among islands.

Alternative 2C. Use the St. Thomas Fishermen's Association recommendation for dividing the EEZ among islands.

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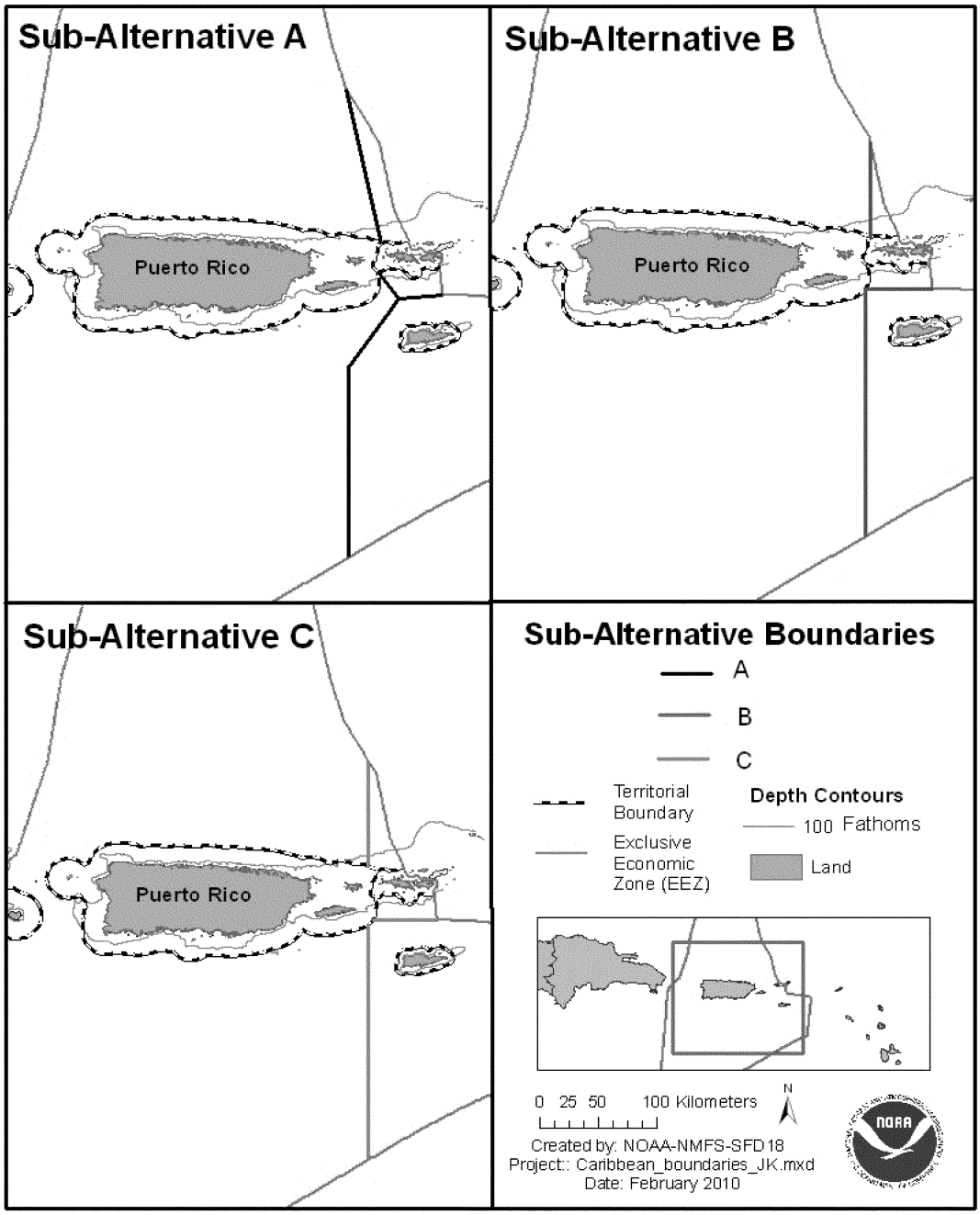
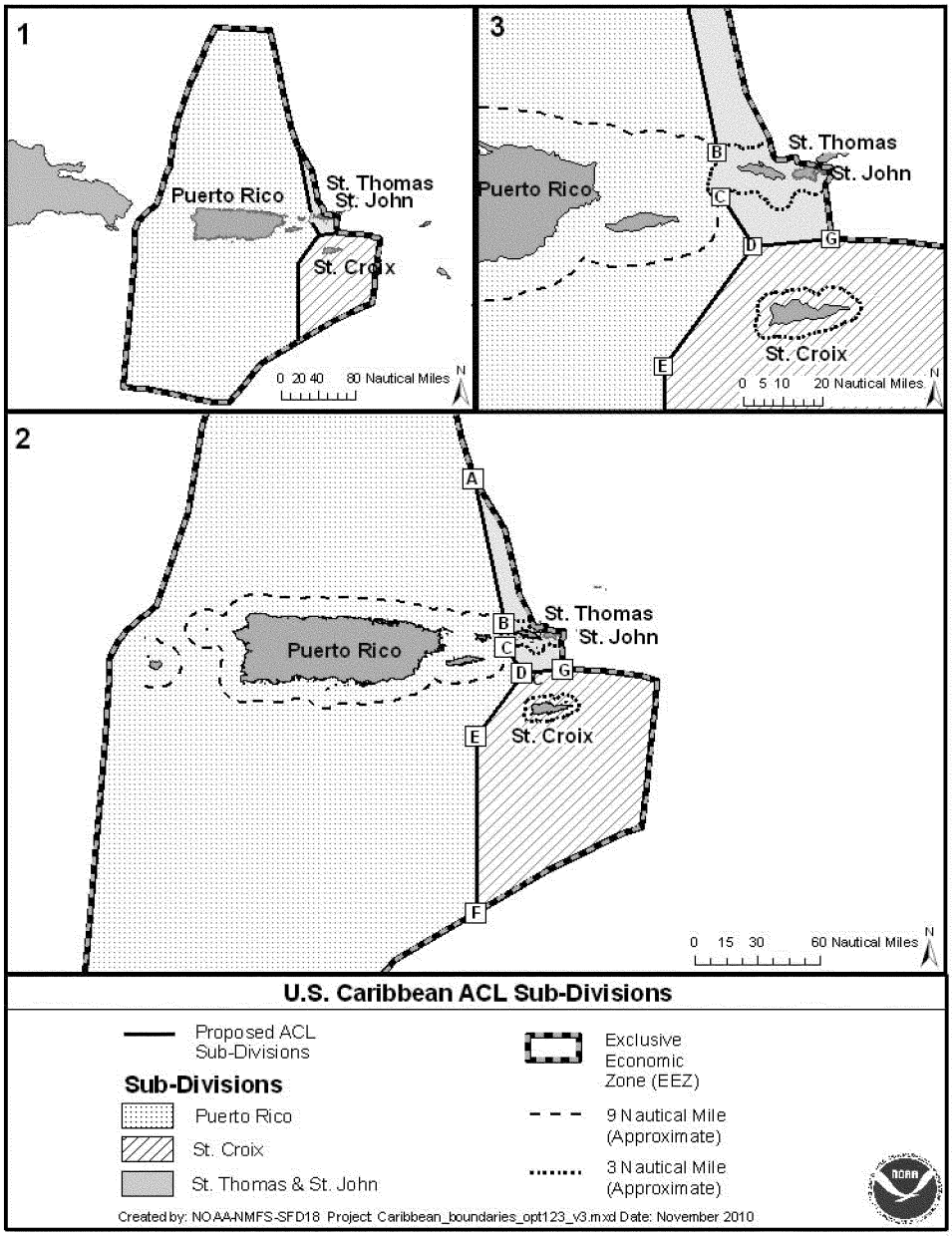


Figure 4.5.1. Alternative proposed boundaries for subdividing the U.S. Caribbean EEZ by island group. Sub-Alternative 2A is the equidistant approach, Sub-Alternative 2B is the straight-line approach, and Sub-Alternative 2C is the St. Thomas Fisherman's Association approach.



Reference Point	Latitude	Longitude	Comments
A	19° 37’ 29”	65° 20’ 57”	Intersects with the International/EEZ boundary
B	18° 25’ 46.3015”	65° 06’ 31.866”	Intersects with the EEZ/Territorial boundary
C	18° 13’ 59.0606”	65° 05’ 33.058”	Intersects with the EEZ/Territorial boundary
D	18° 01’ 16.9636”	64° 57’ 38.817”	
E	17° 30’ 00.000”	65° 20’ 00.1716”	
F	16° 02’ 53.5812”	65° 20’ 00.1716”	
G	18° 03’ 03”	64° 38’ 03”	

Figure 4.5.2. Detailed boundaries, including coordinates, for subdividing the U.S. Caribbean Exclusive Economic Zone by island group using the equidistant approach (Sub-Alternative A).

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4.6 Action 6: Annual Catch Limit Allocation and Management

4.6.1 Action 6(a) Separation of recreational and commercial sectors (Puerto Rico only).

Alternative 1. No action. Do not specify sector-specific ACLs.

Alternative 2. Specify separate commercial and recreational ACLs based on the preferred management reference point time series.

4.6.2 Action 6(b) Establish bag limit restrictions on recreational reef fish harvest.

Alternative 1. No action. Do not establish bag limit restrictions on recreational reef fish harvest.

Alternative 2. Establish a 5-fish aggregate bag limit per person per fishing day (would not apply to a fisher who has a valid commercial fishing license)

Alternative 3. Establish a 2-fish aggregate bag limit per person per fishing day (would not apply to a fisher who has a valid commercial fishing license)

Alternative 4. Prohibits the harvest of species in the surgeonfish FMU (would not apply to a fisher who has a valid commercial fishing license).

Alternative 5. Establish an aggregate bag limit of 10 fish per fisher including not more than two surgeonfish per fisher or six surgeonfish per boat, and 30 aggregate fish per boat on a fishing day (would not apply to a fishers who has a valid commercial fishing license).

Alternative 6. Establish an aggregate bag limit of 5 fish per fisher including not more than two surgeonfish per fisher or six surgeonfish per boat, and 15 aggregate fish per boat on a fishing day (would not apply to a fisher who has a valid commercial fishing license).

4.6.3 Action 6(c) Establish bag limit restrictions on recreational spiny lobster harvest.

Alternative 1. No action. Do not establish bag limit restrictions on recreational lobster harvest.

Alternative 2. Establish a 5-spiny lobster aggregate bag limit per person per fishing day (would not apply to a fisher who has a valid commercial fishing license).

Alternative 3. Establish a 2-spiny lobster bag limit per person per fishing day (would not apply to a fisher who has a valid commercial fishing license).

Alternative 4. Prohibits the harvest of spiny lobster (would not apply to a fishers who has a valid commercial fishing license).

Alternative 5. Establish a bag limit of: 5 spiny lobster per fisher and 15 spiny lobster per boat on a fishing day (would not apply to a fisher who has a valid commercial fishing license).

Alternative 6. Establish a bag limit of: 2 spiny lobster per fisher and 12 spiny lobster per boat on a fishing day (would not apply to a fisher who has a valid commercial fishing license).

4.7 Action 7: Accountability Measures for Species Considered in This Amendment

Accountability measures (AMs) are defined as management controls to prevent ACLs, including sector-specific ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur (50 CFR 310(g)(1)).

4.7.1 Action 7(a) Triggering accountability measures. Actions 1, 2, 3, and 4 include alternatives to establish and allocate ACLs. If an ACL is exceeded, AM alternatives are provided to address overages. Action 7 alternatives are presented in two parts, the first addresses the triggering of AMs and the second addresses the actual actions needed to redress overages.

Alternative 1. No Action. Do not establish criteria for triggering AMs.

Alternative 2. Trigger AMs if the ACL is exceeded based upon:

Alternative 2A: A single year of landings beginning with landings from 2011.

Alternative 2B: A single year of landings beginning with landings from 2011, then a 2-year running average of landings in 2012 (average of 2011+2012) and thereafter (*i.e.,* 2011, 2011–2012, 2012–2013, etc.).

Alternative 2C: A single year of landings beginning with landings from 2011, a 2-year average of landings in 2012 (average of 2011+2012), then a 3-year running average of landings in 2013 (average of 2011+2012+2013) and thereafter (*i.e.,* 2011, 2011–2012, 2011–2013, 2012–2014, etc.).

Alternative 3. Trigger AMs if the ACL is exceeded as defined below unless NOAA Fisheries' SEFSC (in consultation with the Council and its SSC) determines the overage occurred because data collection/monitoring improved rather than because catches actually increased:

Alternative 3A: A single year of landings effective beginning 2011.

Alternative 3B: A single year of landings effective beginning 2011, then a 2-year running average of landings effective 2012 and thereafter (*i.e.,* 2011, 2011–2012, 2012–2013, etc.).

Alternative 3C: A single year of landings effective beginning 2011, a 2-year running average of landings effective 2012, then a 3-year running average of landings effective 2013 and thereafter (*i.e.,* 2011, 2011–2012, 2011–2013, 2012–2014, etc.).

4.7.2 Action 7(b) Applying accountability measures.

Alternative 1. No Action. Do not apply AMs.

Alternative 2. If AMs are triggered, based upon the preferred criteria chosen in Action 7(a), reduce the length of the fishing season for that species or species group the year following the trigger determination by the amount needed to prevent such an overage from occurring again. The needed changes will remain in effect until modified.

Alternative 3. If AMs are triggered based upon the preferred criteria chosen in action 7(a), reduce the length of the fishing season for that species or species group the year following the trigger determination by the amount needed to prevent such an overage from occurring again and to pay back the overage. The needed changes will remain in effect until modified.

4.8 Action 8: Framework Measures

4.8.1 Action 8(a): Establish Framework Measures for Spiny Lobster FMP.

Alternative 1: No Action. Do not establish framework measures for the Spiny Lobster FMP.

Alternative 2: Amend the framework procedures for the Spiny Lobster FMP to provide a mechanism to expeditiously adjust the following reference points and management measures through framework action:

a. Quota Requirements.
b. Seasonal Closures.
c. Area Closures.
d. Fishing Year.
e. Trip/Bag Limit.
f. Size Limits.
g. Gear Restrictions or Prohibitions.
h. Fishery Management Units (FMUs).
i. Total Allowable Catch (TAC).
j. Annual Catch Limits (ACLs).
k. Accountability Measures (AMs).
l. Annual Catch Targets (ACTs).
m. Maximum Sustainable Yield (MSY).
n. Optimum Yield (OY).
o. Minimum Stock Size Threshold (MSST).
p. Maximum Fishing Mortality Threshold (MFMT).
q. Overfishing Limit (OFL).
r. Acceptable Biological Catch (ABC) Control Rules.
s. Actions To Minimize the Interaction of Fishing Gear With Endangered Species or Marine Mammals.

Alternative 3: Amend the framework procedures for the Spiny Lobster FMP to provide the Council with a mechanism to expeditiously adjust a subset of management measures outlined in Alternative 2.

4.8.2 Action 8 (b): Establish Framework Measures for Corals and

Reef Associated Plants and Invertebrates FMP.

Alternative 1: No Action. Do not amend the current framework measures for the Corals FMP.

Alternative 2: Amend the framework procedures for the Coral FMP to provide a mechanism to expeditiously adjust the following reference points and management measures through framework action:

a. Quota Requirements.
b. Seasonal Closures.
c. Area Closures.
d. Fishing Year.
e. Trip/Bag Limit.
f. Size Limits.
g. Gear Restrictions or Prohibitions.
h. Fishery Management Units (FMUs).
i. Total Allowable Catch (TAC).
j. Annual Catch Limits (ACLs).
k. Accountability Measures (AMs).
l. Annual Catch Targets (ACTs).
m. Maximum Sustainable Yield (MSY).
n. Optimum Yield (OY).
o. Minimum Stock Size Threshold (MSST).
p. Maximum Fishing Mortality Threshold (MFMT).
q. Overfishing Limit (OFL).
r. Acceptable Biological Catch (ABC) control rules.
s. Actions To Minimize the Interaction of Fishing Gear With Endangered Species or Marine Mammals.

Alternative 3: Amend the framework procedures for the Coral FMP to provide the Council with a mechanism to expeditiously adjust a subset of management measures outlined in Alternative 2.

Written comments can be sent to the Council not later than August 15, 2011, or submitted at the Council meeting that will take place at La Concha hotel, in San Juan, Puerto Rico on August 30–31, 2011.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone (787) 766–5926, at least five days prior to the meeting date.

Dated: July 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–17674 Filed 7–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA568

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Arctic Ocean, September–October 2011

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the University of Alaska Geophysics Institute (UAGI) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical seismic survey in the Arctic Ocean during September–October 2011. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to UAGI to take, by Level B harassment only, several species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than August 15, 2011.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *ITP.Nachman@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

The National Science Foundation (NSF), which is providing funding to UAGI to conduct the survey, has prepared a draft ''Environmental Assessment of a Marine Geophysical Survey by the *R/V Marcus G. Langseth* in the Arctic Ocean, September–October 2011,'' prepared by LGL Ltd., Environmental Research Associates (LGL), on behalf of UAGI and NSF, which is also available at the same internet address. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30 day public notice and comment period on any proposed

authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Summary of Request

NMFS received an application on March 4, 2011, from UAGI for the taking, by harassment, of marine mammals incidental to conducting a marine geophysical seismic survey in the Arctic Ocean. NMFS reviewed UAGI's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, UAGI modified its application and submitted a revised application on May 10, 2011. The May 10, 2011, application is the one available for public comment (see **ADDRESSES**) and considered by NMFS for this proposed IHA.

UAGI proposes to conduct a 2D seismic survey in the Arctic Ocean, Chukchi Sea, in both international waters and within the U.S. Exclusive Economic Zone (EEZ) in water depths ranging from 30–3,800 m (98–12,467 ft). UAGI plans to conduct the proposed seismic survey from September 5 through October 9, 2011, which includes vessel transit time from Dutch Harbor.

UAGI plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to collect seismic reflection data across the transition from the Chukchi Shelf to the Chukchi Borderland to define the apparent change in structure between two large continental blocks. In addition to the proposed operations of the seismic airgun array, UAGI intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey. A 75-kilohertz (kHz) acoustic Doppler current profiler (ADCP) may also be used.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a short-term behavioral disturbance for marine mammals in the proposed survey area. This is the principal means of marine mammal taking associated with these activities, and UAGI has requested an authorization to take 11 species of marine mammals by Level B harassment. These species are: Bowhead whale; gray whale; humpback whale; minke whale; fin whale; beluga whale; killer whale; bearded seal; spotted seal; ringed seal; and ribbon seal. Take is not expected to result from the use of the MBES or SBP, for reasons discussed later in this notice; nor is take expected to result from collision with the vessel because it is a single vessel moving at a relatively slow speed during seismic acquisition within the survey, for a relatively short period of time (approximately 35 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

UAGI's survey is proposed to occur in the area 72.5–77° N. and 160–175° W. in international waters and within the U.S. EEZ (see Figure 1 in UAGI's application). The project is scheduled to occur from September 5–October 9, 2011. Some minor deviation from these dates is possible, depending on logistics and weather. Therefore, NMFS is proposing to make the IHA valid from September 5–October 23, 2011. The vessel will not be able to remain in the area once ice begins to form, as the *Langseth* is not an icebreaker. The *Langseth* would depart from Dutch Harbor on September 5, 2011, and sail northeast to arrive at approximately 72.5° N., 162° W., where the seismic survey will begin, more than 200 km (124 mi) from Barrow. The entire cruise would last for approximately 35 days, and it is estimated that the total seismic survey time will be approximately 25 days, depending on ice conditions. Seismic survey work is scheduled to terminate near the starting point at approximately 72.4° N., 164° W. on October 6; the vessel would then sail south to Dutch Harbor for arrival on October 9. There could be extra days of seismic shooting, if the collected data are of substandard quality.

The proposed survey will include collection of seismic reflection data across the transition from the Chukchi Shelf to the Chukchi Borderland to define the apparent change in structure between two large continental blocks. This study will test existing tectonic models and develop new constraints on the development of the Amerasian Basin and will substantially advance our understanding of the Mesozoic history of this basin. In addition, these data will enable the formulation of new tectonic models for the history of this region, which will improve our understanding of the surrounding continents.

The survey will involve one source vessel, the *Langseth,* which is operated by Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, under a cooperative agreement with NSF. The *Langseth* will deploy an array of 10 airguns (1,830 in^3) as an energy source at a tow depth of 6 m (19.7 ft). The receiving system will consist of a 2-km (1.2-mi) long hydrophone streamer. As the airgun array is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. In addition, at least 72 sonobuoys will be deployed in order to record seismic refraction data. The *Langseth* will be avoiding the ice edge, and an ice expert will be available to provide daily guidance and to predict ice movements.

The proposed program will consist of a total of approximately 5,502 km (3,419 mi) of survey lines, not including transits to and from the survey area when airguns will not be in use (see Figure 1 in UAGI's application). Water depths within the study area range from approximately 30–3,800 m (98–12,467). Just over half of the survey effort (55%) will occur in water 100–1,000 m (328–3,281 ft) deep, 32% will take place in water >1,000 m (3,281 ft) deep, and 13% will occur in water depths <100 m (328 ft). There will be additional seismic operations in the survey area associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard. In addition to the operations of the airgun array, a Kongsberg EM 122 MBES and a Knudsen 320B SBP will also be operated from the *Langseth* continuously throughout the cruise. A 75-kHz ADCP may also be used.

All planned geophysical data acquisition activities will be conducted by L–DEO with on-board assistance by the scientists who have proposed the study. The Principal Investigator is Dr. Bernard Coakley of UAGI. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Vessel Specifications

The *Langseth* will tow the 10-airgun array along predetermined lines. The vessel will also tow the hydrophone streamer and deploy the sonobuoys. When the *Langseth* is towing the airgun array, as well as the hydrophone streamer, the turning rate of the vessel while the gear is deployed is limited. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The vessel has a length of 71.5 m (235 ft); a beam of 17 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834. The *Langseth* was designed as a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from the airgun array. The ship is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers directly. Each propeller has four blades, and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800 hp bowthruster, which is not used during seismic acquisition. The *Langseth's* operation speed during seismic acquisition is typically 7.4 to 9.3 km per hour (hr) (km/hr) (4 to 5 knots [kts]). When not towing seismic survey gear, the *Langseth* typically cruises at 18.5 km/hr (10 kts). The *Langseth* has a range of 25,000 km (15,534 mi) (the distance the vessel can travel without refueling).

The *Langseth* is not an ice-strengthened vessel and must especially consider safety-of-operations while towing a significant amount of equipment behind the vessel; it therefore cannot operate in ice conditions that would pose serious hazards to the vessel and crew. After consideration of the operational challenges, however, NSF and L–DEO concluded that the *Langseth* would be able to support the activity if it remained in ice-free waters. An ice expert would be available to help provide guidance during any operations.

The vessel also has an observation tower from which protected species visual observers (PSVO) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the PSVO's eye level will be approximately 21.5 m (71 ft) above sea level, providing the PSVO an unobstructed view around the entire vessel.

Acoustic Source Specifications

(1) Airgun Array

During the survey, the airgun array to be used will consist of 10 airguns, with a total volume of approximately 1,830 cubic inches (in^3). The airgun array will consist of a mixture of Bolt 1500LL and Bolt 1900LLX airguns, set in a typical configuration of one of the *Langseth's* four linear arrays or ''strings'' (see Figure 2 in UAGI's application); the first and last airguns in the strings are spaced 16 m (52 ft) apart. The airgun array will be towed approximately 100 m (328 ft) behind the *Langseth.* The shot interval will be 15 seconds (s). The firing pressure of the array is 1,950 pounds per square inch. During firing, a brief (approximately 0.1 s) pulse of sound is emitted. The airguns will be silent during the intervening periods.

The tow depth of the array will be 6 m (19.7 ft). Because the actual source is a distributed sound source (10 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array.

(2) MBES

The *Langseth* will operate a Kongsberg EM 122 MBES concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of sound (also called a ping) (10.5 to 13 kHz, usually 12 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1° fore-aft and 150° athwartship, and the maximum source level is 242 dB re 1 μPa (rms).

For deep-water operations, each ping consists of eight (in water greater than 1,000 m [3,281 ft]) or four (in water less than 1,000 m [3,281 ft]) successive, fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave pulses increase from 2 to 15 milliseconds (ms) long in water depths up to 2,600 m (8,530.2 ft), and frequency-modulated chirp pulses up to 100 ms long are used in water greater than 2,600 m (8,530.2 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between the pulses for successive sectors.

(3) SBP

The *Langseth* will also operate a Knudsen 320B SBP continuously throughout the cruise simultaneously with the MBES to map and provide information about the sedimentary features and bottom topography. The beam is transmitted as a 27° cone, which is directed downward by a 3.5 kHz transducer in the hull of the *Langseth.* The maximum output is 1,000 watts (204 dB re 1 μPa), but in practice, the output varies with water depth. The pulse interval is 1 s, but a common mode of operation is to broadcast five pings at 1-s intervals followed by a 5-s pause.

(4) ADCP

The Ocean Surveyor 75 is an ADCP operating at a frequency of 75 kHz, producing a ping every 1.4 s. The system is a four-beam phased array with a beam angle of 30°. Each beam has a width of 4°, and there is no overlap. Maximum output is 1 kilowatt, with a maximum depth range of 700 m (2,296.6 ft).

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates, and all references to SPL in this document refer to rms unless otherwise noted. SPL does not take the duration of a sound into account.

Predicted Sound Levels

Received sound levels have been predicted by Marine Acoustics, Inc. (MAI), in relation to distance and direction from the airguns, for the 10-airgun array. The MAI model was site specific; sound velocity profiles, bathymetry, and bottom composition were used to model propagation at seven sites 120–2,727 m (328–8,947 ft) deep in the survey area that represented different physiographic provinces described by Jakobsson *et al.* (2003). The source model used was the CASS/GRAB model, and propagation was modeled using the Range-Dependent Acoustic Model (RAM) (Zingarelli and King, 2005). The detailed modeling report can be found in Appendix A1 of the draft EA (see **ADDRESSES**).

Received sound levels for a single 40-in^3 airgun were modeled by L–DEO. The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the

single airgun; thus, the predicted exclusion zone radii are essentially the same at different tow depths. As the L–DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water and to relatively short ranges, correction factors were used to estimate exclusion zone radii in shallow and intermediate-depth water as was done for previous L–DEO surveys from the *Langseth.* A detailed description of the L–DEO modeling effort is provided in Appendix A2 of the draft EA.

Table 1 in this document and Table 1 in UAGI's application show the distances at which three rms sound levels are expected to be received from the 10-airgun array and a single airgun. For the 10-airgun array, distances were modeled at seven sites; the distances in Table 1 are the averages from the sites in each depth range.

TABLE 1—MAXIMUM PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE 1 μPA (RMS) COULD BE RECEIVED IN VARIOUS WATER-DEPTH CATEGORIES DURING THE PROPOSED SURVEY IN THE ARCTIC OCEAN. THE DISTANCES FOR THE 10-AIRGUN ARRAY ARE THE AVERAGES OF MODELED 95% PERCENTILE DISTANCES AT MODELING SITES IN EACH DEPTH RANGE

Source and volume	Tow depth (m)	Water depth	Predicted RMS radii (m)		
			190 dB	180 dB	160 dB
Single Bolt		Deep (>1000 m)	12	40	385
	6	Intermediate (100–1000 m)	18	60	578
		Shallow (<100)	150	296	1,050
1 string		Deep (>1000 m)	130	425	14,070
10 airguns	6	Intermediate (200–1000 m)	130	1400	13,980
1830 in^3		Shallow (<200)	190	1870	14,730

*The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in^3 airgun; thus, the predicted safety radii are essentially the same at any tow depth.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 10 airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS expects these disturbances to be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4–5 kts [7.4 to 9.3 km/hr]) during seismic data acquisition.

Description of Marine Mammals in the Area of the Specified Activity

The Chukchi Sea supports a diverse assemblage of marine mammals, including: Bowhead, gray, beluga, killer, minke, humpback, and fin whales; harbor porpoise; ringed, ribbon, spotted, and bearded seals; narwhals; polar bears; and walruses. The bowhead, humpback, and fin whales are listed as endangered, and the polar bear is listed as threatened under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). All of these species are also considered depleted under the MMPA. On December 10, 2010, NMFS published a notification of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notification of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register.** Neither species is considered depleted under the MMPA.

The bowhead and beluga whales and the ringed and bearded seals are the marine mammal species most likely to be encountered during this survey, with the ringed seal being the most likely marine mammal species to occur throughout the proposed survey area. Although humpback and minke whales are uncommon in the Arctic Ocean, sightings of both species have occurred in the Chukchi Sea in recent years (Brueggeman, 2009; Haley *et al.,* 2010; Clarke *et al.,* 2011).

There are scattered records of narwhal in Alaskan waters, where the species is considered extralimital (Reeves *et al.,* 2002). Harbor porpoises occur mainly in shelf areas where they can dive to depths of at least 220 m (722 ft) and stay submerged for more than 5 min (Harwood and Wilson, 2001). This species prefers shallower waters, making it unlikely that harbor porpoises would be encountered during the proposed seismic survey. Because of the rarity of these two species in the proposed survey area, they are not considered further in this document. The polar bear and walrus are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this proposed IHA notice.

Refer to Sections III and IV of UAGI's application for detailed information regarding the abundance and distribution, seasonal distribution, population status, and life history and behavior of these species and their occurrence in the proposed project area. When reviewing the application, NMFS determined that the species descriptions provided by UAGI correctly characterized the abundance and distribution, seasonal distribution, population status, and life history and behavior of each species. Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The 2010 Alaska Marine Mammal SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010.pdf.*

The application also presents how UAGI calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA. UAGI's methodology for estimating take is described further in the ''Estimated Take by Incidental Harassment'' section found later in this document.

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of

functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 11 marine mammal species (seven cetacean and four pinniped species) are likely to occur in the proposed survey area. Of the seven cetacean species likely to occur in UAGI's propose survey area, five are classified as low frequency cetaceans (*i.e.,* bowhead, gray, humpback, minke, and fin whales) and two are classified as mid-frequency cetaceans (*i.e.,* beluga and killer whales) (Southall *et al.,* 2007).

Potential Effects of the Specified Activity on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Takes by serious injury or mortality are not anticipated to occur as a result of the proposed activities.

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) define tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (*i.e.*, the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.*, 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.*, 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Malme *et al.*, (1985) studied the responses of humpback whales on their summer feeding grounds in southeast Alaska to seismic pulses from an airgun with a total volume of 100 in^3. They noted that the whales did not exhibit persistent avoidance when exposed to the airgun and concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa.

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.*, active versus silent).

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.*, 2009). Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other noise is important in communication, predator and prey detection, and, in the case of toothed whales, echolocation. Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995). Even in the absence of manmade sounds, the sea is usually noisy. Background ambient noise often interferes with or masks the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Natural ambient noise includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal noise resulting from molecular agitation (Richardson *et al.*, 1995). Background noise also can include sounds from human activities. Masking of natural sounds can result when human activities produce high levels of background noise. Conversely, if the background level of underwater noise is high (*e.g.*, on a day with strong wind and high waves), an anthropogenic noise source will not be detectable as far away as would be possible under quieter conditions and will itself be masked.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (*e.g.*, Simard *et al.*, 2005; Clark and Gagnon, 2006), which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (*e.g.*, Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b; and Potter *et al.*, 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the

dominant components of airgun sounds, thus limiting the potential for masking.

Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

There is evidence of other marine mammal species continuing to call in the presence of industrial activity. For example, bowhead whale calls are frequently detected in the presence of seismic pulses, although the number of calls detected may sometimes be reduced (Richardson *et al.*, 1986; Greene *et al.*, 1999; Blackwell *et al.*, 2009). Additionally, annual acoustical monitoring near BP's Northstar production facility during the fall bowhead migration westward through the Beaufort Sea has recorded thousands of calls each year (for examples, see Richardson *et al.*, 2007; Aerts and Richardson, 2008). Construction, maintenance, and operational activities have been occurring from this facility for more than 10 years. To compensate and reduce masking, some mysticetes may alter the frequencies of their communication sounds (Richardson *et al.*, 1995a; Parks *et al.*, 2007). Masking processes in baleen whales are not amenable to laboratory study, and no direct measurements on hearing sensitivity are available for these species. It is not currently possible to determine with precision the potential consequences of temporary or local background noise levels. However, Parks *et al.* (2007) found that right whales altered their vocalizations, possibly in response to background noise levels. For species that can hear over a relatively broad frequency range, as is presumed to be the case for mysticetes, a narrow band source may only cause partial masking. Richardson *et al.* (1995a) note that a bowhead whale 20 km (12.4 mi) from a human sound source, such as that produced during oil and gas industry activities, might hear strong calls from other whales within approximately 20 km (12.4 mi), and a whale 5 km (3.1 mi) from the source might hear strong calls from whales within approximately 5 km (3.1 mi). Additionally, masking is more likely to occur closer to a sound source, and distant anthropogenic sound is less likely to mask short-distance acoustic communication (Richardson *et al.*, 1995a).

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these noises by improving the effective signal-to-noise ratio. In the cases of high-frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995). This ability may be useful in reducing masking at these frequencies. In summary, high levels of noise generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses. Refer to Appendix B (4) of the draft EA for a more detailed discussion of masking effects on marine mammals.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-

important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead, and sperm whales. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.*, 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of NSF's EA, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson *et al.*, 1995). They simply avoided the sound source by displacing their migration route to varying degrees but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme et al., 1986, 1988; Richardson *et al.*, 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4–15 km (2.5–9.3 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B (5) of NSF's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in^3) and to a single airgun (20 in^3) with a source level of 227 dB re 1 μPa (p-p). In the 1998 study, they documented that avoidance reactions began at 5–8 km (3.1–5 mi) from the array, and that those reactions kept most pods approximately 3–4 km (1.9–2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* (2000a) noted localized displacement during migration of 4–5 km (2.5–3.1 mi) by traveling pods and 7–12 km (4.3–7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa for humpback pods containing females, and, at the mean closest point of approach distance, the received level was 143 dB re 1 μPa. The initial avoidance response generally occurred at distances of 5–8 km (3.1–5 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100–400 m (328–1,312 ft), where the maximum received level was 179 dB re 1 μPa.

Data collected by observers during several seismic surveys in the Northwest Atlantic showed that sighting rates of humpback whales were significantly greater during periods of no seismic compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic vs. non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 100 in^3 airgun (Malme *et al.*, 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa (rms).

Studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.*, 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.*, 2006) or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was no observable direct correlation between strandings and seismic surveys (IWC, 2007:236).

Studies of the bowhead whale show that their responsiveness to seismic surveys can be quite variable depending on their activity (migrating vs. feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20–30 km (12.4–18.6 mi) from a medium-sized airgun source at received sound levels of around 120 to 130 dB re 1 μPa (Miller *et al.*, 1999; Richardson *et al.*, 1999; see Appendix B (5) of NSF's EA). However, more recent research on bowhead whales (Miller *et al.*, 2005; Harris *et al.*, 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing–respiration–dive cycles were evident upon statistical analysis (Richardson *et al.*, 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re 1 μPa (Richardson *et al.*, 1986, 1995; Ljungblad *et al.*, 1988; Miller *et al.*, 2005).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50% of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10% of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.*, 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.*, 1999; Gailey *et al.*, 2007; Johnson *et al.*, 2007; Yazvenko *et al.*, 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.*, 1995; Dunn and Hernandez, 2009, Castellote *et al.*, 2010). Sightings by observers on seismic vessels off the United Kingdom from

1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off of Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim directions during seismic versus non-seismic periods (Moulton *et al.*, 2005, 2006a,b). Castellote *et al.* (2010) reported that singing fin whales in the Mediterranean moved away from an operating airgun array.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and humpback whales) in the Northwest Atlantic found that, overall, this group had lower sighting rates during seismic vs. non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.*, 1984; Richardson *et al.*, 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.*, 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987; Allen and Angliss, 2010).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix B of NSF's EA have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009, Moulton and Holst, 2010).

Seismic operators and marine mammal observers on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but, in general, there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.*, Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.*, 2009; Barkaszi *et al.*, 2009, Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.*, Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.*, Stone and Tasker, 2006; Weir, 2008, Barry *et al.*, 2010, Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of 1 km (0.6 mi) or less, and some individuals show no apparent avoidance. The beluga whale is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys conducted in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10–20 km (6.2–12.4 mi) compared with 20–30 km (12.4–18.6 mi) from an operating airgun array, and observers on seismic boats in that area rarely saw belugas (Miller *et al.*, 2005; Harris *et al.*, 2007).

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (*e.g.*, Stone, 2003; Moulton *et al.*, 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (see Appendix B of NSF's EA for a review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.*, 2008; Miller *et al.*, 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.*, 2005). Most beaked whales tend to avoid approaching vessels of other types (*e.g.*, Wursig *et al.*, 1998). They may also dive

for an extended period when approached by a vessel (*e.g.*, Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.*, 2006; Tyack *et al.*, 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010). However, no beaked whale species are known to occur in the proposed project area.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (see Appendix B of NSF's EA for more information).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Pinnipeds generally seem to be less responsive to exposure to industrial sound than most cetaceans. Responses by pinnipeds to underwater sound from some types of industrial activities such as seismic exploration appear to be temporary and localized (Harris *et al.,* 2001; Reiser *et al.,* 2009).

Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior, see Appendix B(5) of NSF's EA. In the Beaufort Sea, some ringed seals avoided an area of 100 m (328 ft) to (at most) a few hundred meters around seismic vessels, but many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by (*e.g.,* Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals and California sea lions tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. Non-auditory physical effects might also occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physical effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed later in this document, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to industrial sound sources, and beaked whales do not occur in the proposed activity area.

Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007). Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 (found earlier in this document and Table 1 in UAGI's application) presents the distances from the *Langseth*'s 10-airgun array at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 and 190 dB re 1 μPa (rms). As shown in the table, these distances vary with depth.

Researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004), meaning that baleen whales require sounds to be louder (*i.e.,* higher dB levels) than odontocetes in the frequency ranges at which each group hears the best. From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). Since current NMFS practice assumes the same thresholds for the onset of hearing impairment in both odontocetes and mysticetes, NMFS' onset of TTS threshold is likely conservative for mysticetes. For this proposed study, UAGI expects no cases of TTS given the strong likelihood that baleen whales

would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The TTS threshold for pulsed sounds has been indirectly estimated as being a sound exposure level (SEL) of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.,* 2007) which would be equivalent to a single pulse with a received level of approximately 181 to 186 dB re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005).

NMFS has established acoustic thresholds that identify the received sound levels above which hearing impairment or other injury could potentially occur, which are 180 and 190 dB re 1 μPa (rms) for cetaceans and pinnipeds, respectively (NMFS 1995, 2000). The established 180- and 190-dB re 1 μPa (rms) criteria are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before additional TTS measurements for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. TTS is considered by NMFS to be a type of Level B (non-injurious) harassment. The 180- and 190-dB levels are shutdown criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the exclusion zones (EZs) described later in this document.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal (see Southall *et al.,* 2007), even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several dB above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time—see Appendix B (6) of NSF's EA. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Additionally, no beaked whale species occur in the proposed project area.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Stranding and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, a L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (*e.g.,* Hildebrand, 2005; Southall *et al.,* 2007). Appendix B (6) of NSF's EA provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change, such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues.

Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to ''the bends''), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans

exposed to sonar. However, the evidence for this remains circumstantial and is associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below 1 kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (*e.g.,* Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand, 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity ''pulsed'' sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident, plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar, suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because none occur in the proposed project area.

Potential Effects on Marine Mammals of Other Acoustic Devices

(1) MBES

UAGI intends to operate the Kongsberg EM 122 MBES from the source vessel during the proposed study. Sounds from the MBES are very short pings, occurring for 2–15 ms once every 5–20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1–2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m [3,280 ft] deep) or four (in water less than 1,000 m [3,280 ft] deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2–15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During operation of this MBES for this proposed seismic survey, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of a MBES on marine mammals are discussed next.

Masking—Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21–25 kHz ''whale-finding'' sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz ADCP were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 s tonal signals at frequencies similar to those that will be emitted by the MBES used by UAGI and L–DEO (the ship operator), and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from a MBES.

Very few data are available on the reactions of pinnipeds to echosounder sounds at frequencies similar to those used during seismic operations. Hastie and Janik (2007) conducted a series of behavioral response tests on two captive gray seals to determine their reactions to underwater operation of a 375 kHz multibeam imaging echosounder that included significant signal components down to 6 kHz. Results indicated that the two seals reacted to the signal by significantly increasing their dive durations. Because of the likely brevity of exposure to the MBES sounds,

pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the animals.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the MBES proposed for use during UAGI's proposed seismic survey is quite different than sonar used for Navy operations. Pulse duration of the MBES is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from naval sonar. As noted by Burkhardt *et al.* (2008), cetaceans are very unlikely to incur PTS from operation of scientific sonars on a ship that is underway.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES is not likely to result in the harassment of marine mammals.

(2) SBP

UAGI also intends to operate a SBP from the source vessel during the proposed survey. Sounds from the SBP are very short pulses, occurring for 1–4 ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward. The SBP on the *Langseth* has a maximum source level of 204 dB re 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a SBP more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the SBP signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources, including airguns. Many marine mammals are anticipated to move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP.

(3) ADCP

UAGI intends to operate an ADCP during the proposed seismic survey. Sounds from the ADCP are very short, occurring every 0.65–1.4 ms. Most of the energy in the sound emitted is at high frequencies (approximately 75 kHz). The ADCP produces sounds that are within the range of frequencies used by odontocetes that may occur in the proposed project area; however, it is outside the hearing range of mysticetes and at the extreme upper end of the hearing range for pinnipeds.

Masking—Whereas the ADCP produces sounds within the frequency range used by odontocetes that may be present in the proposed survey area, marine mammal communications are not anticipated to be masked appreciably by the signals. This is a consequence of the relatively low power output, low duty cycle, and brief period when an individual mammal is likely to be within the area of potential effects. In the case of mysticetes and pinnipeds, the pulses do not overlap with the predominant frequencies in the calls, thus avoiding significant masking impacts.

Behavioral Responses—When a 38-kHz echosounder and a 150-kHz ADCP were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005). Marine mammal behavioral reactions to other sound sources are discussed above. Responses to the ADCP are likely to be similar to those for other sources if received at the same levels. The signals from the ADCP are weaker than those from the echosounders and the airguns. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—Source levels of the ADCP are lower than those of the airguns, which are discussed above. It is unlikely that the ADCP produces sound levels strong enough to cause TTS or (especially) PTS or other physical injuries even in marine mammals that are (briefly) in a position near the source.

The potential effects to marine mammals from the acoustic sources described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections), which, as noted, are designed to ensure the least practicable impact on affected marine mammal species and stocks.

Anticipated Effects on Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (*i.e.,* fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. This section discusses the potential impacts of anthropogenic sound sources on common marine mammal prey in the proposed survey area (*i.e.*, fish and invertebrates).

Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (see

Appendix C of NSF's EA). There are three types of potential effects of exposure to seismic surveys: (1) Pathological; (2) physiological; and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.,* startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.,* mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (see Appendix C of NSF's EA). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (*e.g.,* predator avoidance, prey capture, orientation and navigation, reproduction, *etc.*) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as UAGI and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response testing) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to airgun shots at a SEL of 177 dB re 1 $\mu Pa^2 \bullet s$ showed no hearing loss. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns [less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m [29.5 ft] in the former case and less than 2 m [6.6 ft] in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (see Appendix C of NSF's EA).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies, fish exhibited a sharp startle response at the onset of a sound

followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the ''catchability'' of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski *et al.,* 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, *e.g.,* a change in vertical or horizontal distribution, as reported in Slotte *et al.* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; see also Appendix D of NSF's EA).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix D of NSF's EA.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (*i.e.,* changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.,* squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (*e.g.,* crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

In conclusion, NMFS has preliminarily determined that UAGI's proposed marine seismic survey is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat,

paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses (where relevant).

UAGI and L–DEO have based the proposed mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS; and

(2) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the proposed activities, UAGI and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;
(2) Power-down procedures;
(3) Shut-down procedures; and
(4) Ramp-up procedures.

Planning Phase

Prior to submitting a final MMPA ITA request to NMFS, NSF works with the scientists that propose studies to determine when to conduct the research study. Dr. Coakley worked with L–DEO and NSF to identify potential time periods to carry out the proposed survey, taking into consideration key factors such as environmental conditions (*i.e.,* ice conditions, the seasonal presence of marine mammals and sea birds), weather conditions, and equipment. The project's proposed timeframe avoids the eastward (spring) bowhead migration but overlaps with that of the westward fall migration and the subsistence bowhead hunt along the north shore of Alaska near Barrow. To avoid disturbance, the seismic survey has been scheduled to depart from Dutch Harbor in early September and remain at least 200 km (124 mi) from Barrow during transit to and from the survey area, which is approximately 250–800 km (155–497 mi) northwest of Barrow. Also, to reduce potential effects, the size of the energy source was reduced from the *Langseth's* 36-airgun, 6600-in^3 array to a 10-airgun, 1830-in^3 array.

Proposed Exclusion Zones

Received sound levels for the 10-airgun array have been predicted by MAI in relation to distance and direction from the airguns, and received sound levels for a single 40-in^3 mitigation airgun have been predicted by L–DEO. Table 1 shows the distances at which three rms sound levels are expected to be received from the 10-airgun array and a single airgun at shallow, intermediate, and deep water depths. The 180- and 190-dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. For the 10-airgun array, the 180-dB radius for each of the three water depth categories is as follows: 425 m (0.26 mi) in deep water; 1,400 m (0.87 mi) in intermediate water; and 1,870 m (1.16 mi) in shallow water. For the 10-airgun array, the 190-dB radius for each of the three water depth categories is as follows: 130 m (426.5 ft) in deep water; 130 m (426.5 ft) in intermediate water; and 190 m (623.4 ft) in shallow water. If the protected species visual observer (PSVO) detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered down (or shut down if necessary) immediately (described next).

Power-Down Procedures

A power-down involves decreasing the number of airguns in use such that the radius of the 180 dB (or 190 dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, UAGI and L–DEO will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, the airguns will be powered-down before the animal is within the applicable EZ (dependent upon species). Likewise, if a marine mammal is already within the EZ when first detected, UAGI and L–DEO will power-down the airguns immediately. During a power-down of the airgun array, USGS will also operate the 40 in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), UAGI and L–DEO will shut-down the airgun (see next section).

Following a power-down, airgun activity will not resume until the marine mammal has cleared the EZ. UAGI and L–DEO will consider the animal to have cleared the EZ if:

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for species with shorter dive durations (*i.e.,* small odontocetes or pinnipeds), or 30 min for species with longer dive durations (*i.e.,* mysticetes; no large odontocetes, such as sperm whales, or beaked whales occur in the proposed survey area).

The airgun array will be ramped up gradually after the marine mammal has cleared the EZ (see *Ramp-up Procedures*).

Shut-Down Procedures

UAGI and L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. A shut-down shall be implemented:

(1) If an animal enters the EZ of the single airgun after a power-down has been initiated; or

(2) If an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

UAGI and L–DEO shall not resume airgun activity until the marine mammal has cleared the EZ or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section regarding a power-down.

Ramp-Up Procedures

UAGI and L–DEO shall follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. UAGI proposes that, for the present cruise, this period would be approximately 8 min. L–DEO has used similar periods (approximately 8 to 10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 15–20 min. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, UAGI and L–DEO will implement a power-down or shut-down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up shall not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at

night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. UAGI and L–DEO shall not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or night.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the mitigation measures proposed above provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. Proposed measures to ensure availability of such species or stock for taking for certain subsistence uses is discussed later in this document (see ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

UAGI proposes to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring and to satisfy the anticipated monitoring requirements of the IHA (if issued). UAGI's proposed Monitoring Plan is described next. UAGI understands that this monitoring plan will be subject to review by NMFS (as well as the public), and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. UAGI is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut-down (as described in the ''Proposed Mitigation'' section earlier in this document). PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered-down or shut-down when marine mammals are observed within or about to enter a designated EZ.

During seismic operations in the Arctic Ocean, at least five PSOs will be based aboard the *Langseth.* L–DEO will appoint the PSOs with NMFS' concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two PSVOs will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on duty. PSVO(s) will be on duty in shifts of duration no longer than 4 hr.

Two PSVOs will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third PSO will monitor the passive acoustic monitoring (PAM) equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the PSVO will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When marine mammals are detected within or about to enter the designated EZ, the airguns will immediately be powered-down or shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the EZ by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the EZ, or if not observed after 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (mysticetes).

Passive Acoustic Monitoring (PAM)

PAM will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range.

Besides the three PSVOs, an additional Protected Species Acoustic Observer (PSAO) with primary responsibility for PAM will also be aboard the vessel. UAGI and L–DEO can use acoustic monitoring in addition to visual observations to improve detection, identification, and localization of marine mammals. The

acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing marine mammals are detected. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so that the PSVOs can be advised when animals are detected acoustically. When bearings (primary and mirror-image) to calling animal(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (*i.e.,* hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer laboratory where the acoustic station and signal conditioning and processing system will be located. The digitized signal and PAM system is monitored by PSAOs at a station in the main laboratory. The hydrophone array is typically towed at depths of less than 20 m (66 ft).

Ideally, the PSAO will monitor the towed hydrophones 24 hr per day at the seismic survey area during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. Every effort would be made to have a working PAM system during the cruise. In the unlikely event that all three of these systems were to fail, UAGI would continue science acquisition with the visual-based observer program. The PAM system is a supplementary enhancement to the visual monitoring program. If weather conditions were to prevent the use of PAM, then conditions would also likely prevent the use of the airgun array.

One PSAO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by marine mammals. PSAOs monitoring the acoustical data will be on shift for 1–6 hours at a time. Besides the PSVO, an additional PSAO with primary responsibility for PAM will also be aboard the source vessel. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the PSAO will contact the PSVO immediately, to alert him/her to the presence of marine mammals (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, *etc.*), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the EZ. Observations will also be made during daytime periods when the *Langseth* is underway without seismic operations.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, *etc.*), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

All observations and power-downs or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

UAGI will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), UAGI and L–DEO will immediately cease the specified activities and immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;

• Vessel's speed during and leading up to the incident;

• Description of the incident;

• Status of all sound source use in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with UAGI to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. UAGI may not resume their activities until notified by NMFS via letter, e-mail, or telephone.

In the event that UAGI discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), UAGI will immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by e-mail to the Alaska Regional Stranding Coordinators. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with UAGI to determine whether modifications in the activities are appropriate.

In the event that UAGI discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UAGI will report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by e-mail to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. UAGI will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].'' Only take by Level B harassment is anticipated and proposed to be authorized as a result of the proposed marine seismic survey in the Arctic Ocean. Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. NMFS also assumes that marine mammals exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment. The use of the ADCP is not anticipated to result in the take of low-frequency cetaceans or pinnipeds, as the frequency for this device is outside of or at the extreme upper end of the hearing ranges of these species. There is no evidence that the planned activities could result in injury, serious injury, or mortality within the specified geographic area for which UAGI seeks the IHA. The proposed mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe UAGI's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 10-airgun array to be used during approximately 5,500 km (3,417.5 mi) of survey lines in the Arctic Ocean.

The anticipated radii of influence of the MBES, SBP, and ADCP are less than those for the airgun array. UAGI assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES, SBP, and ADCP given their characteristics (*e.g.,* narrow, downward-directed beam) and other considerations described previously. Therefore, UAGI provides no additional allowance for animals that could be affected by sound sources other than airguns.

UAGI calculated densities using data from the Chukchi Sea for the fall in depth strata 35–50 m (115–164 ft), 51–200 m (167–656 ft), and greater than 200 m (656 ft), mean group sizes from the Beaufort Whale Aerial Survey Project (BWASP) database, and values for trackline detection probability bias and availability bias, $f(0)$ and $g(0)$, from Harwood *et al.* (1996) for belugas, Thomas *et al.* (2002) for bowhead whales, and Forney and Barlow (1998) for gray whales. Based on the lack of any beluga whale sightings and very low densities of bowheads (0.0003–0.0044/km^2) and gray whales (0.0026–0.0042/km^2) during non-seismic periods of industry vessel operations in the Chukchi Sea in September–October 2006–2008 (Haley *et al.* 2010), and the lack of beluga, bowhead, or gray whale sightings during arctic cruises by the Healy in August–September 2005 or July–August 2006 (Haley 2006; Haley and Ireland 2006), the calculated densities are possibly overestimates. Accordingly, they were reduced by an order of magnitude. Densities were calculated for depths greater than 200 m (656 ft) and less than 200 m (656 ft); in the latter case, the densities were effort-weighted averages of the 35–50 m (115–164 ft) and 51–200 m (167–656 ft) densities.

There is evidence of the occasional occurrence of humpback, minke, fin, and killer whales in the northern Chukchi Sea, but because they occur so infrequently in the Chukchi Sea, little to no data are available for the calculation of densities. Minimal densities have therefore been assigned to these species to allow for chance encounters.

Four species of pinnipeds under NMFS jurisdiction could be encountered in the proposed seismic survey area: ringed seal, bearded seal, ribbon seal, and spotted seal. Bengtson *et al.* (2005) reported ringed and bearded seal densities in nearshore fast ice and pack ice and offshore pack ice based on aerial surveys in May–June 1999 and May 2000; ringed seal but not bearded seal densities were corrected for haulout behavior. UAGI used densities from the offshore stratum (12P). Bearded seal densities were used for water depths less than 200 m (656 ft) and were assumed to be zero in water

depths greater than 200 m (656 ft) because they are predominantly benthic feeders. The fall densities of ringed seals in the open water of the offshore survey area have been estimated as 1/10 of the spring pack ice densities because ringed seals are strongly associated with sea ice and begin to reoccupy nearshore fast ice areas as it forms in the fall. The resulting densities (.081/km^2 in 1999 and .023/km^2 in 2000) are similar to ringed seal density estimates (0.016/km^2 to 0.069/km^2) from industry vessel operations during summer 2006–2008 (Haley *et al.*, 2010).

Little information is available on spotted seal or ribbon seal densities in offshore areas of the Chukchi Sea. Spotted seal density in the summer was estimated by multiplying the ringed seal density by 0.02. This calculation was based on the ratio of the estimated Chukchi populations of the two species: 8% of the Alaskan population of spotted seals is present in the Chukchi Sea during the summer and fall (Rugh *et al.,* 1997); the Alaskan population of spotted seals is 59,214 (Allen and Angliss, 2010); and the population of ringed seals in the Alaskan Chukchi Sea is greater than 208,000 (Bengtson *et al.,* 2005). The ribbon seal density used is based on two ribbon seal sightings reported during industry vessel operations in the Chukchi Sea in 2006–2008 (Haley *et al.,* 2010).

Table 2 in this document (and Table 3 in UAGI's application) provides the estimated densities of marine mammals expected to occur in the proposed survey area. As noted previously, there is some uncertainty about the representativeness of the data and assumptions used in the calculations. Because few data were available for the survey area, UAGI calculated densities based on densities observed in adjacent areas of the northern Chukchi Sea, adjusted downward by various assumed factors (see above and UAGI's application). For species seen only rarely in the northern Chukchi Sea, UAGI assigned low densities. It is not known how closely the densities that were used reflect the actual densities that will be encountered; however, the approach used here is believed to be the best available at this time. The estimated numbers of individuals potentially exposed are presented below based on the 160-dB re 1 μParms criterion for all marine mammals.

TABLE 2—EXPECTED DENSITIES OF MARINE MAMMALS IN THE OFFSHORE SURVEY AREA OF THE ARCTIC OCEAN NORTH OF THE CHUKCHI SEA IN SEPTEMBER–OCTOBER 2011. CETACEAN DENSITIES ARE CORRECTED FOR F(0) AND G(0) BIASES. SPECIES LISTED AS ENDANGERED ARE IN ITALICS

Species	Density (#/1000 km^2) in depths <200 m	Density (#/1000 km^2) in depths >200 m
Mysticetes:		
Bowhead Whale	1.87	0
Gray Whale	1.48	0
Fin Whale	0.01	0.01
Humpback Whale	0.01	0.01
Minke Whale	0.01	0.01
Odontocetes:		
Beluga	1.65	6.78
Killer whale	0.01	0.01
Pinnipeds:		
Bearded Seal	14.18	0
Spotted Seal	0.98	0.98
Ringed Seal	48.92	48.92
Ribbon Seal	0.27	0.27

UAGI's estimates of exposures to various sound levels assume that the proposed survey will be fully completed; in fact, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25% to accommodate turns, lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The *Langseth* is not ice-strengthened and will completely avoid ice, so it is very likely that the survey will not be completed because ice likely will be present. Furthermore, any marine mammal sightings within or near the designated EZ will result in the shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160 dB (rms) sounds are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no ice, weather, equipment, or mitigation delays, which is highly unlikely.

UAGI estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are widely spaced in the survey area, so few individual marine mammals would be exposed more than once during the survey. The area including overlap is only 1.3 times the area excluding overlap. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa (rms) was calculated by multiplying:

(1) The expected species density, times.

(2) The anticipated area to be ensonified to that level during airgun operations in each depth stratum, excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by

''drawing'' the applicable 160 dB buffer (see Table 1 in this document and in the IHA application) around each seismic line, and then calculating the total area within the buffers. Areas of overlap (because of lines being closer together than the 160 dB radius) were limited and included only once when estimating the number of individuals exposed. Before calculating numbers of individuals exposed, the areas were increased by 25% as a precautionary measure.

For species whose densities were the same regardless of water depth, UAGI used ensonified areas for all water depths to calculate numbers exposed. For species whose densities were different in water depths less than 200 m (656 ft) and greater than 200 m (656 ft; see Table 2 in this document and Table 3 in UAGI's application), UAGI used ensonified areas for tracklines in water depths less than 200 m (656 ft) and the sum of the ensonified areas in water depths 200–1,000 m (656–3,280 ft) and greater than 1,000 m (3,280 ft) and applied them to the different densities.

Table 4 in UAGI's application shows the estimates of the number of different individual marine mammals that potentially could be exposed to sounds greater than or equal to 160 dB re 1 μPa (rms) during the proposed seismic survey if no animals moved away from the survey vessel. Table 3 in this document presents the abundance of the different species or stocks, proposed take authorization, and the percentage of the regional population or stock. Table 4 in UAGI's application includes species beyond those presented in Table 3 in this document for which take is requested. Walrus and polar bears are not included in this document because those species are under the jurisdiction of the USFWS. Although presented in Table 4 in UAGI's application, no take has been requested and none is proposed to be authorized for narwhal or harbor porpoise. Because the harbor porpoise is mainly a shallow-water species, it is not expected to occur in the survey area. Narwhals are considered extralimital in Alaska, and any vagrants likely would be associated with sea ice. The *Langseth* is not ice-strengthened and will completely avoid ice, so encounters with narwhals are not expected.

Applying the approach described above, approximately 122,530 km^2 (47,309 mi^2; approximately 153,163 km^2 [59,137 mi^2] including the 25% contingency) would be within the 160-dB isopleth on one or more occasions during the survey. For less than 200 m (656 ft) and greater than 200 m (656 ft) depth ranges, the areas are 38,188 km^2 (14,744 mi^2; 47,736 km^2 [18,431 mi^2] including the 25% contingency) and 84,342 km^2 (32,565 mi^2; 105,427 km^2 [40,706 mi^2] including the 25% contingency), respectively. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated in some cases. However, the approach assumes that no marine mammals will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels. The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures that are proposed for inclusion in the IHA (if issued).

TABLE 3—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED TAKE, AND THE PERCENTAGE OF THE POPULATION OR STOCK THAT MAY BE EXPOSED TO SOUNDS ≥160 DB RE 1 μPA (RMS) DURING THE PROPOSED SEISMIC SURVEY IN THE ARCTIC OCEAN, SEPTEMBER–OCTOBER 2011

Species	Abundance [1]	Proposed take authorization	Percentage of population or stock
Bowhead Whale	[2] 14,731	89	0.6
Gray Whale	19,126	71	0.4
Humpback Whale	[3] 20,800	2	0.01
Minke Whale	810	2	0.2
Fin Whale	5,700	2	0.04
Beluga Whale	[4] 42,968	794	1.8
Killer Whale	[5] 768	2	0.3
Bearded Seal	250,000–300,000	677	0.2–0.3
Spotted Seal	59,214	150	0.3
Ringed Seal	249,000	7,492	3
Ribbon Seal	49,000	42	0.09

[1] Unless stated otherwise, abundance estimates are from Allen and Angliss (2011).
[2] Based on estimate of 10,545 individuals in 2001 with a 3.4% annual growth rate (George *et al.*, 2004 and revised by Zeh and Punt, 2005).
[3] North Pacific Ocean (Barlow *et al.*, 2009).
[4] Based on estimates for the eastern Chukchi Sea and Beaufort Sea stocks (Allen and Angliss, 2011).
[5] Based on estimates for the Northern resident and transient stocks (Allen and Angliss, 2011).

Encouraging and Coordinating Research

UAGI and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey in the Arctic Ocean with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the proposed seismic survey. No other marine mammal studies are expected to occur in the study area at the proposed time. However, other industry-funded seismic surveys may be occurring in the northeast Chukchi and/or western Beaufort Sea closer to shore, and those projects are likely to involve marine mammal monitoring. UAGI and NSF have coordinated, and will continue to coordinate, with other applicable Federal, State, and Borough agencies, and will comply with their requirements.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including

but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

For reasons stated previously in this document, no injuries or mortalities are anticipated to occur as a result of UAGI's proposed seismic survey, and none are proposed to be authorized by NMFS. Additionally, for reasons presented earlier in this document, temporary hearing impairment (and especially permanent hearing impairment) is not anticipated to occur during the proposed specified activity. Impacts to marine mammals are anticipated to be in the form of Level B behavioral harassment only, due to the brief duration and sporadic nature of the survey. Certain species may have a behavioral reaction (*e.g.,* increased swim speed, avoidance of the area, *etc.*) to the sound emitted during the proposed marine seismic survey. Table 3 in this document outlines the number of Level B harassment takes that are anticipated as a result of the proposed activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival. The proposed survey would not occur in any areas designated as critical habitat for ESA-listed species. Additionally, as mentioned previously in this document, the proposed seismic survey will not destroy marine mammal habitat.

While some of the species could potentially occur in the proposed survey area year-round, some species only occur at certain times of the year. In the fall, bowhead whales begin their westward migration through the Beaufort Sea in late August/early September. The whales usually reach Barrow around mid-September. It is likely that most bowhead whales will not enter the proposed survey area until about the second half of the proposed survey time period. Additionally, humpback and fin whales have only started to be sighted in the Chukchi Sea in the last 5–6 years. As the extent of Arctic sea ice begins to change, these species may be expanding their normal range further north. However, this is still considered the extreme northern edge of the range of these species, so it is unlikely that they will be present throughout the entire proposed survey time period.

Of the 11 marine mammal species likely to occur in the proposed survey area, three are listed as endangered under the ESA: Bowhead, humpback, and fin whale. All of these species are also considered depleted under the MMPA. As stated previously in this document, the affected bowhead whale stock has been increasing at a rate of 3.4% per year since 2001. On December 10, 2010, NMFS published a notification of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notification of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither species is considered depleted under the MMPA. The listing for these species is not anticipated to be completed prior to the end of this proposed seismic survey. Certain stocks of beluga whale and spotted seal are listed or proposed for listing under the ESA. However, those stocks do not occur in the proposed project area.

As has been noted previously in this document, many cetacean species, especially mysticetes, may display avoidance reactions and not enter into areas close to the active airgun array. However, alternate areas are available to these species. The location of the survey is not a known feeding ground for these species. It is not used for breeding or nursing. Although ice seals breed and nurse in the Chukchi Sea, the survey occurs outside of the time for ice seal breeding or nursing in the Chukchi Sea.

The population estimates for the species that may potentially be taken as a result of UAGI's proposed seismic survey were presented earlier in this document. For reasons described earlier in this document, the maximum calculated number of individual marine mammals for each species that could potentially be taken by harassment is small relative to the overall population sizes (3% for ringed seals, 1.8% for beluga whales, and less than 1% of each of the other 9 marine mammal populations or stocks).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the proposed seismic survey will result in the incidental take of small numbers of marine mammals and that the total taking from UAGI's proposed activities will have a negligible impact on the affected species or stocks. Impact on

Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walruses, and polar bears. (As mentioned previously in this document, both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

Barrow and Wainwright, which is in the Chukchi Sea, are the two villages that are closest to the proposed survey area, which will be initiated more than 200 km (124 mi) offshore. Marine mammals are also hunted in the Beaufort Sea villages of Kaktovik and Nuiqsut (mostly from Cross Island). Other villages in the Chukchi Sea that hunt for marine mammals include Point Lay, Point Hope, Kivalina, and Kotzebue. The villages of Kivalina and Kotzebue are many hundreds of miles south of the proposed project area.

(1) Bowhead Whale

Bowhead whale hunting is the key activity in the subsistence economies of Barrow and two smaller communities to the east, Nuiqsut and Kaktovik. Bowhead whales are also hunted by communities along the Chukchi Sea. The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migrations along the coast. The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. The spring hunt at Barrow occurs after leads open because of the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. The location of the fall subsistence hunt depends on ice conditions and (in some years) industrial activities that influence the bowheads movements as they move west (Brower, 1996). In the fall,

subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km (50 mi) offshore. The autumn hunt at Barrow usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow. The whales have usually left the Beaufort Sea by late October (Treacy, 2002a,b). Along the Chukchi Sea coast, bowhead whales have recently primarily been hunted during the spring, between March and June. However, with changing ice patterns, there is a possibility that Chukchi Sea villages could begin participating in fall bowhead whale hunts. Table 4 in this document (Table 5 in UAGI's application) presents harvest data for the years 1993–2008 for bowhead whale hunts in five North Slope communities.

The proposed survey will not have any impacts on the spring bowhead whale hunt by communities along the Chukchi Sea and Barrow, as those hunts are completed many months prior to the beginning of this proposed survey. The villages of Kaktovik and Nuiqsut are several hundred miles to the east of the proposed survey location. Therefore, no impacts are anticipated on the fall hunts at Kaktovik or Nuiqsut (Cross Island). The closest tracklines to Barrow are more than 200 km (124 mi) and in most cases between 250 and 800 km (155–497 mi) to the northwest of Barrow. The whales will reach Barrow before they enter into the proposed survey area.

Table 4. Number of bowhead whales landed, by year, at Point Hope, Wainwright, Barrow, Cross Island (Nuiqsut), and Kaktovik, 1993-2008. Barrow numbers include the total number of whales landed for the year followed by the numbers landed during the fall hunt in parenthesis.

Year	Point Hope	Wainwright	Barrow	Cross Island	Kaktovik
1993	2	5	23 (7)	3	3
1994	5	4	16 (1)	0	3
1995	1	5	19 (11)	4	4
1996	3	3	24 (19)	2	1
1997	4	3	30 (21)	3	4
1998	3	3	25 (16)	4	3
1999	2	5	24 (6)	3	3
2000	3	5	18 (13)	4	3
2001	4	6	27 (7)	3	4
2002	0	1	22 (17)	4	3
2003	4	5	16 (6)	4	3
2004	3	4	21 (14)	3	3
2005	7	4	29 (13)	1	3
2006	0	2	22 (19)	4	3
2007	3	4	20 (7)	3	3
2008	2	2	21(12)	4	3

Sources: USDI/BLM and references therein; Burns et al. (1993); Koski et al. (2005); Suydam et al. 2004, 2005, 2006, 2007, 2008, 2009.

(2) Beluga Whale

Beluga whales are available to subsistence hunters at Barrow in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in the area through June and sometimes into July and August in ice-free waters. Hunters usually wait until after the spring bowhead whale hunt is finished before turning their attention to hunting belugas. Few, if any, belugas are taken by Kaktovik and Nuiqsut hunters and only during the fall whale harvest. Along the Chukchi Sea, belugas are hunted during the spring and in the summer (between July and August) by residents of Wainwright and Point Hope. Near Point Lay, belugas are taken in June and July. During 2002–2006, Alaska Native subsistence hunters took a mean annual number of 25.4 beluga whales from the Beaufort Sea stock and 59 from the eastern Chukchi Sea stock. The average annual harvest of beluga whales taken by Barrow for 1962–1982 was five (MMS, 1996). The Alaska Beluga Whale Committee recorded that 23 beluga whales had been harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988, and 1995 to the high of 8 in 1997 (Fuller and George, 1999; Alaska Beluga Whale Committee, 2002 cited in USDI/BLM, 2005).

UAGI's proposed seismic survey is not anticipated to impact beluga hunts conducted by villages of the North Slope. The timing of the proposed survey is after the spring and summer beluga harvests in the Chukchi Sea. Although hunting of beluga from Point Hope may extend into September, off Point Hope, the vessel will remain approximately 80 km (50 mi) from the coast, in transit northward to the study area.

(3) Ice Seals

Ringed seals are hunted by villagers along the Beaufort Sea coast mainly from October through June. Hunting for these smaller mammals is concentrated during winter because bowhead whales, bearded seals, and caribou are available through other seasons. Winter leads in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east are used for hunting ringed seals. The average annual ringed seal harvest by the community of Barrow from the 1960s through much of the 1980s has been estimated as 394. Along the Chukchi Sea coast, ringed seals are

mainly taken between May and September near Wainwright, and throughout the year by Point Lay and Point Hope hunters. As the seismic survey will occur far offshore, the survey will not affect ringed seals in the nearshore areas where they are hunted. It is unlikely that accessibility to ringed seals during the subsistence hunt could be impaired during the *Langseth's* transit to and from the study area when the airguns are not operating. Although some hunting in the Chukchi Sea does occur as far as 32 km (20 mi) from shore, the area affected during transit would be in close proximity to the ship, which will be transiting approximately 80 km (50 mi) offshore.

The spotted seal subsistence hunt on the Beaufort Sea coast peaks in July and August, at least in 1987–1990, but involves few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea. Admiralty Bay, less than 60 km (37 mi) to the east of Barrow (and more than 260 km [162 mi] from the proposed survey area), is a location where spotted seals are harvested. Spotted seals are also occasionally hunted in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east (USDI/BLM, 2005). The average annual spotted seal harvest by the community of Barrow from 1987–1990 was one (Braund *et al.,* 1993). Along the Chukchi Sea coast, seals are mainly taken between May and September near Wainwright, and throughout the year by Point Lay and Point Hope hunters.

The proposed seismic survey will take place at least 200 km offshore from the preferred nearshore harvest area of these seals. It is unlikely that accessibility to spotted seals during the subsistence hunt could be impaired during the *Langseth's* transit to and from the study area when the airguns are not operating. Although some hunting in the Chukchi Sea does occur as far as 40 km (25 mi) from shore, the area affected during transit would be in close proximity to the ship.

Bearded seals, although not favored for their meat, are important to subsistence activities in Barrow because of their skins. Six to nine bearded seal hides are used by whalers to cover each of the skin-covered boats traditionally used for spring whaling. Because of their valuable hides and large size, bearded seals are specifically sought. Bearded seals are harvested during the summer months in the Beaufort Sea (USDI/BLM, 2005). The summer hunt typically occurs near Thetis Island in July through August (prior to initiation of UAGI's proposed survey). The animals inhabit the environment around the ice floes in the drifting ice pack, so hunting usually occurs from boats in the drift ice. Braund *et al.* (1993) estimated that 174 bearded seals were harvested annually at Barrow from 1987 to 1990. The majority of bearded seal harvest sites from 1987 to 1990 was within approximately 24 km (15 mi) of Point Barrow (Braund *et al.,* 1993), well inshore of the proposed survey. Along the Chukchi Sea coast, bearded seals are mainly taken between May and September near Wainwright, during the spring and summer by Point Hope hunters, and throughout the year by Point Lay hunters. These hunts occur closer into shore than the proposed survey area or the proposed transit route.

Potential Impacts to Subsistence Uses

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as:

> * * * 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.

Noise emitted during the proposed seismic survey from the acoustic sources has the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. However, because the proposed survey occurs so far from any of the traditional hunting grounds and to the west of the fall bowhead hunting areas (meaning the whales would reach the hunting grounds before entering the survey area), it is not anticipated that there will be impacts to subsistence uses.

Plan of Cooperation (POC)

Regulations at 50 CFR 216.104(a)(12) require MMPA authorization applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. UAGI has worked with the people of the North Slope Borough (NSB) to identify and avoid areas of potential conflict. The project's principal investigator (PI) contacted Dr. Glenn Sheehan of the Barrow Arctic Science Consortium and NSB biologist, Dr. Robert Suydam, on January 7, 2010, to inform them of the proposed study and the elements intended to minimize potential subsistence conflict. The PI presented the proposed UAGI survey at a meeting of the Alaska Eskimo Whaling Commission (AEWC) in Barrow on February 11, 2010. He explained the survey plans to the local residents, including NSB Department of Wildlife Management biologists, consulted with stakeholders about their concerns, and discussed the aspects of the survey designed to mitigate impacts. No major concerns were expressed. The PI also attended the 2011 AEWC meeting on February 17–18; representatives from all NSB communities attended. The only concern expressed was that AEWC would like a good communication link with the *Langseth* during the survey. As requested by AEWC, communication lines between the NSB and the *Langseth* during the survey will be kept open in order to minimize potential conflicts. The study was also presented to government agencies, affected stakeholders, and the general public at the annual Arctic Open-water Meeting in Anchorage, Alaska, on March 7–8, 2011.

As part of its MMPA IHA application, UAGI submitted a POC to NMFS. As noted in the POC, a Barrow resident knowledgeable about the mammals and fish of the area is expected to be included as a PSO aboard the *Langseth.* Although the primary duty of this individual will be as a member of the PSO team responsible for implementing the monitoring and mitigation requirements, this person will also be able to act as a liaison with hunters if they are encountered at sea. However, the proposed activity has been timed so as to avoid overlap with the main harvests of marine mammals (especially bowhead whales). Meetings with whaling captains, other community representatives, the AEWC, NSB, and any other parties to the POC have been and will continue to be held, as necessary, to negotiate the terms of the POC and to coordinate the planned seismic survey operations with subsistence activity.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has preliminarily determined that UAGI's proposed marine seismic survey in the Arctic Ocean will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses.

This preliminary determination is supported by the fact that UAGI and NSF have worked closely with the AEWC and NSB to ensure that the proposed activities are not co-located with annual subsistence activities. Additionally, the proposed seismic survey will occur more than 200 km (124 mi) offshore of the North Slope and to the west of the communities that conduct fall bowhead whale subsistence hunts. This means that the whales will reach the communities prior to entering into the proposed survey area. The Chukchi Sea beluga hunts are typically completed prior to the time the *Langseth* would be transiting through the Chukchi Sea to the survey site. Should late summer or early fall hunts of certain species be occurring at the time of transit of the vessel, the hunts occur closer into shore than the proposed transit route of the *Langseth.*

Based on the measures described in UAGI's POC, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses from UAGI's marine seismic survey.

Endangered Species Act (ESA)

Three of the marine mammal species that could occur in the proposed seismic survey area are listed under the ESA: Bowhead whale; humpback whale; and fin whale. Under Section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits, Conservation and Education Division, has also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on ESA-listed marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, UAGI, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both NSF and NMFS's Office of Protected Resources. Although the ringed seal and bearded seal have been proposed for listing under the ESA, neither of the listings will be finalized prior to conclusion of the proposed seismic survey. Therefore, consultation pursuant to section 7 of the ESA is not needed for these species.

National Environmental Policy Act (NEPA)

With its complete application, UAGI and NSF provided NMFS an EA analyzing the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL on behalf of NSF is entitled ''Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Arctic Ocean, September–October 2011.'' Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the NSF EA for consistency with the regulations published by the Council on Environmental Quality and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the NSF EA and make a decision of whether or not to issue a Finding of No Significant Impact.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to UAGI's proposed marine seismic survey in the Arctic Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 11, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA562]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility off Massachusetts

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to Neptune LNG LLC (Neptune) to take marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port (the Port) in Massachusetts Bay.

DATES: Effective from July 12, 2011, through July 10, 2016.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, calling the contact listed under **FOR FURTHER INFORMATION CONTACT,** or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours at the above address.

The Final Environmental Impact Statement (Final EIS) on the Neptune Deepwater Port License Application authored by the Maritime Administration (MARAD) and U.S. Coast Guard (USCG) is available for viewing at *http://www.regulations.gov* by entering the search words ''Neptune LNG.'' **FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings may be granted for periods up to 5 years, after notification and opportunity for public comment, if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the

availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Regulations governing the take of 14 species of marine mammals, by Level B harassment only, incidental to operation and repair and maintenance activities at the Neptune Port off Massachusetts were issued on June 13, 2011 (76 FR 34157). These regulations are effective from July 11, 2011, through July 10, 2016 (76 FR 35995, June 21, 2011). The species which are authorized for taking are: North Atlantic right whale; humpback whale; fin whale; sei whale; minke whale; long-finned pilot whale; killer whale; Atlantic white-sided dolphin; harbor porpoise; common dolphin; Risso's dolphin; bottlenose dolphin; harbor seal; and gray seal. For detailed information on this action, please refer to the final rule and correction to the final rule (76 FR 34157, June 13, 2011; 76 FR 35995, June 21, 2011). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during operation and repair and maintenance activities at the Neptune Port.

This LOA is effective from July 12, 2011, through July 10, 2016, and authorizes the incidental take of the 14 marine mammal species listed above that may result from port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port off Massachusetts. Once the Port is fully operational, it is anticipated that there may be up to 50 shuttle regasification vessel (SRV) trips per year.

Potential effects of Neptune's port operations and maintenance/repair activities would most likely be acoustic in nature. LNG port operations and maintenance/repair activities introduce sound into the marine environment. Potential acoustic effects on marine mammals relate to sound produced by thrusters during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the port, and during thruster use of dynamic positioning maintenance vessels should a major repair be necessary. Marine mammals may experience masking and behavioral disturbance.

Take of marine mammals will be minimized through the implementation of the following mitigation measures: (1) Restricting repair and maintenance activities to the period between May 1 and November 30, to the greatest extent practicable, so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided; (2) using NMFS-approved protected species observers (PSOs) onboard vessels and bioacoustic technicians; (3) taking appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less in certain seasons and areas and alerting personnel responsible for navigation and lookout duties to concentrate their efforts when a marine mammal is sighted; (4) remaining 1 km (0.6 mi) away from North Atlantic right whales and other whales to the extent possible while moving, and PSOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 1 km (0.6 mi) from the vessel; (5) remaining 91 m (100 yd) away from all other marine mammal species; (6) ceasing any noise emitting activities that exceed a source level of 139 dB re 1 μPa if a right whale is sighted within or approaching to a distance of 457 m (500 yd); (7) ceasing any noise emitting activities that exceed a source level of 139 dB re 1 μPa if a marine mammal other than a right whale is sighted within or approaching to a distance of 91 m (100 yd); and (8) implementing passive acoustic monitoring of marine mammals to supplement the effectiveness of visual sightings. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. No injury or mortality is anticipated, and none is authorized.

Through this LOA, Neptune is required to monitor for marine mammals using both visual observers (*i.e.,* PSOs) and passive acoustic monitoring systems. Neptune is required to submit an annual report to NMFS on August 1 of each year. The report will include data collected for each distinct marine mammal species observed in the LNG facility area during the period of January 1 through December 31 of the previous year of activity. Additional information on the mitigation, monitoring, and reporting requirements can be found in the final rule (76 FR 34157, June 13, 2011). Neptune is also required to submit a comprehensive report, which shall provide full documentation of methods, results, and interpretation of all monitoring during the period of effectiveness of this LOA.

Dated: July 11, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–17762 Filed 7–13–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0006]

Macy's, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Macy's, Inc., containing a civil penalty of $750,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 29, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

July 11, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Macy's, Inc. (''Macy's'') and the U.S. Consumer Product Safety Commission (''Commission'') staff (''Staff'') enter into this Settlement Agreement (''Agreement''). The Agreement and the

incorporated attached Order (''Order'') settle Staff's allegations set forth below.

Parties

2. Staff is the staff of the Commission, an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Macy's is a corporation organized and existing under the laws of Delaware, with its principal offices located in Cincinnati, Ohio. At all relevant times, Macy's sold apparel and other products.

Staff Allegations

4. During periods of time from April 2006 through October 2010, Macy's, through its subsidiaries, imported, sold, and/or held for sale various quantities of the following children's upper outerwear products with drawstrings at the neck: Quiksilver, Inc.—Hide & Seek hooded sweatshirts; Jerry Leigh of California, Inc.—Harajuku Lovers hooded jackets; La Jolla Sport USA, Inc.—O'Neill hooded sweatshirts; Dysfunctional Clothing, LLC—Lost hooded sweatshirts; Macy's Merchandising Group, Inc.—Epic Threads hooded sweatshirts; Macy's Merchandising Group, Inc.—Greendog sweaters; C–MRK, Inc.—Ocean Current hooded sweatshirts; NTD Apparel, Inc.—Hello Kitty hooded sweatshirts; S. Rothschild & Co., Inc.—wool coats; and VF Contemporary Brands, Inc.—Splendid hooded jackets and hooded vest sets. The products identified in this paragraph are collectively referred to herein as ''Garments.''

5. Macy's sold the Garments, and/or held the Garments for sale, to consumers.

6. The Garments are ''consumer product[s],'' and, at all relevant times, Macy's was a ''manufacturer'' and/or ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), (11), and (13), 15 U.S.C. 2052(a)(5), (8), (11), and (13).

7. In February 1996, Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, Staff recommends that no children's upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also references the CPSA's section 15(b) (15 U.S.C. 2064(b)) reporting requirements.

10. Macy's informed the Commission that there had been no reported incidents or injuries associated with the Garments.

11. Macy's distribution in commerce of the Garments did not meet either the Guidelines or ASTM F1816–97, failed to comport with Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. The Commission, in cooperation with Macy's and/or other firms that were the Garments' manufacturers, importers, or distributors, announced recalls of the Garments.

13. Based in part on information available through the sources set forth in paragraphs 7 through 9 herein, Macy's had presumed and actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Macy's obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that the Garments created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), Macy's was required to immediately inform the Commission of the defect and risk.

14. Macy's knowingly failed to immediately inform the Commission about the Garments as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this knowing failure subjected Macy's to civil penalties.

15. On multiple occasions from March 2009 to January 2010, Macy's offered Garments for sale, sold Garments, and/or distributed Garments in commerce that were subject to voluntary corrective action taken by the Garments' manufacturers, in consultation with the Commission. The Commission notified the public of that action, or Macy's knew or should have known of that action.

16. Macy's knowingly engaged in the acts alleged in paragraph 15 as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). These acts violated CPSA section 19(a)(2)(B), 15 U.S.C. 2068(a)(2)(B). Pursuant to CPSA section 20, 15 U.S.C. 2069, these acts subjected Macy's to civil penalties.

Macy's Responsive Allegations

17. Macy's denies Staff's allegations above, including, but not limited to, any claim that Macy's failed to timely report to the Commission the sale or distribution of any children's upper outerwear products with drawstrings pursuant to section 15(b) of the CPSA.

18. Macy's promptly notified the Commission pursuant to section 15(b) of the CPSA upon learning that certain children's upper outerwear products contained drawstrings.

Agreement of the Parties

19. Under the CPSA, the Commission has jurisdiction over this matter and over Macy's.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Macy's, or a determination by the Commission, that Macy's knowingly violated the CPSA.

21. In settlement of Staff's allegations, Macy's shall pay a civil penalty in the amount of seven hundred fifty thousand dollars ($750,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via *http://www.pay.gov*.

22. Macy's agrees that it will not seek or accept, directly or indirectly, indemnification, reimbursement, insurance, or any other form of compensation or payment, including, but not limited to, cash, account credit, or set-off, from any vendor or supplier from which Macy's acquired the Garments, or from any other firm or person, for the civil penalty that Macy's

agrees and is ordered to pay pursuant to the Agreement and Order.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register.**

24. Macy's shall conduct annual training of all employees responsible for purchasing children's upper outerwear, including training regarding all drawstring prohibitions, restrictions, guidelines, rules, and laws, and shall include such training when first hiring or assigning employees responsible for purchasing children's upper outerwear.

25. Within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement, Macy's shall conduct a comprehensive review of its existing children's apparel inventory to identify any children's upper outerwear bearing drawstrings at the neck (''Drawstring Garments'').

26. Within ten (10) calendar days of the completion of the review Macy's conducts pursuant to paragraph 25, Macy's shall submit to Staff an Inventory Review Completion Report, covering the review that Macy's conducted pursuant to paragraph 25. The report shall, at a minimum, include the following:

a. A comprehensive list of all Drawstring Garments that Macy's has identified, including, but not limited to, the following: item description; style number(s); garment sizes in inventory; number of units of each size in inventory; date(s) of purchase; identity of the company/ies from which the garment was purchased; and (if applicable) the period of time during which Macy's sold and/or offered for sale the Drawstring Garment.

b. One sample of each available size of each Drawstring Garment identified during the inventory review;

c. A description of the step(s) that Macy's has taken to eliminate the strangulation hazards posed by each of the Drawstring Garments; and

d. The following certification signed by an officer of Macy's:

Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that the information is true and correct. I am aware that there are significant penalties for submitting false information to Federal officials, including the possibility of fines and imprisonment.

The report shall be directed to the following Staff: Seth B. Popkin, Lead Trial Attorney, Office of the General Counsel, Division of Compliance, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814.

27. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Macy's knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Macy's failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

28. The Commission may publicize the terms of the Agreement and the Order.

29. The Agreement and the Order shall apply to, and be binding upon, Macy's and each of its successors and assigns.

30. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Macy's and each of its successors and assigns to appropriate legal action.

31. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

32. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Macy's agree that severing the provision materially affects the purpose of the Agreement and the Order.

Macy's, Inc.

Dated: 6/21/11.

By: _____

Dennis Broderick,

Executive Vice President, General Counsel, and Secretary, Seven West Seventh Street, Cincinnati, Ohio 45202.

Dated: 6/22/11.

By: _____

Jeffrey B. Margulies, Esq., William L. Troutman, Esq.,

Fulbright & Jaworski L.L.P., 555 South Flower Street, 41st Floor, Los Angeles, CA 90071, Counsel for Macy's, Inc.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,

General Counsel.

Mary B. Murphy,

Assistant General Counsel, Office of the General Counsel.

Dated: 6/28/11.

By: _____

Seth B. Popkin,

Lead Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Macy's, Inc. (''Macy's'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Macy's, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered, that Macy's shall pay a civil penalty in the amount of seven hundred fifty thousand dollars ($750,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via *http://www.pay.gov*. Upon the failure of Macy's to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Macy's at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b); and it is

Further Ordered, that Macy's shall fully perform all of its obligations as set forth in the Settlement Agreement at paragraphs 24, 25, and 26.

Provisionally accepted and provisional Order issued on the *8th* day of *July,* 2011.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–17746 Filed 7–13–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.
2. *Date:* Friday, July 29, 2011.
3. *Time:* 12 p.m.–3 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.
4. *Location:* Jefferson Hall Library, Haig Room. West Point, NY.
5. *Purpose of the Meeting:* This is the 2011 Summer Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.
6. *Agenda:* The Academy leadership will provide the Board updates on the following: West Point Leader development System, Propensity to Serve, Cost of Educating a Cadet, Connecting with Graduates and Net Zero.
7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.
8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–17704 Filed 7–13–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before August 15, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 11, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Upward Bound Annual Performance Report.

OMB Control Number: 1840–0762.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 1,143.

Total Estimated Annual Burden Hours: 10,287.

Abstract: Grantees in the Upward Bound programs (Upward Bound, Upward Bound Math-Science, and Veterans Upward Bound) must submit this report annually. The Department uses the reports to evaluate the performance of grantees prior to awarding continuation funding and to assess grantees' prior experience at the end of the budget period. The Department will also aggregate the data across projects to provide descriptive information on the programs and to analyze their outcomes in response to the Government Performance and Results Act.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4577. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–17772 Filed 7–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Arts in Education National Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Arts in Education National Program.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.351F.

Dates:

Applications Available: July 14, 2011.

Deadline for Transmittal of Applications: August 15, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Arts in Education National Program supports national level high-quality arts education projects and programs for children and youth, with special emphasis on serving students from low-income families and students with disabilities.

Priorities: This notice includes one absolute priority and one competitive preference priority. We are establishing these priorities for the FY 2011 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Model Projects.

High-quality projects that are designed to develop and implement, or expand, initiatives in arts education and arts integration on a national level for pre-kindergarten-through-grade-12 children and youth, with special emphasis on serving students from low-income families and students with disabilities.

In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding will provide services and develop initiatives in multiple schools, school districts, and communities throughout the country.

Competitive Preference Priority: For FY 2011, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Supporting Programs, Practices, or Strategies for which there are Strong or Moderate Evidence of Effectiveness.

Projects that are supported by strong or moderate evidence. A project that is supported by strong evidence (as defined in this notice) will receive more points than a project that is supported by moderate evidence (as defined in this notice).

Application Requirements:

A project must describe how it would (a) Serve low-income students and students with disabilities; and (b) implement the following activities on a national level:

1. Professional development based on national standards for pre-kindergarten-through-grade-12 arts educators.

Note: *National standards* refers to the arts standards developed by the Consortium of National Arts Education Associations. The standards outline what students should know and be able to do in the arts. These are not Department standards. To view the standards, please go to *http://www.menc.org/resources/view/the-national-standards-for-arts-education-a-brief-history.*

2. Development and dissemination of instructional materials, including online resources, in multiple arts disciplines for arts educators.

3. Arts-based educational programming in music, dance, theater, media arts, and visual arts, including folk arts for pre-kindergarten-through-grade-12 students and arts educators.

4. Community and national outreach activities that strengthen and expand partnerships among schools, school districts, and communities throughout the country.

Definitions:

As used in this notice—

Arts means music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher or other instructional staff who work in music, dance, theater, media arts, or visual arts, including folk arts.

Carefully matched comparison group design means a type of quasi-experimental study (as defined in this notice) that attempts to approximate an experimental study (as defined in this notice). More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) Demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) The time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) Methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Integration means (i) Encouraging the use of high-quality arts instruction within other academic content areas, and (ii) strengthening the arts as a core academic subject in the school curriculum.

Interrupted time series design means a type of quasi-experimental study (as defined in this notice) in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.[1]

[1] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time; a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of

Continued

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence:

(1) At least one well-designed and well-implemented experimental or quasi-experimental study supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability;

(2) At least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or

(3) Correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

National non-profit arts education organization means an organization of national scope that is supported by staff or affiliates at the State and local levels and that has a demonstrated history of advancing high-quality arts education and arts integration for arts educators, education leaders, artists, and students through professional development, partnerships, educational programming, and systemic school reform.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental study (as defined in this notice) and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed and well-implemented (as defined in this notice) quasi-experimental studies (as defined in this notice) include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study (as defined in this notice) design that closely approximates an experimental study (as defined in this notice). In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence:

(1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or

(2) One large, well-designed and well-implemented randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the Arts in Education National Program under section 5551 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7271), and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, selection criteria, definitions, and other requirements under section 437(d)(1) of GEPA. These priorities, selection criteria, definitions, and other requirements will apply to the FY 2011 grant competition only.

Program Authority: 20 U.S.C. 7271.

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.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,654,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months (subject to availability of funds).

Note: The applicant should propose to use the entire amount of available funds ($6,654,000) during the twelve month budget period. If additional funds subsequently become available, we may make continuation awards.

III. Eligibility Information

1. *Eligible Applicants:* A national non-profit arts education organization.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under the program.

c. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with funds awarded under this program with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

IV. Application and Submission Information

1. *Address to Request Application Package:* Carolyn Warren, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W209, Washington, DC 20202–5900. *Telephone:* (202) 205–5443 or by *e-mail: carolyn.warren@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the

the treatment and/or treatments of different lengths or intensity.

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 program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this 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. We suggest you limit the application narrative (Part III) to 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, 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.

3. *Submission Dates and Times:*

Applications Available: July 14, 2011.

Deadline for Transmittal of Applications: August 15, 2011.

Applications for a grant under this competition must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application 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.

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.

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application 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 351F), 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.

b. *Submission of Applications by Hand Delivery.*

If you submit your application 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 351F), 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:* We will use four selection criteria to evaluate

applications for this competition. Selection criteria (1) *Significance,* (2) *Quality of the project design,* and (3) *Quality of project services* are established in this notice pursuant to section 437(d)(1) of GEPA, as explained in the *Waiver of Proposed Rulemaking* section of this notice. Selection criterion (4) *Quality of the project evaluation* is from 34 CFR 75.210.

The maximum score for each criterion is indicated in parentheses. The maximum score for all of the selection criteria is 100 points. The total maximum score of an application is 110 points (100 points under the selection criteria and an additional 10 points under the competitive preference priority). Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The notes following the selection criteria are provided as guidance to help applicants in preparing their applications, and are not required by statute or regulations.

The selection criteria are as follows:

(1) *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(a) The national significance of the proposed project.

(b) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of children and youth, with special emphasis on serving students from low-income families and students with disabilities.

(c) The extent to which the applicant has a history of three or more years of demonstrated excellence in the areas of arts education and arts integration on a national scale.

(2) *Quality of the project design* (40 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of pre-kindergarten-through-grade-12 children and youth, with special emphasis on serving students from low-income families and students with disabilities.

(b) The extent to which the proposed project will provide high-quality professional development for pre-kindergarten-through-grade-12 arts educators and other staff who provide instruction in music, dance, drama, media arts, or visual arts, including folk arts.

(c) The extent to which the proposed project will develop and disseminate instructional materials, including online resources, in multiple arts disciplines for arts educators and other instructional staff.

(d) The extent to which the proposed project will support arts-based educational programming.

(e) The extent to which the proposed project will provide community and national outreach.

(3) *Quality of project services* (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(a) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners in order to maximize the effectiveness of project services.

(b) The extent to which the proposed project will provide services and initiatives that will reach students and educators in multiple schools, school districts, and communities throughout the country.

(4) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The evaluation plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning, or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when these instruments will be developed; (5) how data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

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) 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 Secretary has established four performance measures to assess the effectiveness of this program. Projects funded under this competition will be expected to collect and report to the Department data related to these measures. Applications should, but are not required to, discuss in the application narrative how they propose to collect these data. The four GPRA performance measures are: (1) The total number of students who participate in standards-based arts education sponsored by the grantee; (2) the number of teachers participating in the grantee's program who receive professional development that is sustained and intensive; (3) the total number of students from low-income families who participate in standards-based arts education sponsored by the grantee; and (4) the total number of students with disabilities who participate in standards-based arts education sponsored by the grantee.

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: Carolyn Warren, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W209, Washington, DC 20202–5950. *Telephone:* (202) 205–5443 or by *e-mail: carolyn.warren@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: 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.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 11, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–17756 Filed 7–13–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9324–4]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Ocean Shores (the City), WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver from the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City for the purchase of Greensand Plus pressure filter media, manufactured in Brazil. This is a project specific waiver and only applies to the use of the specified products for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The waiver applicant states that the project requires the Greensand Plus filter media for use in their new shallow aquifer treatment plant. The design specifications of the project require a combination treatment process comprised of greensand filtration and MIEX® treatment. The greensand filtration process will primarily target the removal of iron and manganese, whereas the proprietary MIEX® process targets removal of dissolved organic carbon and other anionic species. Greensand Plus is currently used in the City's existing water treatment plant 1. In 2005, the City utilized Greensand Plus for their greensand filter media during pilot testing, and identified that product as the desired filter media for the proposed water treatment plant.

The Regional Administrator is making this determination based on the review and recommendations of the Drinking Water Unit. The City has provided sufficient documentation to support their request.

DATES: July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Johnny Clark, DWSRF ARRA Program Management Analyst, Drinking Water Unit, Office of Water & Watersheds (OWW), (206) 553–0082, U.S. EPA Region 10 (OWW–136), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for purchase of non-domestic manufactured Greensand Plus pressure filter media. The City is replacing an existing deep aquifer water treatment plant with a new shallow aquifer water treatment plant. The shallow aquifer water supply contains levels of iron, manganese, and color near or exceeding their secondary maximum contaminant levels, and also has detectable levels of hydrogen sulfide, ammonia, and organic nitrogen, as well as relatively high total organic carbon. The proposed new shallow aquifer treatment plant is designed to accommodate an average day demand of 1 MGD and a maximum day demand of 2 MGD. After conducting a pilot plant treatment study and evaluating three treatment alternatives, the City selected a combination treatment process comprising greensand filtration and MIEX® treatment. The City previously obtained a Buy American waiver, granted July 24, 2009 for this project for the use of MIEX® DOC Resin used in the MIEX® filtration process. The greensand filtration process primarily targets removal of iron and manganese, whereas the proprietary MIEX® process targets removal of dissolved organic carbon and other anionic species. Greensand Plus media was used by the City during their pilot testing, consistent with existing plant greensand operations. The shallow aquifer treatment plant project will require approximately 900 cubic feet (79,200 lbs) of Greensand Plus filter media.

During the City's recent experience with Greensand Plus, currently used in their existing water treatment plant 1 process, the City utilized this product during greensand filter pilot testing and identified that product as the desired media for the proposed water treatment plan. The shallow aquifer raw water supply is a challenging water source from a water quality perspective; therefore, an extensive effort was made by the City to pilot a number of processes and to select the most suitable combination of treatment processes for effective water treatment. If a traditional greensand filter media, such as Manganese Greensand, is used, it could introduce uncertainty based on the unproven effectiveness of an alternative agent. Greensand Plus has a number of properties that set it apart from traditional greensand media. Key distinguishing points for Greensand Plus media relate to its performance and durability. Greensand Plus has a more robust physical structure and is expected to have a longer service life of 10–15 years compared to traditional greensand, which typically has 5–8 years of service life. Greensand Plus has more of an absorptive capacity over traditional media and a lower headloss profile. This contributes to more effective iron and manganese removal, with less backwashing resulting in higher average plant capacity. Use of a traditional media would likely result in diminished plant performance and plant capacity de-rating. Based on available information, it is unlikely that other traditional greensand filter media would function within the requirement of the project specifications. Additionally, the City was informed that traditional greensand filter media is in short supply because it is no longer commonly used since the advent of Greensand Plus, which is a superior product.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contact as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the award official *may* deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the City's requirement for Greensand Plus pressure filter media, which was selected based on their pilot testing. The waiver request was submitted after contract signing; however, it was reasonably unforeseeable. During the design and bid preparation process, this product was understood by the greensand filter vendor Roberts Filter to be manufactured in the United States. A request for ARRA compliance documentation was sent by Roberts Filter to their filter media supplier CEI on January 17, 2010.

Documentation of ARRA compliance was provided; however, the ARRA compliance supplied was for a lesser greensand material, manufactured in New Jersey and not Greensand Plus, a fact which was overlooked at the time even though they have variations in their chemical properties. In a letter dated January 28, 2011, Roberts Filter notified the contractor Pease and Sons that Roberts had determined based on communications about material shipping that Greensand Plus is not manufactured in the United States, but is instead, produced by an American company in Brazil and subsequently imported to the U.S. This was the first time they were notified of the fact that Greensand Plus filter media was not manufactured in the United States. Because ARRA compliance documentation was solicited and thought to be in hand, the circumstance of applying for a waiver after the start of construction was not foreseen. EPA has evaluated this information and recognizes that the responses submitted to the City regarding Buy American compliance were done so in error. EPA will consider the City's waiver request as a timely request since it was reasonably unforeseeable.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'', defines ''satisfactory quality'' as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The City has provided information to the EPA representing there are no current domestic manufacturers of the Greensand Plus pressure filter media. EPA's consulting contractor (Cadmus) reviewed the information provided by the City and determined that the project specifications include the option for traditional greensand filter media as well as Greensand Plus and identified traditional greensand mined and produced domestically by Inversand Company (Inversand) as an available alternative. However, the City provided information from Inversand indicating that it has permanently reduced production of traditional greensand as it is no longer commonly used since it does not perform as well as Greensand Plus. The City provided information indicating that the reduced production by Inversand has resulted in extensive lead time and potential project delays for the use of the traditional greensand. Based on the information provided by Inversand, the project engineers began the process of modifying the project

specifications to indicate that Greensand Plus be used for the project. Ultimately the project specifications were not modified after the pilot testing showed Greensand Plus to be the selected filter media for this project because all of the project bids were based on Greensand Plus.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less effective project. The implementation of ARRA Buy American requirements on such projects eligible for DWSRF assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA to create or retain jobs.

The Drinking Water Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28, 2009, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'' Memorandum:

> Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the City's design specifications. The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual assistance recipients. Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a manufacturer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of Greensand Plus pressure filter media, manufactured in Brazil, for a shallow aquifer water treatment plant project specified in the City's waiver request of February 11, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: June 13, 2011.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2011–17061 Filed 7–13–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, July 14, 2011 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Resolution honoring the service of Ex-Im Bank's outgoing Director, Diane Farrell.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3957.

Lisa V. Terry,

Assistant General Counsel for Administration (Acting).

[FR Doc. 2011–17527 Filed 7–13–11; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one altered Privacy Act system of records.

SUMMARY: Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended (Privacy Act), 5 U.S.C. 552a, the FCC proposes to alter one system of records, FCC/OSP–1, ''Broadband Dead Zone Report and Consumer Broadband Test.'' The altered system of records incorporates more details about the voluntary fixed and mobile consumer broadband test. The FCC will also alter the categories of individuals; categories of records; the purposes for which the information is maintained; the retrievability procedures; Routine Use (5); and delete Routine Use (2); and make other edits and revisions as necessary to update the information and to comply with the requirements of the Privacy Act.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before August 15, 2011. The Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before August 23, 2011. The proposed altered system of records will become effective on August 23, 2011 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed altered system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed alteration of one system of records maintained by the FCC. The FCC previously gave complete notice of the system of records (FCC/OSP–1, ''Broadband Dead Zone Report and Consumer Broadband Test'') covered under this Notice by publication in the **Federal Register** on April 7, 2010 (75 FR 17738). This notice is a summary of the more detailed information about the proposed altered system of records, which may be viewed at the location given above in the ''**ADDRESSES**'' section. The purposes for altering FCC/OSP–1, ''Broadband Dead Zone Report and Consumer Broadband Test'' are to revise

the categories of individuals; to revise the categories of records; to the revise purposes for which the information is maintained; to revise Routine Use (5); to delete Routine Use (2); to revise the retrievability procedures; and to make other edits and revisions as necessary to update the information and to comply with the requirements of the Privacy Act.

The FCC will achieve these purposes by altering this system of records with these changes: Revision of the language regarding the categories of individuals in the system, for clarity and to add that the categories of individuals in this system include individuals who participate in the Broadband Dead Zone Report voluntary survey and individuals who participate in both the fixed and mobile versions of the voluntary Consumer Broadband Test.

Revision of the language regarding the categories of records in the system, for clarity and to add that the categories of records in this system include the street address, city, state, zip code, of each individual who selects to participate in the Broadband Dead Zone Report voluntary survey and each individual who participates in both the fixed and mobile versions of the voluntary Consumer Broadband Test. The voluntary fixed and mobile Consumer Broadband Test also collects the ''Internet Protocol (IP) address'' of each user who selects to participate. The voluntary fixed and mobile consumer broadband test collects the ''unique handset identification number'' of each individual's smartphone used to access the test, and collects the location reported by each user's handset (reported as a latitude and longitude point) at the moment the user initiates the test.

Revision of the language regarding the purposes for which the information is maintained, for clarity and to add that the Commission uses the records in this system collected from the Broadband Dead Zone Report and the voluntary fixed and mobile Consumer Broadband Test to determine the access of US residents to broadband—cable, DSL, fiber, mobile wireless, and other broadband services, and to gather data on the quality of the broadband services being provided. The Consumer Broadband Test permits users to measure the quality of their fixed or mobile Internet broadband connection. Individual street addresses, IP addresses, mobile handset location, and unique handset identification numbers are not made public by the FCC, but aggregated or anonymized data from the database may be made public. Additionally, IP addresses, mobile handset location, and unique handset identification numbers may be shared with FCC software partners as part of the Consumer Broadband Test application. These partners may publish the IP address, mobile handset location, unique handset identification numbers, and broadband performance data, or otherwise make this information available to the public (but the IP address is not associated with a street address). These data may be used to inform implementation of the National Broadband Plan, the National Broadband Map, and other proceedings related to the provisioning of broadband services.

Minor revision to each of the Routine Uses to add a title to each use for clarity;

Deletion of Routine Use (2) which the Commission has determined is duplicated by Routine Use (3) and its, therefore, redundant;

Revision of Routine Use (5) to add the Department of Justice (DOJ) and the Office of Management and Budget (OMB) to the Federal agencies to whom the Commission may disclose information in this system of records and for the reasons listed: Government-wide Program Management and Oversight—A record from this system of records may be disclosed to General Services Administration (GSA) and to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; to the U.S. Department of Justice (DOJ) in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or to the Office of Management and Budget (OMB) in order to obtain that office's advice regarding obligations under the Privacy Act. Such disclosure shall not be used to make a determination about individuals; and

Revision of the language regarding the policy and practice for retrieving records in the system, for clarity and to add a fifth and a sixth broadband Internet access question so that [i]nformation in the Broadband Dead Zone Report and voluntary fixed and mobile Consumer Broadband Test system may be retrieved by the responses to the broadband Internet access questions: (1) Broadband access (yes/no); (2) broadband service availability (check boxes for types of broadband services available at an individual's home); (3) the individual's home address: Street address, city, state, and zip code; (4) the individual's IP address; (5) the individual's reported handset location; and (6) the individual's unique handset identifcation number. Furthermore, the information may be retreived and/or aggregated based upon other voluntary fixed and mobile Consumer Broadband Test variables, such as broadband speed, latency, jitter, and packet loss, among other broadband quality variables.

This notice meets the requirement of documenting the changes to this system of records that the FCC maintains, and provides the public, OMB, and Congress an opportunity to comment.

FCC/OSP–1

SYSTEM NAME:

Broadband Dead Zone Report and Consumer Broadband Test.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Office of Strategic Planning (OSP), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include individuals who participate in the Broadband Dead Zone Report voluntary survey and individuals who participate in both the fixed and mobile versions of the voluntary Consumer Broadband Test.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include the street address, city, state, zip code, of each individual who selects to participate in the Broadband Dead Zone Report voluntary survey and each individual who participates in both the fixed and mobile versions of the voluntary Consumer Broadband Test. The voluntary fixed and mobile Consumer Broadband Test also collects the ''Internet Protocol (IP) address'' of each user who selects to participate. The voluntary fixed and mobile consumer broadband tests collects the ''unique handset identification number'' of each individual's smartphone used to access the test, and collects the location reported by each user's handset (reported as a latitude and longitude point) at the moment the user initiates the test.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Broadband Data Improvement Act of 2008, Public Law 110–385, Stat 4096 § 103(c)(1); American Reinvestment and Recovery Act of 2009 (ARRA), Public Law 111–5, 123 Stat 115 (2009); and Communications Act, 47 U.S.C. 154(i).

PURPOSES:

The Commission uses the records in this system collected from the Broadband Dead Zone Report and the voluntary fixed and mobile Consumer Broadband Test to determine the access of U.S. residents to broadband—cable, DSL, fiber, mobile wireless, and other broadband services, and to gather data on the quality of the broadband services being provided. The Consumer Broadband Test permits users to measure the quality of their fixed or mobile Internet broadband connection. Individual street addresses, IP addresses, mobile handset location, and unique handset identification numbers are not made public by the FCC, but aggregated or anonymized data from the database may be made public. Additionally, IP addresses, mobile handset location, and unique handset identification numbers may be shared with FCC software partners as part of the Consumer Broadband Test application. These partners may publish the IP address, mobile handset location, unique handset identification numbers, and broadband performance data, or otherwise make this information available to the public (but the IP address is not associated with a street address). These data may be used to inform implementation of the National Broadband Plan, the National Broadband Map, and other proceedings related to the provisioning of broadband services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Law Enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for implementing or enforcing the statute, rule, regulation, or order.

2. Department of Justice, Courts, and Adjudicative Bodies—A record from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

3. Congressional Inquiries—A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

4. Government-wide Program Management and Oversight—A record from this system of records may be disclosed to General Services Administration (GSA) and to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; to the U.S. Department of Justice (DOJ) in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or to the Office of Management and Budget (OMB) in order to obtain that office's advice regarding obligations under the Privacy Act. Such disclosure shall not be used to make a determination about individuals.

5. Data Breach—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

6. Public-Private Partnerships and the USDA Rural Development Agency's Telecommunications Program—The information collected through the Broadband Dead Zone Report and voluntary fixed and mobile Consumer Broadband Test, with the exception of any personally identifiable information (PII), may be shared with public-private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency. This sharing regime is described in the Commission's Broadband Data Order of 2008 (FCC 08–89).

7. NTIA and State Designated Entities—The information collected through the Broadband Dead Zone Report and voluntary fixed and mobile Consumer Broadband Test, including the personally identifiable information (PII), may be shared with the National Telecommunications and Information Administration (NTIA) and the 56 State Designated Entities for the State Broadband Data & Development Grant Program, who are tasked with gathering broadband availability information that is delivered to the FCC and NTIA for compilation into the National Broadband Map. Any PII shared with these entities is disclosed under the rules of the agreement between NTIA and the state grantees governing the protection of sensitive, protected, or classified data collected pursuant to the grant program. The NTIA and the state grantees do not make any PII publicly available.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information includes the electronic data and records that are stored in the FCC's computer network databases.

RETRIEVABILITY:

Information in the Broadband Dead Zone Report and voluntary fixed and mobile Consumer Broadband Test system may be retrieved by the responses to the broadband Internet access questions: (1)Broadband access (yes/no); (2) broadband service availability (check boxes for types of broadband services available at an individual's home); (3) the individual's home address: street address, city, state, and zip code; (4) the individual's IP address; (5) the individual's reported handset location; and (6) the individual's unique handset indentifcation number. Furthermore, the information may be retreived and/or aggregated based upon other voluntary fixed and mobile Consumer Broadband Test variables, such as broadband speed, latency, jitter, and packet loss, among other broadband quality variables.

SAFEGUARDS:

Access to the information in the Broadband Dead Zone Report or the

voluntary fixed and mobile Consumer Broadband Test database, which is housed in the FCC's computer network databases, is restricted to authorized supervisors and staff in the Office of Strategic Planning (OSP) and the Information Technology Center's (ITC) Planning and Support Group, who maintain these computer databases. Additionally, staff of the National Broadband Map may be granted access to this data. Other FCC employees and contractors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured, off-site location.

RETENTION AND DISPOSAL:

The information in this system is limited to electronic files, records, and data, which pertains to the Dead Zone Report, which includes:

(1) The information obtained from individuals who participated in the Consumer Information survey; and

(2) The information obtained from individuals who participated in the voluntary fixed and mobile Consumer Broadband Test.

Until the National Archives and Records Administration (NARA) approves the retention and disposal schedule, these records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Address inquiries to the Office of Strategic Planning (OSP), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Office of Strategic Planning (OSP), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Office of Strategic Planning (OSP), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Office of Strategic Planning (OSP), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system are the Broadband Dead Zone Report survey respondents and voluntary fixed and mobile Consumer Broadband Test participants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–17775 Filed 7–13–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, July 19, 2011, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–17910 Filed 7–12–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *David E. Kirschner and Margaret Kirschner, as co-trustees of the Henry C. Kirschner Trust B1, and David E. Kirschner and Margaret Kirschner, individually and as co-trustees of the Henry C. Kirschner Trust A2, acting in concert with The Noble Foundation, Philip and Cheryl Kirschner, Khajha Kirschner, Pamela Kirschner Bolduc, and the Mary C. Kirschner 2007 Trust with David E. Kirschner acting as trustee;* to acquire 25 percent or more of the voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly acquire control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

Board of Governors of the Federal Reserve System, July 11, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–17706 Filed 7–13–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (EST) July 18, 2011.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 23, 2011 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Performance Activity Report.
   b. Legislative Report.
3. Quarterly Reports.
   a. Investment Policy Report.
   b. Vendor Financial Report.
4. Budget Estimate for Fiscal Year 2012.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 11, 2011.

Thomas K. Emswiler,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2011–17820 Filed 7–12–11; 11:15 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding, EH09–907

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the following 7 grantees: Colorado, Iowa, Kansas, Louisiana, Minnesota, South Carolina, and Vermont to develop and implement their Tracking Networks. These activities are proposed by the above-mentioned grantees in their FY 2011 applications submitted under funding opportunity EH09–907, ''National Environmental Public Health Tracking Program—Network Implementation (EPHT),'' Catalogue of Federal Domestic Assistance Number (CFDA): 93.070.

Approximately $4,920,000 in ACA funding will be awarded to the grantees for network expansion and enhancement. Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Section 4002 [42 U.S.C. 300u–11]; (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published funding opportunity announcement of EH09–907:

—*Authority:* Sections 311 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 243 and 247b(k)(2)] as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11].

—*CFDA #:* 93.538 Affordable Care Act—National Environmental Public Health Tracking Program—Network Implementation.

Award Information:

Type of Award: Non-Competing Continuation Cooperative Agreement.

Approximate Total Current Fiscal Year ACA Funding: $4,920,000.

Anticipated Number of Awards: 7.

Fiscal Year Funds: 2011.

Anticipated Award Date: August 1, 2011.

Application Selection Process:

Funding will be awarded to applicants based on results from successful past performance review.

Funding Authority:

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity CDC–RFA–EH09–907. The revised funding authority language will read:

—This program is authorized under Sections 311 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 243 and 247b(k)(2)], as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11].

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT: Elmira Benson, Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail *Elmira.Benson@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. The ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and the ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to ''provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.'' The ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

The ACA legislation affords an important opportunity to advance public health across the lifespan and to improve public health by supporting the Tracking Network. This network builds on ongoing efforts within the public health and environmental sectors to improve health tracking, hazard monitoring and response capacity. Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to expand and sustain their existing tracking networks, utilize tracking data available on networks for potential public health assessments which is consistent with the purpose of the PPHF, as stated above, and to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: June 30, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–17661 Filed 7–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0099]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Followup Study for Infant Feeding Practices Study II

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 15, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Followup Study for Infant Feeding Practices Study II.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Followup Study for Infant Feeding Practices Study II (OMB Control Number 0910—New)

I. Background

FDA is planning to conduct a survey of the mothers who participated in the Infant Feeding Practices Study II (IFPS II) (Ref. 1). The IFPS II sample was drawn from a commercial consumer opinion panel, and so participants are expected to be easier to re-contact than would be the case for a random sample of the population. Some participants will still be panel members. The purpose of the study is to enhance FDA's understanding of the associations between infant feeding practices and diet quality, food allergy, overweight and obesity, and other health and development outcomes in young children.

The study results will be used to help the Agency to understand the possible role of infant feeding practices in the development and progression of food allergy and childhood overweight and obesity, in addition to resistance to infection and other health and development outcomes. The results of the study will not be used to develop population estimates.

The data will be collected by a mailed questionnaire from most respondents and by telephone from those who do not respond to the mailed questionnaire. The study will focus on the following types of information: The child's consumption of various food groups; the child's other consumption practices (such as how often the child eats dinner with a parent and how often he or she eats from fast food restaurants); the mother's control over the child's eating patterns; the child's physical activity and time spent watching a screen (TV or computer); the child's sleep patterns; extent of the child's cognitive stimulation at home; the child's height and weight; the child's visits to a dentist and number of cavities; number of the child's recent physician visits; number of various types of infections the child had in the past year; whether the child has various health conditions including digestive problems, eczema, food allergy, respiratory allergy, attention deficit disorder, developmental delay, anxiety problems, depression, or asthma; the child's social development; the child's family medical history; the mother's height and weight, physical activity, depression, pregnancies subsequent to the sample child and whether subsequent children were breastfed, and employment conditions; the mother's or child's participation in certain government programs; and the child's potential exposure to certain environmental contaminants including cigarette smoke and pesticides. Although all sample members were consumer opinion panel members when the IFPS II was conducted, many will no longer participate on the panel. Therefore, a demographic questionnaire will be mailed to respondents who are no longer a panel member to update current demographic information. Participation in the study is voluntary.

In the **Federal Register** of March 1, 2011 (76 FR 11251), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pilot study mailed questionnaire	91	1	91	0.42 (25 minutes)	38
Pilot study telephone interview	9	1	9	0.42 (25 minutes)	4
Main study mailed questionnaire	1,538	1	1,538	0.33 (20 minutes)	508
Main study telephone interview	522	1	522	0.33 (20 minutes)	172
Demographic questionnaire	1,380	1	1,380	0.08 (5 minutes)	110
Total					832

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

To refine the questionnaire used in the study, a pilot study will be conducted with 100 participants, 91 by mailed questionnaire and 9 by telephone interview. We estimate that it will take a respondent 25 minutes (0.42 hours) to complete the survey and debriefing questions by either method for a total of 38 hours for the mailed and 4 hours for the interview pretest. The sample for the pilot study will be panel members who are mothers of 6-year-old children and who did not participate in the IFPS II.

All IFPS II participants who completed at least two surveys after their infants were born and for whom current contact information can be found will be sent the mailed questionnaire. This is expected to be about 2,562 participants. We estimate that 1,538 respondents will return it and that it will take an average of 20 minutes (0.33 hours) to complete the questionnaire, for a total of 508 hours. An additional 522 mothers are expected to complete the telephone interview of 20 minutes (0.33 hours) for a total of 172 hours. Sample members who are no longer a panel member will be asked to complete a questionnaire to update their demographic information. An estimated 1,380 participants will return the demographic questionnaire, which will require 5 minutes (0.08 hours) to complete for a total of 110 hours. Thus, the total estimated burden is 832 hours. FDA's burden estimate is based on prior experience with consumer surveys that are similar to this proposed data collection.

II. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fein, Sara B., Judith Labiner-Wolfe, Katherine Shealy, *et al.,* ''Infant Feeding Practices Study II: Study Methods,'' *Pediatrics* 2008; 122(suppl 2): S28–S35.

Dated: July 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–17676 Filed 7–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0075]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Good Laboratory Practice Regulations for Nonclinical Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 15, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0119. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Good Laboratory Practice Regulations for Nonclinical Studies—21 CFR Part 58 (OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the Agency issued good laboratory practice (GLP) regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses, and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, *e.g.,* contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that Agency scientific experts could not make a valid determination of product safety. FDA receives, reviews, and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports during its inspections of testing laboratories to verify reliability of results submitted in applications.

The likely respondents collecting this information are contract laboratories, sponsors of FDA-regulated products, universities, or government agencies.

In the **Federal Register** of February 16, 2011 (76 FR 9025), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
58.29(b)	300	20	6,000	0.21	1,260

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
58.35(b)(1) to (b)(6) and (c)	300	270.76	81,228	3.36	272,926
58.63(b) and (c)	300	60	18,000	0.09	1,620
58.81(a) to (c)	300	301.8	90,540	0.14	12,676
58.90(c) and (g)	300	62.7	18,810	0.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878
58.195	300	251.5	75,450	3.9	294,255
Total					786,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–17736 Filed 7–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0231]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 15, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0308. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Experience Reporting For Licensed Biological Products; and General Records—21 CFR Part 600 (OMB Control Number 0910–0308)—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA may only approve a biologics license application for a biological product that is safe, pure, and potent. When a biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to insure its safe use. FDA issued the Adverse Experience Reporting (AER) requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to identify potentially serious safety problems with licensed biological products. Although premarket testing discloses a general safety profile of a biological product's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. In addition, production and/or distribution problems have contaminated biological products in the past. AER reports are obtained from a variety of sources, including manufacturers, patients, physicians, foreign regulatory Agencies, and clinical investigators. Identification of new and unexpected safety issues through the analysis of the data in the AER system contributes directly to increased public health protection. For example, evaluation of these safety issues enables FDA to take focused regulatory action. Such action may include, but is not limited to, important changes to the product's labeling (such as adding a new warning), coordination with manufacturers to ensure adequate corrective action is taken, and removal of a biological product from the market when necessary.

Section 600.80(c)(1) requires licensed manufacturers or any person whose name appears on the label of a licensed biological product to report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer. These reports are known as postmarketing 15-day alert reports. This section also requires licensed manufacturers to submit any followup reports within 15 calendar days of receipt of new information or as requested by FDA, and if additional information is not obtainable to maintain records of the unsuccessful steps taken to seek additional information. In addition, this section requires a person who submits an adverse action report to the licensed manufacturer rather than FDA to maintain a record of this action. Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report for an adverse experience obtained from a postmarketing clinical study only if the licensed manufacturer concludes that there is a reasonable possibility that the product caused the

adverse experience. Section 600.80(c)(2) requires licensed manufacturers to report each adverse experience not reported in a postmarketing 15-day alert report at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of these periodic reports are submitted annually since a large percentage of currently licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires licensed manufacturers to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires licensed manufacturers to submit, at an interval of every 6 months, information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors. These distribution reports provide FDA with important information about products distributed under biologics licenses, including the quantity, certain lot numbers, labeled date of expiration, the fill lot numbers for the total number of dosage units of each strength or potency distributed (*e.g.,* 50,000 per 10-milliliter vials), and date of release. FDA may require the licensed manufacturer to submit distribution reports under this section at times other than every 6 months. Under § 600.90, a licensed manufacturer may submit a waiver request for any requirements that apply to the licensed manufacturer under §§ 600.80 and 600.81. A waiver request submitted under § 600.90 must include supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of a product including any recalls. These recordkeeping requirements serve preventative and remedial purposes by establishing accountability and traceability in the manufacture and distribution of products. These requirements also enable FDA to perform meaningful inspections. Section 600.12 requires, among other things, that records must be made, concurrently with the performance of each step in the manufacture and distribution of products. These records must be retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, under § 600.12, manufacturers must maintain records relating to the sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing responsibility with respect to a product. Under § 600.12(b)(2), manufacturers are also required to maintain complete records pertaining to the recall from distribution of any product. Furthermore, § 610.18(b) (21 CFR 610.18(b)) requires, in part, that the results of all periodic tests for verification of cultures and determination of freedom from extraneous organisms be recorded and maintained.

Respondents to this collection of information include manufacturers of biological products and any person whose name appears on the label of a licensed biological product. Under table 1 of this document, the number of respondents is based on the estimated number of manufacturers that are subject to those regulations or that submitted the required information to the Center for Biologics Evaluation and Research and Center for Drugs Evaluation and Research, FDA, in fiscal year (FY) 2010. Based on information obtained from the FDA's database system, there were 108 licensed biologics manufacturers. This number excludes those manufacturers who produce Whole Blood or components of Whole Blood and in vitro diagnostic licensed products, because of the exemption under § 600.80(k). The total annual responses are based on the number of submissions received by FDA in FY 2010. There were an estimated 86,583 15-day Alert reports, 57,300 periodic reports, and 349 lot distribution reports submitted to FDA. The number of 15-day alert reports for post marketing studies under § 600.80(e) is included in the total number of 15-day alert reports. FDA received 21 requests for waivers under § 600.90, of which 19 were granted. The hours per response are based on FDA experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB control number 0910–0291.

In the **Federal Register** of April 21, 2011 (77 FR 22401), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received from the public.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
600.80(c)(1) and 600.80(e)	108	801.69	86,583	1	86,583
600.80(c)(2)	108	530.55	57,300	28	1,604,400
600.81	108	3.23	349	1	349
600.90	21	1	21	1	21
Total					1,691,353

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under table 2 of this document, the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from FDA's database system, there were 304 licensed manufacturers of biological products in FY 2010. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding (b)(2) is estimated to be 131. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB control number 0910–0116. The total annual records is based on the annual average of lots released in FY 2010 (6,752), number of recalls made (1,881), and total number of adverse experience reports received (143,883) in FY 2010. The hours per record are based on FDA experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
600.12 [2]	131	51.54	6,752	32	216,064
600.12 (b)(2)	304	6.19	1,881	24	45,144
600.80(c)(1) and 600.80(i)	108	1,332.25	143,883	1	143,883
Total					405,091

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in § 610.18(b) are included in the estimate for § 600.12.

Dated: July 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–17675 Filed 7–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0215]

Draft Guidance for Industry and FDA Staff on In Vitro Companion Diagnostic Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''In Vitro Companion Diagnostic Devices.'' This guidance is intended to assist sponsors planning to develop a therapeutic product that depends on the use of an in vitro companion diagnostic device for its safe and effective use or an in vitro diagnostic device that is intended for use with a corresponding therapeutic product and included in the instructions for use in the labeling of those products. This guidance defines in vitro companion diagnostic devices; explains the need for FDA oversight of companion diagnostic devices; clarifies that, in most circumstances, if use of a companion diagnostic device is essential for the safe and effective use of a therapeutic product, the diagnostic device and therapeutic product should be approved or cleared contemporaneously by FDA for the use indicated in the therapeutic product labeling; provides guidance for industry and FDA staff on possible premarket regulatory pathways and FDA's regulatory enforcement policy; and describes certain statutory and regulatory approval requirements relevant to therapeutic product labeling that stipulate concomitant use of a companion diagnostic device to ensure safety and effectiveness of the therapeutic product. This draft guidance is not final, nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 12, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''In Vitro Companion Diagnostic Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send a fax request to 301–827–8149 to receive a hard copy. Alternatively, you may submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or Office of Communication, Outreach and Development (HFM–40), 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to the office that you are ordering from to assist in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mansfield, Center for Devices and Radiologic Health, Food and Drug Administration, Bldg. 66, rm. 5676, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4664; or Christopher Leptak, Office of Translational Sciences, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 22, rm. 5102, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–0017; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled ''In Vitro Companion Diagnostic Devices.'' This guidance is intended to provide assistance both to sponsors developing therapeutic products, which for purposes of this guidance includes therapeutic, preventive, or prophylactic drugs and biological products that depend on the use of and are labeled for use with an in vitro diagnostic device, and to sponsors of the companion diagnostics. This guidance defines ''companion diagnostic device'' and clarifies that in most circumstances, if use of a companion diagnostic device is essential for the safe and effective use of a therapeutic product, the diagnostic device and therapeutic product should be approved or cleared contemporaneously by FDA for the use indicated in the therapeutic product labeling.

Diagnostic tests have been employed for many years to enhance the use of therapeutic products. Recently, therapeutic products that depend on the use of a diagnostic test to meet their labeled safety and effectiveness claims have become more common. For example, a test could identify or limit appropriate populations for treatment or identify populations who should not receive a particular treatment because of

the increased risk of a serious side effect. Another reason for this increasing interest is the emergence of new technologies that are improving our ability to individualize, or personalize, medical therapy by identifying patients who are more likely to respond positively or negatively to treatment, or who are at lower risk for a particular side effect.

When an appropriate scientific rationale supports such an approach, FDA encourages the development and use of therapeutic products that depend on the use of approved or cleared companion diagnostic devices, and the Agency has already approved/cleared several companion diagnostics for use with corresponding therapeutic products. FDA believes that use of a companion diagnostic with a therapeutic product raises important concerns about the safety and effectiveness of both the test and the therapeutic product. An erroneous test result could lead to withholding an appropriate therapy or to administering an inappropriate therapy. Healthcare professionals must be able to rely on information from companion diagnostic devices to help make critical treatment decisions. FDA oversight of companion diagnostics will protect patients from treatment risks that could arise from in vitro companion diagnostic devices that have inadequate performance characteristics. To facilitate the development and clearance or approval of therapeutic products that are intended for use with companion diagnostic devices, as well as the development of the companion diagnostics themselves, FDA is clarifying relevant policies related to these devices and products.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on companion diagnostic devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationsGuidance/GuidanceDocuments/_default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''In Vitro Companion Diagnostic Devices'', you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1737 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR Part 807 Subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR Part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR Part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR Part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR Part 814, subparts B and E, have been approved under OMB Control No. 0910–0231; the collections of information in 21 CFR Part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR Part 801 and 21 CFR 809.10 have been approved under OMB Control No. 0910–0485; and the collections of information in 21 CFR 201.56 and 21 CR 201.57 have been approved under OMB control number 0910–572.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–17671 Filed 7–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 8 and 9, 2011, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Shanika Craig, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1613, 301–796–6639, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 8 and 9, 2011, the committee will discuss and make recommendations regarding the safety and effectiveness of transvaginal surgical mesh used for repair of pelvic organ prolapse. FDA is convening this meeting to seek expert opinion on the risks and benefits of these devices in light of adverse events, *e.g.,* vaginal erosion leading to pelvic pain and dyspareunia, and available information on clinical benefit. The committee will be asked to provide scientific and clinical input on the Agency's proposed premarket and postmarket regulatory strategies for these devices, including

reclassification into Class III (premarket approval), labeling improvements and postmarket surveillance studies. The committee will also consider surgical mesh used to treat stress urinary incontinence.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 30, 2011. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. on September 8 and 9, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 22, 2011. 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, FDA 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 August 23, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Committee Management Staff, 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: *June 30, 2011.*

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–17695 Filed 7–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Formative Research Methodology Studies for the National Children's Study

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for reinstatement of approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 27, 2011, pages 23608–23609, and allowed 60 days for public comment. Two written comments and two verbal comments were received. The verbal comments expressed support for the broad scope of the study. The written comments were identical and questioned the cost and utility of the study. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Formative Research Studies for the National Children's Study (NCS) *Need and Use of Information Collection:* The Children's Health Act of 2000 (Pub. L. 106–310) states:

(a) *Purpose.*—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) *In General.*—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) Plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) Investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) *Requirement.*—The study under subsection (b) shall—

(1) Incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial environmental influences on children's well-being;

(2) Gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) Consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children's Health Act, the results of formative research and pilot tests will be used to maximize the efficiency of NCS procedures, materials, and methods for outreach, engagement of stakeholders, recruitment and retention of Study subjects, and to ensure scientifically robust data collection methodologies for the National Children's Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain OMB's generic approval to conduct survey and instrument design and administration, focus groups, cognitive interviews, and health and social service provider information collection surrounding outreach, engagement, recruitment, consent and questionnaire design, and retention activities.

The results from formative research and pilot tests proposed will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study recruitment, retention, study visit measures and study logistics. *Type of Review:* Reinstatement of OMB #0925–0590, Expiration June 30, 2011. *Frequency of Response:* Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Women of child-bearing age, fathers, community leaders, members, and organizations, health care facilities and professionals, public health, environmental, social and cognitive science professional organizations and practitioners, hospital

administrators, cultural and faith-based centers, and schools and child care organizations. These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study.

Annual reporting burden: See Table 1. The annualized cost to respondents is estimated at: $300,000 (based on $10 per hour).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Small, focused survey and instrument design and administration.	NCS participants	4,000	2	1	8,000
	Members of NCS target population (not NCS participants).	4,000	2	1	8,000
	Health and Social Service Providers	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Focus groups	NCS participants	2,000	1	2	2,000
	Members of NCS target population (not NCS participants).	2,000	1	2	2,000
	Health and Social Service Providers	2,000	1	2	2,000
	Community Stakeholders	2,000	1	2	2,000
Cognitive interviews	NCS participants	500	1	2	1,000
	Members of NCS target population (not NCS participants).	500	1	2	1,000
Total		21,000			30,000

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, *Attn:* NIH Desk Officer, by e-mail to *OIRA_submission@omb.eop.gov,* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Jamelle E. Banks, Public Health Analyst, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive, Room 2A18, Bethesda, Maryland 20892, or call a non-toll free number (301) 496–1877 or E-mail your request, including your address to *banksj@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: July 8, 2011.

Jamelle E. Banks,

Public Health Analyst, Office of Science Policy, Analysis and Communications National Institute of Child Health and Human Development.

[FR Doc. 2011–17735 Filed 7–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: HIV/AIDS.

Date: August 3, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jose H Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Related Technology Applications.

Date: August 3, 2011.

Time: 2 to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@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: July 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–17712 Filed 7–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–24191]

Extension of Agency Information Collection Activity Under OMB Review; Transportation Worker Identification Credential (TWIC) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0047, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day period soliciting comments, of the following collection of information on April 26, 2011, 76 FR 23326. The collection involves the submission of required information necessary to conduct a security threat assessment on individuals applying for a TWIC and a voluntary customer satisfaction survey.

DATES: Send your comments by August 15, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; e-mail *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Transportation Worker Identification Credential (TWIC) Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0047.

Forms(s): TWIC Disclosure and Certification form (OMB 1652–0047) .

Affected Public: Individuals requiring unescorted access to facilities and vessels regulated by the Maritime Transportation Security Act (MTSA) and all mariners holding Coast Guard-issued credentials or qualification documents.

Abstract: The data collected will be used for processing TWIC enrollment and conducting the security threat assessment. At the enrollment center, applicants verify their biographic information and provide identity documentation, biometric information, and proof of immigration status (if required). This information allows TSA to complete a comprehensive security threat assessment. If TSA determines that the applicant is qualified to receive a TWIC, TSA notifies the applicant that their TWIC is ready for activation. Once activated, this credential will be used for identification verification and access control. TSA also conducts a survey to capture worker overall satisfaction with the enrollment process; this optional survey is provided during the activation period.

TSA acknowledges that an error in the 60-day notice was identified by a commenter which related to the length of the previous collection process. Additionally, the commenter questioned total burden hours estimated for 2011 and its associated cost, because it varied significantly from the previous filing in 2008. TSA will directly respond to the individual submitting this feedback.

Number of Respondents: The annualized number of total respondents is 401,330.

Estimated Annual Burden Hours: TSA provided incorrect hours in the 60-day filing and has corrected its estimates. The correct estimated annualized reporting burden is 919,110 hours, and the estimated annualized cost burden is $53,866,023.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–17757 Filed 7–13–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N283; 20124–1112–0000–F2]

Draft Environmental Impact Statement and Habitat Conservation Plan for Commercial Wind Energy Developments Within Nine States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public scoping meetings; request for comments.

SUMMARY: We, the Fish and Wildlife Service, as lead agency advise the public that we intend to prepare an environmental impact statement (EIS) on a proposed application, including a Habitat Conservation Plan (HCP), for an Incidental Take Permit (ITP) under the Endangered Species Act of 1973, as amended. The potential ITP would include federally listed and candidate species within portions of nine states (North Dakota, South Dakota, Montana, Colorado, Nebraska, Kansas, New Mexico, Oklahoma, and Texas).

The activities covered by a potential ITP would include regional-level construction, operation, and maintenance associated with multiple commercial wind energy facilities. The planning partners are currently considering, for inclusion in the HCP, certain species listed as federally threatened or endangered, or having the potential to become listed during the

life of the HCP, and having some likelihood of being taken by the applicant's activities within the proposed permit area. The intended effect of this notice is to gather information from the public to develop and analyze the effects of the potential issuance of an ITP that would facilitate wind energy development within the planning area, while minimizing incidental take and mitigating the effects of any incidental take to the maximum extent practicable.

We provide this notice to (1) Describe the proposed action; (2) advise other Federal and state agencies, potentially affected tribal interests, and the public of our intent to prepare an EIS; (3) announce the initiation of a 90-day public scoping period; and (4) obtain suggestions and information on the scope of issues and possible alternatives to be included in the EIS.

DATES: To ensure consideration, we must receive your written comments on or before October 12, 2011. For approximate public meeting dates, see ''Public Meetings'' in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: Send your comments or request for information by any one of the following methods:

U.S. Mail: U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306; *Attention:* Laila Lienesch;

Facsimile: 505/248–6922 (*Attention:* Laila Lienesch);

E–Mail: *WindEnergyHCPComments@fws.gov;* or

Toll-Free Telephone Message Service: 800/815–8927.

FOR FURTHER INFORMATION CONTACT: Laila Lienesch at 505/248–6494 or *Laila_Lienesch@fws.gov,* Amelia Orton-Palmer at 303/236–4211 or *Amelia_Orton-Palmer@fws.gov,* or Marty Tuegel at 505/248–6651 or *Marty_Tuegel@fws.gov.* Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800/877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*; NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (Service), as lead agency, advise the public that we intend to prepare an environmental impact statement (EIS) on a proposed application, including a Habitat Conservation Plan (HCP), for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), and seek public input prior to developing a draft EIS for the potential issuance of an ITP.

Public Meetings

To facilitate information transfer, we will hold nine public meetings in the following cities between August 2011 and September 2011:

Pueblo, Colorado—August 9, 2011.
Amarillo, Texas—August 10, 2011.
Clovis, New Mexico—August 11, 2011.
Pierre, South Dakota—August 23, 2011.
Bismarck, North Dakota—August 24, 2011.
Glendive, Montana—August 25, 2011.
Kearney, Nebraska—August 30, 2011.
Great Bend, Kansas—August 31, 2011.
Woodward, Oklahoma—September 1, 2011.
Austin, Texas—September 7, 2011.
Corpus Christi, Texas—September 8, 2011.

Specific times and locations of the public information meetings will be available on the Service's Web site—*http://www.fws.gov/southwest/*—and noticed in local newspapers at least 14 days prior to the meeting dates.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact the Service at the address above no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Act and its implementing regulations prohibit take of animal species listed as endangered or threatened. The definition of take under the Act includes the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Section 10 of the Act, 16 U.S.C. 1539, establishes a program whereby persons seeking to pursue activities that are otherwise legal, but could give rise to liability for unlawful take of federally protected species, may receive an ITP, which provides incidental take authorization to the ITP holder. To obtain an ITP, an applicant must submit an HCP containing measures that would minimize incidental take, including avoidance, and mitigate for the effects of any incidental take to the maximum extent practicable; and ensure that the taking is incidental to, and not the purpose of, an otherwise lawful activity (16 U.S.C. 1539(a)(1)(B) and 1539(a)(2)(A)). If we determine that an applicant has satisfied all permitting criteria and other statutory requirements, we intend to issue the ITP. At this time, the entity or entities that would serve as the applicant(s) for and be potentially permitted under an ITP have not been selected. However, the ITP is being sought by the Wind Energy Whooping Crane Action Group (WEWAG), a group of wind energy industry companies formed in 2009. Member companies include Acciona North America; Allete; Alternity; BP Renewables; Clipper Wind Energy; CPV Renewable Energy Company, LLC; EnXco; Duke Wind Energy; Horizon Wind Energy; Iberdrola Renewables; Infinity; MAP Royalty; NextEra Energy Resources; Renewable Energy Systems Americas; Terra-Gen; Trade Wind Energy; Element Power; Own Energy; and Wind Capital Group. Additional companies may become involved as the planning process proceeds. Hereafter, the term ''applicant'' is used to refer to the ultimate applicant(s) selected and the potential permittee(s). The proposed ITP would be granted for certain wind energy development, operation, and decommissioning or repowering–related activities undertaken within the permit area (described below).

WEWAG has sought to work in partnership with the Service to promote species conservation, while complying with environmental stewardship goals and policy requirements that compel the development of clean and sustainable energy from wind resources. If successful, the HCP and subsequent ITP would allow take authorization for otherwise lawful activities, such as the development, construction, operation, and decommissioning or repowering, of commercial wind energy developments within the planning area. The HCP will contain a multifaceted approach, including but not limited to take avoidance, minimization of take (*e.g.,* through proven and defined best management practices), and mitigation of the impacts of take through potential habitat preservation, restoration, and enhancement measures. The applicant must also ensure that adequate funding for implementation, including biological and compliance monitoring, is provided.

WEWAG is currently considering, for inclusion in the HCP, certain species listed as federally threatened or endangered, or having the potential to become listed during the life of the HCP, and having some likelihood of being taken by the applicant's activities within the proposed permit area. Those species include the endangered whooping crane (*Grus americana*), the endangered interior least tern (*Sterna antillarum athalassos*), the endangered piping plover (*Charadrius melodus*),

and the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a candidate species. The final list of covered species may include all these species, a subset of them, and/or additional species, based on the outcome of this planning process.

The proposed planning area is a 200-mile-wide corridor determined by defining the center line of the whooping crane migration path corridor (100 miles on either side of the center line). This line is based on the database of confirmed whooping crane observations from the Cooperative Whooping Crane Tracking Program. This corridor extends from the Gulf Coast of Texas north to the Canadian border and encompasses such cities as Houston, TX; Oklahoma City, OK; Wichita, KS; Bismarck, ND; Grand Island, NE; and Aberdeen, SD. In addition, the planning area includes the majority of the historic range of the lesser prairie-chicken, which extends the permit area beyond the 200-mile-wide whooping crane migration corridor to include parts of Kansas, Colorado, Oklahoma, New Mexico, and Texas.

Environmental Impact Statement

The Service will be the lead Federal agency in the preparation of the EIS to satisfy the requirements of NEPA. With this notice of intent (NOI), we ask other Federal, State, tribal, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. Agencies that would like to request cooperating agency status on the EIS should follow the instructions for filing comments provided under the **ADDRESSES** section above.

The EIS will consider the proposed action (the issuance of a section 10(a)(1)(B) ITP, as supported by an HCP), no action (no HCP/no ITP), and a reasonable range of alternatives that accomplish the purpose and need of the proposal. A detailed description of the proposed action and alternatives will be included in the EIS. The alternatives to be considered for analysis in the EIS may include, but are not limited to, modified lists of covered species, differing land-coverage areas, activities which may be covered, and a variety of permit structures under consideration for the conservation program, described below in the Public Comment section. The EIS will also identify potentially significant impacts on biological resources, land use, air quality, water quality, water resources, economics, and other environmental/historical resources that may occur from issuance of the ITP; indirect impacts as a result of implementing a proposed HCP, including any of the alternatives; and cumulative impacts. Various strategies for avoiding, minimizing, and mitigating the impacts of incidental take will also be considered.

Environmental review of the EIS will be conducted in accordance with the requirements of NEPA, its implementing regulations (40 CFR 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. We furnish this notice in accordance with 40 CFR 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives they believe need to be addressed in the EIS. We invite comments from interested parties to ensure that the full range of issues related to the proposed permit application is identified.

Public Comments

We are requesting information from other interested government agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning the following areas of analysis: Vegetation, Wildlife and Aquatic Resources, Special Status Species, Surface Waters and Floodplains, Hydrology and Groundwater, Wetlands and Waters of the U.S., Archeology, Architectural History, Sites of Religious and Cultural Significance to Tribes, Noise and Vibration, Visual Resources and Aesthetics, Economics and Socioeconomics, Environmental Justice, Air Quality (including greenhouse gas emissions and climate change), Geology and Soil, Land Use, Transportation, Infrastructure and Utilities, Hazardous Materials and Solid Waste Management, and Human Health and Safety.

In addition to the topics above, we are seeking comments on how a future ITP or ITPs may be structured. Currently there are four potential ITP structures being considered. The first involves a single habitat conservation plan that supports a single ITP held by a third party, referred to as a Programmatic HCP. This third-party ITP holder would enroll companies and their projects under the ITP. The third party would need to meet all general permit and ITP issuance criteria (50 CFR 13.21, 17.22(b), and 17.32(b)); and would be responsible for the administration of the HCP, including enrollment, compliance monitoring, biological monitoring, coordination of the mitigation, annual reporting, adaptive management, any ITP amendments, and annual coordination meetings. Under this ITP administrative structure the HCP and ITP would undergo NEPA and section 7 consultation once under the ESA prior to the ITP being issued. The ITP holder would administer the HCP without further Service involvement or reanalysis under NEPA or ESA.

The second ITP structure, referred to as an Umbrella HCP, under consideration is a single habitat conservation plan that supports multiple ITP holders. A single HCP would be developed, and all NEPA and ESA compliance would be done on the HCP. Each company would apply for separate ITPs under the Umbrella HCP. At the time a company applied for an ITP, the Service would evaluate the NEPA and section 7 consultation under ESA to ensure that the impacts and effects of the company's projects are consistent with the HCP's NEPA and ESA compliance documents, and the general permit issuance criteria and ITPs (50 CFR 13.21, 17.22(b), and 17.32(b)). The Service would also announce a Notice of Intent to issue the ITP in the **Federal Register** and take public comment on the application for 30-days (16 U.S.C. 1539(c)). Issuance of ITPs could take up to 90 days to process. Each company holding an ITP would be responsible for implementation of their minimization and mitigation measures, compliance monitoring and biological monitoring, annual reporting, adaptive management procedures, and participation in annual coordination meetings. The Service would be responsible for issuance of new ITPs, coordination of the mitigation, and conducting annual meetings with ITP holders. This ITP administrative structure would have continued Service involvement during the implementation of the HCP.

The third ITP structure, referred to as the Primary Permit HCP, also involves a single HCP that supports an initial ITP held by a third party. Authorities in the initial ITP are then transferred to individual companies through the issuance of ITPs specific to their projects. A single HCP would be developed and all NEPA and ESA compliance would be completed on the HCP prior to issuance of the initial ITP. All compliance and issuance criteria would be reviewed prior to any transfer of authorities to an individual company. The Service would transfer the authorizations in the initial ITP, in whole or in part, based on a joint submission by the initial ITP holder and the proposed transferee, so long as the Service determines that the transferee is qualified to hold an ITP (50 CFR 13.21, 17.22(b), and 17.32(b)) and provides adequate written assurance that it will provide sufficient funding and implement the relevant terms and

conditions of the ITP (50 CFR 13.25). The Service anticipates publishing a Notice of Intent to issue an ITP with transfer authorities in the **Federal Register** and take public comments on the application for 30 days. Issuance of each ITP may take up to 90 days to process. The holder of the initial ITP would be responsible for the coordination of all activities among the transferees. Each company holding an ITP would be responsible for implementation of their minimization and mitigation measures, compliance monitoring and biological monitoring, annual reporting, adaptive management procedures, participation in annual meetings, and coordination with the initial ITP holder. The Service would be responsible in processing the transfers and reviewing annual reports. This ITP administrative structure would have some continued Service involvement during the implementation of the HCP, but it would be less than under the Umbrella HCP and more than under the Programmatic HCP.

The fourth ITP structure, referred to as the Co-Permitted HCP, also involves a single HCP that supports an ITP, but all parties are named as co-permittees on the ITP. A single HCP would be developed and all NEPA and ESA compliance would be completed on the HCP prior to issuance of the initial ITP. Current members of WEWAG (or those who join prior to permit application) would be named as permittee in the incidental take permit application. Assuming the Service found that the HCP met the ESA's permit issuance criteria, the Service would issue a single or master incidental take permit naming each of the WEWAG members as a participating permittee (co-permittee). Similar to the programmatic approach, the incidental take permit would authorize each co-permittee's projects located within the permit area. Prior to undertaking any new project, a co-permittee would submit to the Service a prescribed form indicating how its project complies with the incidental take permit and that any required mitigation has been paid to the appropriate entity. The Service would have the authority to review each project and would stay engaged during the implementation of the HCP. Each company named as a co-permittee would be responsible for implementation of their minimization and mitigation measures, compliance monitoring and biological monitoring, annual reporting, adaptive management procedures, and participation in annual coordination meetings. Additional NEPA and ESA section 7 would not be necessary, as each permittee would be fully authorized under the permit.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not provide information useful in determining the issues and the impacts to the human environment in the draft EIS. The public will also have a chance to review and comment on the draft EIS when it is available (a notice of availability will be published in the Federal Register).

You may submit your comments and materials by one of the methods described above under the **ADDRESSES** section at the beginning of this notice. Written comments will also be accepted at the public meetings, although these public meetings are primarily intended to provide additional information and provide a chance for the public to ask specific questions concerning the proposed HCP and EIS.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Joy E. Nicholopoulos,

Acting Regional Director, Region 2, Albuquerque, New Mexico .

[FR Doc. 2011–17638 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands, Bowlin North Property, as an Addition to the Pueblo of Laguna Reservation, New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 99.5623 acres, more or less, to be added to the Pueblo of Laguna Reservation, (Laguna), New Mexico.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This Notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued, in accordance with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to and part of the Laguna Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

New Mexico Principal Meridian

Bernalillo County, New Mexico

Section 03, Township 09 North, Range 1 West, N.M.P.M.

Those certain parcels of land known as Parcels I, II, and III, situated in projected Section 3, Township 9 North, Range 1 West, N.M.P.M., within the Town of Atrisco Grant, in Bernalillo County, New Mexico, more particularly described by survey filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 19, 2007, in Book 2007S, page 80, as Document No. 2007147071, performed by Brian K. McClintock, New Mexico Professional Surveyor Number 11597. Said parcels contain 99.5623 acres, more or less.

Said parcels are more particularly described as follows, to-wit:

PARCEL I: (QCD: Bk. A36, Pg. 2843, WD: A13, Pg. 2512) Tract Lettered ''A'' of the Plat of Division of LAND OF MRS. LULA M. BRIDGES, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on July 27, 1971 in *Volume B5, Folio 192;* TOGETHER WITH A Northerly portion of the LANDS OF GEORGE T. HILL, Town of Atrisco Grant, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on February 11, 1952 in *Volume A1, Folio 099* TOGETHER WITH A certain tract of land situate within Projected Section 3, Township 9 North, Range 1 West of the N.M.P.M., Bernalillo County, New Mexico, Being adjacent to the Northerly line of said LANDS OF GEORGE T. HILL, all being more particularly described as follows:

Beginning at the Southwest corner of the herein described ''PARCEL I'', being a No. 5 Rebar, and being a point on the Northerly line of Interstate 40, frontage road (NMP 1–040–3(31)137); Thence N12°23′20″ W, a distance of 1042.71 feet to a point, being a 1″ Iron Pipe; Thence S83°57′47″ W, a distance of 101.19 feet to a point; Thence N09°07′43″ W, a distance of 640.46 feet to a point, being the Northwest corner of ''PARCEL I''; Thence S89°06′14″ E, a distance of 915.03 feet to a point, being a No. 4 Rebar, #11463, and being the Northeast corner of ''PARCEL I''; Thence S13°59′07″ E, a distance of 1206.02 feet to a point, being a No. 4 Rebar, #11463; Thence N74°58′17″ E, a distance of 146.70 feet to a point, being a No. 4 Rebar, #11463; Thence S15°05′50″ E, a distance of 129.77 feet to a point, being a No. 4 Rebar, #11463; Thence S74°58′17″ W, a distance of 230.00 feet to a point, being a No. 4 Rebar, #11463; Thence S15°05′46″ E, a distance of 125.04 feet to a point, being the Southeast corner of ''PARCEL I'', and being a point on the Northerly line of Interstate I–40, frontage road (NMP 1–040–3(31)137); Thence southwesterly along said Interstate 40 right of way line on a curve (radius = 2414.69′, chord = S75°57′39″ W, a distance of 126.94 feet) delta = 3°00′45″, through an arc to the right a distance of 126.95 feet to a point, being R/W cap 8060, #11599; Thence along said Interstate 40 right of way line S77°28′01″ W, a distance of 298.81 feet to a point, being R/W cap 8059, #11599; Thence southwesterly along said Interstate 40 right of way line on a curve (radius = 2670.60′, chord = S76°10′31″ W, a distance of 121.82 feet) delta = 2°36′50″, through an arc to the left a distance of 121.83 feet to a point, being R/W cap 8058, #11599; Thence along said Interstate 40 right of way line S74°50′12″ W, a distance of 241.61 feet to the Southwest corner of ''PARCEL I'' and said point of beginning.

Said described PARCEL I'' contains 1,387,489.99 sq. ft. (31.8524 Ac.) more or less.

PARCEL II: (WD: Bk. 9816, Pg. 8285, WD: A13, Pg. 2512)

Tract B–1 of Plat of Tract B–1, ''LANDS OF BOWLIN'', as designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on October 5, 1993 in *Volume 93C, Folio 288* records of Bernalillo County, New Mexico; EXCEPTING FROM PARCEL I and II those portions conveyed to the New Mexico State Highway and Transportation Department by Warranty Deeds recorded April 5th, 2000 in Book A4, pages 2706 and 2707 as Document Nos. 2000032849 and 2000032850, records of Bernalillo County, New Mexico, all being more particularly described as follows:

Beginning at the Southwest corner of the herein described ''PARCEL II'', being a point on the Northerly line of Interstate 40, frontage road (NMP 1–040–3(31)137); Thence N15°05′46″ W, a distance of 125.04 feet to a point, being the Northwest corner of ''PARCEL II''; Thence N74°58′17″ E, a distance of 230.00 feet to a point, being a No. 4 Rebar, #11463; Thence N74°58′17″ E, a distance of 100.00 feet to a point; Thence S15°02′56″ E, a distance of 10.00 feet to a point; Thence N74°57′04″ E, a distance of 82.53 feet to a point; Thence northeasterly on a curve (radius = 527.00′, chord = N65°34′34″ E, a distance of 171.69 feet) delta = 18°45′00'', through an arc to the left a distance of 172.46 feet to a point; Thence N53°31′18″ E, a distance of 203.50 feet to a point; Thence northeasterly on a curve (radius = 1001.00′, chord = N74° 57′23″ E, a distance of 643.52 feet) delta = 37°30′00″, through an arc to the right a distance of 655.15 feet to a point, being a ''spike found''; Thence S86°17′37″ E, a distance of 169.91 feet to a point, being the Northeast corner of ''PARCEL II'' and also being a No. 4 Rebar, #11463; Thence S03°27′27″ W, a distance of 63.97 feet to a point, being the Southeast corner of ''PARCEL II'', being a point on the Northerly line of Interstate 40, frontage road (NMP 1–040–3(31)137), and being R/W cap 8067, #11599; Thence along said Interstate 40 right of way line, S81°50′44″ W, a distance of 55.03 feet to a point, being R/W cap 8066, #11599; Thence southwesterly along said Interstate 40 right of way line on a curve (radius = 3051.18′, chord = S75°59′55″ W, a distance of 621.10 feet) delta = 11°41′00″, through an arc to the left a distance of 622.18 feet to a point, being R/W cap 8065, #11599; Thence along said Interstate 40 right of way line, S70°09′01″ W, a distance of 490.72 feet to a point, being R/W cap 8064, #11599; Thence along said Interstate 40 right of way line S37°06′58″ W, a distance of 96.14 feet to a point, being R/W cap 8063, #11599; Thence along said Interstate 40 right of way line, S70°03′54″ W, a distance of 135.04 feet to a point; Thence southwesterly along said Interstate 40 right of way line on a curve (radius = 2414.69′, chord = S72°18′48″ W, a distance of 180.45 feet) delta = 4°16′57″, through an arc to the right a distance of 180.49 feet to a point, being the Southwest corner of ''PARCEL II'' and said point of beginning.

Said described ''PARCEL II'' contains 158,458.95 sq. ft. (3.6377 Ac.) more or less.

PARCEL III: (WD: Bk. A49, Pg. 1687, CWD: A96, Pg. 5080)

A certain tract of land situate within projected Section 3, Township 9 North, Range 1 West of the N.M.P.M, Bernalillo County, New Mexico, being more particularly described as follows:

Beginning at the Northwest corner of the herein described ''PARCEL III'', from which point the section corner common to sections 3 and 4, T.9N. and sections 33 and 34, T.10N., R.1W., N.M.P.M., being an aluminum stamped cap, #11599, bears N13°59′07″ W, a distance of 153.19 feet, thence N05°47′23″ E, a distance of 2122.80 feet to said section corner; Thence from point of beginning, S89°06′35″ E, a distance of 4928.09 feet to a point, being a No. 5 Rebar, #11608, being the Northeast corner of ''PARCEL III'' and being a point on the Northerly line of Interstate 40, frontage road (NMP 1–040–3(31)137); Thence along said Interstate 40 right of way line, S74°56′46″ W, a distance of 2207.69 feet to a point, being R/W cap 8071, #11599; Thence southwesterly along said Interstate 40 right of way line on a curve (radius = 2559.05′, chord = S78°43′27″ W, a distance of 279.59 feet) delta = 6°15′47″, through an arc to the right a distance of 279.73 feet to a point, being R/W cap 8070, #11599; Thence along said Interstate 40 right of way line, S81°50′21″ W, a distance of 611.03 feet to a point, being R/W cap 8069, #11599; Thence along said Interstate 40 right of way line, N84°07′23″ W, a distance of 135.22 feet to a point, being R/W cap 8068, #11599; Thence along said Interstate 40 right of way line, S81°50′27″ W, a distance of 66.78 feet to a point, being R/W cap 8067, #11599; Thence N03°27′27″ E, a distance of 63.97 feet to a point, being a No. 4 Rebar, #11463; Thence N86°17′37″ W, a distance of 169.91 feet to a point, being a ''spike found''; Thence southwesterly on a curve (radius = 1001.00′, chord = S74°57′23″ W, a distance of 643.52 feet) delta = 37°30′00″, through an arc to the left a distance of 655.15 feet to a point; Thence S53°31′18″ W, a distance of 203.50 feet to a point; Thence southwesterly on a curve (radius = 527.00′, Chord = S65°34′34″ W, a distance of 171.69 feet) delta = 18°45′00″, through an arc to the right a distance of 172.46 feet to a point; Thence S74°57′04″ W, a distance of 82.53 feet to a point; Thence N15°02′56″ W, a distance of 10.00 feet to a point; Thence S74°58′17″ W, a distance of 100.00 feet to a point, being a No. 4 Rebar, #11463; Thence N15°05′50″ W, a distance of 129.77 feet to a point, being a No. 4 Rebar, #11463; Thence S74°58′17″ W, a distance of 146.70 feet

to a point, being the Southwest corner of ''PARCEL III'', and being a No. 4 Rebar, #11463; Thence N13°59′07″ W, a distance of 1052.83 feet to a point, being the Northwest corner of 'PARCEL III'' and said point of beginning.

Said described ''PARCEL III'' contains 2,790,987.08 sq. ft. (64.0722 Ac.) more or less.

The above-described lands contain a total of 99.5623 acres, more or less, which is subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: July 7, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–17796 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands, Maier Property, as an Addition to the Bay Mills Indian Community of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 40 acres, more or less, to be added to the Bay Mills Indian Community of Michigan.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This Notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued in accordance with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to and part of the Bay Mills Indian Community of Michigan for the exclusive use of Indians on that Reservation who are entitled to reside at the Reservation by enrollment or tribal membership.

Bay Mills Indian Community Reservation, Michigan Meridian, Township of Superior, Chippewa County, Michigan

The Southwest One Quarter (SW ¼) of the Northwest One-Quarter (NW ¼) of Section 31, Township 47 North, Range 2 West.

Title to the lands herein described shall be subject to any existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way of record.

The above-described lands contain a total of 40 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: July 7, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–17801 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands, Community College Campus, as an Addition to the Bay Mills Indian Community of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 40 acres, more or less, to be added to the Bay Mills Indian Community of Michigan.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

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A proclamation was issued in accordance with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to and part of the Bay Mills Indian Community of Michigan for the exclusive use of Indians on that Reservation who are entitled to reside at the Reservation by enrollment or tribal membership.

Bay Mills Indian Community Reservation; Michigan Meridian; Township of Superior, Chippewa County, Michigan

The Northeast One Quarter (NE ¼) of the Northeast One-Quarter (NE ¼) of Section 17, Township 46 North, Range 2 West.

Title to the lands herein described shall be subject to any existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way of record.

The above-described lands contain a total of 40 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: July 7, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–17799 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L631000000–HD000 HAG11–0274]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 29 S., R. 3 W., accepted June 15, 2011.
T. 26 S., R. 7 W., accepted June 15, 2011.
T. 10 S., R. 2 E., accepted June 23, 2011.
T. 25 S., R. 3 W., accepted June 23, 2011.
T. 18 S., R. 28 E., accepted June 23 2011.

T. 12 S., R. 1 E., accepted June 23, 2011.
T. 24 S., R. 4 W., accepted June 23, 2011.
T. 1 S., R. 5 W., accepted June 23, 2011.
T. 20 S., 33 ½ E., accepted June 23, 2011.
T. 26 S., R. 5 W., accepted June 23, 2011.
T. 24 S., R. 7 W., accepted June 23, 2011.
T. 24 S., R. 8 W., accepted June 23, 2011.
T. 33 S., R. 6 W., accepted June 23, 2011.

Washington

T. 33 N., R. 10 E., accepted June 15, 2011.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: 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 review, we cannot guarantee that we will be able to do so.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2011–17701 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[61510–8451–0000; MTM 80092]

Notice of Proposed Withdrawal Extension and Notification of a Public Meeting; Montana; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction.

SUMMARY: This notice corrects the location and starting time of a meeting previously announced in a **Federal Register** notice published on June 27, 2011 (76 FR 37372).

On page 37373, column 2, lines 7–8 of the notice should read: ''held on August 11, 2011, from 6 p.m. to 8 p.m. at the Bureau of Land Management, 920 NE Main Street, Lewistown.''

Cynthia Staszak,

Chief, Branch of Land Resources.

[FR Doc. 2011–17716 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2031–A153–422]

Vegetation and Deer Management Plan/Environmental Impact Statement, Morristown National Historical Park, New Jersey

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for a Vegetation and Deer Management Plan, Morristown National Historical Park, New Jersey.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement (EIS) for a Vegetation and Deer Management Plan at Morristown National Historical Park (NHP), New Jersey. The purpose of this plan is to provide the framework for managing vegetation and deer browsing in order to promote a naturally regenerating hardwood forest with mixed-aged classes of trees that reflect the historic and naturally diverse character of the park. Action is needed now to meet the Congressional intent and the direction in the park's general management plan (GMP) of maintaining a naturally regenerating and sustainable forested landscape.

DATES: The National Park Service will accept comments from the public through August 15, 2011. The National Park Service intends to hold two public scoping meetings within the park at Washington's Headquarters Museum during the scoping period. Details regarding the exact dates and times of these meetings will be announced in the scoping newsletter, on the Internet (at *http://www.nps.gov/morr* and *http://parkplanning.nps.gov/morr*), and through local media at least 15 days in advance of the meetings.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov/morr* and at Washington's Headquarters Museum in Morristown National Historical Park, 30 Washington Place, Morristown, NJ 07960.

FOR FURTHER INFORMATION CONTACT: Superintendent, Morristown National Historical Park (973–539–2016, ext. 200).

SUPPLEMENTARY INFORMATION: Morristown NHP was established and is managed to reflect an 18th-century landscape pattern of field, forest, orchard and clearings that was present during the winter encampments of the Continental Army under General George Washington. The park's General Management Plan (GMP) further indicates that rather than recreate an exact replica of the encampment period, Morristown NHP will protect and foster the landscape to include a broader cultural and ecological context. The GMP also specifies that an important piece of this landscape and both its cultural and ecological contexts is a naturally regenerating mixed hardwood forest that reflects historic character, natural diversity, and natural processes. However, this critical element of the landscape is currently threatened, as native species show little or no regeneration.

Studies and ongoing monitoring show that the loss of regeneration appears to be primarily due to two forces: current levels of deer feeding and browsing, which contribute to lower tree seedling regeneration rates; and the expansion of non-native invasive species, which are outcompeting native species and depressing or eliminating native tree seedling regeneration rates over much of the forest.

Over time, the absence of regeneration will result in either: (1) Replacement of forest stands with species that do not reflect the forest's historic character or natural diversity, or (2) the disappearance of mixed hardwoods altogether.

The National Park Service will prepare a scoping newsletter which will present the issues and statements of purpose, need, and objectives of the Vegetation and Deer Management Plan that the NPS has identified to date during its internal scoping meetings. The newsletter also will provide information on upcoming public scoping meetings that will be held to gather feedback on these topics. Copies of that information will be available

online at *http://parkplanning.nps.gov/morr* or at Morristown NHP's Washington's Headquarters Museum, 30 Washington Place, Morristown, New Jersey.

If you wish to comment on the purpose, need, objectives, or on any other issues associated with the plan, you may submit your comments by one of several methods: Via the Internet at *http://parkplanning.nps.gov/morr* (preferred method); at upcoming public scoping meetings; and by mailing or hand-delivering comments to Superintendent, 30 Washington Place, Morristown, NJ 07960. 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 review, we cannot guarantee that we will be able to do so.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 2011–17761 Filed 7–13–11; 8:45 am]

BILLING CODE 4310–JW–P

DEPARTMENT OF THE INTERIOR

National Park Service

[8896–SZM]

Kalaupapa Federal Advisory Commission Meeting, July 26, 2011

AGENCY: National Park Service, Interior.

ACTION: Meeting Notice.

SUMMARY: This notice sets the date of July 26, 2011, meeting of the Kalaupapa Federal Advisory Commission.

DATES: The public meeting of the Kalaupapa Federal Advisory Commission will be held on Tuesday, July 26, 2011, at 9 a.m. (Hawaii Standard Time)

ADDRESSES: *Location:* The meeting will be held at McVeigh Social Hall, Kalaupapa National Historical Park, Kalaupapa, Hawaii 96742.

Agenda

The July 26, 2011, Commission meeting will consist of the following:

1. Superintendent's Report.
2. General Management Plan (GMP) Update.
3. Commercial Air Service Status at Kalaupapa.
4. Memorial Project Update.
5. Kalaupapa Fire Management Plan Update.
6. Public Comments.

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Superintendent, Kalaupapa National Historical Park, P.O. Box 2222, Kalaupapa, Hawaii 96742, telephone (808) 567–6802 x 1100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. 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 review, we cannot guarantee that we will be able to do so.

Dated: June 14, 2011.

Stephen Prokop,

Superintendent, Kalaupapa National Historical Park.

[FR Doc. 2011–17779 Filed 7–13–11; 8:45 am]

BILLING CODE 4132–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–OIA–WASO–0711–7740; 0050–673]

Drafting of U.S. Nominations to the World Heritage List

AGENCY: Department of the Interior, National Park Service.

ACTION: Second Notice and Request for Comment.

SUMMARY: This notice constitutes the Second Notice in the **Federal Register** referred to in Sec. 73.7(f) of the World Heritage Program regulations (36 CFR Part 73). It sets forth the decision to request that draft World Heritage nominations for 11 ''Frank Lloyd Wright Buildings'' (in Arizona, California, Illinois, New York, Oklahoma, Pennsylvania and Wisconsin) and ''Poverty Point State Historic Site and National Monument,'' Louisiana, be prepared, thereby notifying the owners and the public of this decision.

On December 14, 2010 (75 FR 77901), the Department of the Interior requested public comment on which property or properties on the U.S. World Heritage Tentative List should be nominated next by the United States to the World Heritage List. This was the First Notice in the **Federal Register**, pursuant to 36 CFR 73.7(c). The Tentative List consists of properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List. The current Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008.

After review of the comments provided by the public and consultation with the Federal Interagency Panel for World Heritage, the Department, in accordance with 36 CFR Part 73, has selected ''Frank Lloyd Wright Buildings'' and ''Poverty Point State Historic Site and National Monument'' from the Tentative List as proposed nominations to the World Heritage List. With the assistance of the Department, the owners of these sites are encouraged to prepare complete nomination documents for the sites in accordance with 36 CFR Part 73 and the nomination format required by the World Heritage Committee. A discussion of the decision, the nomination process and schedule and a summary of the comments as received follows.

Recommendations of the Federal Interagency Panel for World Heritage

The Federal Interagency Panel for World Heritage assists the Department of the Interior in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks and includes representatives from various Federal Departments and agencies with Federal land management and policy-making responsibilities. The Panel made its recommendations to the Department of the Interior on the next U.S. World Heritage nominations at a meeting on May 9, 2011.

The Panel agreed by consensus to support the preparation of nominations at this time for ''Frank Lloyd Wright Buildings'' and ''Poverty Point State Historic Site and National Monument.'' The Panel reviewed the public suggestions for nominations for other properties at this time from the U.S. World Heritage Tentative List but did not recommend the preparation of nominations for any additional or alternate properties, noting that other good candidates on the Tentative List would need more substantial work or assistance before they could be expected to develop viable nominations. Panel members emphasized the considerable

work and cost involved in developing nomination documents, and wanted to ensure that any nominations drafted have the best possible chance of success when they may be considered by the World Heritage Committee.

Decision To Request the Preparation of Two U.S. World Heritage Nominations

The Department considered all comments received during the comment period as well as the advice of the Federal Interagency Panel for World Heritage in making the decisions to request drafts for two U.S. World Heritage nominations.

Brief descriptions are provided for these potential nominations along with a summary of the comments about them that had been received and were considered as part of this process. The Department will decide whether to nominate these two sites to the World Heritage List based on complete draft World Heritage nominations for them. Draft World Heritage nominations are requested of the owners for the following sites. The titles of the nominations are subject to revision as the drafts are developed:

Frank Lloyd Wright Buildings

Unity Temple, *Oak Park, Illinois (1905–08);*

Frederick C. Robie House, *Chicago, Illinois (1908–10);*

Hollyhock House, *Los Angeles, California (1919–21);*

Taliesin, *Spring Green, Wisconsin (1911 and later);*

Fallingwater, *Mill Run, Pennsylvania (1936–38);*

Herbert and Katherine Jacobs House, *Madison, Wisconsin (1937);*

S. C. Johnson & Son, Inc., Administration Building and Research Tower, *Racine, Wisconsin (1936–39; 1943–50);*

Taliesin West, *Scottsdale, Arizona (1938);*

Price Tower, *Bartlesville, Oklahoma (1953–56);*

Solomon R. Guggenheim Museum, *New York, New York (1956–59);*

Marin County Civic Center, *San Rafael, California (1960–69).*

These eleven properties are among the most iconic, intact, representative, innovative, and influential of the more than 400 Frank Lloyd Wright (1867–1959) designs that have been erected. They span almost sixty years of his efforts to create an ''organic architecture'' that attracted widespread international attention and powerfully affected the course of modern architecture around the world as well as in the United States. The properties include his two long-time homes with studios and schools, four residences he designed for others, two office complexes, a place of worship, a museum, and a governmental complex.

The Frank Lloyd Wright Buildings were selected to prepare a nomination as the candidate on the Tentative List with the strongest international recognition of global significance. It would be the first U.S. nomination for 20th-century architecture, an area in which the United States has had a major impact. The Frank Lloyd Wright Building Conservancy is providing strong leadership in the preparation of a nomination.

The Department received 16 comments on this proposal; nine expressed general support. The Frank Lloyd Wright Building Conservancy, which is coordinating the nomination effort, detailed the work completed so far, including organizing the owners of the properties to coordinate management, obtaining advice from Wright scholars, and drafting nomination material. The Conservancy also requested that the Herbert and Katharine Jacobs House in Madison, Wisconsin, Wright's first ''Usonian'' house, be added to the group of buildings. Three comments stated that this is the strongest candidate on the Tentative List and should be the next to be nominated. Two comments suggested changing the name of the proposal. Three comments suggested adding other Wright buildings to the series (not including the Jacobs House).

The Department agrees that the Jacobs House, which was initially part of the 2007 proposal by the Conservancy, should be part of the nomination; the Wisconsin Historical Society now holds a preservation covenant on the house. Other than this addition, the Department believes that the Conservancy has followed a systematic and defensible process to identify the most significant Wright buildings to include, and does not support further additions.

The Department is prepared to reconsider the name of the series to ensure that the emphasis of the nomination is on the significance of the buildings rather than their architect.

Poverty Point, Louisiana

This vast complex of earthen structures, constructed 3,100–3,700 years ago, may be the largest hunter-gatherer settlement that has ever existed. Located on a bayou west of the Mississippi River in northeastern Louisiana, it is an integrated complex of earthen mounds, enormous concentric ridges, and a large plaza. Not only was it the largest and most elaborate settlement of its time in North America, it was, more significantly, built by a foraging society of hunter-gatherers, not a settled agricultural people, which makes it without parallel in world archeological and ethnographic records, challenging anthropology's basic assumptions about hunter-gatherer societies.

Poverty Point was selected to prepare a World Heritage nomination because it is a virtually unique archeological site that is recognized internationally. The nomination effort has the strong support of the State of Louisiana, which has shown excellent progress in developing materials for a nomination. The Department received 10 comments on this site; four expressed general support. Lieutenant Governor Jay Dardenne, speaking for the State of Louisiana as the owner of the site, expressed strong support for the effort and cited work done in preparation for a nomination, including consultation with international experts. Two state senators emphasized the site's readiness to prepare a nomination. The International Committee on Archaeological Heritage Management stated that the proposal is well justified and that the Louisiana team is capable of preparing a satisfactory nomination. Two comments recommended that the site be combined with the Hopewell Ceremonial Earthworks and Serpent Mound, the other archeological sites on the Tentative List; one of these suggested that the grouping be an extension to the Cahokia Mounds World Heritage Site in Illinois. The Department believes that the archeological sites in Louisiana, Illinois and Ohio are sufficiently culturally distinct to merit separate World Heritage listing.

DATES: Draft World Heritage nominations for ''Frank Lloyd Wright Buildings'' and ''Poverty Point State Historic Site and National Monument'' must be prepared and submitted in substantially complete draft form to the National Park Service by July 1, 2012 in order for a nomination to potentially be submitted to the UNESCO World Heritage Centre by the United States by February 1, 2013. (The July 1, 2011 date stated in the First Notice is no longer feasible given the time that has elapsed since its publication.) The World Heritage nomination format may be found at the World Heritage Centre Web site at *http://whc.unesco.org/en/nominationform.* The National Park Service will coordinate the review and evaluation of the draft nominations.

Submission of interim draft nominations to the World Heritage Centre for technical review must be

made by September 30, 2012. The Centre is to provide comments by November 15, 2012. The Federal Interagency Panel for World Heritage will review draft nominations following receipt of the Centre's comments. The Interagency Panel will evaluate the adequacy of the nominations, the significance of the properties and whether the nominations should be forwarded to the World Heritage Centre to be considered for listing. Final submittal to the World Heritage Centre by the Department of the Interior through the Department of State is required by February 1, 2013, if the properties are to be considered in the next cycle of nominations to the World Heritage List. Submittal of final nominations must be made no later than that date for the World Heritage Committee to be able to consider them at its annual meeting in the summer of 2014.

Protective measures must be in place before a property may be nominated as provided for in 36 CFR 73.13. If a nomination cannot be completed in accordance with this timeline, work may continue into the following year(s) for subsequent submission to UNESCO.

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam, 202–354–1809 or April Brooks, 202–354–1808. For complete information about U.S. participation in the World Heritage Program, please see the National Park Service Office of International Affairs' Web site at: *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm.*

To request paper copies of documents discussed in this notice, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005. E-mail: *April_Brooks@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1971, and the U.S. was the first nation to ratify it. The United States served its fourth term on the World Heritage Committee from 2005–2009. The Committee, composed of representatives of 21 nations periodically elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer.

There are 911 sites in 151 of the 187 signatory countries. Currently there are 21 World Heritage Sites in the United States.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR Part 73—World Heritage Convention. The National Park Service serves as the principal technical agency for World Heritage in the Department of the Interior, which has the lead role for the U.S. Government in the implementation of the Convention and manages all or parts of 17 of the 21 U.S. World Heritage Sites, including Yellowstone National Park, the Everglades, and the Statue of Liberty.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. A country cannot nominate a property unless it has been on its Tentative List for a minimum of a year. Countries are limited to nominating no more than two sites in any given year.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. law. Inclusion in the Tentative List merely indicates that the property may be further examined for possible World Heritage nomination in the future.

The World Heritage Committee's Operational Guidelines ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. The Guidelines recommend that a nation review its Tentative List at least once every decade.

NPS prepared and submitted (through the Secretary of the Interior and the Secretary of State) to the World Heritage Centre of UNESCO on January 24, 2008, an updated Tentative List. The Tentative List was published in the **Federal Register** on March 19, 2008. The process for developing the U.S. Tentative List is detailed on the NPS Office of International Affairs Web site at: *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm.*

Summary of other Public Comments: On December 14, 2010, the Department published a request for comments in the **Federal Register** (Volume 75, Number 239, pages 77901–77903), on which of the sites on the Tentative List should be nominated next by the United States. Comments were accepted through January 13, 2011, thirty days from the date of publication of the notice in the **Federal Register.** Respondents were asked to address the qualifications of the Tentative List properties for nomination by the United States to the World Heritage List.

A summary of the comments received appears below organized by site, along with the Department's responses as appropriate. Comments on the two sites that are proposed for nomination appear in the discussion of the decision. The Department received 172 comments and an Internet petition with 830 signatures. The comments were also available to the Federal Interagency Panel for World Heritage and to the Department of the Interior officials who have selected the properties that are asked to prepare nominations. The full texts of all the comments are available upon request.

Comments were also sought on potential additions to the Tentative List. These comments are on file to be considered by the Federal Interagency Panel and the Department of the Interior in due course.

Cultural Sites

Civil Rights Movement Sites, Alabama: Dexter Ave. King Memorial Baptist Church, Montgomery; Bethel Baptist Church, Birmingham; 16th St. Baptist Church, Birmingham

The Department received seven comments: Three expressed general support and four recommended that a variety of additional sites be added to the grouping to more comprehensively represent the topic.

The Department agrees that additional sites will need to be added before this proposal could be considered for nomination.

Dayton Aviation Sites, Ohio: Wright Cycle Company and Wright & Wright Printing; Huffman Prairie Flying Field; Wright Hall; Hawthorn Hill

The Department received 14 comments: Four expressed general support. The other 10 recommended that Wright Brothers National Memorial in Kitty Hawk, NC be added to the group; two of these commenters also questioned whether Hawthorn Hill should be included in the group, and one also questioned the inclusion of the Wright Cycle Company Building.

The Department acknowledges that some of the components of this proposal

may have difficulties in meeting the technical requirements of the World Heritage Committee, and that such issues would have to be resolved before a nomination could be made. The Wright Brothers National Memorial was nominated unsuccessfully in 1981 by the United States, and the Department believes that the issues raised at that time may still affect a potential nomination.

Hopewell Ceremonial Earthworks, Ohio: Fort Ancient State Memorial; Hopewell Culture National Historical Park; Newark Earthworks State Memorial

The Department received 95 comments: 71 of them, plus the Internet petition with 830 signatures, expressed general support, and four provided more substantive expressions of support, including information from Federal and State site owners and stewards on work that has begun to document the properties and engage in public outreach, including a planned symposium. Eleven specifically recommended that the group of sites be expanded to include Serpent Mound State Memorial in Ohio, which is included as a separate site for nomination on the Tentative List. Three recommended that all these sites be combined with Poverty Point, the other archeological site on the Tentative List; one of these suggested that the grouping be an extension to the Cahokia Mounds World Heritage Site in Illinois. One noted concern over the management organization and the sufficiency of preservation of the State-owned components. Two objected to ''Hopewell Ceremonial Earthworks'' as the proposed name. The Department believes that the archeological sites in Louisiana, Illinois and Ohio are sufficiently culturally distinct to merit separate World Heritage listing. It has considered the justifications proposed for adding Serpent Mound to the Hopewell grouping.

At this time, it believes that the original formulation would still be the most strongly justifiable. If the Ohio properties were to be combined, a different justification for Outstanding Universal Value and a revision of the World Heritage criteria proposed to be met would have to be developed and agreed upon; such an effort, even if deemed viable, would require additional time and consultation.

Thomas Jefferson Buildings, Virginia: Poplar Forest, Bedford County; State Capitol, Richmond

The Department received seven comments. Two expressed general support. One supported the proposal to extend the existing World Heritage listing of Monticello and the University of Virginia as an elaboration of the Jeffersonian architectural idea; three of the others indicated that Poplar Forest was a weaker component and should be reconsidered, and one of these also said that alterations to the State Capitol must be addressed carefully. Two comments said that other properties on the Tentative List should have priority over an extension to an existing listing.

The Department acknowledges that the issue raised in these comments will need to be considered.

Mount Vernon, Virginia

The Department received four comments. One expressed general support. The others made various suggestions for how this site, which was unsuccessfully nominated in 2009, might be reformulated for possible nomination again in the future.

San Antonio Franciscan Missions, Texas: San Antonio Missions National Historical Park and the Alamo (Mission San Antonio)

The Department received 43 comments: 32 expressed general support; this included numerous elected officials. Six comments provided more substantive expressions of support, including information from Federal and State site owners, the Archbishop of San Antonio and others on work that has begun to prepare a nomination and on ongoing research and conservation of the sites. The Advisory Council on Historic Preservation and the National Trust for Historic Preservation suggested that it might best be nominated as an extension to the Mexican World Heritage site of the Franciscan Missions of the Sierra Gorda de Queretaro. The U.S. chapter of the International Council on Monuments and Sites cited some potential weaknesses in the proposal that would need to be addressed. One commenter stated that it should be nominated at this time, although more justification as to how it fills a gap in the World Heritage List is needed; the writer suggested that the agricultural and cultural landscape aspects were most significant, while the architecture is not exceptional in a global context. Another comment suggested that the context needs to address the whole subject of Spanish colonial missions in the Americas; that the core and buffer zones will be challenging to delineate; and that the acequia system should be highlighted.

The Department believes that the range of comments accurately reflects a number of issues that will need to be addressed in a future nomination.

Serpent Mound State Memorial, Ohio

The Department received 67 comments: 53 expressed general support. The Executive Director of the Ohio Historical Society wrote as the owner of the site that he recommended combining the site with the Hopewell Ceremonial Earthworks; nine other comments made a similar suggestion. Richard D. Shiels, Director of the Newark Earthworks Center of the Ohio State University and E. Gordon Gee, President of the University, cited public interpretive and outreach work and research related to the site, including a planned symposium. Two comments recommended that the site be combined with both the Hopewell Ceremonial Earthworks and with Poverty Point in Louisiana; one of these suggested that the grouping be an extension to the Cahokia Mounds World Heritage Site in Illinois.

The Department believes that the archeological sites in Louisiana, Illinois and Ohio are sufficiently culturally distinct to merit separate World Heritage listing. It has considered the justifications proposed for adding Serpent Mound to the Hopewell grouping. At this time, it believes that the original formulation would still be the most strongly justifiable. There is insufficient evidence to link Serpent Mound to the Hopewell culture sites, including conflicting evidence for its construction date. Serpent Mound has a more distinctive identity as an effigy mound.

If the Ohio properties were to be combined, a different justification for Outstanding Universal Value and a revision of the World Heritage criteria proposed to be met would have to be developed and agreed upon; such an effort, even if deemed viable, would require additional time and consultation.

Natural Sites

Fagatele Bay National Marine Sanctuary

The Department received four comments: three expressed general support. The Marine Conservation Biology Institute recommended the nomination of the Marine Sanctuary to the World Heritage List.

The Department believes that Fagatele Bay would be more likely to receive international support were it nominated as a part of a significantly larger nomination, including other areas in American Samoa and perhaps elsewhere in the Pacific.

Okefenokee National Wildlife Refuge

The Department received one comment, expressing general support.

Petrified Forest National Park

The Department received five comments; four expressed general support. Another noted that the site continues to have problems with theft of park resources.

White Sands National Monument

The Department received five comments: four expressed general support. Another made specific recommendations for edits and additions to the site's Tentative List application.

Authority: 16 U.S.C. 470 a–1, a–2, d; 36 CFR Part 73.

Dated: July 7, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–17769 Filed 7–13–11; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Portable Electronic Devices and Related Software,* DN 2828; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*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 has received a complaint filed on behalf of Apple Inc., f/k/a Apple Computer, Inc. on July 8, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable electronic devices and related software. The complaint names as respondents HTC Corp. of China; HTC America Inc. of Bellevue, WA and Exedea Inc. of Houston, TX.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2828'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: July 8, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17678 Filed 7–13–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–786]

In the Matter of Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 8, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Freescale Semiconductor, Inc. of Austin, Texas.

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 integrated circuits, chipsets, and products containing same including televisions by reason of infringement of certain claims of U.S. Patent No 5,467,455 (''the '455 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 cease and desist orders.

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 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 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 integrated circuits, chipsets, and products containing same including televisions that infringe one or more of claims 9 and 10 of the '455 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: Freescale Semiconductor, Inc., 6501 William Cannon Drive West, Austin, TX 78735.

(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:

Funai Electric Co., Ltd., 7–7–1 Nakagaito, Daito, Osaka 574–0013, Japan.

Funai Corporation, Inc., 201 Route 17, Suite 903, Rutherford, NJ 07070.

MediaTek Inc., No. 1 Dusing Road, Hsinchu Science Park, Hsinchu City, Taiwan 30078.

Zoran Corporation, 1390 Kifer Road, Sunnyvale, CA 94086.

(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 Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Commission notes that issues regarding whether Complainant may be precluded from asserting its complaint in light of a Commission decision in a prior investigation involving the same patent may be present here. In instituting this investigation, the Commission has not made any determination as to whether Complainant is so precluded. Accordingly, the presiding administrative law judge may wish to consider this issue at an early date. Any such decision should be issued in the form of an initial determination (ID) under Rule 210.42(c), 19 CFR 210.42(c). The ID will become the Commission's final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44 and 210.45, 19 CFR 210.43, 210.44, and 210.45.

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.

Issued: July 8, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17685 Filed 7–13–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–771]

In the Matter of Certain Electronic Devices, Including Mobile Phones, Mobile Tablets, Portable Music Players, and Computers, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

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 the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 8) granting a joint motion to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. 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 April 29, 2011, based on a complaint filed by Nokia Corporation of Finland; Nokia Inc. of White Plains, New York; and Intellisync Corporation of White Plains, New York (collectively ''Nokia''), alleging a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation, sale for importation and sale within the United States after importation of certain mobile phones, mobile tablets, portable music players, and computers. 76 FR 24051 (Apr. 29, 2011). The complaint named as the respondent Apple Inc. of Cupertino, California (''Apple''). The complaint alleges that certain Apple products infringe various claims of seven patents: U.S. Patent Nos. 7,209,911; 6,212,529; 6,141,664; 7,558,696; 6,445,932; 5,898,740; and 7,319,874.

On June 16, 2011, Nokia and Apple filed their Joint Motion to Terminate Investigation No. 337–TA–771 on the Basis of Settlement Agreement. On June 17, 2011, the Commission investigative attorney filed a response that recommended that the Commission grant the motion. That same day, the ALJ granted the motion as an ID (Order No. 8).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 8, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17677 Filed 7–13–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–704]

In the Matter of Certain Mobile Communications and Computer Devices and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety on the Basis of a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 73) granting a joint motion by complainant Apple Inc., f/k/a Apple Computer, Inc. of Cupertino, California (''Apple'') and respondents Nokia Corporation of Espoo, Finland and Nokia Inc. of White Plains, New York (collectively ''Nokia'') to terminate in its entirety Inv. No. 337–TA–704, *Certain Mobile Communications and Computer Devices and Components Thereof* based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. 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 February 24, 2010, based on a complaint filed by Apple. 75 FR 8399–400. The complaint, as amended and supplemented, alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile communications and computer devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,379,431; 5,455,599; 5,519,867; 5,915,131; 5,920,726; 5,969,705; 6,343,263; 6,424,354; and RE39,486. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Nokia as respondent.

On June 16, 2011, Apple and Nokia jointly moved to terminate this investigation in its entirety in view of a settlement agreement and a license agreement between the parties. On June 17, 2011, the Commission Investigative attorney filed a response in support of the motion.

On June 24, 2011, the ALJ issued the subject ID, granting pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)) the joint motion to terminate the investigation in its entirety. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 11, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17699 Filed 7–13–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,120A]

Steelcase, Inc., North America Division, Including Workers From Steelcase University Also Known as Steelcase Learning Center, a Subsidiary of Steelcase, Inc., Including On-Site Leased Workers From Manower, Inc., Grand Rapids, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 4, 2011,

applicable to workers of Steelcase, Inc., North America Division, including on-site leased workers from Manpower, Inc., Grand Rapids, Michigan. The workers are engaged in the production of office furniture. The notice was published in the **Federal Register** on February 24, 2011 (76 FR 10399). The notice was amended on February 24, 2011 to correct the impact date to read December 10, 2010. The amended notice was published in the **Federal Register** on March 10, 2011 (76 FR 13228).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm.

The review shows Steelcase University, also known as Steelcase Learning Center, is a subsidiary of Steelcase, Inc. Since Steelcase University, also known as Steelcase Learning Center, a subsidiary of Steelcase, Inc. operates internally with Steelcase, Inc., only provides services to the parent company, Steelcase, Inc. and both are experiencing worker layoffs.

Based on these findings, the Department is amending this certification to include workers of Steelcase University, also known as Steelcase Learning Center, a subsidiary of Steelcase, Inc., Grand Rapids, Michigan.

The intent of the Department's certification is to include all workers employed at Steelcase, Inc., North America Division, Grand Rapids, Michigan who were adversely affected by a shift in production of office furniture to Mexico.

The amended notice applicable to TA–W–75,120A is hereby issued as follows:

''All workers of Steelcase, Inc., North America Division, including workers from Steelcase University, also known as Steelcase Learning Center, a subsidiary of Steelcase, Inc., including on-site leased workers from Manpower, Inc., Grand Rapids, Michigan (TA–W–75,120A), who became totally or partially separated from employment on or after December 10, 2010 through February 4, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 5th day of July, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–17668 Filed 7–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 25, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 25, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of July 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[11 TAA petitions instituted between 6/20/11 and 6/24/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80242	M/A—Com Technical Solutions (State/One-Stop)	Torrance, CA	06/20/11	06/17/11
80243	Cleo Inc. (Company)	Memphis, TN	06/21/11	06/09/11
80244	STMicroelectronics (Company)	Coppell, TX	06/22/11	06/17/11
80245	Kavlico Corporation (State/One-Stop)	Moorpark, CA	06/22/11	06/21/11
80246	Border Apparel (Workers)	El Paso, TX	06/22/11	03/28/11
80247	Dmat Ltd (Workers)	Moraine, OH	06/22/11	06/15/11
80248	Cascade Microtech Inc. (Company)	Beaverton, OR	06/23/11	06/22/11
80249	Staples (State/One-Stop)	Broomfield, CO	06/23/11	06/21/11
80250	Roseburg Forest Products (Union)	Coquille, OR	06/23/11	06/21/11
80251	Volunteer Apparell (Workers)	Luttrell, TN	06/24/11	06/23/11
80252	Dex One (Company)	Morrisville, NC	06/24/11	06/23/11

[FR Doc. 2011–17669 Filed 7–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,671]

Hewlett Packard Global Parts Supply Chain, Global Product Life Cycles Management Unit Including Teleworkers Reporting to Houston, TX; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on November 8, 2010 for all workers of Hewlett Packard, Global Parts Supply Chain, Global Product Life Cycles Management Unit, including teleworkers reporting to Houston, Texas (subject worker group). The notice was published in the **Federal Register** on November 23, 2010 (75 FR 71460).

On June 6, 2011, the Department issued a Notice of Intent to Terminate Certification Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of the subject worker group. The Department's Notice of Intent to Terminate Certification was published in the **Federal Register** on June 13, 2011 (76 FR 34271).

The Department has not received any written comments from the group of workers or any persons showing a substantial interest in the termination of the certification issued under TA–W–74,671, pursuant to 29 CFR 90.17(b).

Since eligible workers of Hewlett Packard, Global Parts Supply Chain, Global Product Life Cycles Management Unit, including teleworkers reporting to Houston, Texas (TA–W–74,671) who have not yet received TAA benefits will be eligible to apply for these benefits under TA–W–74,466I, a certification issued two months before TA–W–74,671, the Department is terminating the later certification. It is the Department's intent to terminate the latter certification to correct the duplicate coverage of eligible workers and the possibility of unintended duplication of benefits.

Consequently, the certification issued under investigation TA–W–74,671 has been terminated.

Signed in Washington, DC, this 1st day of July, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–17670 Filed 7–13–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–065)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within September 12, 2011.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's education and outreach activities are funded by NASA's Office of Education, Mission Directorates, and Offices of Chief Technologist and Communications. NASA's Education Coordinating Council includes representatives from each of NASA's field Centers plus the Jet Propulsion Laboratory (JPL), which deliver education and outreach. Data collection to be covered by this request are organized around three goals: (1) Contribute to the development of the Science, Technology, Engineering, Mathematics (STEM) workforce in disciplines needed to achieve NASA's strategic goals, through a portfolio of investments; (2) attract and retain students in STEM disciplines through a progression of educational opportunities for students, teachers, and faculty; and (3) build between STEM formal and informal education providers strategic partnerships and linkages that promote STEM literacy and awareness of NASA's missions.

The new NASA STEM Education and Outreach Generic Clearance is modeled on the National Science Foundation's (NSF) Education Generic Clearance (OMB 3145–0136). The scope of NASA's proposed data collection is limited as was agreed in discussions conducted among NASA, NSF and OMB in October 2010 to (1) Staff and project participants; (2) project implementation characteristics and (3) project outputs.

The collection covers only descriptive information gathered through a variety of methods, including surveys, face-to-face or telephone interviews, observations, and focus groups, from participants or implementers of NASA-funded education or outreach projects. Data is gathered from stakeholders and other program participants, including but not limited to students, faculty, teachers, members of the public, administrators and staff. NASA will use data from the NASA STEM Education and Outreach Generic Clearance primarily for program planning, management and accountability purposes in order to respond to queries from the Congress, the public and to support Government and Performance Modernization Act (GPRMA) requirements, and similar Federal performance reporting purposes, such as to the U.S. Government Accountability Office (GAO). In 2011, GAO was asked by the U.S. Congress to conduct a study to catalog Federal STEM education programs and determine the extent to which overlap or potential duplication exists. This Generic Clearance will enable NASA to respond to future such requests that seek information from Federal departments and agencies that will enable GAO to assemble a compendium of Federal education programs (pre-kindergarten through doctorate). Items in the survey are informed by the 2011 experience.

Information from this collection may also be published as part of NASA Education Highlights documents that are available via the NASA Web site at: *http://www.nasa.gov/offices/education/performance/index.html.*

This information is required for effective administration and communication relating to program and project monitoring and evaluation, and for measuring attainment of NASA's program, project and goals. Further, some data collected may serve as baseline data for future, separate, research or evaluation studies, or for the

identification of treatment and control groups for future study. In keeping with protocols long-established between NSF and OMB, NASA proposed evaluation or research study will be cleared with OMB separately and will include separate calls for public comment.

II. Method of Collection

Electronic.

III. Data

Title: NASA STEM Education Generic Clearance.

OMB Number: 2700–xxxx.

Type of review: Regular.

Affected Public: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or Tribal government.

Number of Respondents: 2,236,000.

Responses per Respondent: 1.

Annual Responses: 2,444,000.

Hours per Request: 0.15–.5 hour.

Annual Burden Hours: 245,333.

Frequency of Report: On occasion, quarterly, semi-annually, annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2011–17667 Filed 7–13–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–063)]

Centennial Challenges 2011 Strong Tether Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314)(d). The 2011 Strong Tether Challenge is scheduled and teams that wish to compete may register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The 2011 Strong Tether Challenge is a prize competition designed to encourage development of very strong, lightweight material for use in a multitude of structural applications. The Spaceward Foundation administers the Challenge for NASA. NASA is providing the prize purse.

DATES: 2011 Strong Tether Challenge will be held on August 12, 2011.

ADDRESSES: 2011 Strong Tether Challenge will be conducted at the 2011 Space Elevator Conference held at the Microsoft Conference Center, 16156 NE. 36th St, Redmond, Washington.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the 2011 Strong Tether Challenge, please visit: *http://www.spaceward.org/elevator2011-ts.*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Dr. Larry Cooper, Centennial Challenges Program, NASA Headquarters 300 E Street, SW., Washington, DC 20546–0001. *E-mail address: larry.p.cooper@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

The competition consists of measuring the tensile strength of a tether material. There are requirements for maximum mass and minimum strength and length categories. The strongest sample that meets the criteria is eligible to win the specified prize.

I. Prize Amounts

The total 2011 Strong Tether Challenge purse is $2,000,000 (two million U.S. dollars). Incremental prizes will be offered for entries that meet specific requirements for strength and mass based on the length of the sample.

II. Eligibility

To be eligible to win a prize competitors must (1) Register and comply with all requirements in the rules and team agreement; (2) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and (3) shall not be a Federal entity or Federal employee acting within the scope of their employment.

III. Rules

The complete rules and team agreement for the 2011 Strong Tether Challenge can be found at: *http://www.spaceward.org/challenges-ts.*

Dated: July 7, 2011.

Michael J. Gazarik,

Deputy Chief Technologist.

[FR Doc. 2011–17665 Filed 7–13–11; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:30 a.m. to 5 p.m., on Monday, August 1, 2011.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after October 1, 2011.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW.,

Washington, DC 20506, or call 202–606–8322.

Michael P. McDonald,

Management Officer, Advisory Committee.

[FR Doc. 2011–17767 Filed 7–13–11; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0262]

Draft Regulatory Guide: Re-Issuance and Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Re-Issuance and Availability of Draft Regulatory Guide, DG–3037.

FOR FURTHER INFORMATION CONTACT: Kevin Morrissey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3130, e-mail: *Kevin.Morrissey@nrc.gov,* or, R. A. Jervey, *telephone:* 301–251–7404, *e-mail: Richard.Jervey@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information and methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications.

The draft regulatory guide (DG), entitled, ''Guidance for Fuel Cycle Facility Change Processes,'' is temporarily identified by its task number, DG–3037, which should be mentioned in all related correspondence. DG–3037 will be a new regulatory guide. The guide was previously issued for public comment on June 29, 2009 (74 FR 31073). Public comments on the 2009 draft, and the NRC responses to those comments, may be found in the NRC's Agencywide Document Access and Management System (ADAMS) under Accession Number ML100890028. As a result of considerations raised by stakeholders during the earlier public comment period, and ongoing NRC policy development, the 2009 draft DG–3037 has been revised, and the NRC is providing a comment period for members of the public to consider the re-issued draft DG–3037.

Title 10 of the *Code of Federal Regulations,* Part 70, ''Domestic Licensing of Special Nuclear Material'' (10 CFR Part 70) contains the regulations applicable to fuel cycle facility licensees that possess greater than a critical mass of special nuclear material. Such licensees are authorized to engage in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, and fabrication of mixed-oxide fuel or fuel assemblies. DG–3037 provides guidance on how to meet the requirements of 10 CFR 70.72, ''Facility changes and change process.'' with emphasis on the screening that is necessary to separate changes that do and do not require prior NRC approval.

Fuel cycle facility licensees are required by 10 CFR 70.72(a) to establish a configuration management system to evaluate, implement, and track each change to the site, structures processes, systems, equipment, components, computer programs, and activities of personnel. Such changes may be made by the licensee without prior approval of the NRC, provided that the changes meet the criteria of 10 CFR 70.72(c).

In a separate action, the NRC is developing guidance regarding a process for submitting requests to allow changes during construction for power reactors under 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The changes during construction guidance will be published in draft form for comment. After the changes during construction guidance is finalized, the NRC will consider whether similar guidance is appropriate for construction activities at those 10 CFR Part 40 and 10 CFR Part 70 licensed facilities which are subject to integrated safety analysis (ISA) requirements. Thus, DG–3037 may be subject to further revision after the 10 CFR Part 52 guidance is finalized, or separate guidance concerning changes during construction for fuel cycle facilities may be developed,

II. Further Information

The NRC staff is soliciting comments on DG–3037. Comments may be accompanied by relevant information or supporting data and should reference DG–3037 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: Please include Docket ID NRC–2009–0262 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0262. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The regulatory analysis is available electronically under ADAMS Accession Number ML110960217.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be

found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0262.

Comments would be most helpful if received by August 12, 2011. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–3037 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML110960051.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 1st day of July, 2011.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–17734 Filed 7–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8502; NRC–2009–0036]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Renewal for Uranium One USA Inc., Irigaray and Christensen Ranch Uranium In-Situ Recovery Projects (Willow Creek Project), Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Ron C. Linton, Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–7777; *Fax number:* 301–415–5369; *E-mail: Ron.Linton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Source Materials License SUA–1341 for the continued uranium production operations and the recovery of uranium by *in-situ* recovery (ISR) at the Irigaray and Christensen Ranch facilities in Johnson and Campbell Counties, Wyoming (Willow Creek Project). The NRC has prepared an Environmental Assessment (EA) in support of this proposed license renewal in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The NRC is also conducting a safety evaluation of the proposed license renewal, pursuant to 10 CFR part 40. The results of the safety evaluation will be documented in a separate Safety Evaluation Report. If approved, the NRC will issue the renewed license following the publication of this notice.

II. EA Summary

The proposed licensing action is to renew Source Materials License SUA–1341 for a 10-year period to authorize Uranium One USA, Inc. to continue ISR operations at the Irigaray and Christiansen Ranch facilities in Campbell and Johnson Counties, Wyoming. On May 30, 2008, COGEMA Mining, Inc. (COGEMA) submitted an application to renew Source Materials License SUA–1341. A Notice of License Renewal Request and an Opportunity for Hearing was published in the **Federal Register** on February 9, 2009 (74 FR 6436). In response, the Oglala Delegation of the Great Sioux Nation Treaty Council (Delegation) and the Powder River Basin Resource Council (Council) filed petitions to intervene and requests for hearing. For reasons stated in the Memorandum and Order LBP–09–13, dated July 23, 2009, the Atomic Safety and Licensing Board concluded that neither the Delegation nor the Council demonstrated standing as required by 10 CFR 2.309(a). Therefore, the petitions were denied.

During the NRC's review of the license renewal request, the Irigaray and Christensen Ranch ISR Project underwent a change in control from COGEMA Mining, Inc. to Uranium One, Inc. (Uranium One). Subsequently, the Irigaray and Christensen Ranch ISR Project underwent a second change in control and ownership from Uranium One to Rosatom, through JSC Atomredmetzoloto (ARMZ). While the parent company changed to Rosatom, Uranium One USA, Inc., a daughter company of Uranium One and Rosatom, remains the licensee.

The staff has prepared an EA in support of the proposed license renewal. Staff considered the following environmental resource areas in its evaluation: Land use; transportation; socioeconomics; air quality; water quality and use; geology and soils; ecology; noise; historical and cultural; scenic and visual; public and occupational health and safety; and waste management. The environmental impacts on these resource areas were determined to be small. The license renewal request does not require altering the site footprint nor does it change the operating processes of the existing facility; therefore, there are no anticipated significant impacts on land use, noise, historic and cultural, scenic and visual, or ecological resources. The proposed action will not adversely affect Federal or state-listed threatened or endangered species. Public and occupational exposures are below the limit established in 10 CFR Part 20. Uranium One USA, Inc. maintains acceptable waste management practices and procedures. The staff concluded that the proposed 10-year renewal of Source Materials License SUA–1341 will not result in a significant impact to the environment.

NRC staff consulted with other agencies regarding the proposed action, including the Wyoming State Historic and Preservation Office, Wyoming Department of Environmental Quality, Buffalo Field Office of the Bureau of Land Management, the Eastern Shoshone Tribe, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Blackfeet Nation, Three Affiliated Tribes (Mandan, Hidatsa, and Arikara), the Ft. Peck Assiniboine/Sioux, the Oglala Sioux Tribe, the Crow Nation, and the Cheyenne River Sioux Tribe. The consultations ensured that the requirements of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act were met and provided the designated state liaison agency the opportunity to comment on the proposed action.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that the proposed license renewal will not significantly affect the quality of the human environment. Therefore, preparation of an environmental impact statement is not warranted for the proposed action and a finding of no significant impact is appropriate.

IV. Further Information

Documents related to this action, including the license renewal application and supporting documentation, are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table:

Document	ADAMS accession No.
License Renewal Application	ML081850689
NRC letter to COGEMA—Request for Additional Information (RAI)	ML090750369
COGEMA Letter to NRC—Response to RAI	ML092110694
NRC Letter to Uranium One—RAI	ML100610326
Uranium One Letter to NRC—Response to RAI	ML103081071
NRC Consultation Letters	*ML090400214 (package)*
NRC Letter to Wyoming State Historic Preservation Office	ML090400252
NRC Letter to U.S. Fish and Wildlife Service	ML090400244
NRC Letter to Wyoming Department of Environmental Quality (WDEQ)	ML090400231
NRC Letter to Blackfeet Nation	ML090400292
NRC Letter to Cheyenne River Sioux Tribe	ML090400261
NRC Letter to Crow Nation	ML090400267
NRC Letter to Ft. Peck Sioux	ML090400279
NRC Letter to Northern Arapaho Tribe	ML090400301
NRC Letter to Northern Cheyenne Tribe	ML090400295
NRC Letter to Oglala Sioux Tribe	ML090400273
NRC Letter to Eastern Shoshone Tribe	ML090400308
NRC Letter to Three Affiliated Tribes	ML090400287
NRC Draft EA transmittal letter to Bureau of Land Management (BLM) Buffalo Field Office and WDEQ	ML100210638
BLM response to EA review request	ML102360242
Final Environmental Assessment	ML103270681

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.Resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. Hard copies of the documents are available from the PDR for a fee.

Dated at Rockville Maryland, 7th day of July 2011.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–17731 Filed 7–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2011–0006].

DATE: Week of July 11, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of July 11, 2011

Tuesday, July 12, 2011

9:25 a.m. Affirmation Session (Public Meeting) (Tentative).

AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility)—Board Memorandum Certifying Question to the Commission Regarding Decommissioning Financial Assurance (Feb. 18, 2011) (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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ADDITIONAL INFORMATION: By a vote of 5–0 on July 11, 2011, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that the above referenced Affirmation be held on July 12, 2011, with less than one week notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: July 11, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–17844 Filed 7–12–11; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–213 and 72–39; NRC–2011–0158]

Connecticut Yankee Atomic Power Company, Haddam Neck Plant; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for license transfer, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by August 15, 2011. A request for a hearing must be filed by August 3, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0158 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0158. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application, dated December 6, 2010, is available electronically under ADAMS Accession Number ML103490133.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0158.

FOR FURTHER INFORMATION CONTACT: Kristina L. Banovac, Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–492–3571; *fax number:* 301–492–3348; *e-mail: Kristina.Banovac@nrc.gov.*

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Facility Operating License No. DPR–61 for the Haddam Neck Plant, currently held by Connecticut Yankee Atomic Power Company (CYAPCO), as owner and licensed operator of the Haddam Neck Plant.

According to an application for consent filed by CYAPCO, in connection with a pending merger of Northeast Utilities and NSTAR (each current indirect minority co-owners of CYAPCO), Northeast Utilities, the surviving company, will have an indirect ownership of 63 percent of CYAPCO after the merger. CYAPCO will continue to operate the facility and hold the license.

No physical changes to the Haddam Neck Plant facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed merger will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii). NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in

accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at M*SHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 20 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this indirect license transfer application, see the application dated December 6, 2010, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North,

Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 6th day of July 2011.

For the Nuclear Regulatory Commission.

Kristina L. Banovac,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2011–17732 Filed 7–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–029 AND 72–31; NRC–2011–0159]

Yankee Atomic Electric Company, Yankee Nuclear Power Station (Yankee-Rowe); Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for license transfer, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by August 15, 2011. A request for a hearing must be filed by August 3, 2011.

ADDRESSES: Please include Docket ID NRC–211–0159 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0159. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application dated December 6, 2010, is available electronically under ADAMS Accession No. ML103490133.

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0159.

FOR FURTHER INFORMATION CONTACT: Kristina L. Banovac, Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–492–3571; *fax number:* 301–492–3348; *e-mail: Kristina.Banovac@nrc.gov*.

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Facility Operating License No. DPR–3 for the Yankee Nuclear Power Station (Yankee-Rowe), currently held by Yankee Atomic Electric Company (YAEC), as owner and licensed operator of Yankee-Rowe.

According to an application for consent filed by YAEC, in connection with a pending merger of Northeast Utilities and NSTAR (each current indirect minority co-owners of YAEC), Northeast Utilities, the surviving company, will have an indirect ownership of 52.5 percent of YAEC after the merger. YAEC will continue to operate the facility and hold the license.

No physical changes to the Yankee-Rowe facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed merger will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely

requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii). NRC regulations are accessible electronically online from the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

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A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 20 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal**

Register and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this indirect license transfer application, see the application dated December 6, 2010, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 6th day of July 2011.

For the Nuclear Regulatory Commission.

Kristina L. Banovac,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2011–17733 Filed 7–13–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on July 14, 2011 at 10.m., in the Auditorium, Room L–002, to hear oral argument in an appeal by Comverse Technology, Inc. from an initial decision of an administrative law judge.

Comverse is a New York corporation that provides a variety of services in the telecommunications industry through its subsidiaries. Comverse's common stock is registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934.

On July 22, 2010, the law judge issued his decision finding that Comverse had violated Securities Exchange Act Section 13(a) and Exchange Act Rules 13a–1 and 13a–13 by failing to file quarterly and annual reports for any period after October 31, 2005. The law judge revoked the registration of Comverse's common stock. Subsequent to the issuance of the law judge's decision, Comverse has filed certain annual and quarterly reports.

Comverse does not appeal the law judge's findings of violation but, rather, the law judge's determination to revoke its registration. Exchange Act Section 12(j) authorizes sanctions, including revocation, for reporting violations where it is ''necessary or appropriate for the protection of investors.'' Issues likely to be considered at oral argument include the extent to which, under the circumstances, sanctions are warranted.

Commissioner Paredes, as duty officer, determined that no earlier notice thereof was possible.

For further information, please contact the Office of the Secretary at (202) 551–5400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

July 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–17855 Filed 7–12–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64840; File No. SR–BX–2011–043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7034 To Extend the Waiver of Certain Co-Location Installation Fees for an Additional Month

July 8, 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 July 1, 2011, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7034 to extend the waiver of fees assessed for the installation of certain co-location services for an additional month. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7034 to extend for a one-month period the initial waiver of fees assessed for the installation of certain co-location services, in order to provide its existing and potential new customers a full opportunity to avail themselves of the waiver. The initial waiver of fees for the installation of certain co-location services commenced June 1, 2011 and ended June 30, 2011.[3] Since the initial waiver, there has been significant demand for the select co-location services by existing customers, as well as new customers. However, the Exchange has become aware that a significant number of new and existing customers are unable to complete their requests by June 30, 2011 due to the need for additional time to order new equipment to be housed in the cabinets, or, to complete the internal approval

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64631 (June 8, 2011), 76 FR 34785 (June 14, 2011) (SR–BX–2011–032).

process for the ongoing monthly fees that will be incurred as part of the service. Therefore, the Exchange proposes to extend the waiver of fees until July 29, 2011 (the ''extended period''). Beginning August 1, 2011, the above-referenced waived fees will revert to the amount in effect prior to June 1, 2011. The Exchange proposes to extend the waiver of the following installation fees during the extended period:

1. Rule 7034(a): Installation fees for new cabinets with power.
2. Rule 7034(b): Installation fees for external telecommunication, inter-cabinet connectivity, connectivity to The Nasdaq Stock Market LLC and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee [4] will not be waived during the extended period.
3. Rule 7034(c): Installation fees for cabinet power related to an order for a new cabinet.
4. Rule 7034(d): Installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the extended period. Installation fees for other items that are customized or options are not waived during the extended period.

The following requirements must be met to receive the waiver of the installation fee:

1. The new cabinet order must be placed in the CoLo Console [5] during the extended period; and
2. The new cabinet must be live within 90 days of the date of the order.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed fee waiver is reasonable because it provides an opportunity for all new customers and all existing customer [sic] that desire additional cabinet space to obtain that space without incurring fees. This decrease in fees provided a savings of over $100,000 to customers that took advantage of the fee waiver during the month of June. In addition, the Exchange believes that the fee waiver results in an equitable allocation of fees among the members of the Exchange. Specifically, the Exchange believes that by encouraging new and existing co-location customers to increase their presence in the Exchange's data center, the Exchange will generate additional order execution and data consumption activity. If it materializes, such an increase in activity would assist the Exchange in controlling the charges it imposes on members generally for their use of a variety of Exchange services. The waiver of fees is also equitably allocated since all existing and potential co-location customers may avail themselves of the waiver during the period of availability. Notably, during June 2011, the preponderance of customers availing themselves of the waiver were existing, rather than new customers, demonstrating the benefit of the program to a variety of members. Finally, extending the program for a month will ensure that several customers that have expressed an interest in expanding their data center presence but that have not yet been able to do so will have the opportunity to benefit from the waiver.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the extension of the waiver of fees for certain co-location services is equitable because all customers may avail themselves of the waiver.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–BX–2011–043 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–BX–2011–043. 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 will be available for inspection and

[4] The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

[5] The ''CoLo Console'' is web-based ordering tool that is utilized by NASDAQ to place co-location orders.

[6] Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the ''live date''). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

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–BX–2011–043 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17679 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64842; File No. SR–Phlx–2011–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Extend the Waiver of Certain Co-Location Installation Fees for an Additional Month

July 8, 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 July 1, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule to extend the waiver of fees assessed for the installation of certain co-location services for an additional month.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Phlx Fee Schedule to extend for a one-month period the initial waiver of fees assessed for the installation of certain co-location services, in order to provide its existing and potential new customers a full opportunity to avail themselves of the waiver. The initial waiver of fees for the installation of certain co-location services commenced June 1, 2011 and ended June 30, 2011.[3] Since the initial waiver, there has been significant demand for the select co-location services by existing customers, as well as new customers. However, the Exchange has become aware that a significant number of new and existing customers are unable to complete their requests by June 30, 2011 due to the need for additional time to order new equipment to be housed in the cabinets, or, to complete the internal approval process for the ongoing monthly fees that will be incurred as part of the service. Therefore, the Exchange proposes to extend the waiver of fees until July 29, 2011 (the ''extended period''). Beginning August 1, 2011, the above-referenced waived fees will revert to the amount in effect prior to June 1, 2011. The Exchange proposes to extend the waiver of the following installation fees during the extended period:

1. Section X(a): Installation fees for new cabinets with power.

2. Section X(b): Installation fees for external telecommunication, inter-cabinet connectivity, connectivity to The Nasdaq Stock Market LLC and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee[4] will not be waived during the extended period.

3. Section X(c): Installation fees for cabinet power related to an order for a new cabinet.

4. Section X(d): Installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the extended period. Installation fees for other items that are customized or options are not waived during the extended period.

The following requirements must be met to receive the waiver of the installation fee:

1. The new cabinet order must be placed in the CoLo Console[5] during the designated period; and

2. The new cabinet must be live within 90 days of the date of the order.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed fee waiver is reasonable because it provides an opportunity for all new customers and all existing customer [sic] that desire additional cabinet space to obtain that space without incurring fees. This decrease in fees provided a savings of over $100,000 to customers that took advantage of the fee waiver during the month of June. In addition, the Exchange believes that the fee waiver results in an equitable allocation of fees among the members of the Exchange. Specifically, the Exchange believes that by encouraging new and existing co-location customers to increase their presence in the Exchange's data center, the Exchange will generate additional

[3] *See* Securities Exchange Act Release No. 64629 (June 8, 2011) (SR–Phlx–2011–77).

[4] The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

[5] The ''CoLo Console'' is a Web-based ordering tool that is utilized by Phlx to place co-location orders.

[6] Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the ''live date''). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

order execution and data consumption activity. If it materializes, such an increase in activity would assist the Exchange in controlling the charges it imposes on members generally for their use of a variety of Exchange services. The waiver of fees is also equitably allocated since all existing and potential co-location customers may avail themselves of the waiver during the period of availability. Notably, during June 2011, the preponderance of customers availing themselves of the waiver were existing, rather than new customers, demonstrating the benefit of the program to a variety of members. Finally, extending the program for a month will ensure that several customers that have expressed an interest in expanding their data center presence but that have not yet been able to do so will have the opportunity to benefit from the waiver.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–Phlx–2011–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–97. 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 will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2011–97 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17683 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64841; File No. SR–FINRA–2011–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Revolving Door Restrictions on Former Officers of FINRA

July 8, 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 July 1, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend (i) FINRA Rule 9141 (Appearance and Practice; Notice of Appearance) to prohibit a former officer of FINRA, for a period of one year after termination of employment with FINRA, from making an appearance before an adjudicator on behalf of any other person under the FINRA Rule 9000 Series; and (ii) FINRA Rule 9242 (Pre-hearing Submission) to prohibit a former officer of FINRA, for a period of one year after termination of employment with FINRA, from providing expert testimony on behalf of any other person under the FINRA Rule 9000 Series.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA seeks to diligently uphold a high degree of fairness in disciplinary and similar proceedings that take place before FINRA hearing panels and other FINRA adjudicators. To further this goal, FINRA is amending two procedural rules that will prevent former FINRA officers—for one year—from appearing on behalf of a client before a FINRA adjudicator or testifying as an expert witness in a FINRA forum.

The FINRA Rule 9000 Series is FINRA's Code of Procedure (the ''Code'') and provides detailed procedures for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings. FINRA is imposing a temporal forum appearance prohibition under the Code on FINRA officers that restricts former officers from acting in two different capacities in a FINRA forum (''Revolving Door Restrictions''). The proposed rule change maintains the perception of fairness and safeguards against former FINRA officers potentially exerting undue influence in FINRA proceedings. Although FINRA is not aware of any instances of former officers exerting undue influence in FINRA's disciplinary and similar forums, FINRA seeks to prevent such an incident by implementing the Revolving Door Restrictions under the Code.

First, the proposed rule change addresses a former officer appearing as a lawyer in FINRA's forum. FINRA Rule 9141 governs, among other things, the appearance and practice of lawyers before an adjudicator under the Code.[5] The proposed rule change amends FINRA Rule 9141 to prohibit a former FINRA officer, for a period of one year after termination of employment with FINRA, from making an appearance before an adjudicator on behalf of any other person under the FINRA Rule 9000 Series. The proposed rule change accordingly restricts former FINRA officers who are attorneys from appearing on behalf of clients before Hearing Officers, Hearing Panels, the National Adjudicatory Council, and the FINRA Board of Governors.[6] While the most common impact of the proposed rule change will be to prohibit a former FINRA officer from appearing on behalf of a respondent, the prohibition also applies to a former FINRA officer appearing on behalf of a witness who is not a respondent but is testifying before a Hearing Panel, Hearing Officer, or other adjudicator.

Second, the Revolving Door Restrictions amend FINRA Rule 9242 to prohibit a former officer of FINRA, for a period of one year after termination of employment with FINRA, from providing expert testimony on behalf of a respondent under the FINRA Rule 9000 Series. The proposed rule change makes clear, however, that nothing in the rule prohibits a former officer of FINRA from testifying as either a fact witness or as an expert witness on behalf of FINRA.

The Revolving Door Restrictions are designed to provide clear boundaries that limit specific activities of former FINRA officers in a manner that is consistent with restrictions currently imposed on other regulators in the securities industry.[7] One aspect of the restrictions focuses on a former FINRA officer's appearance before a FINRA adjudicator because that event is recorded in a written notice that is currently required under the Code.[8] Moreover, once a matter is pending before an adjudicator, both the prohibitions on appearing before an adjudicator and testifying as an expert witness can be enforced quickly in the context of a pending FINRA proceeding either directly by the adjudicator or through a motion to disqualify the former FINRA officer, which is filed with the adjudicator.[9] In sum, the proposed rule change is designed to create restrictions that are precisely defined and straightforward to enforce.

Although FINRA's proposed rule change will serve as one safeguard against unfairness in its proceedings, it is not the only safeguard. Former FINRA employees, whether officers or not, who are attorneys that seek to represent a client in a FINRA proceeding must, as noted earlier, be licensed to practice law before the highest court of any state.[10] The vast majority of state jurisdictions have adopted rules of professional conduct that are based on the American Bar Association's Model Rules of Professional Conduct.[11] Model Rule 1.9(a) addresses a lawyer's conflict of interest regarding a former client and prohibits a lawyer who has represented a client in a matter from subsequently representing any other person in that matter or a substantially related matter when that person's interests are materially adverse to the interests of the former client.[12] For example, in a FINRA disciplinary case, this means that FINRA Department of Enforcement attorneys who have litigated for FINRA and have ended their FINRA employment may not subsequently represent any respondent in appeals in that case, any other continuing litigation in that case, or a substantially related matter in which the respondent's interests are materially adverse to FINRA's interests.[13] By augmenting the protections imposed by state bar ethical rules with the Revolving Door Restrictions, FINRA believes that it will further insulate its proceedings from the appearance of any undue influence.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 2, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which

[5] *See* FINRA Rule 9141(b) (requiring attorneys that seek to represent a party in a FINRA proceeding to be licensed to practice law before the highest court of any state).

[6] FINRA Rule 9120(a) defines the term ''Adjudicator.'' For purposes of the proposed rule change, ''adjudicator'' includes the FINRA Board of Governors, when it is calling a case for review, *see* FINRA Rule 9351, a Subcommittee, Review Subcommittee or Extended Proceeding Committee of the National Adjudicatory Council, *see* FINRA Rule 9331 and FINRA Regulation By-Law Article V, Sec. 5.13, a Hearing Officer, *see* FINRA Rule 9120(r), a Hearing Panel, *see* FINRA Rule 9120(s), a Hearing Panel in an eligibility proceeding or the Statutory Disqualification Committee, *see* FINRA Rule 9524(a)(1) and (10), and the Waiver Subcommittee, *see* FINRA Rule 9630.

[7] FINRA officers include Vice Presidents, Senior Vice Presidents, and higher ranking FINRA executives.

[8] *See* FINRA Rule 9141(b).

[9] FINRA Rule 9150 authorizes an adjudicator to exclude an attorney from acting as counsel in FINRA disciplinary and similar proceedings.

[10] *See* FINRA Rule 9141(b).

[11] Richard Acello, *New York Makes Itself a 'Model' State: California Now the Only Holdout on Adopting ABA Model Rules,* 95 ABA J., Sept. 2009, at 22.

[12] The ABA Model Rules of Professional Conduct (2010), available at *http://www.americanbar.org.*

[13] A conflict of interest may be waived by a former client who gives informed consent. Model Rule 1.9(a) and comment 9 (2010). FINRA, as the former client with the option to waive, does not anticipate waiving any such conflicts.

[14] 15 U.S.C. 78*o*–3(b)(6).

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will maintain the perception of fairness in its disciplinary and similar proceedings and will safeguard against former FINRA officers potentially exerting undue influence in FINRA proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f)(3) of Rule 19b–4 thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–FINRA–2011–032 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–FINRA–2011–032. 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 will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2011–032 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17682 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(3).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64844; File No. SR–NYSEAmex–2011–34]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending NYSE Amex Equities Rule 70.40(3) To Permit Member Organizations To Engage in Proprietary Trading From Their Approved Booth Premises in Certain OTC Bulletin Board and OTC Markets Securities

July 8, 2011.

I. Introduction

On May 11, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Amex Equities Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTC Bulletin Board (''OTCBB'') and OTC Markets securities. The proposed rule change was published for comment in the **Federal Register** on May 25, 2011.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

NYSE Amex proposes to amend NYSE Amex Equities Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTCBB and OTC Markets securities.[4]

In June 2007, the New York Stock Exchange LLC adopted NYSE Rule 70.40, which permits a member organization to operate its booth premises on the NYSE Floor in a manner similar to its ''upstairs'' office, thereby allowing member organizations to access other markets and trade a wider array of products from their booth premises and thus operate more efficiently and competitively.[5] At the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64521 (May 19, 2011); 76 FR 30415 (''Notice'').

[4] The Exchange's affiliate, New York Stock Exchange LLC (''NYSE''), has proposed to adopt the same rule. *See* SR–NYSE–2011–22.

[5] *See* Securities Exchange Act Release 55908 (June 14, 2007), 72 FR 34056 (June 20, 2007) (SR–NYSE–2007–51) (notice of filing and immediate effectiveness of proposed rule change permitting member organizations to operate their booth

Continued

time that NYSE Rule 70.40 was adopted, it included certain conditions and limitations on such trading, including that only trading on behalf of customers would be permitted. In October 2008, the Exchange adopted NYSE Amex Equities Rule 70.40, which is identical to NYSE Rule 70.40.[6] As such, NYSE Rule Amex Equities 70.40(3) prohibits member organizations approved to operate booth premises pursuant to such Rule from effecting any transaction from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion on the Exchange.

After more than two years of experience with NYSE Amex Equities Rule 70.40, member organizations have requested that certain types of proprietary trading be permitted under the Rule, and the Exchange has determined that it is appropriate to do so. Therefore, the Exchange proposes to revise NYSE Amex Equities Rule 70.40(3) to permit member organizations to effect transactions in the common, preferred, and debt securities of an operating company that is quoted on the OTC Bulletin Board or OTC Markets (an ''OTC Security'') from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion, except that such member organizations could not effect such transactions in an OTC Security that is related to a security listed or traded on the Exchange or NYSE.[7] Because trading would be limited to the common, preferred, and debt securities of an operating company, a member organization could not trade in an index-based or derivative security (*e.g.,* a right or warrant) that is quoted on the OTCBB or OTC Markets.

Under the proposed rule change, an OTC Security would be considered related to a security listed or traded on the Exchange or NYSE[8] if:

(a) The OTC Security is issued by an issuer of a security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option, or an affiliate of such issuer;

(b) The OTC Security is subject to a corporate action that relates to the issuer of a security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option, or an affiliate of such issuer;

(c) The OTC Security is issued by an issuer of a security that is a component of a narrow-based security index[9] that is linked to a security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option; or

(d) The OTC Security is issued by a foreign issuer or is a depositary receipt (or the equivalent thereof) for such a security, and a security issued by such foreign issuer or a depositary receipt (or the equivalent thereof) for such a security is listed or traded on the Exchange or NYSE or underlies an NYSE Amex option.

Under the proposed rule, a corporate action would be any action by an issuer of an OTC Security or a security listed or traded on the Exchange or NYSE that causes a relationship between the price of the OTC Security and the price of the security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option, such as the announcement of a merger, acquisition, joint venture, spinoff, dissolution, bankruptcy filing or other similar type of event involving the issuers.

The proposed proprietary transactions in OTC Securities would remain subject to all of the other provisions of NYSE Amex Equities Rule 70.40. First, a member organization would have to obtain approval from NYSE Regulation, Inc. (''NYSER'') to engage in proprietary OTC Securities trading from booth premises.[10] Second, all such transactions would be subject to the regulatory requirements that apply to ''upstairs'' trading, including registration requirements and audit trail requirements applicable to those markets and supervision requirements under NYSE Amex Equities Rule 342.[11] Finally, a member organization would be required to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities; such procedures must be reasonably designed to ensure that the member organization would be trading in compliance with the requirements of NYSE Amex Equities Rule 70.40, including that it is not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE. A member organization would be required to obtain NYSER approval of such written procedures before such trading commences.[12] A member organization would be required to regularly review such procedures and compliance therewith, and obtain approval from NYSER of any subsequent changes to such procedures.[13]

At a minimum, such written procedures must require the member organization to exercise due diligence before commencing trading in an OTC Security from the booth premises pursuant to this Rule to ensure that such trading is in compliance with the requirements of this Rule and that the member organization has procedures to monitor its trading activity in order to remain in compliance. A member organization must have supervisory systems in place that produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to which the member organization is trading from the booth premises under this Rule. The member organization must be able to demonstrate which OTC Security transactions were effected from the booth premises (as compared to off-Floor trading, if applicable). If the member organization could not demonstrate which trading is from the booth premises, the Exchange would presume that all such trading was effected from the booth premises.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In

premises as an upstairs office). Under NYSE Amex Equities Rule 70.40, only Floor Brokers may conduct activity from booth premises.

[6] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (Order Granting Approval of Proposed Rule Change To Establish New Membership, Member Firm Conduct, and Equity Trading Rules Following the Exchange's Acquisition by NYSE Euronext). Under NYSE Amex Equities Rule 70.40, only Floor Brokers may conduct activity from booth premises.

[7] Since the merger of NYSE and NYSE Amex in 2008, the exchanges have conducted equity trading from the same Trading Floor, and NYSE Amex has conducted options trading in rooms adjacent the Trading Floor. *See* Securities Exchange Act Release No. 58673 (September 29, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60), 73 FR 57707 (October 3, 2008), and NYSE Rule 6A.

[8] Securities listed on The NASDAQ Stock Market are traded on NYSE Amex pursuant to unlisted trading privileges and thus would be considered a security traded on NYSE Amex under the proposed rule change. *See* Rules 500–525—NYSE Amex Equities.

[9] For purposes of the proposed rule, the definition of narrow-based security index would be the same as the definition in Section 3(a)(55) of the Securities Exchange Act of 1934 (the ''Act'').

[10] NYSE Amex Equities Rule 70.40(1).

[11] NYSE Amex Equities Rule 70.40(4) and (5).

[12] If a member organization had already obtained approval to operate booth premises under NYSE Amex Equities Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSER approval under NYSE Amex Equities Rule 70.40(7).

[13] NYSE Amex Equities Rule 70.40(6) and (7).

[14] 15 U.S.C. 78f.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change will enable member organizations to expand the types of activities that can be conducted from booth premises to include transactions in certain OTCBB and OTC Markets securities for the member organization's own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion. At the same time, the proposal excludes such transactions in an OTC Security that is related to a security listed or traded on the Exchange or on NYSE. In addition, the Commission notes that the proposed proprietary transactions in OTC Securities would remain subject to the registration, audit trail, and supervision requirements of NYSE Amex Equities Rule 70.40.[17] This includes the requirement to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities. These procedures must be reasonably designed to ensure that member organizations are not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE.[18]

The primary reason for the earlier restriction on proprietary trading by Floor Brokers was concern that the Floor Broker's knowledge of events on the floor and the state of the market would provide him with an unfair advantage over off-floor market participants. However, in light of the proposed rule's restriction on trading OTC Securities that are related to a security listed or traded on the Exchange or NYSE, the Commission believes that the opportunities for members to trade on non-public information will be appropriately minimized or eliminated.

In addition to written procedures, the member organization must have a supervisory system in place to produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to trading from booth premises and must be able to demonstrate which OTC Security transactions were effected from the booth premises. Furthermore, as noted above, to the extent that a member organization has already obtained approval to operate booth premises under NYSE Amex Equities Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSER approval under NYSE Amex Equities Rule 70.40(7).[19]

In light of the foregoing requirements, which provide for appropriate limitations on and oversight of proprietary trading by Exchange members from their approved booth premises adjacent to the floor, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSEAmex–2011–34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17690 Filed 7–13–11; 8:45 am]

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[16] 15 U.S.C. 78f(b)(5).

[17] *See* Notice, *supra* note 3.

[18] *See id.*

[19] *See* Notice. *See also supra* note 12.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64846; File No. SR–BYX–2011–013]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

July 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2011, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective July 1, 2011, in order to: (i) Decrease the standard rebate to remove liquidity from the Exchange; (ii) modify the tiered pricing structure applicable to adding displayed liquidity to the Exchange's order book; (iii) adopt a fee for non-displayed orders that add liquidity to the Exchange and receive price improvement when executed; (iv) increase the standard routing fee for the CYCLE, RECYCLE, Parallel D and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

Parallel 2D routing strategies;[6] and (v) make other modifications to certain other non-standard routing options and strategies.

(i) Decrease to Standard Rebate for Removing Liquidity

The Exchange proposes to reduce the rebate that it provides for orders that remove liquidity from the Exchange from $0.0003 per share to $0.0002 per share. Consistent with the current rebate to remove liquidity, the rebate per share for executions that remove liquidity from the Exchange will not apply to executions that remove liquidity in securities priced under $1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under $1.00 per share.

(ii) Changes to Tiered Fee Structure for Adding Liquidity

The Exchange currently maintains a tiered pricing structure for adding displayed liquidity in securities priced $1.00 and above that allows Members to add liquidity free of charge to the extent such liquidity sets the national best bid or offer (the ''NBBO Setter Program''). The NBBO Setter Program is applicable to a Member's orders so long as the Member submitting the order achieves the applicable average daily volume (''ADV'') requirement of at least 0.1% of the total consolidated volume (''TCV'') during the month. All other executions resulting from liquidity added by a Member are subject to a fee of $0.0002 per share. The Exchange proposes to increase this standard fee to add liquidity from $0.0002 per share to $0.0003 per share and to adopt a fee to add liquidity under the NBBO Setter Program. Specifically, the Exchange proposes to charge $0.0002 per share for Member executions under the NBBO Setter Program, which will continue to be available for Members with an ADV of at least 0.1% of TCV during the month. The Exchange does not propose to modify either the volume level required to meet the NBBO Setter Program or its existing definitions of ADV or TCV in connection with this change.

(iii) Fee for Non-Displayed Price Improved Orders

As defined on the Exchange's current fee schedule, ''non-displayed liquidity'' includes liquidity resulting from all forms of Pegged Orders,[7] Mid-Point Peg Orders,[8] and Non-Displayed Orders,[9] but does not include liquidity resulting from Reserve Orders [10] or Discretionary Orders.[11] The Exchange currently charges $0.0010 per share for non-displayed orders that add liquidity to and are executed on the Exchange. The Exchange recently received approval of a rule to allow non-displayed orders that are not executable at their most aggressive price to be executed at one-half minimum price variation less aggressive than that price.[12] Accordingly, such non-displayed orders will receive price improvement upon execution. Because such orders will receive price improvement, the Exchange proposes to execute the orders subject to a fee of $0.0030 per share. The Exchange believes that price improvement received for executions of non-displayed orders will offset the additional fee charged by the Exchange for such orders.

(iv) Increase to Fee for Standard Best Execution Routing Strategies

The Exchange proposes to modify the fee charged by the Exchange for its CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies from $0.0026 per share to $0.0028 per share. To be consistent with this change, the Exchange proposes to charge 0.28%, rather than 0.26%, of the total dollar value of the execution for any security priced under $1.00 per share that is routed away from the Exchange through these strategies.

(v) Other Modifications to Non-Standard Routing Rates

Various market centers, including the Exchange's affiliate, BATS Exchange, Inc. (''BZX''), are implementing certain pricing changes effective July 1, 2011. The Exchange proposes various changes to its routing strategies in connection with such changes so that fees charged and rebates provided reflect a direct pass-through of the fee charged or rebate received when routing directly to such market centers. For instance, the Exchange's affiliate, BZX, is increasing the fee charged for shares removed from BZX from $0.0028 per share to $0.0029 per share. Accordingly, the Exchange proposes to modify its Destination Specific Order [13] to BZX, as well as its TRIM [14] and SLIM [15] routing strategies with respect to any executions at BZX, to charge a fee of $0.0029 per share. The Exchange also proposes to modify its TRIM routing strategy to reflect the exact rate paid or assessed for executions at NASDAQ BX and EDGA Exchange, respectively. The Exchange currently identifies both of these venues as ''low priced venues'' and the Exchange does not charge or rebate its Members for orders routed to and executed by such venues. As proposed, the Exchange will pass on rebates that are paid by these venues in full. Specifically, the Exchange proposes to rebate $0.0014 per share for TRIM routed orders executed at NASDAQ BX, as this is the same rate paid by NASDAQ BX and is thus a direct pass-through. Similarly, the Exchange proposes to rebate $0.00015 per share for TRIM routed orders executed at EDGA Exchange, as this is, again, a direct pass-through of the rebate provided by EDGA Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[16] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also allowing the Exchange to continue to offer incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange, add liquidity to the Exchange and/or route orders through the Exchange's standard routing strategies will be paying higher fees or receiving lower rebates due to the proposal, the increased revenue received by the

[6] As defined in BYX Rule 11.13.

[7] As defined in BYX Rule 11.9(c)(8).

[8] As defined in BYX Rule 11.9(c)(9).

[9] As defined in BYX Rule 11.9(c)(11).

[10] As defined in BYX Rule 11.9(c)(1).

[11] As defined in BYX Rule 11.9(c)(10).

[12] *See* Securities Exchange Act Release No. 64753 (June 27, 2011) (SR–BYX–2011–009).

[13] As defined in BYX Rule 11.9(c)(12).

[14] As defined in BYX Rule 11.13(a)(3)(G).

[15] As defined in BYX Rule 11.13(a)(3)(H).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

Exchange will be used to continue to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange.

The Exchange believes that basing its tiered rebate structure on overall TCV, rather than a static number irrespective of overall volume in the securities industry, is a fair and equitable approach to pricing. Volume-based tiers such as the liquidity rebate tiers offered by the Exchange have been widely adopted in the equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality.

Despite the decrease in rebate for all Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard rebate to remove liquidity still remains higher than standard rebates paid by at least one other market center with a similar fee structure, EDGA Exchange ($0.00015 per share).

Also, the Exchange's proposed NBBO Setter liquidity adding fee of $0.0002 per share and standard displayed liquidity adding fee of $0.0003 per share still remain approximately the same as one other market center that imposes a fee to add liquidity, EDGA Exchange ($0.00025 charge per share). The Exchange's proposed fees for adding liquidity are also significantly lower than the standard liquidity adding fees of NASDAQ OMX BX ($0.0018 charge per share). Additionally, the Exchange believes that the NBBO Setter Program will continue to incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. To the extent the proposed changes will result in increased fees charged to Members, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange.

The Exchange believes that the additional fee for executions of non-displayed orders that receive price improvement is appropriate because the price improvement received will offset the change in the fee structure for such orders. The Exchange does not want to overly incentivize hidden liquidity, as this would be contrary to the goals of this proposal. Finally, the Exchange believes that the proposed changes to the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are designed to mirror the cost and/or rebate applicable to the execution if such routed orders were executed directly by the Member at each away market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [18] and Rule 19b–4(f)(2) thereunder,[19] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–BYX–2011–013 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–BYX–2011–013. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2011–013 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17692 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64848; File No. SR–EDGX–2011–19]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

July 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2011, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

Currently, Members can qualify for the Mega Tier Rebate and be provided a rebate of $0.0034 per share for all liquidity posted on EDGX if they add or route at least 4,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (including all flags except 6) *And* add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. The Exchange proposes to amend the second prong of this criteria for achieving a $0.0034 per share rebate to indicate that Members will qualify for such rebate if they add a minimum of 20,000,000 shares (instead of 38,000,000 shares) of average daily volume on EDGX in total including during both market hours and pre- and post-trading hours.

Members can also currently qualify for the Mega Tier and be provided a rebate of $0.0032 per share for liquidity added on EDGX in either of two ways: (i) If the Member, on a daily basis, measured monthly, posts 0.75% of the Total Consolidated Volume (''TCV'') [4] in average daily volume; or (ii) if the Member, on a daily basis, measured monthly, posts 10,000,000 shares more than their February 2011 average daily volume added to EDGX. The Exchange proposes to amend the Mega Tier criteria in (ii), above, for achieving a $0.0032 rebate to indicate that Members will qualify for such rebate if, on a daily basis, measured monthly, they post 0.12% of the TCV in average daily volume more than their February 2011 average daily volume added to EDGX. This latter criteria in (ii) is designed to reward a Member's growth pattern in providing liquidity beyond a designated baseline (Feb. 2011 average daily volume added to EDGX).

Finally, the Exchange proposes to provide an additional rebate of $0.0029 per share for Members who post 0.065% of TCV in average daily volume more than their February 2011 average daily volume added to EDGX, unless they otherwise qualify for a higher rebate. This criteria is also designed to reward a Member's growth pattern in providing liquidity beyond a designated baseline (Feb. 2011 average daily volume added to EDGX).

[4] TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on July 1, 2011.

Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Exchange Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange also believes that proposing an additional rebate of $0.0029 per share represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates are correlated with Member's liquidity provision and/or meeting growth criteria beyond a designated baseline, as described above. The new rebate offers a new, flexible way for Members to achieve a higher rebate than the standard rebate of $0.0023 per share. The Exchange believes that the proposed rebate is non-discriminatory in that it applies uniformly to all Members.

The Mega Tier rebate of $0.0034/$0.0032 per share has both strict liquidity provision and/or growth criteria associated with it, and is $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0004/$0.0002 greater than the Super Tier rebate ($0.0030 per share) and is $0.0005/$0.0003 per share greater than the new rebate proposed of $0.0029 per share.

For example, and as proposed in this filing, based on average TCV for May 2011 (7.0 billion), in order for a Member to qualify for the Mega Tier rebate of $0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre- and post-trading hours and add a minimum of 20,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. The criteria for this qualification is the most stringent of the liquidity provision criteria amongst the tiers as fewer Members generally trade during pre- and post-trading hours because of the limited time parameters associated with these trading sessions. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions. Such increased volume increases potential revenue to the Exchange, and would allow the

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

Another way a Member can qualify for the Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Based on average TCV for May 2011 (7.0 billion), this would be 52.5 million shares on EDGX. A second method, as proposed in this filing, to qualify for the rebate of $0.0032 per share would be to post 0.12% of the TCV in average daily volume more than the Member's February 2011 average daily volume added to EDGX. As mentioned above, this criteria is designed to reward growth by a Member beyond a designated baseline (Feb. 2011 average daily volume added to EDGX). Assuming the Member's February 2011 average daily volume added to EDGX was 0 shares, this would amount to an additional 8.4 million shares. The Exchange believes that requiring Members to post 0.12% of the TCV in average daily volume more than a February 2011 average daily baseline volume offers an additional, flexible way to achieve the Mega Tier rebate and encourages Members to add increasing amounts of liquidity to EDGX each month, and thereby rewards a Member's growth patterns. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

In order to qualify for the Ultra Tier, which has less stringent criteria than the analogous liquidity provision criteria of the Mega Tier, the Member would have to post 0.50% of TCV. Based on average TCV for May 2011 (7.0 billion shares), this would be 35 million shares on EDGX.

Finally, the Super Tier has the least stringent criteria of the analogous tiers that only reward liquidity provision. In order for a Member to qualify for this rebate, the Member would have to post at least 10 million shares of average daily volume to EDGX. As stated above, these rebates also result, in part, from lower administrative and other costs associated with higher volume.

Finally, the Exchange also believes that adding criteria that allows Members to qualify for a $0.0029 per share rebate if they add an average of 0.065% of the TCV in average daily volume more than their February 2011 average daily volume added to EDGX, provided they don't qualify for a higher rebate, allows Members even greater flexibility with respect to achieving an additional rebate and rewards growth patterns in volume by Members as this rebate's conditions encourage Members to add increasing amounts of liquidity to EDGX each month. Based on an average daily volume in February 2011 of 0 shares, the Member would have to add 4.5 million shares to qualify for such rebate. This rebate also result, in part, from lower administrative and other costs associated with higher volume.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. 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–EDGX–2011–19 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–EDGX–2011–19. This file

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

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 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–EDGX–2011–19 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17694 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64847; File No. SR–BATS–2011–019]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

July 8, 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 July 1, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In addition to minor structural changes, the Exchange proposes to modify the fee schedule to: (i) Increase the standard fee to access the Exchange; (ii) introduce a tiered pricing structure applicable to the rebate for adding displayed liquidity to the Exchange's order book, including the adoption of definitions relating to such pricing structure; (iii) adopt a program, the ''NBBO Setter Program,'' which will provide an additional rebate specifically for orders that set the national best bid or offer (the ''NBBO''), subject to average daily volume requirements; (iv) reduce the rebate for adding non-displayed liquidity to the Exchange's order book; (v) discontinue payment of a liquidity rebate for non-displayed orders that add liquidity to the Exchange and receive price improvement when executed; (vi) increase the standard routing fee for the CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies;[6] and (vii) make other modifications to certain other non-standard routing options and strategies.

(i) Increase to Standard Access Fee

The Exchange currently charges $0.0028 per share for all orders executed on the Exchange that remove liquidity from the Exchange. The Exchange proposes to increase the standard fee to remove liquidity from the Exchange to $0.0029 per share. Consistent with the current fee to remove liquidity, the charge per share for executions that remove liquidity from the Exchange will not apply to executions that remove liquidity in securities priced under $1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for the rebate for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under $1.00 per share.

(ii) Tiered Rebate Structure

The Exchange currently rebates $0.0027 per share for orders that add displayed liquidity to the Exchange's order book and are executed by the Exchange. The Exchange proposes to decrease the standard rebate for adding displayed liquidity to $0.0025 per share and to simultaneously adopt two volume-based tiers through which Members can realize higher rebates for adding displayed liquidity, as further described below.

First, the Exchange proposes to provide a rebate of $0.0029 per share for orders that add displayed liquidity to the Exchange's order book for any Member that has an average daily volume (''ADV''), as defined below, equal to or greater than 1.0% of total consolidated volume (''TCV''), also as defined below. Accordingly, the proposal will result in an increased rebate of $0.0002 for Members with an ADV of 1.0% of TCV or more.

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BATS Rule 11.13.

Second, the Exchange proposes to provide a rebate of $0.0027 per share for orders that add displayed liquidity to the Exchange's order book where the Member has an ADV equal to or greater than 0.5% but less than 1.0% of average TCV. Thus, Members qualifying for the second tier will receive the same rebate for adding displayed liquidity as they do today.

In addition, the Exchange proposes to adopt definitions for both ADV and TCV. For purposes of the fee schedule, the proposed definition of ADV is average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis. The Exchange proposes to make clear in the definition of ADV that routed shares are not included in the Exchange's calculation of ADV, but rather, only volume executed on the Exchange counts towards a Member's ADV. The Exchange also proposes to allow affiliated entities to aggregate their order flow for purposes of the Exchange's determination of ADV with respect to pricing tiers if such entities provide prior notice to the Exchange. Specifically, to the extent two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. The Exchange will verify such affiliate using a Member's Form BD, which lists control affiliates.

Rather than basing its pricing structure on a static number of shares executed by a Member each day, the Exchange proposes to adopt its tiered pricing structure such that it is based on total consolidated volume, or TCV, and is thus variable based on overall volumes in the securities industry. As proposed, TCV is defined as total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. To illustrate the Exchange's application of TCV, if the overall volume of securities traded as reported by all exchanges and trade reporting facilities is 100 billion shares in a given month, this amount will be used as the TCV against which the Exchange's tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 100 billion shares divided by 20 trading days is an average TCV of 5 billion shares per day. Using these volumes as an example, to reach the Exchange's proposed tier of 1.0% of average TCV, and thus qualify for the higher rebate of $0.0029 per share, a Member would need to have an ADV of at least 50 million shares traded on the Exchange per day. If, in the next month, volumes doubled, and the TCV for the month was 200 billion shares, then a Member would need to have an ADV of at least 100 million shares traded on the Exchange per day to have an ADV equal to 1.0% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of shares is a preferable measure of overall activity given the fluctuation of volumes in the securities industry.

In conjunction with the adoption of these definitions, the Exchange proposes to move, but not to otherwise modify, the footnote on the Exchange's current fee schedule defining ''non-displayed order types'' as well as footnotes in the portion of the Exchange's fee schedule applicable to BATS Options (as defined below) and physical connection charges.

(iii) NBBO Setter Program

Consistent with programs offered by the Exchange for its equity options platform (''BATS Options'')[7] and by the Exchange's affiliated exchange, BATS Y-Exchange, Inc. (''BYX''),[8] the Exchange proposes to adopt a program to attract aggressively priced displayed liquidity by providing an additional rebate for orders that set the NBBO to Members that reach either of the volume-based rebate tiers described above. Specifically, the Exchange proposes to provide any Member with an ADV equal to or greater than 0.5% of TCV with an additional rebate of $0.0002 per share for displayed liquidity that sets the NBBO and is later executed on the Exchange.

An order that is entered at the most aggressive price both on the Exchange's order book and according to then current consolidated data from the applicable securities industry processor (''SIP'') will be determined to have set the national best bid or offer for purposes of the NBBO Setter Program without regard to whether a more aggressive order is entered prior to the original order being executed.

(iv) Reduction of Rebate for Non-Displayed Orders

As defined on the Exchange's current fee schedule, ''non-displayed liquidity'' includes liquidity resulting from all forms of Pegged Orders,[9] Mid-Point Peg Orders,[10] and Non-Displayed Orders,[11] but does not include liquidity resulting from Reserve Orders[12] or Discretionary Orders.[13] The Exchange currently provides a rebate of $0.0020 per share for non-displayed orders executed on the Exchange. Consistent with other aspects of this proposal that are intended to incent aggressively priced, displayed liquidity, the Exchange proposes to reduce the rebate that it provides for non-displayed orders to $0.0017 per share.

(v) Discontinued Rebate for Non-Displayed Price Improved Orders

As noted above, the Exchange currently provides a liquidity rebate of $0.0020 per share for all non-displayed orders that add liquidity to the Exchange's order book and are executed by the Exchange. The Exchange recently received approval of a rule to allow non-displayed orders that are not executable at their most aggressive price to be executed at one-half minimum price variation less aggressive than that price.[14] Accordingly, such non-displayed orders will receive price improvement upon execution. Because such orders will receive price improvement, the Exchange proposes to execute the orders without providing either a liquidity rebate or charging a fee. The Exchange believes that price improvement received for executions of non-displayed orders (rather than price improvement and a liquidity rebate) is appropriate because the price improvement received will offset the change in the fee structure for such orders.

(vi) Increase to Fee for Standard Best Execution Routing Strategies

The Exchange proposes to modify the fee charged by the Exchange for its CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies from $0.0028 per share to $0.0029 per share. To be consistent with this change, the Exchange proposes to charge 0.29%, rather than 0.28%, of the total dollar

[7] *See* Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR–BATS–2010–038) (adopting an NBBO Setter Rebate for BATS Options); *see also* Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2011) (SR–BATS–2011–012) (modifying the NBBO Setter Program for BATS Options to include a volume requirement based on TCV).

[8] *See* Securities Exchange Act Release No. 64429 (May 6, 2011), 76 FR 27694 (May 12, 2011) (SR–BYX–2011–008) (adopting an NBBO Setter Rebate for BYX).

[9] As defined in BATS Rule 11.9(c)(8).

[10] As defined in BATS Rule 11.9(c)(9).

[11] As defined in BATS Rule 11.9(c)(11).

[12] As defined in BATS Rule 11.9(c)(1).

[13] As defined in BATS Rule 11.9(c)(10).

[14] *See* Securities Exchange Act Release No. 64754 (June 27, 2011) (SR–BATS–2011–015).

value of the execution for any security priced under $1.00 per share that is routed away from the Exchange through these strategies.

(vii) Other Modifications to Non-Standard Routing Rates

Various market centers, including the Exchange's affiliate, BYX, are implementing certain pricing changes effective July 1, 2011. The Exchange proposes various changes to its routing strategies in connection with such changes so that fees charged and rebates provided reflect a direct pass-through of the fee charged or rebate received when routing directly to such market centers. For instance, the Exchange's affiliate, BYX, is reducing the rebate paid for shares removed from BYX from $0.0003 per share to $0.0002 per share. Accordingly, the Exchange proposes to modify its Destination Specific Order; [15] to BYX, as well as its TRIM [16] and SLIM [17] routing strategies with respect to any executions at BYX, to pay a rebate of $0.0002 per share. The Exchange also proposes to modify its TRIM routing strategy to reflect the exact rate paid or assessed for executions at NASDAQ BX and EDGA Exchange, respectively. The Exchange currently identifies both of these venues as ''low priced venues'' and the Exchange does not charge or rebate its Members for orders routed to and executed by such venues. As proposed, the Exchange will pass on rebates that are paid by these venues in full. Specifically, the Exchange proposes to rebate $0.0014 per share for TRIM routed orders executed at NASDAQ BX, as this is the same rate paid by NASDAQ BX and is thus a direct pass-through. Similarly, the Exchange proposes to rebate $0.00015 per share for TRIM routed orders executed at EDGA Exchange, as this is, again, a direct pass-through of the rebate provided by EDGA Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[18] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[19] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange and/or route orders through the Exchange's standard routing strategies will be paying higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access and routing fees will benefit Members' results in trading on the Exchange to the extent the tiered rebate structure adopted by the Exchange for adding liquidity and the adoption of the NBBO Setter Program incentivize liquidity providers to provide more aggressively priced liquidity.

The Exchange believes that basing its tiered rebate structure on overall TCV, rather than a static number irrespective of overall volume in the securities industry, is a fair and equitable approach to pricing. Volume-based tiers such as the liquidity rebate tiers proposed in this filing have been widely adopted in the equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality.

The proposed modification to the Exchange's rebate structure will have variable affects on Members of the Exchange, dependent on the volume of transaction activity they conduct on the Exchange. The Exchange notes that Members with current volumes meeting the ADV tier of 0.5% to 1.0% of TCV will not be impacted by any decrease in rebates. Further, Members with current volumes equal to or exceeding 1.0% of TCV will receive larger rebates than they currently receive. Despite the decrease in rebate for all other Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard rebate still remains higher than standard rebates paid by other markets with similar fee structures, such as NYSE Arca and Nasdaq.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

Additionally, the Exchange believes that the proposed NBBO Setter Rebate, similar to rebates now offered on BATS Options for six months and on the Exchange's affiliate, BYX, for two months, will incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. The Exchange further believes that conditioning a Member's ability to receive the NBBO Setter Rebate on reaching one of the Exchange's volume tiers is consistent with the Act for the reasons described above with respect to volume-based tiers generally.

The Exchange believes that the elimination of a rebate for executions of non-displayed orders that receive price improvement is appropriate because the

[15] As defined in BATS Rule 11.9(c)(12).

[16] As defined in BATS Rule 11.13(a)(3)(G).

[17] As defined in BATS Rule 11.13(a)(3)(H).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

price improvement received will offset the change in the fee structure for such orders. The Exchange believes that if it provided both a rebate and price improvement for such executions the Exchange would be overly incentivizing hidden liquidity, which is contrary to the goals of this proposal. Further, the Exchange believes that reducing the standard rebate for non-displayed liquidity is beneficial to market participants including public investors, as this change, too, allows the Exchange to provide additional incentives for displayed liquidity.

Finally, the Exchange believes that the proposed changes to the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are designed to mirror the cost and/or rebate applicable to the execution if such routed orders were executed directly by the Member at each away market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [20] and Rule 19b–4(f)(2) thereunder,[21] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2011–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–019. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2011–019 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17693 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 64845; File No. SR–Phlx–2011–90]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Board of Director Qualifications

July 8, 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 June 30, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange By-Law Article III, Section 3–2 regarding Board of Director qualifications.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange By-Law Article III, Section 3–2 to expand the qualifications for a director position so that the Exchange's Board of Directors is comprised of representatives of various interests. Specifically, the Exchange proposes to amend the current provision of Section 3–2, regarding issuer representative(s), to require at least one Director representative of issuers and investors, along with the requisite Public Directors,[5] Industry Directors[6] and Member Representative Directors.[7]

Currently, Article III, Section 3–2 provides: ''[T]he number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement.'' The Exchange recently adopted this provision to its By-Laws.[8]

The Exchange is now seeking to expand the requirement to have a Director representative of issuers and investors instead of the requirement to have at least one issuer representative (or if the Board consists of ten or more Directors at least two issuer representatives.[9] The Director representative of issuers and investors would be nominated by the Nominating Committee and elected by the sole shareholder, The NASDAQ OMX Group, Inc.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because the composition of the Exchange's Board of Directors fosters the protection of investors by insuring [sic] that they are represented on the Board.

The Exchange believes that the proposed Board composition satisfies Section 6(b)(3) of the Act,[13] in that one Director representative represents issuers and investors. The Board composition continues to provide for fair representation on the Exchange's board as required by Section 6(b)(3) of the Act[14] in that twenty percent of the Directors represent members and there is a process for selecting Member Representative Directors to the Board.[15] Finally, the Public Directors continue to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the Exchange's governance process and also bring a unique, unbiased prospective to the Board. The Exchange believes that this amendment continues to maintain the necessary board requirements which serve to protect the public interest and provide for fair representation of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2011–90. 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 will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–90 and should be submitted on or before August 4, 2011.

[5] *See* Exchange By-Law Article I(gg).

[6] *See* Exchange By-Law Article I(p).

[7] *See* Exchange By-Law Article I(w).

[8] *See* Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx–2011–13) (A rule change, among other things, to conform the Exchange By-Laws to the By-Laws of the NASDAQ Stock Market LLC).

[9] The Exchange believes that this qualification is more appropriate for the Exchange which does not have the expansive listings of the NASDAQ Stock Market LLC.

[10] *See* By-Law Article V, Section 5–3 and Article II, Section 2–1.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(3).

[14] 15 U.S.C. 78f(b)(3).

[15] *See* By-Law Article II.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17691 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64843; File No. SR–NYSE–2011–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending NYSE Rule 70.40(3) To Permit Member Organizations To Engage in Proprietary Trading from Their Approved Booth Premises in Certain OTC Bulletin Board and OTC Markets Securities

July 8, 2011.

I. Introduction

On May 11, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTC Bulletin Board (''OTCBB'') and OTC Markets securities. The proposed rule change was published for comment in the **Federal Register** on May 25, 2011.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

NYSE proposes to amend NYSE Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTCBB and OTC Markets securities.[4]

In June 2007, the Exchange adopted NYSE Rule 70.40, which permits a member organization to operate its booth premises on the Exchange Floor in a manner similar to its ''upstairs'' office, thereby allowing member organizations to access other markets and trade a wider array of products from their booth premises and thus operate more efficiently and competitively.[5] At the time that NYSE Rule 70.40 was adopted, it included certain conditions and limitations on such trading, including that only trading on behalf of customers would be permitted. As such, NYSE Rule 70.40(3) prohibits member organizations approved to operate booth premises pursuant to such Rule from effecting any transaction from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion on the Exchange.

After more than three years of experience with NYSE Rule 70.40, member organizations have requested that certain types of proprietary trading be permitted under the Rule, and the Exchange has determined that it is appropriate to do so. Therefore, the Exchange proposes to revise NYSE Rule 70.40(3) to permit member organizations to effect transactions in the common, preferred, and debt securities of an operating company that is quoted on the OTC Bulletin Board or OTC Markets (an ''OTC Security'') from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion, except that such member organizations could not effect such transactions in an OTC Security that is related to a security listed or traded on the Exchange or NYSE Amex.[6] Because trading would be limited to the common, preferred, and debt securities of an operating company, a member organization could not trade in an index-based or derivative security (*e.g.,* a right or warrant) that is quoted on the OTCBB or OTC Markets.

Under the proposed rule change, an OTC Security would be considered related to a security listed or traded on the Exchange or NYSE Amex[7] if:

(a) The OTC Security is issued by an issuer of a security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option, or an affiliate of such issuer;

(b) The OTC Security is subject to a corporate action that relates to the issuer of a security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option, or an affiliate of such issuer;

(c) The OTC Security is issued by an issuer of a security that is a component of a narrow-based security index[8] that is linked to a security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option; or

(d) The OTC Security is issued by a foreign issuer or is a depositary receipt (or the equivalent thereof) for such a security, and a security issued by such foreign issuer or a depositary receipt (or the equivalent thereof) for such a security is listed or traded on the Exchange or NYSE Amex or underlies an NYSE Amex option.

Under the proposed rule, a corporate action would be any action by an issuer of an OTC Security or a security listed or traded on the Exchange or NYSE Amex that causes a relationship between the price of the OTC Security and the price of the security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option, such as the announcement of a merger, acquisition, joint venture, spinoff, dissolution, bankruptcy filing or other similar type of event involving the issuers.

The proposed proprietary transactions in OTC Securities would remain subject to all of the other provisions of NYSE Rule 70.40. First, a member organization would have to obtain approval from NYSE Regulation, Inc. (''NYSER'') to engage in proprietary OTC Securities trading from booth premises.[9] Second, all such transactions would be subject to the regulatory requirements that apply to ''upstairs'' trading, including registration requirements and audit trail requirements applicable to those markets and supervision requirements under NYSE Rule 342.[10] Finally, a member organization would be required to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities; such

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64522 (May 19, 2011); 76 FR 30418 (''Notice'').

[4] The Exchange's affiliate, NYSE Amex LLC (''NYSE Amex''), has proposed to adopt the same rule. *See* SR–NYSEAmex–2011–34.

[5] *See* Securities Exchange Act Release 55908 (June 14, 2007), 72 FR 34056 (June 20, 2007) (SR–NYSE–2007–51) (notice of filing and immediate effectiveness of proposed rule change permitting member organizations to operate their booth premises as an upstairs office). Under NYSE Rule 70.40, only Floor Brokers may conduct activity from booth premises.

[6] Since the merger of NYSE and NYSE Amex in 2008, the exchanges have conducted equity trading from the same Trading Floor, and NYSE Amex has conducted options trading in rooms adjacent the Trading Floor. *See* Securities Exchange Act Release No. 58673 (September 29, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60), 73 FR 57707 (October 3, 2008), and NYSE Rule 6A.

[7] Securities listed on The NASDAQ Stock Market are traded on NYSE Amex pursuant to unlisted trading privileges and thus would be considered a security traded on NYSE Amex under the proposed rule change. *See* Rules 500–525–NYSE Amex Equities.

[8] For purposes of the proposed rule, the definition of narrow-based security index would be the same as the definition in Section 3(a)(55) of the Securities Exchange Act of 1934 (the ''Act'').

[9] NYSE Rule 70.40(1).

[10] NYSE Rule 70.40(4) and (5).

procedures must be reasonably designed to ensure that the member organization would be trading in compliance with the requirements of NYSE Rule 70.40, including that it is not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE Amex. A member organization would be required to obtain NYSER approval of such written procedures before such trading commences.[11] A member organization would be required to regularly review such procedures and compliance therewith, and obtain approval from NYSER of any subsequent changes to such procedures.[12]

At a minimum, such written procedures must require the member organization to exercise due diligence before commencing trading in an OTC Security from the booth premises pursuant to this Rule to ensure that such trading is in compliance with the requirements of this Rule and that the member organization has procedures to monitor its trading activity in order to remain in compliance. A member organization must have supervisory systems in place that produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to which the member organization is trading from the booth premises under this Rule. The member organization must be able to demonstrate which OTC Security transactions were effected from the booth premises (as compared to off-Floor trading, if applicable). If the member organization could not demonstrate which trading is from the booth premises, the Exchange would presume that all such trading was effected from the booth premises.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change will enable member organizations to expand the types of activities that can be conducted from booth premises to include transactions in certain OTCBB and OTC Markets securities for the member organization's own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion. At the same time, the proposal excludes such transactions in an OTC Security that is related to a security listed or traded on the Exchange or on NYSE Amex. In addition, the Commission notes that the proposed proprietary transactions in OTC Securities would remain subject to the registration, audit trail, and supervision requirements of NYSE Rule 70.40.[16] This includes the requirement to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities. These procedures must be reasonably designed to ensure that member organizations are not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE Amex.[17]

The primary reason for the earlier restriction on proprietary trading by Floor Brokers was concern that the Floor Broker's knowledge of events on the floor and the state of the market would provide him with an unfair advantage over off-floor market participants. However, in light of the proposed rule's restriction on trading OTC Securities that are related to a security listed or traded on the Exchange or NYSE Amex, the Commission believes that the opportunities for members to trade on non-public information will be appropriately minimized or eliminated.

In addition to written procedures, the member organization must have a supervisory system in place to produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to trading from booth premises and must be able to demonstrate which OTC Security transactions were effected from the booth premises. Furthermore, as noted above, to the extent that a member organization has already obtained approval to operate booth premises under NYSE Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSER approval under NYSE Rule 70.40(7).[18]

In light of the foregoing requirements, which provide for appropriate limitations on and oversight of proprietary trading by Exchange members from their approved booth premises adjacent to the floor, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSE–2011–22) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17689 Filed 7–13–11; 8:45 am]

BILLING CODE 8011–01–P

[11] If a member organization had already obtained approval to operate booth premises under NYSE Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSER approval under NYSE Rule 70.40(7).

[12] NYSE Rule 70.40(6) and (7).

[13] 15 U.S.C. 78f.

[14] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Notice, *supra* note 3.

[17] *See id.*

[18] *See* Notice. *See also supra* note 11.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12671 and #12672]

Minnesota Disaster #MN–00031

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Minnesota dated 07/07/2011.

Incident: Severe Storms and Tornadoes.

Incident Period: 05/21/2011 through 05/22/2011.

Effective Date: 07/07/2011.

Physical Loan Application Deadline Date: 09/06/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2012.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Hennepin.

Contiguous Counties:

Minnesota:

Anoka, Carver, Dakota, Ramsey, Scott, Sherburne, Wright.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12671 C and for economic injury is 12672 0.

The State which received an EIDL Declaration # is Minnesota.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

July 7, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–17726 Filed 7–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12615 and #12616]

Oklahoma Disaster Number OK–00050

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1989–DR), dated 06/06/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/22/2011 through 05/25/2011.

Effective Date: 07/06/2011.

Physical Loan Application Deadline Date: 08/05/2011.

EIDL Loan Application Deadline Date: 03/06/2012.

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 Presidential disaster declaration for the State of Oklahoma, dated 06/06/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Ottawa.

Contiguous Counties: (Economic Injury Loans Only):

Kansas: Cherokee.

Missouri: Newton.

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. 2011–17727 Filed 7–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12562 and #12563]

Arkansas Disaster Number AR–00049

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–1975–DR), dated 05/02/2011.

Incident: Severe Storms, Tornadoes, and Associated Flooding.

Incident Period: 04/14/2011 through 06/03/2011.

Effective Date: 07/01/2011.

Physical Loan Application Deadline Date: 07/01/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/02/2012.

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 Arkansas, dated 05/02/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Craighead.

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. 2011–17728 Filed 7–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: July 28, 2011 from 9 a.m. to 5 p.m. in the Eisenhower Conference room, side B, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration. The purpose of this meeting is to begin preparations for the 2011 Annual Report. For information regarding our veterans' resources and partners, please visit our Web site at *http://www.sba.gov/vets.*

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public. Anyone wishing to attend this meeting or to make a presentation to the Advisory Committee on Veterans Business Affairs, advance notice is requested. Please contact Cheryl Simms, Program Liaison, at the U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416; *Telephone number:* (202) 619–1697; Fax number (202) 481–6085 or by e-mail at *cheryl.simms@sba.gov.*

If you require accommodations because of a disability, please contact the Office of Veterans Business Development at (202) 205–6773 at least two weeks in advance.

Dated: July 1, 2011.

Dan S. Jones,

SBA Committee Management Officer.

[FR Doc. 2011–17327 Filed 7–13–11; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent and Draft Environmental Impact Statement: Highway 35, Between Norfolk and South Sioux City, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind a Notice of Intent and Draft Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Notice of Intent (NOI) and Draft Environmental Impact Statement (DEIS) for improvements that were proposed for the Highway 35 Corridor from Norfolk to South Sioux City (N35) in Nebraska [DPS–35–4(119)]. The NOI was published in the **Federal Register** on March 4, 2002, and the DEIS availability was published in the **Federal Register** on January 11, 2008. This rescission is based on a lack of available funding for the full corridor proposal, which led to a reduction in scope to focus on the area of more defined need within the Norfolk area. The reduction in scope has brought the proposed action below the threshold of an EIS.

FOR FURTHER INFORMATION CONTACT: Melissa Maiefski, Program Delivery Team Lead, FHWA, Nebraska Division, 100 Centennial Mall North, Room 220, Lincoln, Nebraska 68508, *Telephone:* (402) 742–8473.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads (NDOR), is rescinding the NOI and DEIS for a proposal to improve N–35 between Norfolk and South Sioux City in Madison, Stanton, Wayne, Dixon, and Dakota Counties in Nebraska. The previous proposed action, described in the 2008 DEIS, was to upgrade the existing two lane, 70 mile rural highway to a four lane divided highway on partially new alignment. The NOI is being rescinded in large part due to funding constraints, which led to a reduction of scope to focus on the more imminent N–35 needs within the Norfolk area only. The current proposed actions would improve the capacity of N–35 within Norfolk, from the junction of N–35 with US 275 to Nucor Road, and would improve the intersection of N–35 with Norfolk Avenue and Victory Road. NDOR will be holding a public meeting to solicit community input on the new proposal, which will be advertised through the local media. Given the reduction in scope and the associated potential impacts of the proposed action, FHWA intends to prepare a lower-level NEPA document to determine if the project has the potential to significantly affect the quality of the human environment. If, at a future time, FHWA determines that the proposed action is likely to have a significant impact on the environment, a new NOI to prepare an EIS will be published.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: July 8, 2011.

Joseph A. Werning,

Division Administrator, Nebraska.

[FR Doc. 2011–17709 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, the United States Fish and Wildlife Service (USFWS), and the United States Army Corps of Engineers (USACOE).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project along Interstate 805, San Diego, CA, PM: 4.4–15.8 in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 10, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: David Nagy, Environmental Branch Chief, Division of Environmental Analysis, Caltrans, District 11, 4050 Taylor St., San Diego, CA 91942, *Office:* 619–688–0224, *e-mail: david.nagy@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The addition of four managed lanes and HOV/transit lanes and associated multi-modal facilities (two in each direction) on Interstate 805 (I–805) from just south of East Palomar Street overcrossing in the City of Chula Vista to the Landis Street overcrossing in the City of San Diego.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA) for the project, approved on June 22, 2011 in the FHWA Finding of No Significant Impacts (FONSI) issued on June 15, 2011, and in other documents in the FHWA project records. The Environmental Impact Report & EA/FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans Final EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist11/.* The USFWS decision is available within the environmental document at the above Web site as an appendix. Pending federal actions include:

- 401 Water Quality Certification from the Regional Water Quality Control Board, under Section 401 of the Clean Water Act.
- 404 Permit to Discharge Dredged or Fill Material, under Section 404 of the Clean Water Act.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Title VI of the Civil Rights Act of 1964;
11. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
12. National Historic Preservation Act of 1966;
13. Historic Sites Act of 1935;
14. Executive Order 11990, Protection of Wetlands
15. Executive Order 13112, Invasive Species;
16. Executive Order 11988, Floodplain Management; and,
17. Executive Order 12898, Environmental Justice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 7, 2011.

Maiser Khaled,

Acting Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2011–17702 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Tupelo, Mississippi Railroad Relocation Project

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Availability of the Draft Environmental Impact Statement and public hearing for the Tupelo, Mississippi Railroad Relocation Project (Project).

SUMMARY: The Federal Railroad Administration announces the availability of the Tupelo, Mississippi Railroad Relocation Project Draft Environmental Impact Statement (DEIS) for public review and comment.

DATES: FRA invites interested Members of Congress, state and local governments, other Federal agencies, Native American tribal governments, organizations, and members of the public to provide comments on the DEIS. The public comment period began with EPA's publication of the NOA on June 24, 2011. Because of the anticipated interest in the Project, the comment period will continue until September 12, 2011. Written and oral comments will be given equal weight, and FRA and MDOT will consider all comments received or postmarked by that date in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

The public hearing on the DEIS will be held on Thursday, August 11, 2011, from 4 to 7 p.m. at the BancorpSouth Arena located at 375 East Main Street, Tupelo, Mississippi 38804. The hearing will be held in meeting rooms 3, 4 and 5 and attendees are encouraged to park on the west side of the building as that is more convenient to the meeting rooms.

ADDRESSES: Comments may be submitted at the public hearings both verbally and in writing. Written comments may be submitted until September 12, 2011. Comment sheets are available on the project Web site at *http://www.gomdot.com/Home/Projects/Studies/Northern/TupeloRailroadRelocation/Home.aspx.* The comment sheets may be submitted by FAX to 601–359–7355 or mailed to MDOT at Mississippi Department of Transportation, Environmental Division (87–01), P.O. Box 1850, Jackson, MS 39215–9947. Comments may also be submitted by e-mail at *http://www.gomdot.com/Home/AboutMDOT/EmailUs.aspx?Topic=Environmental.*

FOR FURTHER INFORMATION CONTACT: For further information regarding the DEIS or the Project, please contact: Ms. Kim Thurman, Environmental Division Manager, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS 39215 (telephone 601 359–7920); or by e-mail at *Kthurman@mdot.state.ms.us* with ''Tupelo Railroad Relocation Project'' in the subject heading, or Mr. John Winkle, Transportation Industry Analyst, Office of Passenger Programs, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room W38–311, Washington, DC 20590, (telephone 202 493–6067), or by e-mail at *John.Winkle@DOT.Gov* with ''Tupelo Railroad Relocation Project'' in the subject heading.

SUPPLEMENTARY INFORMATION: The DEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* the Council on Environmental Quality NEPA implementing regulations, 40 CFR Parts 1500–1508, and the FRA NEPA procedures, 64 FR 28545 (May 26, 1999). FRA is the lead Federal agency and the Mississippi Department of Transportation (MDOT) is the lead State agency. The Environmental Protection Agency (EPA) included the DEIS in the Notice of Availability (NOA) published on June 24, 2011.

The DEIS evaluates the environmental impacts of the Tupelo, Mississippi Railroad Relocation Project, through which MDOT proposes to relocate an existing BNSF Railway Company (BNSF) main line. Currently, the BNSF line runs at grade and through several busy intersections in the City of Tupelo. The purpose of the Project is to improve mobility and safety by reducing roadway congestion caused by the operation of BNSF trains through the City, particularly at the intersection of Main Street (US 278/MS 6) and Gloster Street (MS 145). The build alternatives considered included operational improvements, alternative corridors, and in-town options such as railroad and highway grade separations. Through the alternatives development process, an elevated rail viaduct with a relocated interchange yard was considered to be the only reasonable build alternative and, therefore, was brought forward for detailed study.

Potential environmental impacts of the No-Build Alternative include noise, safety and mobility impacts, while the primary impacts of the Build Alternative include high construction costs, and impacts to farmlands, cultural and historic resources, streams, floodplains and utilities. Mitigation strategies are described to avoid or minimize potential impacts. Such strategies would be further refined in subsequent environmental review.

Availability of the DEIS

MDOT has placed copies of the Draft EIS and appendices at the following locations:

Tupelo City Hall, 71 East Troy Street, Tupelo, MS 38804.
Lee County Public Library, 219 N. Madison Street, Tupelo, MS 38801.
Lee County Chancery Clerk, 200 W. Jefferson Street, Tupelo, MS 38804.

Mississippi Department of Transportation, Environmental Division, 401 North West Street, Jackson, MS 39201.
Mississippi Department of Transportation, First District Headquarters, 1901 N. Gloster Street, Tupelo, MS 38803.
Federal Railroad Administration, Region 3, 61 Forsyth Street—Suite 16T20, Atlanta, GA 30303–3104.

In addition, electronic versions of the Draft EIS and appendices are available through FRA's Web site at *http://www.fra.dot.gov/rpd/freight/3002.shtml* and the MDOT Web site at *http://www.gomdot.com/Home/Projects/Studies/Northern/TupeloRailroadRelocation/Home.aspx.*

Issued in Washington, DC, on July 8, 2011.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy & Development.

[FR Doc. 2011–17684 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0052]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 14, 2011, the Norfolk Southern Railway Corporation (NS) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 236. FRA assigned the petition Docket Number FRA–2011–0052.

NS seeks a waiver from compliance with cab signal system requirements found in 49 CFR 236.566 *Locomotive of each train operating in train stop, train control, or cab signal territory; equipped.* Specifically, NS seeks relief to operate non-equipped locomotives in the following locations:

- Operations on the Pittsburgh Line, Harrisburg Division from control point (CP) Cannon at milepost (MP)–PT 118.9 near Duncannon, Pennsylvania to CP Harrisburg at MP–PT 105.1 near Harrisburg, PA.
- Operations on the Pittsburgh Line, Pittsburgh Division from CP Cannon at MP–PT 118.9 near Duncannon, PA to CP Solomon at MP–PT 352.5 near Pittsburgh, PA, with the condition that an absolute block be established in advance of each movement of foreign trains and engines between CP Bloom at MP–PT 351.6 near Pittsburg, PA and CP Solomon.
- Operations on the Fort Wayne Line, Pittsburgh Division from CP Rochester at MP–PC 29.5, near East Rochester, PA to CP Alliance at MP–PC 83.2.
- Operations on the Conemaugh Line, Pittsburgh Division from CP Conpit at MP–LC 0.0, near Bolivar, PA to CP Kiski at MP–LC 47.8, near Freeport, PA.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 29, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the comment, 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 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on July 7, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–17681 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0052]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 3, 2011, the Norfolk Southern Corporation (NS) has petitioned the Federal Railroad Administration (FRA) for an extension of the relief previously granted under Docket Number FRA–2009–0052. The original request granted conditional approval on September 29, 2009, for relief from requirements of the Rules, Standards and Instructions, Title 49 CFR Part 236, 236.586—Daily or after trip test.

NS requested a waiver from compliance with § 236.586 Daily or after trip test in its entirety for locomotives equipped with UltraCab equipment.

Applicant's justification for the extension: Over the past 19 months, NS has not seen any notable increase or decrease in locomotive shoppings as a result of not performing a daily or after-trip test while operating locomotives in cab signal territory.

NS further request that they be allowed to conduct the currently required quarterly performance review on a semi-annual basis, with all other conditions of the September 29, 2009, letter to be abided with.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 29, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 comment (or signing the comment, 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 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, D.C. on July 7, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–17680 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mazda

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Mazda Motor Corporation (Mazda) petition for an exemption of the CX–5 vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of the Theft Prevention Standard (49 CFR Part 541).

DATES: The exemption granted by this notice is effective beginning with the 2013 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated April 7, 2011, Mazda requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for its MY 2013 CX–5 vehicle line.

The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, Mazda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Mazda will install a passive transponder-based, electronic immobilizer antitheft device as standard equipment on its CX–5 vehicle line beginning with MY 2013. Major components of the antitheft device will include a powertrain control module, an immobilizer control module, a security light, coil antenna, transmitter with transponder, LF antenna and a FR receiver. The device will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights or horn alarm).

Mazda stated that activation of the immobilization device occurs when the ignition is turned to the ''OFF'' position and since the transponder is integrated into the immobilizer device, any inadvertent activation of the device is prevented. Additionally, Mazda stated that when the ignition is turned to the ''ON'' position, a code is transmitted from the transponder to the immobilizer control module. Mazda further stated that if the code from the transponder matches with the code programmed in the immobilizer control unit, the vehicle's engine can be started, and if the codes do not match, the engine will be disabled. Mazda also stated that it is very difficult to defeat this type of electronic engine immobilizer device because there are no moving parts and there is a separate battery located in the key. Additionally, Mazda stated that the immobilizer device will incorporate a LED indicator that will provide information about the ''set'' and ''unset'' condition of the device. Mazda stated that when the ignition is turned to the ''ON'' position, the LED illuminates continuously for 3 seconds to indicate the ''unset'' state of the device and when the ignition is in the ''OFF'' position, the flashing LED indicates the ''set'' state of the device confirming that the vehicle is protected by the immobilizer. Mazda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.5, Mazda provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Specifically, Mazda stated that the components of the immobilization device were tested in climatic, mechanical and chemical environments, and for its immunity to various electromagnetic radiation and electric conduction. Mazda stated that the antitheft device and operation of the electronic engine immobilizer system makes conventional theft methods ineffective, (*i.e.,* hot-wiring and attacking the ignition lock cylinder). Mazda also stated that there is no way to start the vehicle by mechanically overriding the device and that successful key duplication would be virtually impossible.

Mazda provided data on the effectiveness of other similar antitheft devices installed on vehicle lines in support of its belief that its device will be at least as effective as those comparable devices. Specifically, Mazda stated that this device was installed on certain MY 1996 Ford vehicles as standard equipment, (*i.e.,* all Ford Mustang GT, Cobra, Taurus LX, SHO and Sable LS models). In MY 1997, Mazda installed its immobilizer device on the entire Ford Mustang vehicle line as standard equipment. When comparing 1995 model year Mustang vehicle thefts (without immobilizers) with MY 1997 Mustangs vehicle thefts (with immobilizers), Mazda referenced the National Crime Information Center's (NCIC) theft information which showed that there was a 70% reduction in theft

experienced when comparing MY 1997 Mustang vehicle thefts (with immobilizers) to MY 1995 Mustang vehicle thefts (without immobilizers). Mazda also stated that the Highway Loss Data Institute's (HLDI) September 1997 Theft Loss Bulletin reported an overall theft loss decrease of approximately 50% for both the Ford Mustang and Taurus models upon installation of an antitheft immobilization device. Additionally, Mazda referenced a July 2000 International Institute for Highway Safety news release which reported that when comparing theft loss data before and after equipping vehicles with passive immobilizer devices, the data showed an average theft reduction of approximately 50% for vehicles with immobilizer devices.

Based on the supporting evidence submitted by Mazda, the agency believes that the antitheft device for the Mazda CX–5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

The agency also notes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Mazda has provided adequate reasons for its belief that the antitheft device for its new vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Mazda provided about its device.

For the foregoing reasons, the agency hereby grants in full Mazda's petition for exemption for the Mazda CX–5 vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with MY 2013 vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Mazda decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption.

Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 8, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–17715 Filed 7–13–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6 (Sub-No. 474X)]

BNSF Railway Company—Abandonment Exemption—in Washington County, MN

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 CFR Part 1152 subpart F—*Exempt Abandonments* to abandon a 0.51-mile line of railroad between milepost 15.59 and milepost 16.10 in Washington County, MN.[1] The line traverses United States Postal Service Zip Code 55038.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has been handled on the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period. As provided under 49 CFR 1105.11, BNSF has certified that it served its Environmental and Historic Reports as required under 49 CFR 1105.7 and 1105.8. BNSF also has certified that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 13, 2011, unless stayed pending

[1] This transaction is related to a concurrently filed notice of exemption in Docket No. AB 882 (Sub-No. 3X), *Minnesota Commercial Railway Company—Discontinuance of Service Exemption—in Washington County, Minnesota,* in which Minnesota Commercial Railway Company seeks an exemption to discontinue its lease operations over the same 0.51-mile rail line.

reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 25, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 3, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Courtney Biery Estes, General Attorney, BNSF Railway Company, 2500 Lou Menk Drive, AOB–3, Fort Worth, TX 76131.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 19, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by July 14, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *HTTP:// WWW.STB.DOT.GOV.*

Decided: July 11, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–17713 Filed 7–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 882 (Sub–No. 3X)]

Minnesota Commercial Railway Company—Discontinuance of Service Exemption—in Washington County, MN [1]

Minnesota Commercial Railway Company (MNNR) filed a verified notice of exemption under 49 CFR Part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 0.51-mile line of railroad owned by BNSF Railway Company (BNSF) between milepost 15.59 and milepost 16.10 at Hugo, in Washington County, MN. The line traverses United States Postal Service Zip Code 55038.[2]

MNNR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has been handled on the line for at least 2 years; and (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period. MNNR also has certified that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad —Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 13, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2) [3] must be filed by July 25, 2011.[4] Petitions to reopen must be filed by August 3, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to MNNR's representative: Karl Morell, Ball Janik LLP, 655 Fifteenth Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *HTTP:// WWW.STB.DOT.GOV.*

Decided: July 11, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–17719 Filed 7–13–11; 8:45 am]

BILLING CODE 4915–01–P

[1] This transaction is related to a concurrently filed verified notice of exemption filed in Docket No. AB 6 (Sub–No. 474X), *BNSF Railway Company—Abandonment Exemption—in Washington County, MN,* in which BNSF seeks an exemption under 49 CFR Part 1152 subpart F to abandon the same 0.51-mile line.

[2] MNNR was authorized to lease and operate the line in *Minnesota Commercial Railway Company—Lease & Operation Exemption—Burlington Northern Santa Fe Railway Co.,* FD 33577 (STB served Apr. 10, 1998).

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW.,Washington, DC, on August 2, 2011 at 9:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: July 6, 2011.

Mary Miller,

Assistant Secretary, (Financial Markets).

[FR Doc. 2011–17526 Filed 7–13–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; California; 2007 South Coast $PM_{2.5}$ Plan and 2007 State Strategy; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0366; FRL–9435–1]

Approval and Promulgation of Implementation Plans; California; 2007 South Coast $PM_{2.5}$ Plan and 2007 State Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards in the Los Angeles-South Coast area (South Coast). These SIP revisions are the South Coast 2007 Air Quality Management Plan (South Coast 2007 AQMP) (revised 2011) and South Coast-related provisions of the 2007 State Strategy (revised 2009 and 2011). EPA is proposing to approve the emissions inventories; air quality modeling; reasonably available control measures/reasonably available control technology demonstration; the reasonable further progress and attainment demonstrations; and the transportation conformity motor vehicle emissions budgets. EPA is also proposing to grant California's request to extend the attainment deadline for the South Coast to April 5, 2015 and to approve commitments to measures and reductions by the South Coast Air Quality Management District and the California Air Resources Board. Finally, we are proposing to disapprove the SIP's contingency measures and to reject the assignment of 10 tpd of NO_X reductions to the federal government. This proposed rule amends EPA's November 22, 2010 proposed rule (75 FR 91294) on the South Coast $PM_{2.5}$ plan and 2007 State strategy.

DATES: Any comments must arrive by August 15, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0366, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
- *E-mail: tax.wienke@epa.gov.*
- *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812, and
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765.

The SIP materials are also electronically available at: *http://aqmd.gov/aqmp/07aqmp/index.html* and *http://www.arb.ca.gov/planning/sip/sip.htm.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The $PM_{2.5}$ NAAQS and the South Coast $PM_{2.5}$ Nonattainment Area

On July 18, 1997 (62 FR 36852), EPA established new national ambient air quality standards (NAAQS) for $PM_{2.5}$, particulate matter with a diameter of 2.5 microns or less, including annual standards of 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and 24-hour (daily) standards of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. 40 CFR 50.7 EPA established the standards based on substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above the levels of these standards.

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children. See, EPA, *Air Quality Criteria for Particulate Matter,* No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

$PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of various chemical reactions from precursor emissions of nitrogen oxides (NO_X), sulfur oxides (SO_X), volatile organic compounds (VOC) and ammonia (NH_3) (''secondary $PM_{2.5}$''). See 72 FR 20586, 20589 (April 25, 2007).

Following promulgation of a new or revised NAAQS, EPA is required by Clean Air Act (CAA) section 107(d) to designate areas throughout the United States as attaining or not attaining the NAAQS. On January 5, 2005, EPA published initial air quality designations for the 1997 $PM_{2.5}$ NAAQS, based on air quality monitoring data for three-year periods of 2001–2003 or 2002–2004 (70 FR 944). These designations became effective on April 5, 2005.

EPA designated the ''Los Angeles-South Coast Air Basin'' area (South Coast nonattainment area), including Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County as nonattainment for both the 1997 24-hour and the annual $PM_{2.5}$ standards. The South Coast $PM_{2.5}$ nonattainment area is home to about 17 million people, has a diverse economic base, and contains one of the highest-volume port areas in the world. For a precise description of the geographic boundaries of the South Coast $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.[1] The local air district with primary responsibility for developing a plan to attain the $PM_{2.5}$ NAAQS in this area is the South Coast Air Quality Management District (District or SCAQMD).

Ambient 24-hour $PM_{2.5}$ levels in the South Coast are well below the 1997 $PM_{2.5}$ NAAQS. Ambient annual $PM_{2.5}$ levels are improving but are still above the federal NAAQS. The design value monitor at Mira Loma recorded a value of 16.8 μg/m³ for the 2008–2010 period.[2] In the South Coast, the levels and composition of $PM_{2.5}$ differ by geographic location, with higher $PM_{2.5}$ concentrations typically occurring in metropolitan Los Angeles and in the inland valley areas of San Bernardino and metropolitan Riverside Counties. The higher $PM_{2.5}$ concentrations in Los Angeles County are mainly due to secondary formation of particulates. See South Coast 2007 AQMP, page 2–13.

II. California's State Implementation Plan Submittals To Address $PM_{2.5}$ Attainment in the South Coast Nonattainment Area

A. California's SIP Submittals

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a State Implementation plan (SIP) under title 1, part D of the CAA. This SIP must include, among other things, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. Under CAA section 172(b), a State has up to three years after an area's designation to nonattainment to submit its SIP to EPA. For the 1997 $PM_{2.5}$ NAAQS, these nonattainment SIPs were due no later than April 5, 2008.

California has made six SIP submittals to address $PM_{2.5}$ nonattainment in the South Coast nonattainment area. The two principal ones are the District's 2007 $PM_{2.5}$ Plan (South Coast 2007 AQMP) and the CARB's State Strategy for California's 2007 State Implementation Plan (2007 State Strategy).

In addition to these submittals, the District and State have also submitted numerous rules that contribute to improving air quality in the South Coast nonattainment area. See Appendices A and B of the technical support document (TSD) for this proposal.

1. 2007 South Coast AQMP

On November 28, 2007, the California Air Resources Board (CARB or State) submitted the ''Final 2007 Air Quality Management Plan, June 2007.''[3] This

[1] On October 17, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by lowering the level to 35 μg/m³. At the same time, we retained the level of the annual $PM_{2.5}$ standard at 15.0 μg/m³. 71 FR 61144. On November 13, 2009, EPA designated areas, including the South Coast, with respect to the revised 24-hour NAAQS. 74 FR 58688. California is now required to submit an attainment plan for the 35 μg/m³ standards by December 14, 2012. In this preamble, all references to the $PM_{2.5}$ NAAQS, unless otherwise specified, are to the 1997 24-hour $PM_{2.5}$ standards of 65 μg/m³ and annual standards of 15 μg/m³ as codified in 40 CFR 50.7.

[2] See the Air Quality Subsystem (AQS) Preliminary Design Value Report dated April 21, 2011 in the docket for today's action. 16.8 μg/m³ is the highest design value in the South Coast nonattainment area. The design value is the three year average of annual means of a single monitoring site. (see 40 CFR 50 Appendix N Section 1(c)(1)). This design value is based on 2008 and 2009 data that are complete, validated, and certified by the District and on 2010 data that are complete and validated but not yet certified by the District.

[3] The South Coast 2007 AQMP is the first South Coast Plan to address $PM_{2.5}$. We have previously acted on numerous South Coast air quality plans for ozone, PM–10, carbon monoxide, and NO_2, such as the 1997/1999 AQMP. We approved the ozone portion of the 1997 South Coast AQMP, as amended in 1999, on April 10, 2000 (see 65 FR 18903). Our most recent action on a SIP addressing the CAA requirements for the South Coast ozone nonattainment area was our partial approval and partial disapproval of the 2003 AQMP (see 74 FR 10176, March 10, 2009). Our 2009 final action was challenged in the Ninth Circuit Court of Appeals, which published an opinion remanding certain aspects of EPA's action for further action consistent with the opinion. See *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011). The issues in dispute relate to the consequences of an

Continued

Plan was adopted by the District on June 1, 2007 and submitted to CARB on October 24, 2007.[4] The South Coast 2007 AQMP includes a $PM_{2.5}$ attainment demonstration for the South Coast. In order to meet relevant CAA requirements for the $PM_{2.5}$ NAAQS, the South Coast 2007 AQMP includes base and projected year $PM_{2.5}$ emissions inventories for the South Coast nonattainment area; air quality monitoring data; short-, medium- and long-term District control measures; a summary of CARB's control measures; transportation control measures (TCMs); a demonstration of reasonable further progress (RFP); a modeled attainment demonstration; a demonstration of reasonably available control measures/reasonably available control technology (RACM/RACT); contingency measures for the 1997 $PM_{2.5}$ RFP and for attainment for the South Coast $PM_{2.5}$ nonattainment area; and a request to extend the attainment date for the 1997 $PM_{2.5}$ NAAQS to April 5, 2015, although all controls necessary for attainment by that date will be in place by the attainment year of 2014.[5] The South Coast 2007 AQMP submittal also includes District Governing Board Resolution 07–9 adopting the final South Coast 2007 AQMP.

2. CARB 2007 State Strategy

To demonstrate attainment, the South Coast 2007 AQMP relies in part on measures in the 2007 State Strategy. The 2007 State Strategy was adopted on September 27, 2007 and submitted to EPA on November 16, 2007.[6] It discusses CARB's overall approach to addressing, in conjunction with local plans, attainment of both the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS not only in the South Coast nonattainment area but also in California's other nonattainment areas such as the San Joaquin Valley and the Sacramento area. It also includes CARB's commitments to propose 15 defined State measures[7] and to obtain specific amounts of aggregate emissions reductions of direct $PM_{2.5}$, NO_X, VOC and SO_X in the South Coast from sources under the State's jurisdiction, primarily on- and off-road motor vehicles and engines.

3. CARB 2009 State Strategy Status Report

On August 12, 2009, CARB submitted the ''Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy'', dated March 24, 2009, adopted April 24, 2009 (''2009 State Strategy Status Report''),[8] which updates the 2007 State Strategy to reflect its implementation during 2007 and 2008.

In today's proposal, we are evaluating only those portions of the South Coast 2007 AQMP and 2007 State Strategy and its revisions (including the 2011 revisions described below) that are relevant for attainment of the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area.

4. Additional 2008 SIP Submittal Related to Motor Vehicle Emissions Budgets

In addition to the SIP submittals for the 1997 $PM_{2.5}$ NAAQS mentioned above, on April 4, 2008, the District Governing Board approved an alternative approach for transportation conformity motor vehicle emission budgets for the South Coast nonattainment area. This new approach was based on the 2007 SIP baseline emissions reflecting only the regulations adopted as of October 2006 for all milestone years up to the attainment year. The CARB Governing Board approved Resolution 08–27 itemizing the modifications to the South Coast nonattainment area transportation conformity emission budgets. The revised motor vehicle emissions budgets were submitted as an amendment to the California SIP on April 30, 2008 and were amended as part of the 2011 Progress Report discussed below. We are acting on the budgets as amended in 2011 today.

5. CARB 2011 Progress Report

On May 18, 2011, CARB submitted the ''Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions'', dated March 29, 2011, and adopted April 28, 2011 (''2011 Progress Report'').[9] This submittal, which updates both the 2007 State Strategy and the South Coast 2007 AQMP, shows that both CARB and the District have made significant progress in meeting their commitments to adopt measures and to reduce emissions. More specifically, it updates CARB's rulemaking calendar in the 2007 State Strategy to reflect the current status of CARB's adopted $PM_{2.5}$ measures and to change the expected action dates for several measures. It also updates the RFP demonstration, contingency measures, and transportation conformity motor vehicle emissions budgets in the South Coast 2007 AQMP to reflect rule adoption, changes to activity and emissions factors for certain source categories, and the impact on projected emissions levels in the South Coast nonattainment area of the recent economic recession.[10]

6. Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plan for South Coast Air Basin and Coachella Valley

Also, on May 19, 2011, CARB submitted a SIP revision entitled ''Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plan for South Coast Air Basin and Coachella Valley (SIP Revisions)''. These SIP revisions provide revised control measure commitments, a revised rule implementation schedule, and a partial backstop for the 10 tpd NO_X federal assignment for the South Coast 2007 AQMP.[11] For the purposes of today's

EPA disapproval of a SIP submittal, the adequacy of EPA's evaluation of a particular control measure from the 2003 State Strategy, and the rationale for EPA's approval of the State's submittal as meeting the requirements of CAA section 182(d)(1)(A) (TCMs to offset growth in emissions from growth in VMT) in the South Coast. EPA has sought rehearing on some of the issues, and the mandate in this case has not yet been issued pending action by the court on the petition for rehearing.

[4] See letter, James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, September 15, 2010, with enclosures.

[5] While the applicable attainment date for $PM_{2.5}$ areas with a full five-year extension is April 5, 2015, reductions must be implemented by 2014 to achieve attainment by that date. See 40 CFR 51.1007(b). We, therefore, refer to 2014 as the attainment year and April 5, 2015 as the attainment date.

[6] See CARB Resolution No. 07–28, September 27, 2007 with attachments and letter from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures.

[7] The 2007 State Strategy also includes measures to be implemented by the California Bureau of Automotive Repair (Smog Check improvements) and the California Department of Pesticide Regulation (VOC reductions from pesticide use). See 2007 State Strategy, p. 64–65 and CARB Resolution 7–28, Attachment B, p. 8.

[8] See CARB Resolution No. 09–34, April 24, 2009 and letter, James N. Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, August 12, 2009 with enclosures. Only pages 11–27 of the 2009 State Strategy Status Report are submitted as a SIP revision. The balance of the report is for informational purposes only. See Attachment A to CARB Resolution No. 09–34.

[9] See CARB Board Resolution 11–24, May 18, 2011 and letter, James N. Goldstene, Executive Officer, CARB to Jared Blumenfeld, Regional Administrator, EPA Region 9, May 19, 2011 with enclosures. Only Appendices B, C and D of the 2011 Progress Report are submitted as a SIP revision. The balance of the report is for informational purposes only.

[10] On June 20, 2011, CARB posted to its Web site technical revisions to the updated motor vehicle emissions budgets (budgets) in the 2011 Progress Report. See *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm*. We discuss these revisions in the section on budgets below.

[11] See letter, Lynn Terry, Deputy Executive Officer, CARB, to Jared Blumenfeld, Regional

proposal, we will refer to this SIP revision as ''2011 Progress Report, Appendix F'', since it was included as an Appendix to the 2011 Progress Report submitted on May 18, 2011.

In today's proposal, we are only evaluating those portions of the South Coast 2007 AQMP and the 2007 State Strategy and its revisions that are relevant for attainment of the $PM_{2.5}$ standards in the South Coast nonattainment area.

Future references in this proposal to the AQMP and the 2007 State Strategy will be to the AQMP as revised in 2011 and the Strategy as revised in 2009 and 2011, respectively, unless otherwise noted.

B. CAA Procedural Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the South Coast 2007 AQMP. The District conducted public workshops, provided public comment periods, and held public hearings prior to the adoption of the South Coast 2007 AQMP on June 1, 2007 (District Governing Board Resolution No. 07–9). CARB provided the required public notice and opportunity for public comment prior to its September 27, 2007 public hearing on the plan. See CARB Resolution No. 07–41.

CARB conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2007 State Strategy on September 27, 2007. (CARB Resolution No. 07–28). CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 24, 2009 adoption of the 2009 State Strategy Status Report. CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 28, 2011 adoption of the 2011 Progress Report. See CARB Resolution 09–34 and CARB Executive Order S–11–010.

Administrator, EPA Region 9, dated May 19, 2011, and enclosed ARB Board Resolution 11–24.

The SIP submittals include proof of publication for notices of the District and CARB public hearings, as evidence that all hearings were properly noticed. We find, therefore, that the four submittals that comprise the South Coast $PM_{2.5}$ Plan meet the procedural requirements of CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that EPA has not affirmatively determined to be complete or incomplete will become complete 6 months after the date of submittal by operation of law. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

The South Coast 2007 AQMP became complete by operation of law on May 28, 2008. The November 16, 2007 submission of the 2007 State Strategy and the 2009 revisions to the Strategy became complete by operation of law on May 16, 2008 and February 12, 2010, respectively. We determined that the 2011 Progress Report was complete on June 13, 2011.[12]

III. EPA's 2010 Proposed Action on the South Coast $PM_{2.5}$ SIP

This is the second time EPA has proposed action on California's SIP to address attainment of the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area. On November 22, 2010 (75 FR 71294), EPA proposed to approve in part and disapprove in part the 2007 South Coast $PM_{2.5}$ plan and the related portions of the 2007 State Strategy as amended in 2009.

Specifically, we proposed to approve the emissions inventories as meeting the applicable requirements of the CAA and the $PM_{2.5}$ implementation rule in 40 CFR part 51, subpart Z. We proposed to approve the District's and CARB's commitments to specific measures and specific aggregate emissions reductions in these SIP revisions because their approval would strengthen the SIP. We also proposed to approve the air quality modeling.

We previously proposed to disapprove the attainment demonstration as not meeting the applicable requirements of the CAA and the $PM_{2.5}$ implementation rule because it relied too extensively on enforceable commitments to reduce emissions in place of fully-adopted and submitted rules. Based on this proposed disapproval, we also proposed to disapprove the RACM/RACT and RFP demonstrations. We also proposed to disapprove the related contingency measures and transportation conformity motor vehicle emissions budgets for the RFP milestone years 2009 and 2012 and the attainment year of 2014. Finally, we proposed not to grant the State's request to extend the attainment date for the $PM_{2.5}$ NAAQS in the South Coast nonattainment area to April 5, 2015.

[12] See letter, Deborah Jordan, EPA Region 9, to James Goldstene, CARB, dated June 13, 2011 in the docket for today's action.

During the comment period for the November 2010 proposal, we received four comment letters from the public as well as comment letters from CARB and the District. Subsequent to the close of the comment period, CARB adopted and submitted revisions to the South Coast 2007 AQMP and 2007 State Strategy. After considering information contained in the comment letters and these supplemental SIP submittals, we have substantially amended our November 2010 proposed action as described below. EPA will consider all significant comments submitted in response to both its November 2010 proposal and today's proposal before taking final action on the South Coast 2007 AQMP. However, EPA strongly encourages those who submitted comments on the November 2010 proposal to submit revised comments reflecting today's amended proposal during the comment period on this amended proposal.

IV. CAA and Regulatory Requirements for $PM_{2.5}$ Attainment SIPs

EPA is implementing the $PM_{2.5}$ NAAQS under Title 1, part D, subpart 1 of the CAA, which includes section 172, ''Nonattainment plan provisions.'' Section 172(a)(2) establishes the attainment date for a $PM_{2.5}$ nonattainment area ''as expeditiously as practicable'' but no later than five years after the area's designation as nonattainment. This section also allows EPA to grant up to a five-year extension of an area's attainment date based on the severity of the area's nonattainment and the availability and feasibility of controls. EPA designated the South Coast as a nonattainment area effective April 5, 2005, and thus the applicable attainment date is no later than April 5, 2010 or, should EPA grant a full five-year extension, no later than April 5, 2015.

Section 172(c) contains the general statutory planning requirements applicable to all nonattainment areas, including the requirements for emissions inventories, RACM/RACT, attainment demonstrations, RFP demonstrations, and contingency measures.

On April 25, 2007, EPA issued the Clean Air Fine Particle Implementation

Rule for the 1997 $PM_{2.5}$ NAAQS. 72 FR 20586, codified at 40 CFR part 51, subpart Z ($PM_{2.5}$ implementation rule). The $PM_{2.5}$ implementation rule and its preamble address the statutory planning requirements for emissions inventories, RACM/RACT, attainment demonstrations including air quality modeling requirements, RFP demonstrations, and contingency measures. This rule also addresses other matters such as which $PM_{2.5}$ precursors must be addressed by the State in its $PM_{2.5}$ attainment SIP, applicable attainment dates, and the requirement for mid-course reviews.[13] We will discuss each of these CAA and regulatory requirements for attainment plans in more detail below.

V. Review of the South Coast 2007 AQMP and the South Coast Portion of the 2007 State Strategy

We summarize our evaluation of the South Coast $PM_{2.5}$ plan's compliance with applicable CAA and EPA regulatory requirements below. Our detailed evaluation can be found in the TSD for this proposal, which is available on line at *http://www.regulations.gov* in docket number EPA–R09–OAR–2009–0366, or from the EPA contact listed at the beginning of this notice.

A. Emissions Inventories

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires states to submit a plan revision that includes ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant.'' The $PM_{2.5}$ implementation rule requires states to include direct $PM_{2.5}$ emissions and emissions of all $PM_{2.5}$ precursors in this inventory, even if it has determined that control of any of these precursors is not necessary for expeditious attainment. 40 CFR 51.1008(a)(2) and 72 FR 20586, at 20648. Direct $PM_{2.5}$ includes condensable particulate matter. See 40 CFR 51.1000. $PM_{2.5}$ precursors are NO_X, SO_2, VOC, and ammonia (NH_3).[14] *Id.* The inventories should meet the data requirements of EPA's Consolidated Emissions Reporting Rule (codified at 40 CFR part 51 subpart A) and include any additional inventory information needed to support the SIP's attainment demonstration and (where applicable) RFP demonstration. 40 CFR 51.1008(a)(1) and (2).

Baseline emissions inventories are required for the attainment demonstration and for meeting RFP requirements. As determined on the date of designation, the base year for these inventories should be the most recent calendar year for which a complete inventory was required to be submitted to EPA. The emission inventory for calendar year 2002 or other suitable year should be used for attainment planning and RFP plans for areas initially designated nonattainment for the $PM_{2.5}$ NAAQS in 2005. 40 CFR 51.1008(b).

EPA has provided additional guidance for $PM_{2.5}$ emission inventories in ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' November 2005 (EPA–454/R–05–001).

2. Emissions Inventories in the South Coast 2007 AQMP

The base year and future year baseline planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors for the South Coast nonattainment area together with additional documentation for the inventories are found in Appendix III of the South Coast 2007 AQMP. Average annual day baseline inventories are provided for the plan's base year of 2002 (the reference year for the RFP demonstration) as well as 2005, 2008, 2010, 2011, and 2014. The base year and baseline inventories incorporate reductions from federal, state, and District measures adopted prior to 2007. South Coast 2007 AQMP, page 3–1. The District also provided both summer and winter planning inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors. South Coast 2007 AQMP, Appendix III, page III–1–23.

Table 1 is a summary of the average annual day inventories for directly-emitted $PM_{2.5}$ and for the $PM_{2.5}$ precursors NO_X, VOC, and SO_X for the base year of 2002 from the South Coast 2007 AQMP (derived from Appendix A, Table A–2). It is these inventories that provide the basis for the control measure analysis and the RFP and attainment demonstrations in the South Coast 2007 AQMP.

TABLE 1—SOUTH COAST NONATTAINMENT AREA EMISSIONS INVENTORY SUMMARY FOR $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2002 BASELINE YEAR

[Annual average day emissions in tons per day] [a]

Emissions inventory category	NO_X 2002	VOC 2002	$PM_{2.5}$ 2002	SO_X 2002	NH_3 [b] 2005
Stationary/Areawide Sources	93	302	60	22	75
On-road Mobile Sources	628	362	18	4	29
Off-road Mobile Sources	372	180	21	27	n/a

[13] In June 2007, a petition to the EPA Administrator was filed on behalf of several public health and environmental groups requesting reconsideration of four provisions in the $PM_{2.5}$ implementation rule. See EarthJustice, Petition for Reconsideration, ''In the Matter of Final Clean Air Fine Particle Implementation Rule,'' June 25, 2007. These provisions are (1) the presumption that compliance with the Clean Air Interstate Rule satisfies the NO_X and SO_2 RACT requirements for electric generating units; (2) the deferral of the requirement to establish emission limits for condensable particulate matter (CPM) until January 1, 2011; (3) revisions to the criteria for analyzing the economic feasibility of RACT; and (4) the use of out-of-area emissions reductions to demonstrate RFP. These provisions are found in the $PM_{2.5}$ implementation rule and preamble at 20623–20628, 40 CFR 51.1002(c), 20619–20620, and 20636, respectively. On May 13, 2010, EPA granted the petition with respect to the fourth issue. Letter, Gina McCarthy, EPA, to David Baron and Paul Cort, EarthJustice, May 13, 2010. On April 25, 2011, EPA granted the petition with respect to the first and third issues, but denied the petition with respect to the second issue given that the deferral period for CPM emissions limits had already ended. Letter, Lisa P. Jackson, EPA, to Paul Cort, EarthJustice, April 25, 2011. EPA intends to publish in the **Federal Register** notice that will announce the granting of the latter petition with respect to certain issues and to initiate a notice and comment process to consider proposed changes to the 2007 $PM_{2.5}$ implementation rule.

Neither the District nor the State relied on the first, third, or fourth of these provisions in preparing the South Coast 2007 AQMP or 2007 State Strategy. The District has deferred CPM limits in its rules. This limited deferral does not affect the South Coast 2007 AQMP's RACM/RACT and expeditious attainment demonstrations. EPA will evaluate any rule adopted or revised by the District after January 1, 2011 to assure that it appropriately addresses CPM.

[14] The District controls sulfur oxides (SO_X), which includes SO_2, and considers the two terms interchangeable for emissions purposes. We will use SO_X in this notice.

TABLE 1—SOUTH COAST NONATTAINMENT AREA EMISSIONS INVENTORY SUMMARY FOR $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2002 BASELINE YEAR—Continued

[Annual average day emissions in tons per day] [a]

Emissions inventory category	NO_X 2002	VOC 2002	$PM_{2.5}$ 2002	SO_X 2002	NH_3 [b] 2005
Total	1093	844	99	53	104

[a] *Source:* 2007 AQMP, pp. 3–9 and 3–14, Tables 3–1A and 3–3A. Numbers may not add due to rounding. Ammonia emissions estimates were updated to 2005 by SCAQMD.
[b] NH3 numbers were not provided for 2002.

As a starting point for the South Coast 2007 AQMP's inventories, the District used CARB's inventory for the year 2002. An example of this inventory and CARB's documentation for its inventories can be found in Appendices A and F, respectively, of the 2007 State Strategy. The 2002 inventory for the South Coast nonattainment area was projected to future years using CARB's California Emission Forecasting and Planning Inventory System (CEFIS). South Coast 2007 AQMP, Appendix III, page III–1–1. Both base year and baseline inventories use the current version of California's mobile source emissions model approved by EPA for use in SIPs, EMFAC2007, for estimating on-road motor vehicle emissions. 73 FR 3464 (January 18, 2008). Off-road inventories were developed using the CARB off-road model. Ammonia emissions estimates were provided separately by the District.[15]

When CARB submitted the 2011 Progress Report, the revised attainment demonstration for the South Coast was based on the 2002 baseline inventory. This is consistent with the baseline inventory in the 2007 AQMP, as well as the base year for the RFP demonstration. It is also the year recommended by EPA guidance.[16]

3. Proposed Action on the Emission Inventories

The inventories in the South Coast 2007 AQMP are based on the most current and accurate information available to the State and District at the time the Plan was developed and submitted (including using the latest EPA-approved version of California's mobile source emissions model, EMFAC2007), address comprehensively all source categories in the South Coast nonattainment area, and are consistent with EPA's inventory guidance. For these reasons, EPA is proposing to approve the 2002 base year emissions inventory in the South Coast 2007 AQMP as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(a)(1) and to find that the baseline inventories in the South Coast 2007 AQMP provide an adequate basis for the RACM/RACT, RFP, and attainment demonstrations. We provide more detail on our review of the base year inventory as well as the projected year inventories in section II.A. of the TSD.

Since late 2007, California has experienced an economic recession that has greatly reduced current levels of economic activity in the State's construction and goods movement sectors. The recession has resulted in lowered projected future levels of activity in this sector. 2011 Progress Report, Appendix E. As a result, projected emission levels from these categories are now substantially lower than the levels projected for 2008 and later in the Plan as submitted in 2007. At this time, California is addressing these recession impacts on future economic activity through adjustments to the baseline inventories for specific source categories. See 2011 Progress Report, Appendix E, page 2. There are no recession-related adjustments to the 2002 base year inventory in the South Coast 2007 AQMP.

CARB also made technical changes to the inventories for diesel trucks, buses, and certain categories of off-road mobile source engines as part of its December 2010 rulemaking amending the In-Use On-Road Truck and Bus Rule and the In-Use Off-Road Engine rule. *Id.* The State estimates that these changes collectively reduce the 2002 base year total inventory in the South Coast by 4 percent for NO_X and 5 percent for $PM_{2.5}$.[17] These changes are small given the normal and unavoidable uncertainties in all emissions inventories, and therefore, do not change our basis for proposing to approve the base year inventory or to find the baseline inventories adequate for SIP planning purposes. We discuss the impact of these changes on the plan's RFP and attainment demonstrations later in this notice.

We note that the District and CARB are currently working on revisions to the South Coast AQMP to address the 2006 24-hour $PM_{2.5}$ standards. These revisions are due to EPA in December 2012 and will include the most current inventory information that is available.

B. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT) and Adopted Control Strategy

1. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' EPA defines RACM as measures that a State finds are both reasonably available and contribute to attainment as expeditiously as practicable in its nonattainment area. Thus, what constitutes RACM/RACT in a $PM_{2.5}$ attainment plan is closely tied to that plan's expeditious attainment demonstration. 40 CFR 51.1010; 72 FR 20586 at 20612. States are required to evaluate RACM/RACT for direct $PM_{2.5}$ and all of its attainment plan precursors. 40 CFR 51.1002(c).

Consistent with subpart 1 of Part D of the CAA, EPA is requiring a combined approach to RACM and RACT for $PM_{2.5}$ attainment plans. Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technology documents or guidelines for what constitutes RACT, or identify specific source categories for State and EPA evaluation during attainment plan development. 72 FR 20586 at 20610. Rather, under subpart 1, EPA considers

[15] Electronic mail from Kathy Hsiao, SCAQMD to Wienke Tax, EPA Region 9, ''RE: NH3 numbers for SCAB,'' dated October 29, 2010.

[16] See 72 FR 20586, at 20647.

[17] See Attachment 1 to the letter, Lynn Terry, Deputy Executive Officer, CARB, to Elizabeth Adams, Deputy Director, Air Division, US EPA Region 9, dated May 18, 2011 (''CARB Progress Report supplement''), in the docket for today's proposal.

RACT to be part of an area's overall RACM obligation. Because of the variable nature of the $PM_{2.5}$ problem in different nonattainment areas, EPA determined not only that states should have flexibility with respect to RACT and RACM controls but also that in areas needing significant emission reductions to attain the standards, RACT/RACM controls on smaller sources may be necessary to reach attainment as expeditiously as practicable. 72 FR 20586 at 20612, 20615. Thus, under the $PM_{2.5}$ implementation rule, RACT and RACM are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. 40 CFR 51.1010; 72 FR 20586 at 20612.

The $PM_{2.5}$ implementation rule requires that attainment plans include the list of measures the state considered and information sufficient to show that a state met all requirements for the determination of what constitutes RACM/RACT in its specific nonattainment area. 40 CFR 51.1010. In addition, the rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as RACM/RACT, consider the cumulative impact of implementing the available measures and adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. *Id.* Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. 72 FR 20586 at 20614.

A more comprehensive discussion of the RACM/RACT requirement for $PM_{2.5}$ attainment plans and EPA's guidance for it can be found in the $PM_{2.5}$ implementation rule preamble at 72 FR 20586, at 20609–20633 and in section II.D. of the TSD for this proposal.

2. RACM/RACT Demonstration in the South Coast 2007 AQMP and the 2007 State Strategy

For the South Coast 2007 AQMP and the 2007 State Strategy, the District, CARB and the local agency (through the South Coast's metropolitan planning organization (MPO), the Southern California Association of Governments (SCAG)), each undertook a process to identify and evaluate potential reasonably available control measures that could contribute to expeditious attainment of the $PM_{2.5}$ standards in the South Coast nonattainment area. These RACM/RACT analyses address control measures for sources of direct $PM_{2.5}$, NO_X, SO_X, and VOC, which are the State's selected attainment plan precursors for the 1997 $PM_{2.5}$ standards in the South Coast (see section V.C.3 below). We describe each agency's efforts below.

a. District's RACM/RACT Analysis and Adopted Control Strategy

The District's RACM/RACT analysis, which focuses on stationary and area source controls, is described in Chapter 6 and Appendix VI of the South Coast 2007 AQMP.

Since the 1970s, the District has adopted stationary source control rules that have resulted in significant improvement of air quality in the South Coast nonattainment area. When command and control rules were no longer within the limitations of economic efficiency, the District began using economic incentive approaches with programs such as the Surplus Off-Road Opt-In for NO_X (SOON) program and the Carl Moyer program.[18] [19] While the District still relies on command and control regulations, the District's control strategies are now supplemented by market incentive and compliance flexibility approaches where appropriate. These regulations and strategies have yielded significant emissions reductions from sources under the District's jurisdiction. In developing the South Coast 2007 AQMP, the District conducted a process to identify RACM for the South Coast that involved public meetings to solicit input, evaluation of EPA suggested RACM and RACT, and evaluation of other air agencies' regulations. See South Coast 2007 AQMP, Appendix VI.

To determine which measures would be feasible for the South Coast, the District looked at measures implemented in other nonattainment areas' plans (including the San Joaquin Valley, the San Francisco Bay Area, Sacramento, Ventura, Dallas-Fort Worth, the Houston-Galveston area, and by the Lake Michigan Air Directors Consortium, or LADCO), and held meetings with CARB, technical experts, local government representatives, and the public during development of the South Coast 2007 AQMP. The District sponsored an AQMP summit, which generated 200 potential control measures. In addition, the District reviewed the list of control measures suggested for consideration in EPA's $PM_{2.5}$ implementation rule. The District also reevaluated all 82 District rules and regulations. The District then screened the identified measures and rejected those that affected few or no sources in the South Coast, had already been adopted as rules, or were in the process of being adopted. The District evaluated the remaining measures using baseline inventories, available control technologies, and potential emission reductions as well as whether the measure could be implemented on a schedule that would contribute to attainment of the $PM_{2.5}$ standard assuming a 2015 deadline. South Coast 2007 AQMP, Appendix VI.

In general, EPA proposes to find that the District's current rules and regulations are equivalent to, or more stringent than, those developed by other air districts with respect to emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors. The District is exploring several options for reducing emissions further. These include the feasibility of lowering emission limits and increasing levels of control in order to promote cleaner stationary source technologies; lowering the VOC content of coatings and solvents; establishing standards and test methods for generic equipment and lowering release or leak thresholds; improving leak detection, repair, inspection and maintenance; and adding best management practices to rules.

Based on its RACM/RACT evaluation for stationary and area sources under its jurisdiction, the District developed 37 stationary source control measures which comprised all measures included in other districts' AQMPs, as well as some new innovative measures. The District determined that the few available measures that District staff did not include would not advance the attainment date or contribute to RFP due to the insignificant or unquantifiable emissions reductions that they would potentially generate. See South Coast 2007 AQMP, Appendix VI, page VI–7. Since submittal of the AQMP in 2007, the District has completed action on the majority of

[18] The Carl Moyer Memorial Air Quality Standards Attainment Program (''Carl Moyer Program'') provides incentive grants for engines, equipment and other sources of pollution that are cleaner than required, providing early or extra emission reductions. Eligible projects include cleaner on-road, off-road, marine, locomotive and stationary agricultural pump engines. The program achieves near-term reductions in emissions of NO_X, PM, and VOC or reactive organic gas (ROG) which are necessary for California to meet its clean air commitments under the SIP.

[19] The SOON program provides funding assistance to applicable fleets for the purchase of commercially-available low-emission heavy-duty engines to achieve near-term reduction of NO_X emissions from in-use off-road diesel vehicles. All large fleets with a total statewide equipment horsepower (hp) over 20,000 hp must apply for funding. Fleets below 20,000 hp may voluntarily participate in this program.

these rules and submitted them to EPA for approval into the SIP.

From October 2002 through June 2006, the District adopted approximately 17 rules to address its commitment to achieve the reductions committed to in the 2003 AQMP for the South Coast. These rules included controls on VOC emissions from refineries and chemical plants, co-composting operations, architectural coatings, solvent cleaning operations, oil and gas production wells, and livestock waste. Many of the adopted rules achieved more estimated reductions in VOC, NO_X and SO_X than were expected in the 2003 AQMP. A summary of these rules, which are included in the baseline emissions estimates for the South Coast 2007 AQMP, is provided in Table 1–2 of the South Coast 2007 AQMP. See South Coast 2007 AQMP, Chapter 1, Table 1–2 and Chapter 4, page 4–6, and Table B–1 in Appendix B of the TSD for today's action.

In addition to the rules adopted for the 2003 AQMP, the District has also made new commitments in its South Coast 2007 AQMP to achieve further reductions from VOC, NO_X, SO_X and direct $PM_{2.5}$ sources in the South Coast area. The District committed to adopt and submit measures that will achieve the following additional emissions reductions: 10.8 tpd NO_X, 10.4 tpd VOC, 2.9 tpd direct $PM_{2.5}$ and 2.9 tpd SO_X.[20] See 2011 Progress Report, Appendix E, Table 1. The District expects to meet its emissions reductions commitments for each of the pollutants by adopting new control measures and programs found in the Table 4–2A of the South Coast 2007 AQMP (see South Coast 2007 AQMP, page 4–10 and CARB Staff Report on South Coast 2007 AQMP, p. 18), as updated in the 2011 Progress Report, Appendix E, Tables 2 through 5 and from additional actions summarized in the CARB Staff Report on the South Coast 2007 AQMP (see CARB Staff Report on South Coast 2007 AQMP, p. 17). The new control measures and additional actions are estimated to achieve more of the District's emission reduction commitments. They include new rules to regulate lubricants, consumer products, non-RECLAIM ovens, dryers and furnaces, space heaters, facility modernizations, livestock waste, residential wood burning, and commercial cooking. The South Coast 2007 AQMP also identifies 22 measures (beyond the new control measures and additional actions just discussed) for further review, which may also yield additional reductions towards the District's commitments. As discussed above, the District's commitment is to achieve the estimated total tonnage reductions of each pollutant because specific control measures and actions as adopted may provide more or less reductions than estimated in the South Coast 2007 AQMP.

Finally, EPA notes that since the adoption of the South Coast 2007 AQMP, the District has already adopted and submitted many of the rules in the South Coast 2007 AQMP that help fulfill the District's enforceable commitments for additional emission reductions of NO_X, VOC, direct $PM_{2.5}$ and SO_X in the South Coast area. Table 3 below summarizes the status of these new rules.

TABLE 2—SOUTH COAST

[Annual average day emissions in tons per day] [a]

Pollutant	SIP commitment by 2014		
	Commitment	Achieved	Balance
VOC	10.4	14.4	+4.0
NO_X	10.8	7.60	−3.2
$PM_{2.5}$	2.9	1.00	−1.9
SO_X	2.9	4.01	+1.11

Source: 2011 Progress Report, Appendix F, Table 1. The "Achieved" column in Table 2 reflects District rules submitted to EPA. Table 3 reflects emissions reductions EPA can credit towards the attainment demonstration.

TABLE 3—STATUS OF DISTRICT SHORT- AND INTERMEDIATE-TERM CONTROL MEASURES CREDITED IN SOUTH COAST 2007 AQMP ATTAINMENT DEMONSTRATION

Control measure	Rule No.	Title	Emissions reduction commitment in South Coast 2007 AQMP	Emissions reductions achieved [a]	SIP status
BCM–03	445	Woodburning fireplaces and wood stoves	1.0 tpd $PM_{2.5}$	1.0 tpd $PM_{2.5}$; 0.44 tpd VOC; 0.06 tpd NO_X; 0.01 tpd SO_X.	74 FR 27716, 6/11/09.
BCM–05	1138	Underfired charbroilers	1.1 tpd $PM_{2.5}$		66 FR 36170, 7/11/2001.
CTS–01	1144	Metalworking fluids and direct-contact lubricants.	1.9 tpd VOC	3.9 tpd VOC	75 FR 40726, 07/14/10.
CMB–01	1147	NO_X reductions from miscellaneous sources.	3.5 tpd NO_X	3.5 tpd NO_X	75 FR 46845, 08/04/10.
CMB–02	2002	Further SO_X reductions from RECLAIM	2.9 tpd SO_X	4.0 tpd SO_X	76 FR 30896, 5/27/11.
FUG–02	461	Emissions Reductions from Gasoline Transfer and Dispensing Facilities.	3.7 tpd VOC	VOC reductions substituted by Rule 1143.	71 FR 18216, 4/11/06.
FUG–04	1149	Storage Tank and Pipeline Cleaning and Degassing.	None	0.04 tpd VOC	74 FR 67821, 12/21/09.
CMB–03	1111	Further NO_X reductions from space heaters	0.8 tpd NO_X	0.01 tpd NO_X	75 FR 46845, 8/4/10.

[20] CARB uses the term ROG (reactive organic gases) where we use the term VOC (volatile organic compounds). We will use the term VOC in this notice to refer to both ROG and VOC.

TABLE 3—STATUS OF DISTRICT SHORT- AND INTERMEDIATE-TERM CONTROL MEASURES CREDITED IN SOUTH COAST 2007 AQMP ATTAINMENT DEMONSTRATION—Continued

Control measure	Rule No.	Title	Emissions reduction commitment in South Coast 2007 AQMP	Emissions reductions achieved [a]	SIP status
MCS–01	1110.2	Liquid and gaseous fuels—stationary ICEs		0.6 tpd NO_X; 0.3 tpd VOC.	74 FR 18995, 4/27/09.
FLX–02		Refinery pilot program	0.7 tpd VOC; 0.4 tpd $PM_{2.5}$.	VOC reductions substituted by Rule 1143.	
MOB–05	2251	AB923 LDV high emitter program	0.8 tpd VOC; 0.4 tpd NO_X.		No rule associated with this measure.
MOB–06		AB923 MDV high emitter program	0.5 tpd VOC; 0.5 tpd NO_X.		No rule associated with this measure.
Measures Proposed for EPA Action or Soon to be Proposed for EPA Action					
MCS–05	1127	Livestock waste	0.8 tpd VOC.		
MCS–01	1146	NO_X from industrial, institutional, & commercial boilers, steam generators, and process heaters.	1.2 tpd NO_X; 0.4 tpd $PM_{2.5}$; 2.0 tpd VOC.		Proposed limited approval/limited disapproval signed June 21, 2011.
MCS–01	1146.1	NO_X from small ind, inst, & comm'l boilers, steam gens, and proc. Htrs.			Proposed limited approval/limited disapproval signed June 21, 2011.
CTS–04	1143	Consumer Paint Thinners and Multi-Purpose Solvents.	2.1 tpd VOC	9.7 tpd VOC	Proposed approval signed June 23, 2011.

SIP Commitment vs. SIP-Creditable Emissions Reductions

SIP commitment—$PM_{2.5}$	2.9 tpd	Total SIP-creditable $PM_{2.5}$ reductions	1.2 tpd.
SIP commitment—NO_X	10.8 tpd	Total SIP-creditable NO_X reductions	4.2 tpd.
SIP commitment—VOC	10.4 tpd	Total SIP-creditable VOC reductions	14.4 tpd.
SIP commitment—SO_X	2.9 tpd	Total SIP-creditable SO_X reductions	4.01 tpd.

[a] From 2011 Progress Report, Appendix F, Tables 2–5. EPA can only credit rules that have been adopted, submitted to EPA, and approved for credit in the SIP.

b. CARB's RACM Analysis and Adopted Control Strategy

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products.

Given the need for significant emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. In addition, California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

California's emissions standards have reduced new car emissions by 99 percent and new truck emissions by 90 percent from uncontrolled levels. 2007 State Strategy, p. 37. The State is also working with EPA on goods movement activities and is implementing programs to reduce emissions from ship auxiliary engines, locomotives, harbor craft and new cargo handling equipment. In addition, the State has standards for lawn and garden equipment, recreational vehicles and boats, and other off-road sources that require newly manufactured equipment to be 80–98% cleaner than their uncontrolled counterparts. *Id.* Finally, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance (I/M) or ''Smog Check'' requirements, truck and bus idling restrictions, and various incentive programs.

Appendix A of the TSD includes a list of all measures adopted by CARB between 1990 and the beginning of 2007. These measures, reductions from which are reflected in the Plan's baseline inventories, fall into two categories: Measures that are subject to a waiver of Federal pre-emption under CAA section 209 (section 209 waiver measures or waiver measures) and those for which the State is not required to obtain a waiver (non-waiver measures). EPA allows emission reduction credit for measures that are granted a waiver from Federal preemption through the CAA section 209 waiver process. See section II.F.4.a.i. of the TSD and EPA's final approval of the San Joaquin Valley 1-Hour Ozone Plan at 75 FR 10420, 10424 (March 8, 2010). Generally, the State's baseline non-waiver measures have been approved by EPA into the SIP and are fully creditable for meeting CAA requirements. See TSD, Appendix A.

CARB developed its proposed 2007 State Strategy after an extensive public consultation process to identify potential SIP measures.[21] From this process, CARB identified and committed to propose 15 new defined measures. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. Many, if not most, of these measures are being proposed for

[21] More information on this public process including presentations from the workshops and symposium that preceded the adoption of the 2007 State Strategy can be found at *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

adoption for the first time anywhere in the nation. They build on CARB's already comprehensive program described above that addresses emissions from all types of mobile sources through both regulations and incentive programs. See Appendix A of the TSD. Table 4 below lists the defined measures in the 2007 State Strategy and their current adoption and approval status. Table 5 provides the State's current estimate of the emissions reductions in the South Coast nonattainment area from these measures.

TABLE 4—2007 STATE STRATEGY DEFINED MEASURES SCHEDULED FOR CONSIDERATION AND CURRENT STATUS (UPDATED APRIL 2011)

State measure	Expected action year	Current status
Defined Measures in 2007 State Strategy		
Smog Check Improvements	2007–2009	Elements approved 75 FR 38023 (July 1, 2010).[22]
Expanded Vehicle Retirement (AB118)	2007	Adopted CARB June 2009; Bureau of Automotive Repair September 2010.
Modifications to Reformulated Gasoline Program	2007	Approved, 75 FR 26653 (May 2, 2010).
Cleaner In-use Heavy Duty Trucks	2007, 2008, 2010	Proposed approval signed June 29, 2011.
Auxiliary Ship Cold Ironing and Other Clean Technologies.	2007–2008	Adopted December 2007.
Cleaner Main Ship Engines and Fuels	Fuel: 2008–2011 Engines: 2008	Proposed approval signed June 29, 2011.
Port Truck Modernization	2007, 2008, 2010	Adopted December 2007 and December 2008.
Accelerated Introduction of Cleaner Locomotives	2008	Implementation 2012.
Clean Up Existing Harbor Crafts	2007, 2010	Adopted November 2007, revised June 2010.
Cleaner In-Use Off-Road Engines	2007, 2010	Waiver action pending.
New Emissions Standards for Recreational Boats	2013	Partial adoption, July 2008; additional action expected 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards.	2013	Adopted November 2008; additional action expected 2013.
Enhanced Vapor Recovery for Above Ground Storage Tanks.	2008.	
Additional evaporative emissions standards	2009, 2013.	
Consumer Products Program (I and II)	2008, 2009, 2011	Phase I approved November 4, 2009, 74 FR 57074; Phase II approved May 12, 2011, 76 FR 27613.

Sources: 2009 State Strategy Update, p. 23 and 2011 Progress Report, Table 1, p. 8. Additional information from *http://www.ca.arb.gov*.

TABLE 5—CURRENTLY CREDITABLE EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE 2007 STATE STRATEGY FOR THE SOUTH COAST, AS REVISED APRIL 2011 (TONS PER DAY 2014)

State measure	Direct $PM_{2.5}$	NO_X	VOC	SO_X
Smog Check Improvements (BAR)	0.3	2.6	8.6	0
Cleaner In-Use Heavy-Duty Trucks	2.6	18.6	3.3	0
Cleaner In-Use Off-Road Equipment (> 25 hp)	0	0.5	0.1	0
Ship Auxiliary Engine Cold Ironing & Clean Tech.	0.1	8.1	0.2	0.3
Cleaner Main Ship Engines and Fuel—Main Engines	3.5	17.6	0.5	37
Clean Up Existing Harbor Craft	0.2	4.1	0.1	0

Source: 2011 Progress Report, Appendix E, pp. 2 and 3. Only defined measures with direct $PM_{2.5}$, VOC, SO_X and/or NO_X, reductions in the South Coast are shown here.

In addition to the State's commitments to propose defined new measures, the 2007 State Strategy includes an enforceable commitment for emissions reductions sufficient, in combination with existing measures and the District's commitments, to attain the $PM_{2.5}$ NAAQS in the South Coast nonattainment area by the requested attainment date of April 5, 2015. For the South Coast, these emission reductions commitments are to achieve 152 tpd of NO_X, 46 tpd of VOC, 9 tpd of direct $PM_{2.5}$, and 20 tpd of SO_X (see 2007 State Strategy, p. 63 and CARB Resolution 07–28, Attachment B, p. 6). The nature of this commitment is described in the State Strategy as follows:

"The total emission reductions from the new measures necessary to attain the federal standards are an enforceable State commitment in the SIP. While the proposed State Strategy includes estimates of the emission reductions from each of the individual new measures, it is important to note that the commitment of the State Strategy is to achieve the total emission reductions necessary to attain the federal standards, which would be the aggregate of all existing and proposed new measures combined. Therefore, if a particular measure does not get its expected emission reductions, the State still commits to achieving the total aggregate emission reductions, whether this is realized through additional reductions from the new measures or from alternative control measures or incentive programs. If actual emission decreases occur in any air basin for which emission reduction commitments have been

[22] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013. Reductions shown for the SmogCheck program in the 2011 Progress Report do not include reductions from AB 2289 improvements. See CARB Progress Report supplement, attachment 5.

made that are greater than the projected emissions reductions from the adopted measures in the State Strategy, the actual emission decreases may be counted toward meeting ARB's total emission reduction commitments.''

CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3.

c. The Local Jurisdiction's RACM Analysis

The local jurisdiction's RACM analysis was conducted by the metropolitan planning organization (MPO) for the South Coast region, the Southern California Association of Governments (SCAG). This analysis, which focused on transportation control measures (TCMs), and the results of this analysis are described in Appendix IV–C of the South Coast 2007 AQMP. The TCMs in the South Coast 2007 AQMP are derived from TCM projects in the 2006 SCAG Regional Transportation Improvement Program (RTIP). This analysis, described beginning on page 49 of Appendix IV–C of the South Coast 2007 AQMP, resulted in extensive local government commitments to implement programs to reduce auto travel and improve traffic flow. South Coast 2007 AQMP page 6–6 and Appendix IV–C. SCAG also provided reasoned justifications for any measures that it did not adopt. Attachment A to Appendix IV–C contains an extensive list of TCMs in process and newly programmed TCMs. The enforceable commitment from SCAG and the transportation agencies was to fund and implement projects in the first two years of the 2006 Regional Transportation Improvement Program (RTIP).

3. Proposed Actions on RACM/RACT Demonstration and Adopted Control Strategy

We propose to find that there are, at this time, no additional reasonably available measures that individually or collectively would advance attainment of the $PM_{2.5}$ NAAQS in the South Coast nonattainment area by one year or more. This proposal is based on our review of potential RACM/RACT in the revised 2007 South Coast AQMP and the 2007 State Strategy; the District's and State's adopted control strategies, including their commitments to adopt measures and their progress in meeting those commitments; and our proposed concurrence (discussed below in section V.C.3) with the State's determination that SO_X, NO_X, and VOC are, and ammonia is not, attainment plan precursors per 40 CFR 51.1002(c). Therefore, we propose to find that the relevant portions of the South Coast 2007 AQMP and the 2007 State Strategy provide for the implementation of RACM/RACT as required by CAA section 172(c)(1) and 40 CFR 51.1010.

Because they will strengthen the California SIP, we are also proposing to approve, the District's commitments to adopt and implement specific control measures on the schedule identified in Tables 2–5 of Appendix E in the 2011 Progress Report, to the extent that these commitments have not yet been fulfilled, and to achieve specific aggregate emissions reductions of direct $PM_{2.5}$, NO_X, VOC and SO_X by specific years as given in Table 1 of the 2011 Progress Report (and Table 2 in today's proposal).

We are also proposing to approve CARB's commitments to propose certain defined measures, as given on Table B–1 in Appendix B of the 2011 Progress Report, and to achieve total aggregate emissions reductions necessary to attain the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area, whether these reductions are realized from the new measures, alternative control measures, incentive programs, or other actual emissions decreases. See CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3. This commitment is to aggregate emissions reductions of 152 tpd of NO_X, 46 tpd of VOC, 9 tpd of direct $PM_{2.5}$, and 20 tpd of SO_X in the South Coast by 2014 (see page 20 of the 2009 State Strategy Status Report).

C. Attainment Demonstration

1. Requirements for Attainment Demonstration

CAA section 172 requires a State to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the specified attainment date. Under the $PM_{2.5}$ implementation rule, this demonstration should consist of four parts:

(1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the $PM_{2.5}$ NAAQS;

(2) Analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, State, and local programs and from potential new State and local measures to meet the RACT, RACM, and RFP requirements in the area;

(3) Adopted emissions reduction measures with schedules for implementation; and

(4) Contingency measures required under section 172(c)(9) of the CAA.

See 40 CFR 51.1007; 72 FR 20586, at 20605.

The requirements for the first two parts are described in the sections on emissions inventories and RACM/RACT above and in the sections on air quality modeling, $PM_{2.5}$ precursors, extension of attainment date, and attainment demonstrations that follow immediately below. Requirements for the third and fourth parts are described in the sections on the control strategy and the contingency measures, respectively.

2. Air Quality Modeling in the South Coast 2007 AQMP

The procedures for modeling attainment of the $PM_{2.5}$ NAAQS as part of an attainment SIP are contained in EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8–Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze.'' (Guidance).[23] A brief description of the modeling used to support South Coast's attainment demonstration follows. For more detailed information about the modeling, please refer to the TSD associated with this rulemaking, which can be found in the docket for today's action.

Air quality modeling is used to establish emission attainment targets, a combination of emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors that the nonattainment area can accommodate without exceeding the NAAQS, and to assess whether the proposed control strategy will result in attainment of the NAAQS by the applicable attainment date. Air quality modeling is performed for a base year and compared to air quality monitoring data to determine model performance. Once the performance is determined to be acceptable, future year emission inventory changes are simulated to determine the relationship between emission reductions and changes in ambient air quality throughout the nonattainment area.

The attainment demonstration for the South Coast nonattainment area is based on the CAMx model using the ''one atmosphere'' approach comprised of the carbon bond IV (CB–IV) gas phased chemistry and a static two-mode particle size aerosol.[24] CAMx annual average $PM_{2.5}$ modeling simulations were generated for 2005 and 2014 baseline emissions scenarios and for a 2014 controlled emissions scenario by

[23] The guidance is available at *http://www.epa.gov/ttn/scram/guidance_sip.htm* and in the docket for today's action.

[24] CAMx is the Comprehensive Air Quality Model with extensions, an Eulerian photochemical dispersion model that allows for integrated ''one-atmosphere'' assessments of gaseous and particulate air pollution (ozone, $PM_{2.5}$, PM_{10}, air toxics) over many scales ranging from sub-urban to continental.

the District. District staff compared the base year model output to speciated particulate data measured in 2005 as part of the Multiple Air Toxics III (MATES–III) program. Model specifications, such as boundary conditions, domain size, and resolution, meet EPA criteria and are discussed in the TSD. Model performance for total mass (the sum of specific individual species), as well as for specific individual species, is adequate and is discussed in the TSD.

The District's attainment analysis follows EPA's guideline technique of applying component-specific relative response factors (RRF) to monitored data throughout the South Coast nonattainment area. A RRF is the ratio of the model's future to current (baseline) predictions at a monitor. Future $PM_{2.5}$ concentrations are estimated at existing monitoring sites by multiplying a modeled RRF at the grid cell locations of each monitor by the observation-based, monitor-specific, ''baseline'' design value. A separate RRF is calculated for each of the $PM_{2.5}$ precursors. Future $PM_{2.5}$ design values were estimated by District staff at existing monitoring sites throughout the South Coast nonattainment area by multiplying modeled RRFs for each monitor times the observed ''component-specific design value.'' The future $PM_{2.5}$ design values were then compared to the annual and 24-hour NAAQS to demonstrate attainment at each site. The maximum 2014 predicted $PM_{2.5}$ annual design value is 15.0 μg/m^3 or lower.[25]

The District also performed the recommended unmonitored area analysis and it indicated that there were no additional nonattainment problems in unmonitored areas. The future $PM_{2.5}$ design values were also compared to the 24-hour $PM_{2.5}$ NAAQS to demonstrate attainment at each site. The maximum predicted 2014 24-hour $PM_{2.5}$ design value at any site is 56.6 μg/m^3; this is lower than the 24-hour $PM_{2.5}$ NAAQS of 65 μg/m^3. EPA guidance also recommends the use of supplemental data analyses to support the air quality modeling. The District used air quality trends and emission inventory trends as ''weight of evidence'' to support the air quality modeling for the attainment demonstration.

The District used its air quality modeling to establish emissions reduction targets to be used in developing the control strategy for the nonattainment SIP. Once a proposed control strategy was developed, the District then used the photochemical modeling to verify that the projected emissions reductions would result in attainment of the 1997 $PM_{2.5}$ standards throughout the South Coast nonattainment area by the target attainment date of 2014. The estimated carrying capacities for the South Coast nonattainment area are included in Table 6.[26] [27]

TABLE 6—EMISSIONS CARRYING CAPACITY ESTIMATES FOR THE SOUTH COAST NONATTAINMENT AREA FOR $PM_{2.5}$ ATTAINMENT

[Tons/day, based on planning inventory]

$PM_{2.5}$	NO_X	SO_X	VOC
87	454	19	469

We are proposing to approve the air quality modeling demonstration in the South Coast 2007 AQMP as meeting the requirements of the CAA consistent with EPA guidance. We provide further discussion in the TSD.

Effect of Inventory Changes on the Air Quality Modeling and Attainment Demonstrations

As discussed above in section V.A., CARB has recently updated the inventories for several mobile source categories for both the base and future years as well as revised the economic forecasts on which the future inventories were based. Ideally, new attainment demonstration modeling would be performed to evaluate the effect of these updates and revisions; however, remodeling is a substantial undertaking and would not necessarily change the basic conclusions of the existing attainment demonstration analysis.

Relative to emissions in the South Coast 2007 AQMP, the decreases in the base year 2002 emissions inventory due to the inventory updates are about 4 percent for NO_X and 5 percent for direct $PM_{2.5}$ emissions. CARB Progress Report supplement, Attachment 1. For the 2014 attainment target year, the decreases in the projected 2014 baseline due to both methodology changes (*e.g.,* changes to construction equipment emissions factors) and the revised economic forecasts are 10 percent for NO_X, 2 percent for direct $PM_{2.5}$, 2 percent for VOC, and a 30 percent increase for SO_X.[28] The effect of the revisions in the target year as compared to the base year are about the same for direct $PM_{2.5}$, and somewhat larger for NO_X. The overall effect of the inventory revisions is thus to increase the emission reductions from base year to attainment year, in a relative sense. Likewise, the revisions would tend to make the relative reduction factors (factors used to scale the modeling results) lower, decreasing the projected $PM_{2.5}$ concentrations in the attainment year and effectively making the attainment demonstration over-estimate the level of emissions reductions needed to attain. Based on model sensitivity results provided by CARB, EPA estimates that ambient concentrations would be slightly lower in the attainment year due to the emission inventory revisions. EPA therefore concludes that the attainment demonstration remains valid, despite the emission inventory changes.

3. $PM_{2.5}$ Precursors Addressed in the South Coast 2007 AQMP

EPA recognizes NO_X, SO_2, VOCs, and ammonia as the main precursor gases associated with the formation of secondary $PM_{2.5}$ in the ambient air. These gas-phase $PM_{2.5}$ precursors undergo chemical reactions in the atmosphere to form secondary particulate matter. Formation of secondary $PM_{2.5}$ depends on numerous factors including the concentrations of precursors; the concentrations of other gaseous reactive species; atmospheric conditions including solar radiation, temperature, and relative humidity; and the interactions of precursors with preexisting particles and with cloud or fog droplets. 72 FR 20586, at 20589.

As discussed previously, a state must submit emissions inventories for each of the four $PM_{2.5}$ precursor pollutants. 72 FR 20586, at 20589 and 40 CFR 51.1008(a)(1). However, the overall contribution of different precursors to $PM_{2.5}$ formation and the effectiveness of alternative potential control measures will vary by area. Thus, the precursors that a state should regulate to attain the $PM_{2.5}$ NAAQS could also vary to some extent from area to area. 72 FR 20586, at 20589.

[25] See 40 CFR part 50 Appendix N, 4.1(a). A predicted design value of 15.04 μg/m^3 or lower is considered modeled attainment of the annual standard.

[26] ''Carrying capacity'' is defined as the maximum level of emissions that enable the attainment and maintenance of an ambient air quality standard for a pollutant. (see South Coast 2007 AQMP, page 5–27.)

[27] The CARB Staff Report for the South Coast 2007 AQMP presents a slightly different emissions carrying capacity which relies more heavily on reductions of primary $PM_{2.5}$ and less heavily on reductions of precursors to $PM_{2.5}$. The Staff Report's emission carrying capacity estimates are $PM_{2.5}$—86 tons/day, NO_X—460 tons/day, SO_X—20 tons/day, and VOC—474 tons/day (see CARB Staff Report on the South Coast AQMP, page ES–3).

[28] By 2014, SO_X emissions reach the attainment target due to adopted State and District rules.

In the $PM_{2.5}$ implementation rule, EPA did not make a finding that all potential $PM_{2.5}$ precursors must be controlled in each specific nonattainment area. See 72 FR 20586, at 20589. Instead, for the reasons explained in the rule's preamble, a state must evaluate control measures for sources of SO_2 in addition to sources of direct $PM_{2.5}$ in all nonattainment areas. 40 CFR 51.1002(c) and (c)(1). A state must also evaluate control measures for sources of NO_X unless the State and/or EPA determine that control of NO_X emissions would not significantly reduce $PM_{2.5}$ concentrations in the specific nonattainment area. 40 CFR 51.1002(c)(2). In contrast, EPA has determined in the $PM_{2.5}$ implementation rule that a state does not need to address controls for sources of VOC and ammonia unless the state and/or EPA make a technical demonstration that controls on such sources would significantly contribute to reducing $PM_{2.5}$ concentrations in the specific nonattainment area at issue. 40 CFR 51.1002(c)(3) and (4). Such a demonstration is required ''if the administrative record related to development of its SIP shows that the presumption is not technically justified for that area.'' 40 CFR 51.1002(c)(5).

''Significantly contributes'' in this context means that a significant reduction in emissions of the precursor from sources in the area would be projected to provide a significant reduction in $PM_{2.5}$ concentrations in the area. 72 FR 20586 at 20590. Although EPA did not establish a quantitative test for determining what constitutes a significant change, EPA noted that even relatively small reductions in $PM_{2.5}$ levels are estimated to result in worthwhile public health benefits. *Id.*

EPA further explained that a technical demonstration to reverse the presumption for NO_X, VOC, or ammonia in any area could consider the emissions inventory, speciation data, modeling information, or other special studies such as monitoring of additional compounds, receptor modeling, or special monitoring studies. 72 FR 20586 at 20596–20597. These factors could indicate that the emissions or ambient concentration contributions of a precursor, or the sensitivity of ambient concentrations to changes in precursor emissions, differs for a specific nonattainment area from the presumption EPA established for that precursor in the $PM_{2.5}$ implementation rule.

In the South Coast nonattainment area, $PM_{2.5}$ can be directly emitted, such as from road dust, diesel soot, combustion products, and other sources (''primary particles''), or formed through atmospheric chemical reactions of precursor chemicals (''secondary particles''). Examples of secondary particles include sulfates, nitrates, and complex carbon compounds formed from reactions of NO_X, SO_X, VOC, and ammonia. The attainment demonstration for the South Coast $PM_{2.5}$ nonattainment area addresses ammonium nitrate and ammonium sulfate because they represent a dominant fraction of $PM_{2.5}$ components in this area and are formed through secondary reactions of the precursors NO_X, SO_X, VOC and ammonia. The District's analysis indicates that SO_X reductions followed by directly-emitted $PM_{2.5}$ and NO_X reductions provide the greatest ambient $PM_{2.5}$ reductions. VOC reductions can also contribute to improving ambient $PM_{2.5}$ concentrations and will occur concurrently as a result of the District's 8-hour ozone NAAQS strategy.[29] The $PM_{2.5}$ implementation rule allows States or EPA to evaluate which $PM_{2.5}$ precursors should be precursors for regulatory purposes in a particular nonattainment area, based on the facts and circumstances of such area. SCAQMD has elected to consider VOCs as regulatory precursors for the purpose of this SIP, based on their modeling analysis, which considered the sensitivity of $PM_{2.5}$ formation to VOC emission reduction. EPA agrees that the District's determination to consider VOC as a precursor for this SIP is appropriate in this nonattainment area.

Starting in 2011, the $PM_{2.5}$ implementation rule requires that states must also address condensable particulate matter (CPM), including estimates of CPM in emissions inventories, modeling, and control strategies.

4. Extension of the Attainment Date

CAA section 172(a)(2) provides that an area's attainment date ''shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment * * *, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment considering the severity of nonattainment and the availability and feasibility of pollution control measures.''

Because the effective date of designations for the 1997 $PM_{2.5}$ standards was April 5, 2005 (70 FR 944), the initial attainment date for $PM_{2.5}$ nonattainment areas is as expeditiously as practicable but not later than April 5, 2010. For any areas that are granted a full five-year attainment date extension under section 172, the attainment date would be no later than April 5, 2015.

Section 51.1004 of the $PM_{2.5}$ implementation rule addresses the attainment date requirement. Section 51.1004(b) requires a State to submit an attainment demonstration justifying its proposed attainment date and provides that EPA will approve an attainment date when we approve that demonstration.

States that request an extension of the attainment date under CAA section 172(a)(2) must provide sufficient information to show that attainment by April 5, 2010 is impracticable due to the severity of the nonattainment problem in the area and the lack of available and feasible control measures to provide for faster attainment. 40 CFR 51.1004(b). States must also demonstrate that all RACM and RACT for the area are being implemented to bring about attainment of the standard by the most expeditious alternative date practicable for the area. 72 FR 20586, at 20601.

For urban areas nationwide, the South Coast nonattainment area has the second highest average annual mean $PM_{2.5}$ concentration (ranking only behind the San Joaquin Valley in California for the 1997 $PM_{2.5}$ standards). Annual $PM_{2.5}$ concentrations recorded over the last few years at the Mira Loma monitoring site continue to exceed the 1997 $PM_{2.5}$ NAAQS.[30] The $PM_{2.5}$ problem in the South Coast is complex, caused by both direct $PM_{2.5}$ and secondary $PM_{2.5}$, and compounded by the topographical and meteorological conditions for the area that are very conducive to the formation and concentration of $PM_{2.5}$ particles. South Coast 2007 AQMP, chapter 4.

As discussed in section V.B.2. above, the District's strategy for attaining the $PM_{2.5}$ standard relies on reductions of directly-emitted $PM_{2.5}$ as well as the $PM_{2.5}$ precursor pollutants NO_X, VOC, and SO_X. The South Coast nonattainment area needs significant reductions in $PM_{2.5}$, NO_X, VOC, and SO_X to demonstrate attainment. Further reducing these pollutants is challenging, because the State and District have already adopted stringent control measures for most

[29] See page 5–17 of Chapter 5 of the South Coast 2007 AQMP. We approved the South Coast RACT SIP on December 18, 2008 (see 73 FR 76947) as complying with the relevant CAA requirements for RACT SIPs for 8-hour ozone.

[30] See footnote 2.

sources of direct $PM_{2.5}$, NO_X, VOC, and SO_X emissions. Moreover, attainment in the South Coast nonattainment area depends on emissions reductions that offset the emissions increases associated with projected increases in population, economic growth, and goods movement.

The direct $PM_{2.5}$ reductions are achieved primarily from open burning and residential wood combustion control measures. These types of control measures present special implementation challenges (*e.g.,* the large number of individuals subject to regulation and the difficulty of applying conventional technological control solutions). NO_X reductions come largely from District rules for fuel combustion sources, and from the State's mobile source rules. VOC reductions come from District rules governing the petroleum industry, as well as consumer products rules at both the State and local level. SO_X reductions identified in the plan come from District rules such as RECLAIM, and State measures related to ships.

Because of the necessity of obtaining additional emissions reductions from these source categories in the South Coast nonattainment area and the need to conduct significant public outreach if applicable control approaches are to be effective, EPA agrees with the District and CARB that the South Coast 2007 AQMP reflects expeditious implementation of the programs during the 2008–2014 time frame. EPA also agrees that the implementation schedule for enhanced stationary source controls is expeditious, taking into account the time necessary for purchase and installation of the required control technologies. The District's control strategies are discussed in greater detail in Chapter 4 of the South Coast 2007 AQMP, and in section V.B.2 above.

In addition, the State has adopted standards for many categories of on-road and off-road vehicles and engines, gasoline and diesel fuels, as well as improvements to California's vehicle inspection and maintenance program, and programs requiring the retrofitting and replacement of in-use trucks, buses, and off-road equipment. The State is implementing these rules and programs as expeditiously as practicable, and it is not feasible to accelerate the schedule for new emissions standards under the State and Federal mobile source control programs.

EPA also expects that CARB and the District will continue to investigate opportunities to accelerate progress as new control opportunities arise, and that the agencies will promptly adopt and expeditiously implement any new measures found to be feasible in the future.

As discussed in section V.B.3 above, we are proposing to approve the RACM/RACT demonstration in the South Coast 2007 AQMP. As discussed below in section V.C.6., we are also proposing to approve the attainment demonstration in the SIP. Based on these proposed approvals, EPA is proposing to grant an extension of the attainment date for the 1997 $PM_{2.5}$ standards in the South Coast to April 5, 2015 pursuant to CAA section 172(b)(2) and 40 CFR 51.1004(b).

5. Attainment Demonstration

Table 7 below summarizes the reductions that are relied on in the South Coast 2007 AQMP to demonstrate attainment by April 5, 2015.

TABLE 7—SUMMARY OF EMISSIONS REDUCTION PROGRESS FOR SOUTH COAST'S $PM_{2.5}$ ATTAINMENT DEMONSTRATION (TONS PER DAY, TPD), UPDATED APRIL 2011

	NO_X	VOC	Direct $PM_{2.5}$	SO_X
2002 baseline (2011 SIP Revision, p. 9	1093	844	99	53
2014 attainment targets (ARB staff Report for South Coast 2007 AQMP)*	460	474	86	20
2014 baseline (2011 SIP Revision, Appendix E, p. 2)**	589	518	95	61
2014 remaining emissions after "adopted controls" (2011 SIP Revision, Appendix E, p. 2)***	530	485	87	20
Remaining emissions reduction/enforceable commitment****	70 (11%)	11 (3%)	1 (8%)	0 0%

* The attainment targets have not changed from the November 22, 2010 proposal.

** The 2014 baseline is revised to reflect new estimates which take into account the impact of the economic recession on and changes in inventory methodologies for diesel trucks, goods movement and construction equipment. See 2011 Progress Report, Appendix E, page 2, "South Coast Air Basin 2014 Progress to Date on ARB Rules" table, "New 2014 Baseline" numbers.

*** The 2014 remaining emissions number is what remains after crediting the reductions from "adopted controls." By "adopted controls" we mean State or district control measures that EPA has approved or proposed to approve into the SIP, or state mobile source measures that are subject to a CAA section 209 waiver. See section V.B.2.b of this notice. In separate actions, EPA has recently proposed to approve several of the measures listed in the 2011 Progress Report SIP Revision, Appendix E tables (*e.g.,* CARB's diesel truck rules and the Ocean-going Vessels fuel rule).

**** This row reflects the State's aggregate emissions reduction commitment, including the 10 tpd NO_X federal assignment. See 2011 Progress Report, p. 5.

As shown in this table, the majority of the emissions reductions that the State projects are needed for $PM_{2.5}$ attainment in the South Coast by April 5, 2015 come from baseline reductions. These baseline reductions include not only the benefit of numerous adopted District and State measures which generally have been approved by EPA either through the SIP process or the CAA section 209 waiver process but also the effect of the recent economic recession and revised emission factors and activity data on projected future inventories. See 2011 Progress Report, Appendix E and Appendices A and B of the TSD. The remaining reductions needed for attainment are to be achieved by the District's and CARB's commitments to reduce emissions in the South Coast nonattainment area. Since the submittal of the South Coast 2007 AQMP and the 2007 State Strategy, SCAQMD and CARB have adopted measures (summarized in Table 8 below) that can be credited towards reducing the aggregate emissions reductions in the enforceable commitments.

a. Enforceable Commitments

As shown above, measures already adopted by the District and CARB (both prior to and as part of the South Coast 2007 AQMP) provide the majority of emissions reductions the State projects are needed to demonstrate attainment. The balance of the needed reductions is in the form of enforceable commitments by the District and CARB.

The CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted

measures.[31] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA considers three factors in determining whether to approve the CAA requirement that relies on the enforceable commitment: (a) Does the commitment address a limited portion of the CAA requirement; (b) is the state capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.[32]

With respect to the South Coast 2007 AQMP and 2007 State Strategy, circumstances warrant the consideration of enforceable commitments as part of the attainment demonstration for the South Coast nonattainment area. As shown in Table 7 above, the majority of emission reductions that are needed to demonstrate attainment and RFP in the South Coast nonattainment area come from rules and regulations that were adopted prior to the AQMP's submittal in November 2007, *i.e.*, they come from the baseline measures.

As a result of these already-adopted State and District measures, most sources in the South Coast nonattainment area were already subject to stringent rules prior to the development of the 2007 State Strategy and the South Coast 2007 AQMP, leaving fewer and more technologically challenging opportunities to reduce emissions. In the South Coast 2007 AQMP and the 2009 revisions to the 2007 State Strategy, the District and CARB identified potential control measures that could achieve the additional emissions reductions needed for attainment. However, the timeline needed to develop, adopt, and implement these measures went well beyond the April 5, 2008[33] CAA deadline to submit the $PM_{2.5}$ plan. As discussed above and below, since 2007, the District and State have made progress in adopting measures to meet their commitments, but have not yet completely fulfilled them. Given these circumstances, the 2007 AQMP and the 2007 State Strategy's reliance on enforceable commitments is warranted. We now consider the three factors EPA uses to determine whether the use of enforceable commitments in lieu of adopted measures to meet CAA planning requirements is approvable.

i. The Commitment Represents a Limited Portion of Required Reductions

For the first factor, we look to see if the commitment addresses a limited portion of a statutory requirement, such as the amount of emissions reductions needed in a nonattainment area.

As shown in Table 7, the remaining portion of the enforceable commitments in the South Coast 2007 AQMP and the revised 2007 State Strategy are 70 tpd NO_X, 11 tpd VOC and 1 tpd direct $PM_{2.5}$ after accounting for measures that are either approved or proposed for approval and revisions to the future year baseline inventories resulting from changes to the plan's economic forecasts and other factors. When compared to the total reductions needed by 2014 for $PM_{2.5}$ attainment in the South Coast nonattainment area on a per-pollutant basis, these remaining commitments represent approximately 11 percent of the NO_X reductions, 3 percent of the VOC reductions and 8 percent of the direct $PM_{2.5}$ reductions needed to attain the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area.

We find that the reductions remaining as enforceable commitments in the 2007 AQMP and the 2007 State Strategy represent a limited portion of the total emissions reductions needed to meet the statutory requirement for attainment in the South Coast nonattainment area and therefore satisfy the first factor. Overall, the level of reductions remaining as commitments is approximately within the 10 percent range that EPA has historically accepted in approving attainment demonstrations.[34]

ii. The State is Capable of Fulfilling Its Commitment

For the second factor, we consider whether the State and District are capable of fulfilling their commitments. As discussed above, CARB has adopted and submitted a 2009 State Strategy Status Report and a 2011 Progress Report, which update and revise the 2007 State Strategy. These reports show that CARB has made significant progress in meeting its enforceable commitments for the South Coast and several other nonattainment areas in California. Additional ongoing programs that address locomotives, recreational boats, and other measures have yet to be quantified but are expected to reduce NO_X and direct $PM_{2.5}$ emissions in the South Coast by 2014. See 2011 Progress Report, Appendix E, page 2.

The District has already exceeded its commitment for reducing VOC and SO_X emissions and is working to meet the commitment to reduce NO_X and directly emitted $PM_{2.5}$. See Tables 2 and 3. The District is also continuing to work to identify and adopt additional measures that will reduce emissions.

Beyond the rules discussed above, both CARB and the District have well-funded incentive grant programs to reduce emissions from the on- and off-road engine fleets. Reductions from several of these programs have yet to be quantified and/or credited in the attainment demonstration. Finally, we note that the South Coast has experienced significant improvements in its $PM_{2.5}$ air quality in the past few years.

Given the evidence of the State's and District's efforts to date and their continuing efforts to reduce emissions, we find that the State and District are capable of meeting their enforceable commitments to achieve the necessary reductions needed to attain the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area by its proposed attainment date of April 5, 2015.

[31] Commitments approved by EPA under section 110(k)(3) of the CAA are enforceable by EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments: See, *e.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, recon. granted in par, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA Section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed. CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.'' Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any ''means or techniques'' that EPA determines are ''necessary or appropriate'' to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

[32] The U.S. Court of Appeals for the Fifth Circuit upheld EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the 1-hour ozone SIP for Houston-Galveston. *BCCA Appeal Group et al.* v. *EPA et al.,* 355 F.3d 817 (5th Cir. 2003).

[33] The 2007 State Strategy and the South Coast 2007 AQMP were developed to address both the 1997 $PM_{2.5}$ NAAQS and the 1997 8-hour ozone NAAQS. The 8-hour ozone SIPs were due in November 2007, and the development and adoption of these plans was timed to coordinate with this submittal date. 2007 State Strategy, p. 1, and South Coast 2007 AQMP, p. ES–3.

[34] See, for example, our approval of the SJV PM_{10} Plan at 69 FR 30005 (May 26, 2004), the SJV 1-hour ozone plan at 75 FR 10420 (March 8, 2010), and the Houston-Galveston 1-hour ozone plan at 66 FR 57160 (November 14, 2001).

iii. The Commitment is for a Reasonable and Appropriate Period of Time

For the third and final factor, we consider whether the commitment is for a reasonable and appropriate period of time.

In order to meet the commitments to reduce emissions to the levels needed to attain the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area, the South Coast 2007 AQMP and the 2007 State Strategy included ambitious rule development, adoption, and implementation schedules, which both the District and CARB have substantially met. See 2011 Progress Report, p. 9. EPA considers these schedules to provide sufficient time to achieve by 2014 the few remaining reductions needed to attain by the proposed attainment date of April 5, 2015. We, therefore, conclude that the third factor is satisfied.

b. Federal Reductions

As discussed in our November 2010 proposal and as shown in Table 7, the South Coast 2007 AQMP assigns 10 tons per day of NO_X reductions to the Federal government. However, because the CAA does not authorize a State to assign responsibility to the Federal government for meeting SIP requirements, we cannot accept the 10 tpd NO_X emissions reductions emissions reductions the District and State assigned to the Federal government in the South Coast 2007 AQMP.

The District has further addressed the federal assignment by committing to an additional reduction of 1 tpd NO_X (see 2011 Progress Report, Appendix F, p. 5 and SCAQMD Governing Board Resolution 11–9, March 4, 2011). In addition, CARB has committed to achieve the remaining portion of the federal assignment in the 2011 Progress Report and includes it in the remaining commitment of 70 tpd of NO_X. (See 2011 Progress Report, p. 5, and CARB Executive Order S–11–010.) As we stated in our November 2010 proposal, we are not accepting the 10 tpd NO_X federal assignment as the CAA does not allow for such assignment. We are proposing, however, to approve the State's and District's commitments to achieve the emissions reductions previously attributed to the federal government.

6. Proposed Action on the Attainment Demonstration

In order to approve a SIP's attainment demonstration, EPA must make several findings and approve the plan's proposed attainment date.

First, we must find that the demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed above in section V.A and V.C.2, we are proposing to approve both the emissions inventories and the air quality modeling on which the South Coast 2007 AQMP's attainment demonstration and other provisions are based.

Second, we must find that the SIP submittal provides for expeditious attainment through the implementation of all RACM and RACT. As discussed above in section V.B, we are proposing to approve the RACM/RACT demonstration in the South Coast 2007 AQMP.

Third, EPA must find that the emissions reductions that are relied on for attainment are creditable. As discussed in section V.C.5, the South Coast 2007 AQMP relies principally on adopted and approved/waived rules to achieve the emissions reductions needed to attain the 1997 $PM_{2.5}$ standards in the South Coast nonattainment area by April 5, 2015. The balance of the reductions is currently in the form of enforceable commitments that account for 11% of the NO_X, 8% of the direct $PM_{2.5}$, and 3% of the VOC emission reductions needed from 2002 levels for attainment. See Table 7.

EPA has previously accepted enforceable commitments in lieu of adopted control measures in attainment demonstrations when circumstances warrant it and the commitments meet three criteria. As discussed above in section V.C.5, we find that circumstances here warrant the consideration of enforceable commitments and that the three criteria are met: (1) Both the State and the District have demonstrated their capability to meet their commitments, (2) the commitments constitute a limited portion of the required emissions reductions, and (3) the commitments are for an appropriate timeframe. Based on these conclusions, we propose to allow the State to rely on these limited enforceable commitments in its attainment demonstration.

Finally, for a $PM_{2.5}$ nonattainment area that cannot attain within five years of its designation as nonattainment, EPA must grant an extension of the attainment date in order to approve the attainment demonstration for the area. As discussed above in section V.C.4, we propose to determine that a five-year extension of the attainment date is appropriate given the nonattainment problem in the South Coast nonattainment area and the availability and feasibility of control measures and, therefore, to grant the State's request to extend the attainment date in the South Coast nonattainment area to April 5, 2015. For the foregoing reasons, we are proposing to approve the attainment demonstration in the South Coast 2007 AQMP.

D. Reasonable Further Progress Demonstration

1. Requirements for Reasonable Further Progress

CAA Section 172(c)(2) requires that plans for nonattainment areas shall provide for reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.''

The $PM_{2.5}$ implementation rule requires submittal of an RFP plan at the same time as the attainment demonstration for any area for which the State seeks an extension of the attainment date beyond 2010. For areas for which the state requests an attainment date extension to 2015, such as the South Coast nonattainment area, the RFP plan must demonstrate that in the applicable milestone years of 2009 and 2012, emissions in the area will be at a level consistent with generally linear progress in reducing emissions between the base year and the attainment year. 40 CFR 51.1009(d). States may demonstrate this by showing that emissions for each milestone year are roughly equivalent to benchmark emission levels for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the attainment plan. The steps for determining the benchmark emissions levels to demonstrate generally linear progress are given in the $PM_{2.5}$ implementation rule in 40 CFR 51.1009(f).

The RFP plan must describe the control measures that provide for meeting the reasonable further progress milestones for the area, the timing of implementation of those measures, and the expected reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors. 40 CFR 51.1009(c).

2. Reasonable Further Progress Demonstration in the South Coast 2007 AQMP

CARB provided an updated and revised RFP demonstration for the South Coast nonattainment area in Appendix C of the 2011 Progress Report.

The demonstration addresses direct $PM_{2.5}$, NO_X, VOC and SO_X and uses the 2002 annual average day inventory as the base year inventory and 2014 as the attainment year. The revised South Coast $PM_{2.5}$ RFP demonstration is summarized Table 8 below.

As discussed above, the District's modeling demonstration indicated that for attainment of the 1997 $PM_{2.5}$ NAAQS, SO_X reductions are the most effective, followed by direct $PM_{2.5}$, and then NO_X and VOC. Therefore, the District's proposed control strategy maximizes reductions of direct $PM_{2.5}$ and SO_X to the extent possible.

TABLE 8—REVISED RFP CALCULATIONS

[Tons per average annual day]

	NO_X	VOC	Direct $PM_{2.5}$	SO_X
2002 baseline inventory (tpd)	1093	844	99	53
Annual percentage change needed to show linear progress (%)	4.87	3.7	1.01	5.35
Annual emissions reduction representing 1 year's worth of RFP	52.8	30.8	1.1	2.8
2009				
Benchmark emissions level (tpd)	724	628	91	34
Revised projected controlled level (tpd)	677	563	89	43
Emissions above/below benchmark emissions level (tpd)[a]	−47	−65	−2	9
Percent above/below benchmark emissions level	−6%	−10%	−2%	+26%
2012				
Benchmark emissions level (tpd)	566	534	88	26
Revised projected controlled emissions level (tpd)	582	514	89	26
Emissions above/below benchmark emissions level (tpd)	16	−20	1	0
Percent above/below benchmark emissions level (%)	+2.8%	−4%	+1%	0%

Source: 2011 Progress Report, Appendix C, Table C–2.

[a] A "-" value in the "projected shortfall" cell means the target has been exceeded. A bold italicized value indicates a shortfall.

3. Proposed Action on the RFP Demonstration

EPA has reviewed the revised RFP demonstration in the 2011 Progress Report and has determined that it was prepared consistent with applicable EPA regulations and policies. See Section II.H of the TSD. As can be seen from Table 8 above, controlled emissions levels for NO_X, direct $PM_{2.5}$ and VOC were below the benchmarks for 2009, demonstrating that the South Coast nonattainment area met its RFP targets for that year for those pollutants. The table shows that the area has a shortfall of 9 tpd of SO_X in 2009. For 2012, the projected controlled emissions levels for direct $PM_{2.5}$ and NO_X are only slightly above the benchmark (by about 1%) and the projected controlled levels for VOC and SO_X are below or at the benchmarks. We find that, overall, these projected controlled emissions levels represent generally linear progress for 2012.

Based on our evaluation, which is summarized above and discussed in detail in section II.H. of the TSD, and our proposed concurrence (discussed above in Section V.C.3) with the State's determination that NO_X, VOC, and SO_X are attainment plan precursors and ammonia is not an attainment plan precursor per 40 CFR 51.1002(c), we propose to find that the South Coast 2007 AQMP provides for reasonable further progress as required by CAA section 172(c)(2) and 40 CFR 51.1009 and that the South Coast nonattainment area has met its 2009 RFP benchmarks.[35]

E. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), all $PM_{2.5}$ attainment plans must include contingency measures to be implemented if an area fails to meet RFP (RFP contingency measures) and contingency measures to be implemented if an area fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date (attainment contingency measures). These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly without significant additional action by the State. 40 CFR 51.1012. They must also be measures not relied on in the plan to demonstrate RFP or attainment and should provide SIP-creditable emissions reductions equivalent to one year of RFP. Finally, the SIP should contain trigger mechanisms for the contingency measures and specify a schedule for their implementation. 72 FR 20586, p. 20642.

Contingency measures can include Federal measures and local measures already scheduled for implementation that provide emissions reductions in excess of those needed to provide for RFP or expeditious attainment. EPA has approved numerous SIPs under this interpretation. See, for example, 62 FR 15844 (April 3, 1997) direct final rule approving Indiana ozone SIP revision; 62 FR 66279 (December 18, 1997), final rule approving Illinois ozone SIP revision; 66 FR 30811 (June 8, 2001), direct final rule approving Rhode Island ozone SIP revision; 66 FR 586 (January 3, 2001), final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions; and 66 FR 634 (January 3, 2001), final rule approving Connecticut ozone SIP revision. The State may use the same measures for both RFP and attainment contingency if the measures will provide reductions in the relevant years; however, should measures be triggered for failure to make RFP, the State would need to submit replacement contingency measures for attainment purposes.

2. Contingency Measures in the South Coast 2007 AQMP

The attainment plan for the South Coast nonattainment area includes

[35] As discussed above in section V.A., CARB has recently updated the inventories for several mobile source categories and estimates that these updates would reduce, if incorporated into those inventories, the Plan's 2002 base year NO_X inventory by approximately 4 percent and the direct $PM_{2.5}$ inventory by approximately 5 percent. CARB Progress Report Supplement, Attachment 1. EPA evaluated the potential impact of revising the 2002 base year inventories on the RFP demonstration and found that the Plan would continue to show the RFP. See Section II.H. of the TSD.

contingency measures to be implemented if the area fails to attain by its attainment date or fails to meet RFP requirements. The contingency measures for the South Coast nonattainment area are described in Chapter 9 of the South Coast 2007 AQMP and discussed in more detail in Appendix IV–A, section 2 of the AQMP. They are described below.

The South Coast 2007 AQMP describes the contingency measures in the following way: ''Although implementation of these measures is expected to reduce emissions, there are issues that limit the viability of these measures as AQMP control measures at this time. Issues surrounding these measures include, but are not limited to availability of District resources to implement and enforce the measure, cost-effectiveness of the measure, potential adverse environmental impacts, potential economic impacts, effectiveness of emissions reductions, and availability of methods to quantify emissions reductions.'' South Coast 2007 AQMP, page 9–1.

The South Coast 2007 AQMP does not calculate the emissions reductions that are equivalent to one year's worth of RFP. Based on information in the plan, we have calculated one year's worth of RFP to be 1.1 tpd of direct $PM_{2.5}$, 52.8 tpd of NO_X, 30.8 tpd of VOC, and 2.8 tpd of SO_X. See Section II.I of the TSD.

The 2011 Progress Report adds language indicating that the trigger for implementation of the contingency measures is nonattainment of the $PM_{2.5}$ standard by April 5, 2015. (See 2011 Progress Report, Appendix F, page (5)) Additional information provided by CARB indicates some reductions are available for attainment contingency measures. See CARB Progress Report Supplement, Attachment 2, dated May 18, 2011, in the docket for today's action.

The South Coast 2007 AQMP and the 2011 Progress Report contained the following contingency measures.

CTY–01—Offsetting potential emissions increase due to change in natural gas specifications—This proposed contingency measure requires RECLAIM facilities that use natural gas of a quality that creates more emissions to offset these emissions for all pollutants. The measure is listed as a ''Remaining 2003 AQMP Revision Control Measure'' and thus was relied on in the 2003 AQMP for attainment. In addition, the reductions are not quantified, and may be zero, because the proposed measure may only reduce future emissions increases rather than provide net reductions. The measure is not triggered by failure to meet RFP or attainment and there is no defined implementation schedule. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

CTY–02—Clean Air Act emission fees for major stationary sources—This proposed contingency measure would use fees generated from the District's Rule 317, Clean Air Act Nonattainment Fees, to achieve emissions reductions. The implementation of Rule 317 is triggered by a failure of the South Coast to attain the 1-hour standard by its applicable attainment date (which occurred on November 15, 2010) and not by any failure to make RFP or to attain the $PM_{2.5}$ NAAQS, a requirement for contingency measures for $PM_{2.5}$ SIPs. South Coast Rule 317 (a fee equivalency program and demonstration) was adopted on February 4, 2011 and submitted to EPA for approval on April 22, 2011. There is no implementation schedule provided for this contingency measure, and the AQMP does not quantify the reductions associated with this measure. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

CTY–03—Banning pre-Tier 3 off-road diesel engines on High Pollution Advisory (HPA) days—This proposed contingency measure would complement a CARB rule which proposed to establish declining fleet average emissions levels for off-road equipment over 25 horsepower (hp). The District proposed a complementary measure, SC–OFFRD–1, that would ban the use of pre-Tier 3 off-road diesel engines after 2023 on HPA days should the South Coast nonattainment area fail to meet the 8-hour ozone standard. This proposed contingency measure would require additional rulemaking at the District level, as it is not currently adopted. It also would be implemented too late in time to provide for RFP or contingency reductions for $PM_{2.5}$ RFP or attainment. In addition, the AQMP does not quantify the reductions associated with this measure. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

CTY–04—Request CARB to accelerate State measure implementation—This proposed contingency measure (which could function as both an RFP and an attainment contingency measure), requires the District's Governing Board to adopt a resolution requesting CARB to accelerate the adoption and/or implementation of any remaining control measures that have not yet been adopted or fully implemented by one year. South Coast 2007 AQMP, page 9–3.

Under CAA section 172(c)(9) and EPA's policies interpreting this section, contingency measures must require minimal additional rulemaking by the State and take effect within a few months of a failure to make RFP or to attain.[36] This proposed contingency measure would require additional rulemaking at the District level and potentially substantial and lengthy additional rulemaking at the State level to be implemented. There is no trigger mechanism or implementation schedule provided, and the AQMP does not quantify the reductions associated with this measure. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

Post-Attainment Year Emissions Reductions. Excess reductions from CARB mobile source measures in 2015/2016 do not fully address the contingency measure requirement for the $PM_{2.5}$ attainment year. There is no calculation of the emissions reductions equivalent of one year's work of RFP in the South Coast 2007 AQMP.

CARB's 2011 Progress Report included calculations for the reductions associated with the existing CARB mobile source control program for 24 tpd of NO_X and 13 tpd of VOC in the year after attainment. However, CARB's mobile source measures do not provide sufficient reductions to meet one year's worth of RFP, based on the information provided in the 2011 Progress Report (see 2011 Progress Report, Appendix F, p. 3, and CARB Progress Report supplement, Attachment 2; therefore, post-attainment-year emissions reductions do not meet the CAA contingency measure requirement.

[36] See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'') 57 FR 13498, at 13512 (April 16, 1992).

TABLE 9—SUMMARY OF REDUCTIONS FROM CONTINGENCY MEASURES

[Tons per average annual day]

	$PM_{2.5}$	NO_X	VOC	SO_X
Excess reductions in the RFP demonstration that are available to meet the 2012 RFP contingency requirements (excess reduction in the 2012 RFP demonstration)	0	0	0	0
New 2015 reductions available to meet the attainment contingency requirement	0	24	13	0
Reductions equivalent to 1-year's worth of RFP	1.1	52.8	30.8	2.8

Source: 2011 Progress Report (see 2011 Progress Report, Appendix F, p. 3.

3. Proposed Action on the Contingency Measures

We are not evaluating the provisions in the South Coast 2007 AQMP that address contingency measures for failure to meet the 2009 RFP benchmarks. Information in the 2011 Progress Report shows that South Coast met its 2009 benchmarks for direct $PM_{2.5}$, NO_X, and VOC. See 2011 Progress Report, Appendix C, Table C–2. SO_X emissions were higher than the linear benchmark, but were corrected by the 2012 linear benchmark. See 2011 Progress report, Table C–2, and section II.H of the TSD. Therefore, contingency measures for failure to meet the 2009 RFP benchmark no longer have any meaning or effect under the CAA and therefore do not require any review or action by EPA. In addition, as noted above, the purpose of RFP contingency measures is to provide continued progress while the SIP is being revised to meet a missed RFP milestone. Failure to meet the 2009 benchmark would have required California to revise the South Coast 2007 AQMP to assure that the next milestone was met and that the plan still provided for attainment. California has already prepared and submitted a revision to the South Coast 2007 AQMP that shows that the SIP continues to provide for RFP and for attainment by April 5, 2015. This revision is the 2011 Progress Report, which is one of the submittals that EPA is proposing action on in this notice.

The South Coast 2007 AQMP includes suggestions for several contingency measures that do not meet the CAA's minimum requirements. The measures proposed by the District are not adopted, and does not quantify the expected emissions reductions in order to gauge whether they provide reductions equivalent to one year's worth of RFP.

The continuing implementation of the State's mobile source program will reduce emissions substantially in 2015 (the year after the 2014 attainment year). However, as shown in Table 9, these reductions do not provide emissions reductions equivalent to one year's worth of RFP when considered on a per-pollutant basis.

Based on this evaluation and for the reasons stated above, we are proposing to disapprove the District's contingency measure provisions for the 2012 RFP year and the attainment year in the South Coast 2007 AQMP for $PM_{2.5}$ as not meeting the requirements of CAA section 172(c)(9) and 40 CFR 51.1012.

F. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Requirements for Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Our transportation conformity rule requires that transportation plans, programs, and projects developed by Metropolitan Planning Organizations (MPOs) in nonattainment and maintenance areas conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards or any interim milestone.

Control strategy SIP submittals (such as RFP and attainment SIP submittals) must specify the maximum emissions of transportation-related emissions from existing and planned highway and transit systems allowed in the appropriate years, *i.e.,* the motor vehicle emissions budgets (''budgets''). The submittal must also demonstrate that these transportation-related emissions levels, when considered with emissions from all other sources, are consistent with RFP or attainment of the NAAQS, whichever is applicable. MPOs cannot use the budgets and DOT cannot approve a Regional Transportation Plan (RTP) or Transportation Improvement Program (TIP) conformity analysis using the budgets until EPA had made an affirmative adequacy finding based on a preliminary review of the SIP. MPOs must use budgets in a submitted but not yet approved SIP, after EPA has determined that the budgets are adequate. In order for us to find these emissions levels or ''budgets'' adequate and/or approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). Additionally, motor vehicle emissions budgets cannot be approved until EPA completes a detailed review of the entire SIP and determines that the SIP and the budgets will achieve their intended purpose (*i.e.,* RFP, attainment or maintenance). For more information on the transportation conformity requirement and applicable policies on budgets, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

$PM_{2.5}$ attainment and RFP plans should identify budgets for direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors. Direct $PM_{2.5}$ budgets should include $PM_{2.5}$ motor vehicle emissions from tailpipe, brake wear, and tire wear. States must also consider whether re-entrained paved and unpaved road dust or highway and transit construction dust are significant contributors and should be included in the direct $PM_{2.5}$ budget. (See 40 CFR 93.102(b) and 93.122(f) and the conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004)). The applicability of emission trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(c).

2. Budgets in the South Coast 2007 AQMP and Additional 2008 Submittal

As submitted on November 28, 2007, the 2007 South Coast AQMP included a set of $PM_{2.5}$ budgets for direct $PM_{2.5}$, and the $PM_{2.5}$ precursors NO_X and VOC for RFP years 2009 and 2012, the attainment year 2014, and 2023 and 2030. The direct $PM_{2.5}$ budgets include tailpipe, brake wear, tire wear, and paved road, unpaved road, and construction dust. See CARB Resolution 07–05, which revised the budgets in the 2007 South Coast AQMP as adopted by

the District, and which was included in the November 28, 2007 submittal. We refer herein to these budgets as the ''original'' budgets. On April 30, 2008, CARB submitted a SIP revision that replaced the original set of $PM_{2.5}$ budgets with two new sets of budgets (herein, ''replacement'' budgets). One set of the replacement budgets is referred to as ''SIP-based'' budgets, and the other set is referred to as ''baseline'' budgets. In its April 30, 2008 submittal, CARB requested that EPA give primary consideration to the ''SIP-based'' budgets and only find the ''baseline'' budgets to be adequate if EPA cannot find the ''SIP-based'' budgets adequate in their entirety.

The replacement budgets submitted on April 30, 2008 differ from the original budgets in that they reflect the EPA-approved EMFAC2007 motor vehicle emissions factor model (see 73 FR 3464, January 18, 2008) rather than District's CEPA emission factor model, which had been used for the original budgets. The ''SIP-based'' budgets reflect emissions reductions from rules adopted by October 2006 and also from control measures CARB expected to adopt in regulatory form in the future. The ''baseline'' budgets differ from the ''SIP-based'' budgets by excluding emission reductions from control measures in the 2007 State Strategy that had not been adopted in regulatory form by October 2006.[37] Moreover, the ''baseline'' budgets are only established for RFP years 2009 and 2012 whereas the ''SIP-based'' budgets are established for the RFP years, the attainment year, and 2023 and 2030.

3. EPA's 2008 Adequacy/Inadequacy Finding

EPA generally first conducts a preliminary review of budgets submitted with an attainment, RFP, or maintenance plan for adequacy, prior to taking action on the plan itself, and did so with respect to the replacement $PM_{2.5}$ budgets in the 2007 South Coast AQMP. The availability of the original budgets was announced for public comment on EPA's adequacy Web page on February 12, 2008 and the availability of the replacement (then available in draft form) was announced for public comment on March 27, 2008. EPA received comments from the public in response to both postings.

On May 6, 2008, we found the ''SIP-based'' $PM_{2.5}$ budgets for the 2007 South Coast AQMP, as revised on April 30, 2008, to be inadequate for transportation conformity purposes. See the letter and enclosures dated May 6, 2008 from Deborah Jordan, Director, Air Division, EPA Region 9 to James Goldstene, Executive Officer, CARB (a copy of which has been placed in the docket for this rulemaking). However, in our May 2008 adequacy determination, we found the ''baseline'' $PM_{2.5}$ budgets for RFP years 2009 and 2012 to be adequate. Generally, we found the ''SIP-based'' budgets to be inadequate because they reflected control measures not yet adopted in regulatory form and thus not adequately quantified or supported by the plan. In contrast, we found the ''baseline'' $PM_{2.5}$ budgets to be consistent with the plan's RFP demonstration and to be based on adopted mobile source regulations that have already been implemented. Our notice of adequacy/inadequacy of the budgets was published on May 15, 2008 at 73 FR 28110 (corrected on June 18, 2008 at 73 FR 34837), and was effective on May 30, 2008. More information on this finding can be found in the TSD for today's action.

4. Updated Motor Vehicle Emissions Budgets in the 2011 Progress Report and Additional Revisions

CARB's 2011 Progress Report contained updated budgets for the South Coast nonattainment area and their documentation in Appendices D and A, respectively, of the 2011 Progress Report. The updated budgets were for direct $PM_{2.5}$, VOC and NO_X for the RFP year of 2012 and the attainment year of 2014. No updated budgets were included in the 2011 Progress Report for the RFP year of 2009 because there are no applicable conformity analysis years prior to 2012.

The submittal also includes a proposed trading mechanism for transportation conformity analyses that would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a NO_X to $PM_{2.5}$ ratio of 10 to 1. Transportation conformity trading mechanisms are allowed under 40 CFR 93.124. The basis for the trading mechanism is the SIP attainment modeling which established the relative contribution of each $PM_{2.5}$ precursor pollutant.

As proposed in the 2011 Progress Report, this trading mechanism would only be used, if needed, for conformity analyses for years after 2014. To ensure that the trading mechanism does not impact the ability of the South Coast nonattainment area to meet the NO_X budget, the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the 2014 NO_X budget has been met. Clear documentation of the calculations used in the trading would be included in the conformity analysis. See 2011 Progress Report, Appendix D, footnote to Table D–1.

On June 20, 2011, CARB posted on its Web site technical revisions to the updated MVEB in the 2011 Progress Report that were referenced in a June 3rd letter to EPA.[38] See CARB, ''Proposed 8–Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,'' Appendix C, June 20, 2011, posted at *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.* These revised updated budgets are shown in Table 10 below. The technical revisions correct data entry errors in the budget calculations and remove the emission reductions attributed to AB923 (the South Coast District's light and medium duty high emitter program).

TABLE 10—REVISED UPDATED RFP AND ATTAINMENT YEAR BUDGETS FOR THE SOUTH COAST $PM_{2.5}$ NONATTAINMENT AREA

Year	Pollutant		
	VOC	NO_X	Direct $PM_{2.5}$
2012	154	326	37

[37] With respect to the ''SIP-based'' budget for RFP year 2009, however, CARB did exclude the emissions reductions from measures not adopted by October 2006. Thus, the ''SIP-based'' $PM_{2.5}$ budget for 2009 is the same as the ''baseline'' $PM_{2.5}$ budget for that year.

[38] See letter, James M. Goldstene, Executive Officer, CARB, to Deborah Jordan, Air Division Director, EPA Region 9, June 3, 2011.

TABLE 10—REVISED UPDATED RFP AND ATTAINMENT YEAR BUDGETS FOR THE SOUTH COAST $PM_{2.5}$ NONATTAINMENT AREA—Continued

Year	Pollutant		
	VOC	NO_X	Direct $PM_{2.5}$
2014	132	290	35

Source: Proposed 8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins, Appendix C, June 20, 2011.

5. Proposed Action on the Revised Updated Budgets in the 2011 Progress Report

EPA has evaluated the revised updated budgets against our adequacy criteria in 40 CFR 93.118(e)(4) and (5) as part of our review of the approvability of the budgets. The results of this review are documented in Section II.J of the TSD. We are also posting a notice of availability on our transportation adequacy Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* EPA is not required under its Transportation Conformity rules to find budgets adequate prior to proposing approval of them. We will ultimately complete the adequacy review of these budgets, which could occur when we take a final action on this SIP, or at an earlier date.

As discussed in sections V.C. and V.D., we have completed our detailed review of the South Coast 2007 AQMP and supplemental submittals, including the 2011 Progress Report. Based on this thorough review of these submittals, we are proposing to approve the attainment and RFP demonstrations in the South Coast 2007 AQMP. As discussed above, CARB has recently posted revisions to the updated budgets that were submitted in the 2011 Progress Report and intends to present these budgets for adoption as a SIP revision at its July 21, 2011 Board meeting. After reviewing these revised updated MVEBs, we are proposing to find them to be consistent with the approvable attainment and RFP demonstrations and to find that they meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). Therefore, EPA proposes to approve the revised updated budgets based on our assumption that we will receive the revised budgets as a complete SIP revision from the State prior to our final action on the South Coast 2007 AQMP. If CARB is unable to adopt and submit the revised budgets, then EPA intends to find inadequate and disapprove the budgets contained in the 2011 Progress Report.[39] If we disapprove the budgets, a conformity freeze would take effect upon the effective date of the disapproval (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent conforming RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. See 40 CFR 93.120.

6. Proposed Action on the Trading Mechanism

As noted above, CARB included a trading mechanism to be used in transportation conformity analyses that use the proposed budgets as allowed under 40 CFR 93.124. This trading mechanism would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a NO_X:$PM_{2.5}$ ratio of 10:1. To ensure that the trading mechanism does not impact the ability of SCAG to meet the NO_X budget, the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those reductions remaining after the 2014 NO_X budget has been met. The trading mechanism will be implemented with the following criteria. The trading applies only to:

- Analysis years after the 2014 attainment year.
- On-road mobile emission sources.
- Trades using vehicle NO_X emission reductions in excess of those needed to meet the NO_X budget.
- Trades in one direction from NO_X to direct $PM_{2.5}$.
- A trading ratio of 10 tpd NO_X to 1 tpd $PM_{2.5}$.

Clear documentation of the calculations used in the trading would be included in the conformity analysis. See 2011 Progress Report, Appendix D, footnote to Table D–1.

EPA has reviewed the 10:1 NO_X:$PM_{2.5}$ ratio and finds it is an appropriate ratio for trading between NO_X and direct $PM_{2.5}$ for transportation conformity purposes in the South Coast Air Basin for the 1997 $PM_{2.5}$ NAAQS. The method for determining the NO_X Equivalent Factors is documented in CARB's Staff Report on Proposed 2007 State Implementation Plan for the South Coast Air Basin—$PM_{2.5}$ Annual Average and 8–Hour Ozone National Ambient Air Quality Standards, September 21, 2007, Appendix C. The method discussed in this documentation appears to be adequate for purposes of assessing the effect of area-wide emissions changes, such as are used in conformity budgets. See Section V.D.2 above and II.B.4 of the TSD.

EPA believes that South Coast 2007 AQMP as revised by the 2011 Progress Report includes an approvable trading mechanism for determining transportation conformity after 2014. EPA is proposing to approve the trading mechanism and all of the criteria included in the footnote to Table D–1 as enforceable components of the transportation conformity program for the South Coast nonattainment area for the 1997 $PM_{2.5}$ NAAQS. EPA is also proposing to approve the use of this ratio in transportation conformity determinations for the 2006 24-hour $PM_{2.5}$ NAAQS, but only until EPA finds adequate or approves budgets developed specifically for the 2006 24-hour $PM_{2.5}$ standard. Until that time, conformity will be determined using the budgets for the 1997 annual $PM_{2.5}$ NAAQS. EPA is not proposing, at this time, to approve the use of this ratio in plans for future PM standards or in the District's new source review (NSR) permitting program.

VI. EPA's Proposed Actions and Consequences

A. EPA's Proposed Approvals and Disapprovals

For the reasons discussed above, EPA proposes to approve, with the exception of the contingency measures, California's SIP for attaining the 1997 $PM_{2.5}$ NAAQS in the South Coast nonattainment area and to grant the State's request for an extension of the attainment date. This SIP is composed of the relevant portions of the South Coast 2007 AQMP as revised in 2011 and the South Coast-specific portions of

[39] EPA cannot approve or find adequate the budgets included in the 2011 Progress Report because they include uncreditable reductions from AB923 and because of the technical error in the budget calculations.

CARB's 2007 State Strategy as revised in 2009 and 2011.

Specifically, EPA proposes to approve under CAA section 110(k)(3) the following elements of the South Coast $PM_{2.5}$ attainment SIP:

(1) The 2002 base year emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008;

(2) the reasonably available control measures/reasonably available control technology demonstration as meeting the requirements of CAA sections 172(c)(1) and 40 CFR 51.1010;

(3) the reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.1009;

(4) the attainment demonstration as meeting the requirements of CAA section 172(c)(1) and(6) and 40 CFR 51.1007;

(5) the air quality modeling as meeting the requirements of the CAA and EPA guidance;

(6) the revised updated 2012 RFP and 2014 attainment year motor vehicle emissions budgets as posted by CARB on June 20, 2011 contingent upon our receipt of a SIP revision, because they are derived from the approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and of 40 CFR 93, subpart A; and CARB's trading mechanism to be used in transportation conformity analyses as allowed under 40 CFR 93.124;

(7) SCAQMD's commitments to the adoption and implementation schedule for specific control measures listed in Tables 2 through 5 in Appendix F of the 2011 Progress Report to the extent that these commitments have not yet been fulfilled; and

(8) CARB's commitments to propose certain defined measures, as listed in Table B–1 on page 1 of Appendix B of the 2011 Progress Report and to achieve aggregate emission reductions by 2014 sufficient to provide for attainment of the 1997 $PM_{2.5}$ NAAQS as described in CARB Resolution 07–28, Attachment B.

EPA also proposes to concur with the State's determination under 40 CFR 51.1002(c) that NO_X, SO_X, and VOC are attainment plan precursors and ammonia is not an attainment plan precursor for attainment of the 1997 $PM_{2.5}$ NAAQS in the South Coast nonattainment area.

EPA proposes to grant, pursuant to CAA section 172(a)(2)(A) and 40 CFR 51.1004(a), California's request to extend the attainment date for the South Coast $PM_{2.5}$ nonattainment area to April 5, 2015.

EPA proposes to disapprove under CAA section 110(k)(3) the contingency measures in the South Coast 2007 AQMP for failing to meet the requirements of CAA section 172(c)(9) and 40 CFR 51.1012.

B. CAA Consequences of a Final Disapproval

EPA is committed to working with the District, CARB and SCAG to resolve the remaining issues with the SIP that make the current $PM_{2.5}$ attainment SIP for the South Coast nonattainment area not fully approvable under the CAA and the $PM_{2.5}$ implementation rule. However, should we finalize the proposed disapproval of the contingency measure provisions in the South Coast 2007 AQMP or finalize a disapproval of the transportation conformity emissions budgets, the offset sanction in CAA section 179(b)(2) would apply in the South Coast $PM_{2.5}$ nonattainment area 18 months after the effective date of a final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if California submits and we approve prior to the implementation of sanctions, SIP revisions that correct the deficiencies identified in our proposed action. In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan addressing the deficient elements in the $PM_{2.5}$ SIP for the South Coast nonattainment area two years after the effective date of any disapproval, should we not approve a SIP revision correcting the deficiencies within the two years.

Because we are proposing to approve the RFP and attainment demonstrations and the motor vehicle emission budgets, we are proposing to issue a protective finding under 40 CFR 93.120(a)(3) to the disapproval of the contingency measures. Without a protective finding, final disapproval would result in a conformity freeze under which only projects in the first four years of the most recent conforming RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. See 40 CFR 93.120(a)(2). Under a protective finding, however, final disapproval of the contingency measures would not result in a transportation conformity freeze in the South Coast $PM_{2.5}$ nonattainment area.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to partially approve and partially disapprove state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP partial approval and partial disapproval under CAA section 110 and subchapter I, part D will not in-and-of itself create any new information collection burdens but simply approves certain State requirements for inclusion into the SIP and disapproves others. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed partial approval and partial disapproval of the SIP under CAA section 110 and subchapter I, part

D will not in-and-of itself create any new requirements but simply approves certain State requirements for inclusion into the SIP and disapproves others. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed approval and disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to partially approve and partially disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposed to partially approve and partially disapprove certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to partially approve and partially disapprove would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval of the SIP under CAA section 110 and subchapter I, part D will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D and to disapprove others will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 29, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2011–17229 Filed 7–13–11; 8:45 am]

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Part III

The President

Executive Order 13579—Regulation and Independent Regulatory Agencies

Federal Register
Vol. 76, No. 135
Thursday, July 14, 2011

Presidential Documents

Title 3—

The President

Executive Order 13579 of July 11, 2011

Regulation and Independent Regulatory Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. *Policy.* (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, ''Improving Regulation and Regulatory Review,'' directed to executive agencies, was meant to produce a regulatory system that protects ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

Sec. 2. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 3. *General Provisions.* (a) For purposes of this order, ''executive agency'' shall have the meaning set forth for the term ''agency'' in section 3(b) of Executive Order 12866 of September 30, 1993, and ''independent regulatory agency'' shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
July 11, 2011.

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Filed 7–13–11; 11:15 am]
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H.R. 2279/P.L. 112–21

Airport and Airway Extension Act of 2011, Part III (June 29, 2011; 125 Stat. 233)

S. 349/P.L. 112–22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as the "Marine Sgt. Jeremy E. Murray Post Office". (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112–23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the "Spencer Byrd Powers, Jr. Post Office". (June 29, 2011; 125 Stat. 237)

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