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Contents

Federal Register

Vol. 76, No. 240

Wednesday, December 14, 2011

Agency for Healthcare Research and Quality
NOTICES
Scientific Information Request on CYP2C19 Variants and Platelet Reactivity Tests, 77833–77834
Scientific Information Request on Intravascular Diagnostic and Imaging Medical Devices, 77834–77835

Agriculture Department
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77767–77768

Alcohol and Tobacco Tax and Trade Bureau
RULES
Establishment of Coombsville Viticultural Area, 77677–77684
Establishment of Fort Ross-Seaview Viticultural Area, 77684–77696
Establishment of Naches Heights Viticultural Area, 77696–77699

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Telecommunications Act Accessibility Guidelines:
Electronic and Information Technology Accessibility Standards, 77738

Bureau of Consumer Financial Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77766–77767

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77835–77836

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Financial Status Reporting Form for State Councils on Developmental Disabilities Program, 77836

Coast Guard
RULES
Seagoing Barges, 77712–77716

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Retail Commodity Transactions Under Commodity Exchange Act:
Interpretation; Request for Comments, 77670–77672
PROPOSED RULES
Process for Designated Contract Market or Swap Execution Facility To Make Swap Available To Trade, 77728–77738

Defense Department
NOTICES
36(b)(1) Arms Sales, 77809–77811
Privacy Act; Computer Matching Programs, 77811–77812

Drug Enforcement Administration
NOTICES
Manufacturers of Controlled Substances; Applications, 77850

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77812–77813

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approvals and Promulgations of Implementation Plans:
State of Missouri, 77701–77703
Pesticide Tolerances:
Hexythiazox, 77703–77709
Tolerance Exemptions:
Butyl acrylate-methacrylic acid-styrene polymer, 77709–77712
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Massachusetts and New Hampshire; Determination of Attainment of the One-Hour Ozone Standard, 77739–77742
Approvals and Promulgations of Implementation Plans:
State of Missouri, 77742
Guidelines Establishing Test Procedures for the Analysis of Pollutants:
Clean Water Act; Analysis and Sampling Procedures; Data Availability, 77742–77747
NOTICES
Access to Confidential Business Information:
Guident Technologies, Inc. and Subcontractor, Impact Innovations Systems, Inc., 77816–77817
Access to Confidential Business Information; Authorizations:
CGI Federal, Inc. and Subcontractor, Innovate, Inc., 77817
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77817–77820
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NSPS for Metallic Mineral Processing Plants (Renewal), 77823–77824
State Operating Permit Program (Renewal) and Federal Operating Permit Program (Renewal), 77820–77823
Cancellation Orders for Certain Pesticide Registrations:
Dicofol, 77824–77825

Meetings:
Human Studies Review Board; Public Teleconference, 77825–77827
Petitions for Objections to State Operating Permits:
Murphy Oil USA, Inc., Meraux Refinery in St. Bernard Parish, LA, 77827–77828
Regulation of Fuel and Fuel Additives:
Modification to Octamix Waiver, 77828–77829
Research Reports; Availability:
Investigation of Ground Water Contamination Near Pavillion, WY, 77829–77830

Federal Aviation Administration
RULES
Amendments of Class D and E Airspace:
North Philadelphia, PA, 77669–77670
PROPOSED RULES
Amendment of Class E Airspace:
Pelion, SC; Withdrawal, 77727
Proposed Amendments and Proposed Establishments of Class E Airspace:
Columbia, SC and Pelion, SC, 77727–77728
NOTICES
Passenger Facility Charge (PFC) Approvals and Disapprovals, 77887–77888

Federal Communications Commission
PROPOSED RULES
Hearing Aid-Compatible Mobile Handsets; Amendments, 77747–77757
NOTICES
Meetings; Sunshine Act, 77830–77831

Federal Election Commission
NOTICES
2012 Presidential Candidate Matching Fund Submission Dates, etc., 77831–77832

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 77813–77814
Environmental Assessments; Availability, etc.:
Cameron LNG, LLC; BOG Liquefaction Project, 77814–77815
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
Ethical Electric Benefit Co., 77815–77816

Federal Railroad Administration
RULES
Alternate Passenger Rail Service Pilot Program, 77716–77726

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Experimental Study on Public Display of Lists of Harmful and Potentially Harmful Tobacco Constituents, 77837–77838
Notification of Health Claim Based on Authoritative Statement of Scientific Body, 77838–77839

Foreign-Trade Zones Board
NOTICES
Applications for Expansion:
Foreign-Trade Zone 49, Newark/Elizabeth, NJ, 77769–77770

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Flathead and McKenzie Rivers and McKenzie National Recreational Trail Visitor Surveys, 77768–77769
Environmental Impact Statements; Availability, etc.:
North Finger Grazing Authorization Project, Malheur National Forest, Grant County, OR, 77769

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Meetings:
Peer Review Draft NTP Technical Reports; Availability; Request for Comments, 77832–77833

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77839–77840
Statements of Organization, Functions and Delegations of Authority, 77840–77841

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Funding Awards; Fiscal Year 2011:
Indian Community Development Block Grant Program, 77842–77846

Interior Department
See Land Management Bureau

Internal Revenue Service
RULES
Employer's Annual Federal Tax Return and Modifications to Deposit Rules, 77672–77677
NOTICES
Meetings:
Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee, 77891
Taxpayer Advocacy Panel Refund Processing Communications Project Committee, 77892–77893
Taxpayer Advocacy Panel Return Processing Delays Project Committee, 77891–77892
Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee, 77893
Taxpayer Advocacy Panel Tax Forms and Publications Project Committee, 77892
Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee, 77892
Taxpayer Advocacy Panel Toll-Free Project Committee, 77892

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Circular Welded Non-Alloy Steel Pipe From Mexico, 77770–77772

Citric Acid and Certain Citrate Salts From People's Republic of China, 77772–77775
Applications for Duty Free Entry of Electron Microscopes:
University of Florida, et al., 77775
Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Hot-Rolled Carbon Steel Flat Products From India, 77775–77776
Corrosion-Resistant Carbon Steel Flat Products From Republic of Korea, 77775
Meetings:
Environmental Technologies Trade Advisory Committee, 77776–77777
North American Free Trade Agreement, Article 1904 Binational Panel Reviews:
Completion of Panel Review, 77777–77778
Termination of Panel Review, 77777
Requests for Nominations:
Advisory Committee on Supply Chain Competitiveness, 77778–77779

Justice Department
See Drug Enforcement Administration
NOTICES
Lodgings of Consent Decrees Under CERCLA, 77846
Privacy Act; Systems of Records, 77846–77850

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Filings of Plats of Surveys:
Eastern States, 77846

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 77841–77842
National Institute on Alcohol Abuse and Alcoholism, 77841

National Labor Relations Board
RULES
Special Procedural Rules Governing Periods When the National Labor Relations Board Lacks a Quorum of Members, 77699–77701

National Oceanic and Atmospheric Administration
RULES
Research Area Within Grays Reef National Marine Sanctuary; Effective Date, 77670
PROPOSED RULES
Fisheries of Exclusive Economic Zone Off Alaska:
Chinook Salmon Bycatch Management in Gulf of Alaska Pollock Fishery; Amendment 93, 77757–77765
NOTICES
Applications:
Fagatele Bay National Marine Sanctuary Advisory Council, 77780
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, 77779–77780
Permits:
Endangered Species; File No. 10022; Modification, 77780–77781
Endangered Species; File No. 15802, 77781
Marine Mammals; File No. 781–1824; Amendment, 77782
Takes of Marine Mammals Incidental to Specified Activities:
Marine Geophysical Survey in Commonwealth of Northern Mariana Islands, February to March, 2012, 77782–77806
U.S. Fish Quotas in Northwest Atlantic Fisheries Organization Regulatory Area; International Affairs, 77806–77809

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77852–77854

Nuclear Regulatory Commission
NOTICES
Criteria for Identifying Material Licensees for Action Review Meeting, 77855
Environmental Impact Statements; Availability, etc.:
Detroit Edison Co. Combined License for Unit 3, Enrico Fermi Atomic Power Plant Site, 77855–77856

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Permit-Required Confined Spaces, 77850–77852

Postal Regulatory Commission
NOTICES
International Mail Price Change for Inbound Air Parcel Post, 77856–77857

Securities and Exchange Commission
NOTICES
Applications:
Seasons Series Trust, et al., 77857–77859
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 77878–77881
EDGA Exchange, Inc., 77877–77878
Fixed Income Clearing Corp., 77861–77862
Fixed Income Clearing Corp.; Correction, 77865
International Securities Exchange, LLC, 77881–77883
Municipal Securities Rulemaking Board, 77865–77877
NASDAQ OMX BX, Inc., 77862–77863
NASDAQ OMX PHLX LLC, 77877
NASDAQ Stock Market LLC, 77863–77865, 77883–77887
NYSE Arca, Inc., 77859–77861

Surface Transportation Board
NOTICES
Acquisitions of Control:
Student Transportation of America, Inc. for Dairyland Buses, Inc., 77888–77889
Continuances in Control Exemptions:
Watco Holdings, Inc.; Swan Ranch Railroad, L.L.C., 77889–77890
Operation Exemptions:
Swan Ranch Railroad, L.L.C. Within Swan Industrial Park, 77890
Petitions for Declaratory Orders:
Union Pacific Railroad Co., 77890–77891

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Monthly Statement of Wages Paid to Trainee, 77893–77894
Request for Supplies (Chapter 31–Vocational Rehabilitation), 77893

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
71 77669
Proposed Rules:
71 (2 documents) 77727

15 CFR
922 77670

17 CFR
1 77670
Proposed Rules:
37 77728
38 77728

26 CFR
31 77672

27 CFR
9 (3 documents) 77677, 77684, 77696

29 CFR
102 77699

36 CFR
Proposed Rules:
1193 77738
1194 77738

40 CFR
52 77701
70 77701
180 (2 documents) 77703, 77709
Proposed Rules:
52 (2 documents) 77739, 77742
70 77742
136 77742

46 CFR
2 77712
24 77712
30 77712
70 77712
90 77712
91 77712
188 77712

47 CFR
Proposed Rules:
20 77747

49 CFR
269 77716

50 CFR
Proposed Rules:
679 77757

Rules and Regulations

Federal Register

Vol. 76, No. 240

Wednesday, December 14, 2011

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0625; Airspace Docket No. 11–AEA–16]

Amendment of Class D and E Airspace; North Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace at Northeast Philadelphia Airport, North Philadelphia, PA, due to the closing of Willow Grove Naval Air Station and Warminster Naval Air Warfare Center (NAWC). This action also corrects a typographic error in the regulatory text for the Class E airspace radius and ceiling level, and adjusts the geographic coordinates of the airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations in the North Philadelphia, PA, airspace area.

DATES: *Effective date:* 0901 UTC, February 9, 2012. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On August 10, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D and Class E airspace at Northeast Philadelphia Airport, North Philadelphia, PA. (76 FR 49383). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found a typographic error in the regulatory text for the radius of the controlled airspace listed for Class E surface airspace, and makes the correction from a 5-mile radius to a 5.6-mile radius of the airport, and also removes reference to the ceiling level that was cited in error. Also, the geographic coordinates of the airport are adjusted.

Class D and E airspace designations are published in paragraphs 5000 and 6002, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D airspace and Class E surface airspace at Northeast Philadelphia Airport, North Philadelphia, PA. The Class D and Class E surface airspace is reconfigured due to the closing of the Willow Grove Naval Air Station and Warminster NAWC. The boundary radius of the controlled airspace listed in the regulatory text for Class E airspace is corrected from a 5-mile radius to a 5.6-mile radius of the airport and reference to the ceiling level listed for Class E airspace is removed. Also, the geographic coordinates of the airport are adjusted to be in concert with the FAAs aeronautical database. This action enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

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 amends Class D and E airspace at Northeast Philadelphia Airport, North Philadelphia, PA.

Lists 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA PA D North Philadelphia, PA [Amended]

Northeast Philadelphia Airport, Philadelphia, PA
(Lat. 40°04′55″ N., long. 75°00′38″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.6-mile radius of the Northeast Philadelphia Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AEA PA E2 North Philadelphia, PA [Amended]

Northeast Philadelphia Airport, Philadelphia, PA
(Lat. 40°04′55″ N., long. 75°00′38″ W.)

That airspace extending upward from the surface within a 5.6-mile radius of the Northeast Philadelphia Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on November 29, 2011.

Mark D. Ward,

Manager, Operation Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–31854 Filed 12–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 070726412–1300–02]

RIN 0648–AV88

Research Area Within Gray's Reef National Marine Sanctuary; Notice of Effective Date

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

ACTION: Notice of effective date.

SUMMARY: NOAA published a final rule for the establishment of a research area within the Gray's Reef National Marine Sanctuary on October 14, 2011 (76 FR 63824). Pursuant to Section 304(b) of the National Marine Sanctuaries Act (16 U.S.C. 1434(b)) the final regulations take effect after 45 days of continuous session of Congress beginning on October 14, 2011. Through this notice, NOAA is announcing the regulations became effective on December 4, 2011.

DATES: *Effective Date:* The regulations published on October 14, 2011 (76 FR 63824) are effective on December 4, 2011.

FOR FURTHER INFORMATION CONTACT: Resource Protection Coordinator Becky Shortland at (912) 598–2381.

Dated: December 5, 2011.

Holly A. Bamford,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 2011–31918 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–NK–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD64

Retail Commodity Transactions Under Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretation; Request for comments.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing this interpretation of the term ''actual delivery'' as set forth in section 2(c)(2)(D)(ii)(III)(aa) of the Commodity Exchange Act (''CEA'') pursuant to section 742(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Commission requests comment on whether this interpretation accurately construes the statutory language. In the event that comments demonstrate a need to modify this interpretation, the Commission will take appropriate action.

DATES: Effective December 14, 2011. Comments must be received by February 13, 2012.

ADDRESSES: Comments, identified by RIN number, may be sent by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Rosemary Hollinger, Regional Counsel, Division of Enforcement, (312) 596–0538, *rhollinger@cftc.gov,* or Martin B. White, Assistant General Counsel, Office of the General Counsel, (202) 418–5129, *mwhite@cftc.gov*, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

All comments must be submitted in English, or, if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (''FOIA''),[1] a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the CFTC's regulations.[2] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[3] Title VII of the Dodd-Frank Act[4] amended the Commodity Exchange Act (''CEA'')[5] 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

[1] 5 U.S.C. 552.

[2] 17 CFR 145.9.

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[4] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[5] 7 U.S.C. 1 *et seq.*

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 authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

In addition, section 742(a) of the Dodd-Frank Act amends section 2(c)(2) of the CEA to add a new subparagraph, section 2(c)(2)(D) of the CEA,[6] entitled ''Retail Commodity Transactions.'' New CEA section 2(c)(2)(D) provides the Commission with a new source of jurisdiction over certain retail commodity transactions.[7] Congress enacted this provision following court decisions, including *CFTC* v. *Zelener,*[8] that narrowly interpreted the term ''contract of sale of a commodity for future delivery''—the statutory term for a futures contract—based on language in customer agreements. *Zelener* involved retail foreign currency transactions that were characterized as spot sales in contract documents, but in which, in practice, customer positions were held open indefinitely and customers never took delivery of foreign currency.[9]

Zelener held that the transactions were not subject to CFTC jurisdiction because they did not involve futures contracts but were ''in form, spot sales for delivery within 48 hours.'' [10] In so ruling, the court focused solely on the language of the customer agreements.

Following *Zelener,* Congress provided the Commission with additional authority over retail foreign currency transactions in the CFTC Reauthorization Act of 2008.[11] Similarly, in section 742(a) of the Dodd-Frank Act, Congress provided the Commission with additional authority over non-foreign currency retail commodity transactions by making specified forms of these transactions subject to certain provisions of the CEA regardless of whether they involve a ''contract of sale of a commodity for future delivery.'' Senator Lincoln explained the rationale for this legislation during floor debate on the Dodd-Frank Act:

> [the] contracts [in *Zelener*] function just like futures contracts, but the court of appeals, * * * based on the wording of the contract documents, held them to be spot contracts outside of CFTC jurisdiction. The CFTC Reauthorization Act of 2008, which was enacted as part of that year's Farm Bill, clarified that such transactions in foreign currency are subject to CFTC anti-fraud authority. It left open the possibility, however, that such Zelener-type contracts could still escape CFTC jurisdiction if used for other commodities such as energy and metals.
>
> Section 742 corrects this by extending the Farm Bill's ''Zelener fraud fix'' to retail off-exchange transactions in all commodities. Further, a transaction with a retail customer that meets the leverage and other requirements set forth in Section 742 is subject not only to the anti-fraud provisions of CEA Section 4b (which is the case for foreign currency), but also to the on-exchange trading requirement of CEA Section 4(a), ''as if'' the transaction was a futures contract.[12]

Accordingly, new CEA section 2(c)(2)(D) broadly applies to any agreement, contract, or transaction in any commodity that is entered into with, or offered to (even if not entered into with), a non-eligible contract participant or non-eligible commercial entity on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.[13] New CEA section 2(c)(2)(D) further provides that such an agreement, contract, or transaction shall be subject to CEA sections 4(a),[14] 4(b),[15] and 4b [16] ''as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.'' [17]

New CEA section 2(c)(2)(D) excepts certain transactions from its application. In particular, new CEA section 2(c)(2)(D)(ii)(III)(aa) [18] excepts a contract of sale that ''results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved.'' [19]

The Commission is issuing this interpretation to inform the public of the Commission's views as to the meaning of the term ''actual delivery'' as used in new CEA section 2(c)(2)(D)(ii)(III)(aa) and to provide the public with guidance on how the Commission intends to assess whether any given transaction results in actual delivery within the meaning of the statute.[20] The Commission requests comment on whether its interpretation of ''actual delivery'' accurately construes the statutory language.

This interpretation does not address the meaning or scope of new CEA section 2(c)(2)(D)(ii)(III)(bb) [21] or any exception to new CEA section 2(c)(2)(D) other than new CEA section 2(c)(2)(D)(ii)(III)(aa). Similarly, this

[6] 7 U.S.C. 2(c)(2)(D).

[7] The jurisdictional grant provided to the Commission by new CEA section 2(c)(2)(D) is in addition to, and independent from, the jurisdiction over contracts of sale of a commodity for future delivery and transactions subject to regulation pursuant to CEA section 19 that the CEA has historically granted to the Commission. The jurisdictional grant provided by new CEA section 2(c)(2)(D) is also in addition to, and independent from, the jurisdiction over swaps granted to the Commission by the Dodd-Frank Act.

[8] 373 F.3d 861 (7th Cir. 2004); *see also CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008).

[9] 373 F.3d at 863–64.

[10] *Id.* at 868–69.

[11] Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651 (2008).

[12] 156 Cong. Rec. S5,924 (daily ed. July 15, 2010) (statement of Sen. Lincoln); *see also Hearing to Review Implications of the CFTC* v. *Zelener Case Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture,* 111th Cong. 52–664 (2009) (''In 2004 the Seventh Circuit Court made a decision in the *CFTC* v. *Zelener* [case]. It adopted a narrow definition of the term 'transactions for future delivery.' What it held is that a 3-day contract offered to retail customers for foreign currency that on its face promised delivery was not a futures contract and was, therefore, outside the CFTC's jurisdiction. This was even though the contracts operated in practice as futures contracts. Following the *Zelener* decision, many [fraudsters] were given a roadmap to evade CFTC jurisdiction and to scam customers or consumers.'') (statement of Hon. Leonard L. Boswell, United States Representative and Chairman, Subcommittee on General Farm Commodities and Risk Management); (''What we are talking about here though is expanding the—well, correcting would be the argument the *Zelener* interpretation of what a futures contract is. If in substance it is a futures contract, it is going to be regulated. It doesn't matter how clever your draftsmanship is.'') (statement of Hon. Jim Marshall, United States Representative).

[13] 7 U.S.C. 2(c)(2)(D)(i).

[14] 7 U.S.C. 6(a).

[15] 7 U.S.C. 6(b).

[16] 7 U.S.C. 6b.

[17] 7 U.S.C. 2(c)(2)(D)(iii).

[18] 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

[19] The Commission has not adopted any regulations permitting a longer actual delivery period for any commodity pursuant to new CEA section 2(c)(2)(D)(ii)(III)(aa). Accordingly, the 28-day actual delivery period set forth in this provision remains applicable to all commodities.

[20] In 1985, the Commission's Office of General Counsel issued a staff interpretation determining whether certain hypothetical precious metals transactions would be subject to regulation under the CEA. Interpretive Letter 85–2, *Bank Activities Involving the Sale of Precious Metals* (CFTC Office of General Counsel Aug. 6, 1985), Comm. Fut. L. Rep. (CCH) ¶ 22,673 (''Letter 85–2''). Letter 85–2 opined on whether the hypothetical transactions would constitute leverage contracts, as defined by 17 CFR 31.4(w), or contracts of sale of a commodity for future delivery, as that term is used in CEA section 2(a)(1)(A). Letter 85–2 is not relevant to a determination of whether ''actual delivery'' has occurred within the meaning of new CEA section 2(c)(2)(D)(ii)(III)(aa) for several reasons, including, but not limited to, the following: (1) Letter 85–2 predates new CEA section 2(c)(2)(D) by approximately 26 years and therefore does not purport to construe new CEA section 2(c)(2)(D); (2) to the extent Letter 85–2 assumes the occurrence of delivery of a commodity, it does not purport to determine whether ''actual delivery'' has occurred under new CEA section 2(c)(2)(D)(ii)(III)(aa); and (3) new CEA section 2(c)(2)(D)(iii) explicitly subjects certain retail commodity transactions to CEA sections 4(a), 4(b), and 4b ''as if'' they were contracts of sale of a commodity for future delivery, regardless of whether they are, in fact, contracts of sale of a commodity for future delivery under CEA section 2(a)(1)(A).

[21] 7 U.S.C. 2(c)(2)(D)(ii)(III)(bb).

interpretation does not address the meaning or scope of contracts of sale of a commodity for future delivery, the forward contract exclusion from the term ''future delivery'' set forth in CEA section 1a(27),[22] or the forward contract exclusion from the term ''swap'' set forth in CEA section 1a(47)(B)(ii).[23] Nor does this interpretation alter any statutory interpretation or statement of Commission policy relating to the forward contract exclusion.[24]

II. Commission Interpretation of ''Actual Delivery''

In the view of the Commission, the determination of whether ''actual delivery'' has occurred within the meaning of new CEA section 2(c)(2)(D)(ii)(III)(aa) requires consideration of evidence regarding delivery beyond the four corners of contract documents. This interpretation of the statutory language is based on Congress's use of the word ''actual'' to modify ''delivery'' and on the legislative history of new CEA section 2(c)(2)(D)(ii)(III)(aa) described above. Consistent with this interpretation of the statutory language, in determining whether actual delivery has occurred within 28 days, the Commission will employ a functional approach and examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction. This approach best accomplishes Congress's intent when it enacted section 742(a) of the Dodd-Frank Act and gives full meaning to Congress's term ''actual delivery.''

Relevant factors in this determination include the following: ownership, possession, title, and physical location of the commodity purchased or sold, both before and after execution of the agreement, contract, or transaction; the nature of the relationship between the buyer, seller, and possessor of the commodity purchased or sold; and the manner in which the purchase or sale is recorded and completed. The Commission provides the following examples to illustrate how it will determine whether actual delivery has occurred within the meaning of new CEA section 2(c)(2)(D)(ii)(III)(aa).

Example 1: Actual delivery will have occurred if, within 28 days, the seller has physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, into the possession of the buyer and has transferred title to that quantity of the commodity to the buyer.

Example 2: Actual delivery will have occurred if, within 28 days, the seller has physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, whether in specifically segregated or fungible bulk form, into the possession of a depository other than the seller and its parent company, partners, agents, and other affiliates, that is: (a) A financial institution as defined by the CEA; (b) a depository, the warrants or warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commission; or (c) a storage facility licensed or regulated by the United States or any United States agency, and has transferred title to that quantity of the commodity to the buyer.[25]

Example 3: Actual delivery will *not* have occurred if, within 28 days, a book entry is made by the seller purporting to show that delivery of the commodity has been made to the buyer and/or that a sale of a commodity has subsequently been covered or hedged by the seller through a third party contract or account, but the seller has not, in accordance with the methods described in Example 1 or 2, physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, and transferred title to that quantity of the commodity to the buyer, regardless of whether the agreement, contract, or transaction between the buyer and seller purports to create an enforceable obligation on the part of the seller, or a parent company, partner, agent, or other affiliate of the seller, to deliver the commodity to the buyer.

Example 4: Actual delivery will *not* have occurred if, within 28 days, the seller has purported to physically deliver the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, in accordance with the method described in Example 2, and transfer title to that quantity of the commodity to the buyer, but the title document fails to identify the specific financial institution, depository, or storage facility with possession of the commodity, the quality specifications of the commodity, the identity of the party transferring title to the commodity to the buyer, and the segregation or allocation status of the commodity.

Example 5: Actual delivery will *not* have occurred if, within 28 days, an agreement, contract, or transaction for the purchase or sale of a commodity is rolled, offset, or otherwise netted with another transaction or settled in cash between the buyer and the seller, but the seller has not, in accordance with the methods described in Example 1 or 2, physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, and transferred title to that quantity of the commodity to the buyer, regardless of whether the agreement, contract, or transaction between the buyer and seller purports to create an enforceable obligation on the part of the seller, or a parent company, partner, agent, or other affiliate of the seller, to deliver the commodity to the buyer.

Issued in Washington, DC, on December 1, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–31355 Filed 12–13–11; 8:45 am]

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[22] 7 U.S.C. 1a(27).

[23] 7 U.S.C. 1a(47)(B)(ii).

[24] *See, e.g.,* Statutory Interpretation Concerning Forward Transactions, 55 FR 39188 (Sept. 25, 1990) (''Brent Interpretation'').

[25] Based on Examples 1 and 2, an agreement, contract, or transaction that results in ''physical delivery'' within the meaning of section 1.04(a)(2)(i)–(iii) of the Model State Commodity Code would ordinarily result in ''actual delivery'' under new CEA section 2(c)(2)(D)(ii)(III)(aa), absent other evidence indicating that the purported delivery is a sham. *See* Model State Commodity Code § 1.04(a)(2)(i)–(iii), Comm. Fut. L. Rep. Archive (CCH) ¶ 22,568 (Apr. 5, 1985). Conversely, an agreement, contract, or transaction that does not result in ''physical delivery'' within the meaning of section 1.04(a)(2)(i)–(iii) of the Model State Commodity Code is highly unlikely to result in ''actual delivery'' under new CEA section 2(c)(2)(D)(ii)(III)(aa).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9566]

RIN 1545–BK82

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the Employers' Annual Federal Tax Program (the Form 944 Program) and the requirements for depositing social security, Medicare, and withheld Federal income taxes (collectively ''employment taxes''). These final regulations allow certain employers to file a Form 944, ''Employer's ANNUAL Federal Tax Return,'' rather than Forms 941, ''Employer's QUARTERLY Federal Tax Return.'' Additionally, these final regulations provide guidance related to the lookback periods and deposit requirements for employers required to file Forms 941 and Form 944. These final regulations affect taxpayers that file Forms 941, Form 944, and any related Spanish-language returns or returns for U.S. possessions.

DATES: *Effective Date:* These regulations are effective on December 14, 2011.

Applicability Date: For dates of applicability, see §§ 31.6011(a)–1(g), 31.6011(a)–4(d), and 31.6302–1(n).

FOR FURTHER INFORMATION CONTACT: Jennifer Records, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements. These final regulations are part of the IRS' continued effort to reduce taxpayer burden by permitting certain employers to file one employment tax return annually instead of four quarterly employment tax returns.

The Treasury Department and the IRS are considering changes to the annual filing program in light of the program's performance as measured against the program's original goals, administrative and operational considerations, and overall program effectiveness. Any changes to the program will be set forth in future guidance.

On January 3, 2006, temporary regulations (TD 9239) relating to Form 944 (the 2006 temporary regulations) were published in the **Federal Register** (71 FR 11). A notice of proposed rulemaking (REG–148568–04) cross-referencing the 2006 temporary regulations was published in the **Federal Register** on the same day (71 FR 46) (the 2006 proposed regulations). A correction to the 2006 temporary regulations was published in the **Federal Register** on March 17, 2006 (71 FR 13766). On December 29, 2008, temporary regulations (TD 9440), which revised the 2006 temporary regulations, relating to Form 944 (the 2008 temporary regulations) were published in the **Federal Register** (73 FR 79354). A notice of proposed rulemaking (REG–148568–04) cross-referencing the 2008 temporary regulations was published in the **Federal Register** on the same day (73 FR 79423) (the 2008 proposed regulations). No requests for a public hearing were received; therefore, no public hearing was held. As noted in the 2008 temporary regulations, comments were received responding to the 2006 notice of proposed rulemaking. Those comments requested that use of Form 944 be changed from mandatory to voluntary and that the amount of the employment tax liability used to determine whether employers are eligible to file Form 944 (the ''eligibility threshold'') be increased. The Treasury Department and the IRS agreed to make Form 944 voluntary and to continue to consider whether to increase the eligibility threshold. No comments responding to the 2008 notice of proposed rulemaking were received. This Treasury decision adopts the rules of the 2008 proposed regulations with minor clarifying changes and removes the temporary regulations. That is, participation in the Form 944 Program will remain voluntary and the eligibility threshold for participation will remain at $1,000.

Explanation of Revisions

Although this Treasury decision adopts the rules of the proposed regulations with no substantive change, some of the language included in the proposed regulations and the existing final regulations is clarified and updated to reflect current law and practice. The revisions are discussed in this preamble.

Employers that request to participate in the Form 944 Program must receive written notice to file Form 944 before they are permitted to file the form. Once employers receive this notice, they must file Form 944 for each year and cannot file Forms 941 until they are notified that their filing requirement has changed to Forms 941 because (1) They contacted the IRS to request that their filing requirement be changed to Forms 941, or (2) they no longer qualify for the Form 944 Program. The IRS issued guidance published in the Internal Revenue Bulletin (Rev. Proc. 2009–13 (2009–1 CB 323) and Rev. Proc. 2009–51 (2009–45 IRB 625)) that provides procedures for employers to follow to request to file Form 944 instead of Forms 941 (''opt in''). Additionally, Rev. Proc. 2009–13 and Rev. Proc. 2009–51 provide procedures for employers to follow to request to file Forms 941 instead of Form 944 when the IRS previously notified them they should file Form 944 (''opt out''). Under Rev. Proc. 2009–13, for tax year 2009, employers who were notified they should file Form 944 could only opt out if they anticipated that their employment tax liability would exceed the $1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. Beginning in 2010, employers were able to opt out of filing Form 944 for any reason if they followed the procedures set forth in Rev. Proc. 2009–51 or its successor. These final regulations clarify that employers should follow the procedures contained in Rev. Proc 2009–51 or its successor to opt in or to opt out of the Form 944 Program.

The revisions contained in these final regulations also impact employers that file Spanish-language returns or returns for U.S. possessions. For tax year 2012 and later, Form 944–SS, Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) and Form 944–PR, Planilla para la Declaración Federal ANUAL del Patrono, will be eliminated due to the low volume of employers filing these forms. Employers who would otherwise file a Form 944–SS or Form 944–PR will file a Form 944. The Treasury Department and the IRS plan to retain Form 944(SP), Declaración Federal ANUAL de Impuestos del Patrono o Empleador, which is the Spanish equivalent of Form 944. Employers in the United States in the Form 944 Program may file Form 944(SP) as an alternative to filing Form 944. Additionally, employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico may file a Form 944(SP) as an alternative to filing Form 944, for tax year 2012 and later. These final regulations remove references to the eliminated forms and update the language included in the proposed regulations and the existing final regulations to provide guidance to former Form 944–SS and Form 944–PR filers who are required to file Form 944 instead.

Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands who are required to file Form 944 for tax year 2012 and later can request to file Forms 941–SS instead of Form 944. Employers in Puerto Rico who are required to file Form 944 for tax year 2012 and later can request to file Forms 941–PR instead of Form 944. Employers required to file Form 944 should follow the procedures contained in Rev. Proc. 2009–51 or its successor to request to file Form 941–SS or Form 941–PR. See § 601.601(d)(2)(ii)(*b*).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities

pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The regulations under sections 6011 and 6302 affect only a small number of taxpayers that file employment tax returns, and participation in the Form 944 Program is voluntary. Therefore, the Treasury Department and the IRS have determined that the regulations will not affect a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities. No comments from the Small Business Administration were received.

Drafting Information

The principal authors of these regulations are Blaise Dusenberry and Jennifer Records of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 is amended by removing the entry for § 31.6302–1T to read in part as follows:

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

■ **Par. 2.** Section 31.6011(a)–1 is amended by revising paragraphs (a)(1), (a)(4), (a)(5) and (g) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3) and (a)(5) of this section and in § 31.6011(a)–5 every employer is required to make a return for the first calendar quarter in which the employer pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act, and is required to make a return for each subsequent calendar quarter (whether or not wages are paid therein) until the employer has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–8 and in paragraphs (a)(3), (a)(4), and (a)(5) of this section, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required by this paragraph (a)(1). Such return shall not include wages for agricultural labor required to be reported on any return prescribed by paragraph (a)(2) of this section. The return shall include wages received by an employee in the form of tips only to the extent of the tips reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

* * * * *

(4) *Employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* Except as otherwise provided in paragraph (a)(5), Form 941–PR, ''Planilla para la Declaracion Federal TRIMESTRAL del Patrono,'' is the form prescribed for use in making the return required under paragraph (a)(1) of this section in the case of every employer whose principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico. Except as otherwise provided in paragraph (a)(5), Form 941–SS, ''Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands),'' is the form prescribed for use in making the return required under paragraph (a)(1) of this section in the case of every employer whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or if the employer has employees who are subject to income tax withholding for these U.S. possessions. Form 941 (or Form 944, as described under paragraph (a)(5) of this section, if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making the return in the case of every employer who is required pursuant to § 31.6011(a)–4 to make a return of income tax withheld from wages.

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, ''Employer's ANNUAL Federal Tax Return,'' instead of Form 941 (or Form 941–SS or Form 941–PR under paragraph (a)(4) of this section) to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income taxes) of $1,000 or less for the entire calendar year, except employers required under—

(A) Paragraph (a)(2) of this section to make a return on Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''; or

(B) Paragraph (a)(3) of this section to make a return on Schedule H (Form 1040), ''Household Employment Taxes.''

(ii) *Requests to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS has established procedures in Revenue Procedure 2009–51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009–51 or its successor to request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

* * * * *

(g) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(5)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4) of this section applies to taxable years beginning on or after January 1, 2012. Paragraph (a)(5)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–1 as in effect prior to December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before January 1, 2012, are contained in § 31.6011(a)–1 as in effect prior to January 1, 2012. The rules of paragraph (a)(5)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)–1T

as in effect on or after December 30, 2008. The rules of paragraph (a)(5) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–1T as in effect prior to December 30, 2008.

§ 31.6011(a)–1T [Removed].

■ **Par. 3.** Section 31.6011(a)–1T is removed.

■ **Par. 4.** Section 31.6011(a)–4 is amended by revising paragraphs (a)(1), (a)(4) and (d) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)–8, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required under this paragraph (a)(1).

* * * * *

(4) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, ''Employer's ANNUAL Federal Tax Return,'' instead of Form 941 to make a return of income tax withheld from wages pursuant to section 3402. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld federal income taxes) of $1,000 or less for the entire calendar year, except employers required under—

(A) Paragraph (a)(3) of this section to make a return on Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''; or

(B) Paragraph (a)(2) of this section to make a return on Schedule H (Form 1040), ''Household Employment Taxes.''

(ii) *Request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS established procedures in Revenue Procedure 2009–51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009–51 or its successor to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

* * * * *

(d) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(4)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4 as in effect prior to December 30, 2008. The rules of paragraph (a)(4)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)–4T as in effect on or after December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4T as in effect prior to December 30, 2008. Paragraph (b)(6) of this section (relating to certain payments made by government entities subject to withholding under section 3402(t)) applies to payments made by government entities under section 3402(t) after December 31, 2012.

§ 31.6011(a)–4T [Removed].

■ **Par. 5.** Section 31.6011(a)–4T is removed.

■ **Par. 6.** Section 31.6071(a)–1 is amended by revising paragraph (a)(1) to read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*—(1) *Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section, each return required to be made under § 31.6011(a)–1, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101–3128), or required to be made under § 31.6011(a)–4, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. A return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations have been made in full payment of such taxes due for the period.

* * * * *

Par. 7. Section 31.6302–0 is amended as follows:

■ 1. Revising the introductory text.
■ 2. Revising the section heading for § 31.6302–1.
■ 3. Adding entries for paragraphs (b)(4)(i), (b)(4)(ii), (c)(5), (c)(6), (f)(4)(ii) and (f)(4)(iii) for § 31.6302–1.
■ 4. Revising the entries for paragraphs (d), (f)(4)(i), (f)(5), (g)(1) and (n) for § 31.6302–1.
■ 5. Removing the heading for § 31.6302–1T and the entries for paragraphs (a) though (n).

The revisions and additions to read as follows:

§ 31.6302–0 Table of contents.

This section lists the table of contents for §§ 31.6302–1 through 31.6302–4.

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(b) * * *
(4) * * *
(i) In general.
(ii) Adjustments and claims for refund.
(c) * * *
(5) Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).
(6) Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.

* * * * *

(d) Examples.

* * * * *

(f) * * *
(4) * * *
(i) *De minimis* deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.
(ii) *De minimis* deposit rule for quarterly return periods beginning on or after January 1, 2010.
(iii) *De minimis* deposit rule for employers who file Form 944.

(5) Examples.

(g) * * *

(1) In general.

* * * * *

(n) Effective/applicability dates.

* * * * *

§ 31.6302–0T [Removed]

■ **Par. 8.** Section 31.6302–0T is removed.

■ **Par. 9.** Section 31.6302–1 is amended by revising paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4), (f)(5) *Example 3,* (g)(1), and (n) to read as follows:

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(b) * * *

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, ''Employer's QUARTERLY Federal Tax Return,'' (or any related Spanish-language returns or returns for U.S. possessions) the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004, to June 30, 2005. The lookback period for employers who file Form 944, ''Employer's ANNUAL Federal Tax Return,'' or filed Form 944 (or any related Spanish-language returns or returns for U.S. possessions) for either of the two previous calendar years, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Forms 941 or Form 944) for the lookback period. The amount of employment tax liabilities reported for the lookback period is the amount the employer reported on either Forms 941 or Form 944 even if the employer is required to file the other form for the current calendar year. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and claims for refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the aggregate amount of employment taxes reported for the lookback period exceeds $50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413, and 6414 filed after the due date of the original return are not taken into account when determining the aggregate amount of employment taxes reported for the lookback period. Prior period adjustments reported on Forms 941 or Form 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c) * * *

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in paragraphs (c)(1) and (c)(2) of this section during that taxable year. An employer who files Form 944 whose actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)–1(a)(5) and 31.6011(a)–4(a)(4), will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Form 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under paragraphs (c)(1) through (c)(4) of this section if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

* * * * *

(d) * * *

Example 6. Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded $1,000 (the applicable eligibility threshold for that taxable year), the IRS notified F to file Forms 941 for calendar year 2007 and thereafter. Based on F's liability during the lookback period (calendar year 2005, pursuant to paragraph (b)(4)(i) of this section), F is a monthly depositor for 2007. F accumulates $1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates $1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the $2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to paragraph (c)(6) of this section, F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) * * *

(2) The term *employment taxes* does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 or Form 944 under § 31.6011(a)–4 or § 31.6011(a)–5. In the case of employers paying advance earned income credit amounts for periods ending before January 1, 2011, the amount of taxes required to be deposited shall be reduced by advance amounts paid to employees. Also, see § 31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

(f) * * *

(4) *De minimis rule*—(i) *De minimis deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is *de minimis* and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is *de minimis* if it is less than $2,500 for the return period or if it is *de minimis* pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than $2,500, unless § 31.6302–1(c)(3) applies to require a deposit at the close of the next day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) *De minimis deposit rule for employers who file Form 944.* An employer who files Form 944 whose employment tax liability for the year equals or exceeds $2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to paragraph (f)(4)(i) of this section will be

deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) * * *

Example 3. De minimis deposit rule for employers who file Form 944 satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of $1,000. On April 28, 2006, K deposits the $1,000 of employment taxes accumulated in the first quarter. K accumulates another $1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the $1,000 of employment taxes accumulated in the second quarter. K's business grows and accumulates $1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the $1,500 of employment taxes accumulated in the third quarter. K accumulates another $2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $5,500 and submits a check for the remaining $2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006 because K complied with the *de minimis* deposit rule provided in paragraph (f)(4)(iii) of this section. Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, because K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is *de minimis,* then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This *de minimis* rule allows K to have the benefit of the same quarterly *de minimis* amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, because K's employment tax liability for each quarter was *de minimis,* K could deposit quarterly.

(g) *Agricultural employers—special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 (''Form 943 taxes'') separately from employment taxes reportable on Form 941 or Form 944 (''Form 941 or Form 944 taxes''). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of paragraph (c)(3) of this section applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See paragraph (b) of this section for rules for determining an agricultural employer's deposit status for Form 941 taxes). Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

* * * * *

(n) *Effective/applicability dates.* Except for the deposit of employment taxes attributable to payments made by government entities under section 3402(t), §§ 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. Paragraph (e)(1)(iii)(E) of this section applies with respect to the deposit of employment taxes attributable to payments made by government entities under section 3402(t) after December 31, 2012. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6302–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3,* and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302–1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in § 31.6302–1T as in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302–1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

* * * * *

§ 31.6302–1T [Removed].

Par. 10. Section 31.6302–1T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 6, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–32069 Filed 12–9–11; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0006; T.D. TTB–100; Ref: Notice No. 119]

RIN 1513–AB81

Establishment of the Coombsville Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: This final rule establishes the 11,075-acre ''Coombsville'' viticultural area in Napa County, California. The viticultural area lies within the Napa Valley viticultural area and the multicounty North Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* January 13, 2012.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St. NW., Room 200E, Washington, DC 20220; phone (202) 453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol

and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Petition for the Coombsville Viticultural Area

TTB received a petition from Thomas Farella of Farella-Park Vineyards and Bradford Kitson, on behalf of the vintners and grape growers in the Coombsville region of Napa Valley, California, proposing the establishment of the Coombsville viticultural area. The proposed viticultural area contains 11,075 acres, 1,360 acres of which are in 26 commercial vineyards, according to the petition. The proposed viticultural area lies within the Napa Valley viticultural area (27 CFR 9.23) and the larger, multicounty North Coast viticultural area (27 CFR 9.30). The distinguishing features of the proposed Coombsville viticultural area include geology, geography, climate, and soils.

TTB notes that the proposed Coombsville viticultural area adjoins or is located near four established viticultural areas: the Oak Knoll District of Napa Valley viticultural area (27 CFR 9.161), the Los Carneros viticultural area (27 CFR 9.32), the Wild Horse Valley viticultural area (27 CFR 9.124), and the Solano County Green Valley viticultural area (27 CFR 9.44). The Oak Knoll District of Napa Valley viticultural area to the northwest and the Los Carneros viticultural area to the southwest share portions of their boundary lines with those of the proposed viticultural area. The Wild Horse Valley viticultural area to the east and the Solano County Green Valley viticultural area to the southeast are close to, but do not touch, the eastern boundary line of the proposed Coombsville viticultural area.

The petition states that four bonded wineries use the ''Coombsville'' name on one or more of their wine labels: Bighorn Cellars, Laird Family Estate, Farella-Park Vineyards, and Monticello Cellars. All four wineries have advised TTB in writing that if the Coombsville viticultural area is established, they will be able to comply with the rule that at least 85 percent of the wine must be produced from grapes grown within the boundary of the Coombsville viticultural area in order to use the ''Coombsville'' name on the label as an appellation of origin.

Previous Proposed Rulemaking

Previously, a group of Napa Valley grape growers proposed the establishment of the 11,200-acre ''Tulocay'' American viticultural area in approximately the same area as the proposed Coombsville viticultural area. Consequently, TTB published Notice No. 68 in the **Federal Register** (71 FR 65432) on November 8, 2006, to propose the establishment of the Tulocay viticultural area. However, comments received in response to Notice No. 68 raised a substantial question as to whether there was a sufficient basis to conclude that the geographical area described in the petition was locally or nationally known as ''Tulocay.'' Additionally, the evidence provided by the commenters and other information available suggested the likelihood of confusion if the term ''Tulocay'' would suddenly be attributed only to grapes grown from a geographical area, as the term ''Tulocay'' has been identified with a particular winery for more than 30 years. Based on the comments received in response to Notice No. 68, TTB published Notice No. 84 in the **Federal Register** (73 FR 34902) on June 19, 2008, withdrawing Notice No. 68.

However, TTB did not preclude consideration of the current petition in Notice No. 84. In fact, TTB stated: ''* * * currently there is no petition requesting the establishment of a viticultural area in the subject area using a variation of Tulocay, such as Tulocay District, or any other name, such as Coombsville or Coombsville District. It is noted that these findings do not preclude future consideration of a petition, supported by sufficient name evidence, proposing the establishment of a viticultural area in the subject area using a name other than 'Tulocay.' '' Notice No. 84 further noted that some comments in response to Notice No. 68 expressed a preference for the name ''Coombsville'' for the proposed viticultural area rather than the petitioned-for ''Tulocay'' name.

TTB further notes that the eastern portion of the boundary line for the proposed Coombsville viticultural area differs from that of the proposed Tulocay viticultural area boundary line in order to keep the proposed Coombsville viticultural area within Napa County and the Napa Valley viticultural area. This boundary change results in a 125-acre reduction of the total area, from 11,200 acres for the previously proposed Tulocay viticultural area to 11,075 acres for the currently proposed Coombsville viticultural area.

Name Evidence for the Proposed Coombsville Viticultural Area

The petition states that ''Coombsville'' is the commonly used name for an area that lies east of the City of Napa, California. In addition, the area east of the City of Napa is designated as ''Coombsville'' on the Napa County Land Use Plan 2008–2030 map. The petition also states that the Coombsville region has always had a separate identity from the City of Napa. Early on, the City of Napa grew in increments, eventually ''swallowing up the easterly suburb of Coombsville'' (''Napa Valley Heyday,'' Richard H. Dillon, The Book Club of California, 2004, page 119).

The petition states that, as early as 1914, an unincorporated area of Napa County became commonly known as the ''Coombsville'' region, named for Nathan Coombs, a prominent community leader and founder of the City of Napa. Mr. Coombs owned 2,525 acres of land on 3 parcels to the east of the Napa River, in the area now called ''Coombsville'' (''Official Map of the County of Napa,'' California, 1876). According to the petition, the original Coombsville Road, little more than an unnamed path, existed more than 120 years ago (''Map of Coombsville,'' survey map, W. A. Pierce, ''County Road from Napa to Green Valley,'' 1883). Currently, Napa city and county road signs identify Coombsville Road where the road intersects with Third Street and the Silverado Trail. Coombsville Road is entirely within the boundary line of the proposed Coombsville viticultural area (''Napa Valley,'' map, California State Automobile Association, May 2004).

The petition cited several Napa County newspaper reports to demonstrate that the Coombsville name is commonly used to refer to the region within the proposed viticultural area. For example, a newspaper report stated: ''A week ago, Patrick Sexton's backyard in Coombsville was a riotous place, with a gobble-gobble here, a gobble-gobble there, a gobble-gobble everywhere'' (''Napa High senior raises great gobblers,'' The Napa Valley Register, Nov. 27, 2008). Another report describes a downed power line that cut off electricity to 2,200 Coombsville residential customers overnight (''Lights out again in Coombsville area,'' *op. cit.,* Sept. 3, 2008). A third report describes a political district including Coombsville, American Canyon, and part of [the City of] Napa (''Local ballot for June takes shape,'' *op. cit.,* March 12, 2008).

The petition also states that the Napa County real estate industry recognizes the Coombsville region in its sale listings. One realtor listing on July 7, 2009, described a property as ''situated in the prestigious and desirable Coombsville area.'' Another realtor listing from 2008 described a property as ''Coombsville Area at Its Best!'' The petition includes the following description of a proposed new housing development in the region: ''The project is off of Wyatt Road, on the frontier where the residences of east Napa meet the open space and rural feel of Coombsville'' (''No middle ground in Napa County,'' *op. cit.,* Oct. 23, 2005). Fifty-five acres in the region purchased for real estate development is described in the petition as, ''* * * in the Coombsville area of Napa County, scrub-covered slopes at the south end of the valley * * *'' (''The Far Side of Eden—New Money, Old Land and the Battle for Napa Valley,'' James Conaway, Houghton Mifflin Company, 2002, page 50).

The petition notes that the Coombsville name has long been associated with viticulture. The petition states that the history of grape-growing in the Coombsville region dates to 1870, when the Carbone family purchased a large land parcel on Coombsville Road (''Napa Valley Heyday,'' Richard H. Dillon, The Book Club of California, 2004, page 100). Around 1880, Antonio Carbone opened a winery (*ibid.*). The historic winery still exists and is now used as a private residence, the petition explains. The petition further states that modern vineyard plantings include: Farella-Park Vineyards; Stag's Leap Wine Cellars' Arcadia Vineyards; Far Niente Winery's Barrow Lane, Carpenter, and John's Creek Vineyards; Berlenbach Vineyards; and Richard Perry Vineyards.

The petition explains that ''Coombsville'' has national name recognition because of its renown as a wine region in Napa Valley. The following reports were published by Wine Spectator: ''Putting Coombsville on the map for Napa Cabernet'' (July 31, 2001), regarding a vintner who believes he can make one of the top cabernets in the Napa Valley region; ''Caldwell Vineyards'' (Nov. 15, 2002), regarding the first time that John Caldwell produced wine from a 60-acre Coombsville vineyard; ''Franciscan Buys Large Parcel of Napa Land'' (March 15, 1999), describing a 160-acre property in the Coombsville region; and ''James Laube Unfined—An Armchair Winery 'Tour' with Philippe Melka'' (Aug. 10, 2007), detailing the acquisition of Coombsville-grown cabernet grapes to produce wine.

The petition also states that the following reports on the Coombsville region appeared on AppellationAmerica.com: the Coombsville region is described as ''the hottest spot for grapes these days in the Napa Valley'' and it is circled on a map of the Napa Valley in ''Why Cool Coombsville is HOT'' (Oct. 8, 2008); and a 1995 acquisition of 20 acres of vineyards in the Coombsville region is detailed in ''The Wonders of Mountain Terroir: Let Robert Craig Explain'' (Feb. 7, 2007).

Boundary Evidence

According to USGS maps submitted with the petition, the proposed Coombsville viticultural area is nestled in the southeastern region of the Napa Valley viticultural area, between the eastern shores of both the Napa River and Milliken Creek and the western ridgeline of the Vaca Range at the Solano County line. The west-facing, horseshoe-shaped southern tip of the Vaca Range encircles much of the proposed Coombsville viticultural area and defines parts of the northern, eastern, and southern portions of the boundary line, according to the petition, boundary description, and USGS maps.

According to the boundary description in the petition, the eastern portion of the boundary line of the proposed Coombsville viticultural area incorporates straight lines between western peaks of the Vaca Range. The eastern portion of the boundary line corresponds in part to, but does not overlap, the western portions of the boundary lines of the Wild Horse Valley and Solano County Green Valley viticultural areas and stays within Napa County.

As detailed in the boundary description in the petition, the southern portion of the boundary line of the proposed Coombsville viticultural area follows a straight southeast-to-northwest line from a map point in Kreuse Canyon to Imola Avenue, and then continues west on Imola Avenue to the Napa River.

According to the petition, and as visible on the USGS maps, an east-west transverse ridge that climatically protects the Coombsville region from the full impact of the marine influence of the San Pablo Bay lies beyond the proposed southern portion of the boundary line. Commonly known as ''Suscol,'' ''Soscol,'' or ''Soscol Ridge,'' the ridge separates the Coombsville region from large portions of the Napa Valley flood plain's differing soils and broad slough topography. The petition states that the complex terrain of the ridge was difficult to use as a precise and reasonable southern portion of the boundary line for the proposed

Coombsville viticultural area petition. Hence, a straight line between two map points and a portion of Imola Avenue was used to define the southern limits of the proposed Coombsville viticultural area. TTB believes that the straight line and Imola Avenue are a reasonable alternative for the proposed southern portion of the boundary line.

According to the boundary description and the USGS Napa Quadrangle map, the western portion of the boundary line of the proposed Coombsville viticultural area relies on portions of the Napa River and Milliken Creek to connect Imola Avenue to the south with Monticello Road to the north. TTB notes that the southwest corner of the proposed viticultural area, at the intersection of Imola Avenue and the Napa River, touches but does not overlap the eastern portion of the boundary line of the Los Carneros viticultural area.

According to the boundary description, the northern portion of the boundary line of the proposed Coombsville viticultural area uses Monticello Road and a straight line from the road's intersection with the 400-foot contour line eastward to the peak of Mt. George. Much of the length of the proposed northern portion of the boundary line follows a ridge line from the Vaca Range along Milliken Creek, according to the USGS maps submitted with the petition. TTB notes that the northwest corner of the proposed viticultural area, at the intersection of Milliken Creek and Monticello Road, touches but does not overlap the southeast corner of the Oak Knoll District of Napa Valley viticultural area.

Distinguishing Features

Geology

The petition describes the ancient volcanic and crustal uplift events in the geologic history of the Coombsville region (''The Geologic Origin of the Coombsville Area,'' EarthVision, Inc., May 2009). According to the petition and the above report, the initial geological event was the eruption and collapse of a volcano that was part of the Napa Valley-Sonoma volcanic series. The collapse of the volcano created a bowl-shaped structure known as a caldera, which formed the basis for the ''cup and saucer'' topography within the Coombsville region.

The petition states that the next important geologic process began when crustal forces started to uplift and wrinkle the earth crust in the Vaca Range. The uplift progressed from east to west through the Vaca Range. When the uplift passed through the Coombsville region, the western front of the caldera collapsed and slid westward as a large landslide into the valley below (*ibid.*). The ancient Napa River removed most of the landslide debris from the Napa Valley (*ibid.*). The remaining debris formed a raised structure in the valley, and the remaining portion of the caldera formed a horseshoe-shaped ridge to the east. This area is referred to on USGS maps of the Coombsville area as the ''cup and saucer,'' since the raised area resembles a teacup sitting within the curved ''saucer'' formed by the remaining ridge of the caldera.

The petition states that the earth surface materials that cover the proposed Coombsville viticultural area originated in a variety of ways. A thin coat of residual debris on volcanic bedrock covers the hills. Within the remains of the caldera, alluvial gravels of the Huichica Formation occur in the northern part and diatomaceous lake deposits occur along the northeast edge. The remainder of the surface material is a variety of alluvial deposits laid down since the ancient volcanic collapse (*ibid.*).

The petition did not include data on the geology of the surrounding areas.

Geography

As shown in the aerial photograph submitted with the petition, the most notable geographical characteristic of the proposed Coombsville viticultural area is a horseshoe-shaped, elevated landform, part of the Vaca Range (''The Winemaker's Dance—Exploring Terroir in the Napa Valley''). The west-facing horseshoe comprises a ring of volcanic mountains, according to the petition. The elevated cup-and-saucer landform lies partially within the curvature of the horseshoe on the western side of the proposed viticultural area. A small flood plain lies along the proposed western portion of the boundary line near the Napa River and Milliken Creek, the petition explains. The petition states that gentle slopes and rolling terrain extend westward from the Vaca Range and the opening of the horseshoe to the Napa River and Milliken Creek, and that most viticultural activity occurs within this area. The petition states that the Milliken-Sarco-Tulocay watershed, named after the three main creeks in the region, lies within the proposed Coombsville viticultural area. The cup-and-saucer landform presents a drainage obstacle, making Sarco Creek detour to the north and Tulocay Creek flow to the south. Eventually, all drainage flows to the southwest and joins with the south-flowing Napa River, the petition explains.

According to USGS maps, elevations within the proposed Coombsville viticultural area vary from about 10 feet along Milliken Creek and the Napa River shoreline to 1,877 feet at the peak of Mt. George, at the northeast corner of the proposed Coombsville viticultural area along the western ridge of the Vaca Range. The landforms along the remaining caldera wall that forms the edge of the ''saucer'' vary from approximately 500 to 1,200 feet in elevation, some having steep terrain. The raised ''cup'' portion of the cup-and-saucer formation exceeds 400 feet in elevation in some areas. The surrounding gentle slopes and rolling terrain which form the bottom of the ''saucer'' vary from approximately 100 to 200 feet in elevation. The flood plain along the western boundary line varies in elevation from 10 to 20 feet along Milliken Creek and the Napa River.

According to the petition, the combination of unique landforms and large elevation differences gives the proposed Coombsville viticultural area a fog-protected partial basin with high surrounding ridges. The aerial photograph submitted with the petition shows Coombsville as an isolated niche within the larger, more open terrain of the Napa Valley viticultural area. Also, the USGS maps indicate that the Vaca Range to the east provides a natural geographical boundary for the proposed viticultural area.

According to the USGS maps and the petition, the regions surrounding the proposed Coombsville viticultural area have different geographies. To the northwest of the proposed viticultural area lies the Oak Knoll District of Napa Valley viticultural area, which can be distinguished from the proposed Coombsville viticultural area by its low valley floor elevations and the dry creek alluvial fan. To the west lies the City of Napa. To the southwest lies the Los Carneros viticultural area, which can be distinguished from the proposed viticultural area by its low rolling hills, flatlands, and mountainous terrain. To the southeast lies the Solano County Green Valley viticultural area, with a more rugged terrain than the proposed Coombsville viticulture area. To the east lies the Wild Horse Valley viticultural area, which can be distinguished from the proposed viticultural area by its isolated valley and the surrounding steep, rugged terrain and high elevations. To the northeast are the Vaca Mountains, which can be distinguished from the proposed viticultural area by their rugged terrain.

Climate

The petition states that the proposed viticultural area has climatically unique features, including precipitation and heat summation. The petition provides statistical information on the microclimates of the adjacent Los Carneros and Oak Knoll District of Napa Valley viticultural areas, which are both within the larger Napa Valley viticultural area (''The Micro-Climate of the Coombsville Viticultural Area,'' Erik Moldstad, Sept. 28, 2009). According to the petitioner, the isolated Wild Horse Valley and Solano County Green Valley viticultural areas, to the immediate east of the proposed Coombsville viticultural area, lack available weather station data. In considering this petition, TTB obtained historic weather station data for surrounding north, east, south, and west regions within 15 miles or less of the proposed Coombsville viticultural area (Lake Berryessa, Fairfield, Napa State Hospital, and the City of Napa, respectively) from the Western Region Climate Center (WRCC) Web site, created in partnership with the National Climatic Data Center, Regional Climate Centers, and State Climate Offices.

The table below presents average annual precipitation amounts and heat summation range totals for the Coombsville region, the Los Carneros and Oak Knoll District of Napa Valley viticultural areas, and the surrounding north, east, south, and west weather station areas. The table data is based primarily on petition documentation and also TTB's WRCC Web site data research.

Climatic averages for Coombsville region and surrounding areas	Coombsville region	Los Carneros viticultural area (southwest)	Oak Knoll District of Napa Valley viticultural area (northwest)	Lake Berryessa (north)	Fairfield (east)	Napa State Hospital (south)	City of Napa (west)
Years	2006–2008	2006–2008	2006–2008	1957–1970	1950–2009	1893–2009	1903–1965
Precipitation in inches—annual average	19.14	17.32	21.63	24.44	22.77	24.61	24.02
Years	1974–2007	1974–2007	1974–2007	1974–2007	1950–2009	1893–2009	1903–1965
Heat summation units—annual average	2,550	2,435	2,888	2,611	2,667	2,794	3,233

The table shows that precipitation in the proposed Coombsville viticultural area averages 19.14 inches annually, and varies from the surrounding viticultural microclimates. The Coombsville region is warmer and wetter than the Los Carneros viticultural area to the southwest and cooler and drier than the Oak Knoll District of Napa Valley viticultural area to the northwest, according to Michael Wolf, owner of Michael Wolf Vineyard Services. To the northwest, the Oak Knoll District of Napa Valley viticultural area averages 2.5 inches more annual rainfall. To the southwest, the Los Carneros viticultural area has about 2 inches less rainfall annually. The data in the table indicates that the proposed Coombsville viticultural area averages 3.63 to 5.47 inches less precipitation annually than the four surrounding areas for which weather station data was obtained by TTB.

The growing season in the proposed Coombsville viticultural area is measured in the Winkler climate classification system (''General Viticulture,'' Albert J. Winkler, University of California Press, 1974, pages 61–64). In the Winkler system, heat accumulation per year defines climatic regions. As a measurement of heat accumulation during the growing season, 1 degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. Climatic region I has less than 2,500 growing degree days (GDD) per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more.

According to the table, the Coombsville region is a low Winkler region II (2,550 GDD units), which is cooler by 61 to 683 degree units than the four surrounding areas from which weather station data was obtained by TTB. The coolest of the four areas is Lake Berryessa to the north at 2,611 GDD units (region II), and the warmest is the City of Napa to the west at 3,233 GDD units (region III). Also, the adjacent Oak Knoll District of Napa Valley viticultural area is significantly warmer at 2,888 GDD units, a high Winkler region II. The adjacent Los Carneros viticultural area is cooler than the proposed Coombsville region (region l) at 2,435 GDD units.

The petition states that significant viticultural factors for the Coombsville region growing season include the amount of solar radiation and daytime heating. The solar radiation and heating are affected by the dissipation rate of morning fog, followed by the number of hours of sunshine, and then the onset of afternoon cooling bay breezes from San Pablo Bay.

The petition states that the effects of the presence and disappearance of fog from the Napa Valley region in the day alters the temperature rise in the grape-growing season. Temperature and sunlight have subtle effects on grape development that, over the growing season, affect grape ripening times and flavors. The pace of sugar accumulation and the pace of the lessening of acidity during grape ripening are two examples of how the fog affects grape development. The petition notes that grape growers in the cooler Los Carneros viticultural area, to the south and closer to the foggy bay, harvest grapes with similar sugar and acidity levels for the same varietal as in the Coombsville region, but do so later in the growing season. To the north of the Coombsville region, in the warmer and less foggy Oak Knoll District of Napa Valley viticultural area, the same varietals with similar sugar and acid levels are harvested earlier than in the Coombsville and Los Carneros areas.

The petition explains that the Coombsville region has more sunlight and daytime heat during the growing season than the Los Carneros viticultural area to the southwest and less than the Oak Knoll District of Napa Valley viticultural area to the northwest. The morning fog generally dissipates about 1 to 2 hours earlier in the Coombsville region than in the Los

Carneros viticultural area to the southwest, and an hour later than in the Oak Knoll District of Napa Valley viticultural area to the northwest. Also, in the afternoon, the bay breezes first cool the Los Carneros viticultural area, then spread slowly northward through the Coombsville region into the Oak Knoll District of Napa Valley viticultural area, and eventually continue northward up the Napa Valley.

According to the petition, as the San Pablo Bay afternoon breezes reach northward to each micro-climate in the Napa Valley region, the air temperature incrementally stops rising, or slightly decreases. These cool breezes contribute to the differences in maximum daytime temperatures during the growing season for the south-to-north locations in the Los Carneros viticultural area, the Coombsville region, Oak Knoll District of Napa Valley viticultural area, and other Napa Valley viticultural areas.

Soils

The petition explains that the soils of the proposed Coombsville viticultural area are generally well drained and of volcanic origin. Upland soils are weathered from their primary volcanic source, while lowland soils are alluvial in nature (''A Custom Soil Resource Report for Napa County, California—Coombsville Soils,'' Natural Resources Conservation Service, United States Department of Agriculture, *http://websoilsurvey.nrcs.usda.gov/,* May 27, 2009). The petitioner provided the following table, which shows the percentages of the predominant soils in the proposed Coombsville viticultural area as compared to surrounding regions, based on information contained in this report.

Viticultural area	Coombsville (percent)	Oak Knoll District of Napa Valley (NW) (percent)	Los Carneros (SW) (percent)	Wild Horse Valley (E) (percent)	West Side Napa River (W) (percent)
Predominant Soil Series:					
Hambright-Rock outcrop	28.5	0.6	0.2	15.5	0
Coombs	24.1	5.6	0	1.7	5.0
Sobrante	15.5	1.1	0	16.0	0
Forward	7.4	0.7	7.9	0	0.4
Haire	4.5	23.0	43.0	0	10.8
Cole	2.6	23.1	10.9	0	47.3

The Hambright-Rock outcrop complex makes up 28.5 percent of the Coombsville area, as shown on the above table, and is found in lesser concentrations to the north, east, and south. The complex is found in the Vaca Range and makes up most of the cup-and-saucer landform soils (*ibid.*).

Coombs gravelly and stony loams represent 24.1 percent of the soils in the Coombsville area, and are found in lesser concentrations to the north, east, and west, as shown on the above table. In addition, those soils are the main types appropriate for grape growing in the Coombsville region. They are alluvial, well drained soils at elevations of 50 to 500 feet. The Coombs soils are ''relatively unique to the area,'' and they were likely first identified in the Coombsville area, according to the petition. Coombs soils make up only 1.7 percent of the soils in Napa County, but they account for almost a quarter of the Coombsville region soils (*ibid.*).

As shown on the table, Sobrante soils make up 15.5 percent of the Coombsville region, 16 percent to the east in Wild Horse Valley, and a much lesser concentration to the northwest. These soils are well drained and are at elevations of 120 feet and higher.

As shown on the table, soils found in lesser concentrations in the proposed Coombsville viticultural area include Haire and Cole, which have higher concentrations in three of the surrounding areas.

The Proposed Coombsville Viticultural Area Compared to the North Coast and Napa Valley Viticultural Areas

North Coast Viticultural Area

The North Coast viticultural area was established by T.D. ATF–145, which was published in the **Federal Register** on September 21, 1983 (48 FR 42973). It includes all or portions of Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties, California. TTB notes that the North Coast viticultural area contains all or portions of approximately 40 established viticultural areas, in addition to the area covered by the proposed Coombsville viticultural area. In the conclusion of the ''Geographical Features'' section of the preamble, T.D. ATF–145 states that ''[d]ue to the enormous size of the North Coast, variations exist in climatic features such as temperature, rainfall, and fog intrusion.''

The proposed Coombsville viticultural area shares the basic viticultural feature of the North Coast viticultural area: the marine influence that moderates growing season temperatures in the area. However, the proposed viticultural area is much more uniform in its geography, geology, climate, and soils than the diverse multicounty North Coast viticultural area. In this regard, TTB notes that T.D. ATF–145 specifically states that ''approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast,'' and that ''smaller viticultural areas tend to be more uniform in their geographical and climatic characteristics, while very large areas such as the North Coast tend to exhibit generally similar characteristics, in this case the influence of maritime air off of the Pacific Ocean and San Pablo Bay.'' Thus, the proposal to establish the Coombsville viticultural area is not inconsistent with what was envisaged when the North Coast viticultural area was established.

Napa Valley Viticultural Area

The Napa Valley viticultural area was established by T.D. ATF–79, which was published in the **Federal Register** on January 28, 1981 (46 FR 9061), includes most of Napa County, California. As noted in T.D. ATF–79, the Napa Valley viticultural area encompasses ''all the areas traditionally known as 'Napa Valley' which possess generally similar viticulture characteristics different from those of the surrounding areas.'' TTB notes that the Napa Valley viticultural area encompasses 14 existing smaller viticultural areas, in addition to the area covered by the proposed Coombsville viticultural area.

The Coombsville petition states that a Mediterranean climate of warm, dry summers and cool, moist winters dominates the Napa Valley region. Air temperatures in the valley increase from south to north based on the dissipation of the marine fog and cooling winds

from the San Pablo Bay to the south. Precipitation amounts are greater at the north end of the valley, at higher elevations, and in the Mayacmas Mountains on the west side of the valley. Sun exposure is greater on the east side of Napa Valley along the southwest face of the Vaca Range, including the Coombsville region, as compared to the western valley foothills of the Mayacmas Mountains.

According to T.D. ATF–79, the Napa Valley viticultural area contains varieties of both Coombs and Sobrante soils, which are prominent in the Coombsville region. The Napa Valley viticultural area also includes other soil types, including Bale, Cole, Yolo, Reyes, and Clear Lake. The latter soil types are not prominent or are not present in the proposed Coombsville viticultural area, according to the petition. Thus, while the characteristics of the proposed Coombsville viticultural area are generally similar to those of the Napa Valley viticultural area, there are some distinguishing characteristics that warrant its separate designation as a viticultural area.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 119 regarding the proposed Coombsville viticultural area in the **Federal Register** on May 24, 2011 (76 FR 30052). In that notice, TTB requested comments from all interested persons by July 25, 2011. TTB solicited comments on the accuracy of the name, boundary, climactic, and other required information submitted in support of the petition. TTB expressed particular interest in whether the distinguishing features of the proposed viticultural area are sufficiently different from the established Napa Valley and North Coast viticultural areas, within which the proposed area lies. Additionally, TTB asked if the geographic features of the proposed viticultural area are so distinguishable from the surrounding Napa Valley and North Coast viticultural areas that the proposed Coombsville viticultural area should no longer be part of those viticultural areas.

TTB received 50 comments in response to Notice No. 119. The commenters included 26 self-identified wine industry members and one self-identified representative of a trade association, the Napa Valley Vintners. Forty-nine of the comments express support for the proposed Coombsville viticultural area, and many note the unique climate and distinctive geography of the proposed viticultural area as described in Notice No. 119. The remaining comment, comment 17, notes a typographical error in the boundary description in paragraph (c)(12) of the proposed regulatory text, which is described in more detail below. There were no comments submitted in opposition to Notice No. 119.

TTB Finding

After careful review of the petition and the comments received during the comment period, TTB finds that the evidence provided by the petitioner supports the establishment of the proposed Coombsville viticultural area within the Napa Valley and North Coast viticultural areas, as proposed in Notice No. 119, with the alteration to the boundary description as discussed below. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of the TTB regulations, TTB establishes the ''Coombsville'' viticultural area in Napa County, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document. In this final rule, TTB altered some of the language in the written boundary description published as part of Notice No. 119, to conform the written boundary description to the boundary of the proposed viticultural area as marked on the USGS maps and the written description submitted with the petition. As noted in comment 17, in paragraph (c)(12) of the proposed regulatory text, the word ''northwest'' should have read ''northeast.'' Paragraph (c)(12) of the final regulatory text contains the correct term ''northeast.''

Maps

The petitioner provided the required maps, and TTB lists them below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Coombsville,'' is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the new regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Coombsville'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. The establishment of the Coombsville viticultural area will not affect any existing viticultural area, and any bottlers using Napa Valley or North Coast as an appellation of origin or in a brand name for wines made from grapes grown within the Coombsville viticultural area will not be affected by the establishment of this new viticultural area. The establishment of the Coombsville viticultural area will allow vintners to use ''Coombsville,'' ''Napa Valley,'' and ''North Coast'' as appellations of origin for wines made from grapes grown within the Coombsville viticultural area.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.223 to read as follows:

§ 9.223 Coombsville.

(a) *Name.* The name of the viticultural area described in this section is ''Coombsville''. For purposes of part 4 of this chapter, ''Coombsville'' is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Coombsville viticultural area are titled:

(1) Mt. George Quadrangle, California, 1951, Photoinspected 1973; and

(2) Napa Quadrangle, California-Napa Co., 1951, Photorevised 1980.

(c) *Boundary.* The Coombsville viticultural area is located in Napa County, California. The boundary of the Coombsville viticultural area is as described below:

(1) The beginning point is on the Mt. George map at the 1,877-foot peak of Mt. George, section 29, T6N/R3W. From the beginning point, proceed southeast in a straight line for 0.4 mile to the intersection of the 1,400-foot elevation line and an unnamed intermittent creek that feeds northeast into Leonia Lakes, section 29, T6N/R3W; then

(2) Proceed east-southeast in a straight line for 0.45 mile to the intersection of the 1,380-foot elevation line and an unnamed, unimproved dirt road, and then continue in the same straight line to the section 29 east boundary line, T6N/R3W; then

(3) Proceed south-southeast in a straight line for 0.6 mile to the unnamed 1,804-foot elevation point in the northwest quadrant of section 33, T6N/R3W; then

(4) Proceed south-southwest in a straight line for 1 mile, passing over the marked 1,775-foot elevation point, to the intersection of the T6N and T5N common line and the 1,600-foot elevation line; then

(5) Proceed south-southeast in a straight line for 1.1 miles to the 1,480-foot elevation point along the section 9 north boundary line, T5N/R3W; then

(6) Proceed south-southwest in a straight line for 1.3 miles to the 1,351-foot elevation point, section 16, T5N/R3W; then

(7) Proceed south-southwest in a straight line for 1.5 miles to the intersection with two unimproved dirt roads and the 1,360-foot elevation line in Kreuse Canyon at the headwaters of the intermittent Kreuse Creek, northeast of Sugarloaf, section 20, T5N/R3W; then

(8) Proceed northwest in a straight line for 1.95 miles to the 90-degree turn of Imola Avenue at the 136-foot elevation point, section 13, T5N/R4W; then

(9) Proceed west along Imola Avenue for 2.1 miles, crossing from the Mt. George map onto the Napa map, to the intersection of Imola Avenue with the Napa River at the Maxwell Bridge, T5N/R4W; then

(10) Proceed north (upstream) along the Napa River for 3.2 miles, crossing over the T6N/T5N common line, to the intersection of the Napa River with Milliken Creek, T6N/R4W; then

(11) Proceed north (upstream) along Milliken Creek for 0.75 mile to the intersection of Milliken Creek with Monticello Road, T6N/R4W; then

(12) Proceed northeast along Monticello Road for 2.4 miles, crossing from the Napa map onto the Mt. George map, to the intersection of Monticello Road with the section 19 west boundary line, T6N/R3W; and then

(13) Proceed east-southeast in a straight line for 1.4 miles to the beginning point, section 29, T6N/R3W.

Signed: September 28, 2011.

John J. Manfreda,

Administrator.

Approved: October 19, 2011.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2011–32018 Filed 12–13–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0004; T.D. TTB–98; Re: Notice Nos. 34, 42, and 117]

RIN 1513–AA64

Establishment of the Fort Ross-Seaview Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 27,500-acre ''Fort Ross-Seaview'' viticultural area in the western part of Sonoma County, California. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* January 13, 2012.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St. NW., Room 200E, Washington, DC 20220; phone (202) 453–1039, ext. 002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) provides for the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation, submission, and approval of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing the establishment of an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the viticultural area;
- A narrative description of the features of the viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the viticultural area, with the boundary of the viticultural area clearly drawn thereon; and
- A detailed narrative description of the viticultural area boundary based on USGS map markings.

The 2003 Fort Ross-Seaview Petition

Patrick Shabram, on behalf of himself and David Hirsch of Hirsch Vineyards, submitted a petition in 2003 to establish the 27,500-acre Fort Ross-Seaview American viticultural area in the western part of Sonoma County, California (the Shabram-Hirsch petition). The Shabram-Hirsch petition states that the proposed Fort Ross-Seaview viticultural area, which contains 18 commercial vineyards on 506 acres, lies close to the Pacific Ocean and about 65 miles north-northwest of San Francisco. It lies entirely within the Sonoma Coast viticultural area (27 CFR 9.116), which lies entirely within the multicounty North Coast viticultural area (27 CFR 9.30). The proposed viticultural area would not overlap, or otherwise affect, any other viticultural areas.

Name Evidence

In 1812, Fort Ross was established by Russian fur trappers on a bluff, lying just west of the boundary of the proposed Fort Ross-Seaview viticultural area and overlooking the Pacific Ocean, according to the Shabram-Hirsch petition. The fort served as Russia's southernmost outpost in the Pacific Northwest until it was abandoned in 1841. Since 1906, the site of the fort has been called the Fort Ross State Historic Park; a reconstructed fort now is open to the public. Seaview is a small, unincorporated community and real estate development located along the Pacific Coast Highway (State Route 1) and located nearby and to the north of the park. Much of the Seaview community is located within the proposed viticultural area.

Fort Ross Road winds through the southern portion of the proposed Fort Ross-Seaview viticultural area, as shown on the 1978 USGS Fort Ross quadrangle map; also shown on the map are Seaview Cemetery and, extending northward in the proposed viticultural area, Seaview Road. The intersection of Fort Ross and Seaview Roads lies to the northeast of the Fort Ross State Historic Park (California State Automobile Association, ''Mendocino and Sonoma Coast'' map, October 2000), according to the Shabram-Hirsch petition.

The Shabram-Hirsch petition states that the location of the proposed viticultural area is commonly called ''Fort Ross-Seaview'' by local grape growers. In a letter to Mr. Shabram explaining the origins and usage of the proposed ''Fort Ross-Seaview'' name, Daniel Schoenfeld, a grape grower and longtime resident, claimed that the Fort Ross-Seaview name identifies the proposed viticultural area and distinguishes the area from other geographic place names. Although all three names, ''Fort Ross,'' ''Seaview,'' and ''Fort Ross-Seaview,'' have been used to identify the area, Mr. Schoenfeld noted an increased incidence in use of the Fort Ross-Seaview name in recent years. For example, the land within and near the proposed viticultural area in the western part of Sonoma County has been called the ''Fort Ross-Seaview district'' (''A Miraculous Intersection: A Short History of Viticulture and Winegrowing in Western Sonoma County'' by Charles L. Sullivan, 2001), according to the Shabram-Hirsch petition.

Boundary Evidence

According to the Shabram-Hirsch petition, viticulture within the proposed Fort Ross-Seaview viticultural area dates to 1817, when Captain Leontii Andreianovich Hagemeister planted Peruvian grape cuttings at Fort Ross. In 1973, Michael Bohan planted two acres of grapes three miles east of Fort Ross, between Seaview Road and Creighton Ridge. In 1974, he planted another 15 acres, and, in 1976, he started selling his grape harvests to wineries in Sonoma and Santa Cruz Counties, California. In 1980, co-petitioner David Hirsch planted a vineyard between the 1,300- and 1,600-foot elevations in the Fort Ross-Seaview area, according to his April 15, 2003 letter to Mr. Shabram that was submitted as a supplemental exhibit to the petition. The petition notes that, in spring 2003, the proposed viticultural area contained 18 commercial vineyards on 506 acres.

According to the Shabram-Hirsch petition, the boundary of the proposed viticultural area generally incorporates most of the contiguous 920-foot elevation line. It also incorporates the ridges, hills, and mountains at higher elevations located along the Pacific coast near Fort Ross and Seaview in western Sonoma County. The 920-foot elevation line and the higher elevations separate the sunnier proposed viticultural area from the surrounding foggy areas, which are at lower elevations.

The western portion of the boundary line of the proposed Fort Ross-Seaview viticultural area is located between 0.5 and 2.5 miles from the Pacific coastline and mostly at or above the 920-foot elevation line, as shown on the USGS maps submitted with the Shabram-Hirsch petition. Coincidentally, the San Andreas Rift Zone runs generally parallel to and west of the western portion of the proposed boundary line and east of the Pacific coast, as shown on the USGS maps.

In his 2003 letter, Mr. Hirsch also explained that, because coastal fog does not rise above the 920-foot elevation line, the proposed viticultural area receives more hours of solar radiation than the surrounding lower elevations,

which cannot support successful viticulture. ''During the summer, fog usually covers the Sonoma Coast during the morning and burns off about noon,'' he wrote. ''This marine fog layer seldom rises above 900 feet, which explains why there are no vineyards below this elevation in the proposed area.'' In addition, according to the Shabram-Hirsch petition, the moderating temperatures of the Pacific Ocean reduce the risk of nighttime freeze and frost within the proposed viticultural area.

Distinguishing Features

The distinguishing features of the 27,500-acre proposed Fort Ross-Seaview viticultural area are topography, soils, and climate, according to the Shabram-Hirsch petition.

Topography

The Shabram-Hirsch petition explains that vineyards within the proposed viticultural area are generally located on rounded ridges with summits extending above 1,200 feet. The USGS maps submitted with the petition show that the proposed viticultural area consists of steep, mountainous terrain made up of canyons, narrow valleys, ridges, and 800- to 1,800-foot peaks. The area, mainly at elevations of between 920 and 1,800 feet, has meandering, light-duty or unimproved roads and jeep trails and scattered creeks and ponds.

The Shabram-Hirsch petition did not include a description of the topography in the surrounding areas.

Soils

The Shabram-Hirsch petition states that the soils consist of Yorkville, Boomer, Sobrante, Laughlin, and many other soils within the proposed Fort Ross-Seaview viticultural area (Soil Survey of Sonoma County, California, issued by the Natural Resources Conservation Service, 1990, pp. 44 and 45). Hugo soils are common in the proposed Fort Ross-Seaview viticultural area and in the mountain ranges of Sonoma County and Mendocino County to the north of the proposed viticultural area. Hugo soils are well drained, very gravelly loams derived from sandstone and shale (*see publication cited above*).

The Shabram-Hirsch petition states that some soils in the proposed viticultural area derived from metamorphic rocks and, to a lesser extent, igneous rocks, but most soils derived from sedimentary rocks (untitled maps, by M.E. Huffman and C.F. Armstrong, California Department of Conservation Division of Mines and Geology, reprinted 2000). The petition also states that the sedimentary rocks in the proposed viticultural area contrast with the relatively younger sedimentary rocks that are the parent material of the soils in the area to the west and that coincide with the San Andreas Rift Zone.

The Shabram-Hirsch petition did not include any soils data for the surrounding areas, except for the area to the west mentioned above.

Climate

The Shabram-Hirsch petition states that generally the proposed viticultural area is not directly affected by marine fog. In areas generally above 900 feet in elevation, the climate is influenced by longer periods of sunlight and is warmer than that in the surrounding land below 900 feet. The prevalence of marine fog below the 900-foot elevation line causes the surrounding, lower areas to be cooler and to have a shorter growing season than that in the proposed viticultural area.

According to the Shabram-Hirsch petition, the coastal fog and its effects on agriculture were studied for more than 3 decades by Robert Sisson, former County Director and Farm Advisor for Sonoma County (''Guidelines for Assessing the Viticultural Potential of Sonoma County: An Analysis of the Physical Environment,'' M.A. thesis by Carol Ann Lawson, University of California, Davis, 1976). Mr. Sisson mapped the diverse climate of the lowermost, foggy coastal areas that surround some of the higher, sunnier elevations, according to the petition.

TTB notes that the Sisson system of climatic classification takes into account the amount of time that a vine is actually exposed to a certain temperature. The system uses such terms as ''Coastal Cool'' and ''Coastal Warm,'' which incorporate a method of heat summation that takes into account not only the highs and lows but the number of hours at which temperatures remain in the highly effective photosynthesis range of 70 to 90 °F. ''Coastal Cool'' is designated as having a cumulative duration of less than 1,000 hours between 70 °F and 90 °F in April through October.

The Shabram-Hirsch petition states that the proposed viticultural area is ''Coastal Cool'' (''Climate Types of Sonoma County,'' map, Vassen, 1986). The area can support viticulture, in contrast to the surrounding, lower-elevation, cooler, less sunny, marine climatic areas that cannot sustain viticulture, according to the petition.

The Shabram-Hirsch petition also states that the proposed Fort Ross-Seaview viticultural area is in the heaviest fog intrusion area, spanning the entire coast of Sonoma County (''Lines of Heaviest and Average Maximum Fog Intrusion for Sonoma County,'' map, by Carol Ann Lawson, 1976). However, TTB notes that this map does not detail the heavy fog line from the contrasting warmer and sunnier microclimates at higher elevations, such as that which exists in the proposed viticultural area.

The Shabram-Hirsch petition states that the water temperature of the ocean off the Pacific coast to the west of the proposed viticultural area rarely rises above 60 degrees Fahrenheit. From mid-spring to fall, a fogbank is created offshore that moves inland through low-elevation mountain gaps and valleys. The fog, rarely rising above the 900-foot elevation line, cools temperatures on shore and reduces sunshine in the early mornings and late afternoons at elevations of 900 feet or less. Consequently, the proposed viticultural area, which lies mainly between the 920- and 1,800-foot elevation lines, receives less fog and more sun during the growing season than the surrounding, lower areas.

The Shabram-Hirsch petition compares the proposed Fort Ross-Seaview viticultural area to the southwestern portion of the Sonoma Coast and nearby Russian River Valley viticultural areas. Those areas, to the southwest and to the northeast, respectively, have cool and comparatively less sunny climates because they generally receive marine fog and do not lie above the fog line.

The Shabram-Hirsch petition states that temperatures are roughly comparable during the coolest part of the year at Fort Ross State Historic Park at the 112-foot elevation level, just west of the proposed boundary, and at Campmeeting Ridge in Seaview at the 1,220-foot elevation level, located within the proposed viticultural area (''Unique Climatic and Environmental Characteristics of the Proposed Fort Ross-Seaview Viticultural Area,'' 2001, by Patrick L. Shabram). However, daily high temperatures during the growing season May through October and daily low temperatures in June and from August through October are warmer on the ridge than at the park, according to the petition. Significant growing season temperature variations occur at points between these lower and higher elevations (*see publication cited above*).

Notices of Proposed Rulemaking and Comments Received

TTB published Notice No. 34 regarding the proposed Fort Ross-Seaview viticultural area in the **Federal Register** on March 8, 2005 (70 FR 11174). In Notice No. 34, TTB invited

comments from all interested members of the public on or before May 9, 2005. In response to a request from an industry member, TTB subsequently extended the comment period of Notice No. 34 from May 12, 2005 until June 8, 2005 (see Notice No. 42, published in the **Federal Register** at 70 FR 25000 (May 12, 2005)).

In Notice No. 34, TTB specifically invited comments regarding whether ''Ft. Ross-Seaview,'' ''Fort Ross,'' ''Ft. Ross,'' and ''Seaview'' should be designated as terms of viticultural significance in addition to the full ''Fort Ross-Seaview'' name. TTB also solicited comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition.

Comments Received in Response to Notice No. 34

TTB received seven comments in response to Notice No. 34. Two comments support the petition without qualification, and a third commenter supports the proposed viticultural area but expressed concern about a potential conflict with his brand name if ''Fort Ross'' or Ft. Ross'' alone are designated as terms of viticultural significance. Four additional comments oppose the petition on the ground that the proposed boundary line excludes a region to the north that the commenters contend has similar geographical features as the petitioned-for viticultural area.

The commenters in support of Notice No. 34 include co-petitioner David Hirsch, of Hirsch Vineyards, who has been growing wine grapes at a vineyard at an elevation of 1,500 feet in the proposed Fort Ross-Seaview viticultural area since 1980. In comment 2, Mr. Hirsch explains the importance of the area's marine-influenced climate, soils, and topography in producing premium grapes in the region. In comment 4, two local grape-growers that have been operating their vineyard on a 1,500-foot elevation ridgetop in the proposed viticultural area since 1982 explain that grape growing is part of the heritage of the Fort Ross-Seaview region. Both comments 2 and 4 emphasize that the establishment of the proposed viticultural area would help consumers identify wines made from grapes grown in the proposed Fort Ross-Seaview viticultural area.

In addition, in comment 3, a local vineyard and winery owner generally supports the establishment of the proposed viticultural area, but the owner opposes the designation of ''Fort Ross'' and ''Ft. Ross'' as viticulturally significant terms because it would create a conflict with the owner's trademarked ''Fort Ross Winery'' and ''Fort Ross Vineyard'' names, which the owner states would cause irreparable economic hardship and potentially cause consumer confusion.

Four additional comments, Nos. 1, 5, 6, and 7, oppose Notice No. 34 based on the proposed boundary line and propose an alternate boundary line that would include an additional area to the north. According to the four opposing commenters, all of whom own vineyards and/or wineries in the area to the north of the proposed viticultural area (the Northern Commenters), the vineyards in that area have the same distinguishing features and characteristics as the vineyards located within the proposed Fort Ross-Seaview viticultural area to the south. The Northern Commenters contend that the northern portion of the proposed boundary line should extend northward to Buckeye Creek, which would include a region generally referred to as the ''Annapolis area.'' In addition, two of the Northern Commenters also express concern about the use of the ''Fort Ross-Seaview'' name, explaining that the ''Fort Ross'' name is used by the Fort Ross Winery and that the ''Seaview'' name is used by an Australian sparkling wine bottler.

In comment 5, one of the Northern Commenters suggested that TTB delay establishing the Fort Ross-Seaview viticultural area to allow the growers in the northern area the opportunity to gather and submit documentation supporting a northern expansion of the 27,500-acre proposed Fort Ross-Seaview viticultural area (the Northern Addition). TTB agreed to a delay, and on November 11, 2005, the Northern Commenters submitted a petition, USGS maps, and a written boundary description for a proposed expansion of the 27,500-acre proposed Fort Ross-Seaview viticultural area to include the Northern Addition (the Northern Addition petition).

The Northern Addition Petition

In the Northern Addition petition, the Northern Commenters petitioned for a 15,726-acre expansion of the proposed Fort Ross-Seaview viticultural area, which included 28 commercial vineyards on about 900 acres as of November 11, 2005. The documentation included a narrative explaining the basis for the proposal as well as supporting evidence relating to the historic name usage and distinguishing features of the Northern Addition. According to the Northern Addition petition, the Northern Addition is well-suited for commercial viticulture because the area vineyards, which are located at inland elevations between 700 and 900 feet, are protected from marine fog intrusion by parallel coastal ridges at elevations of 920 feet or higher. The coastal ridges effectively buffer the cooling fog of the Pacific Ocean from inland vineyards, according to the Northern Addition petition.

Name Evidence: The Northern Addition petition states that, since the Russian occupation of northern California, the ''Fort Ross'' name has continuously been used to identify the Sonoma County coastline north of the Russian River (including the proposed Fort Ross-Seaview viticultural area and the proposed Northern Addition).

Citing historical evidence relating to the Russian occupation's effect on native populations in the early and mid-1800s and the development of the area surrounding Fort Ross by George Washington Call in the mid-1870s, the Northern Addition petition contends that the historically-recognized ''Fort Ross Region'' extends northward from the Russian River to approximately the Gualala River and six to nine miles inland from the Pacific coastline, and that region includes the proposed Fort Ross-Seaview viticultural area as well as the proposed Northern Addition (''The Archeology and Ethnohistory of Fort Ross, California,'' by Kent G. Lightfoot, Thomas A. Wake, and Ann M. Schiff, Archaeological Research Facility, University of California at Berkeley, 1991). The Northern Addition petition further notes that the natural environment of the ''Fort Ross Region'' extends, south to north, from the small coastal town of Jenner, located at the mouth of the Russian River, to the town of Gualala, located at the mouth of the Gualala River.

The Northern Addition petition adds that the ''Seaview'' geographical place name identifies the tiny coastal community of Seaview and Seaview Road, which the Northern Addition petition notes is ''some distance'' from the vineyards in the Northern Addition. The Northern Addition petition points out, however, that some vineyards in the 27,500-acre proposed Fort Ross-Seaview viticultural area are also located at similar distances from the Seaview community.

Given the distance of the Northern Addition from the Seaview community, the Northern Commenters proposed that the ''Fort Ross'' portion of the proposed viticultural area name be modified by an alternative geographical place name in lieu of ''Seaview'' that would better describe the proposed viticultural area with the 15,726-acre Northern Addition, such as ''Stewarts Point'' or ''Annapolis.'' TTB notes that ''Stewarts

Point'' and ''Annapolis'' are geographical place names that refer to areas located in or near the Northern Addition and are outside the boundary line of the 27,500-acre proposed Fort Ross-Seaview viticultural area. Alternatively, the Northern Commenters suggested adding ''Region'' to the ''Fort Ross'' name or combining ''Fort Ross'' with ''Sonoma Coast'' or ''Northern Sonoma Coast.''

Boundary Evidence: According to the Northern Addition petition, the proposed boundary line expansion is based on the geographical features of the 15,726-acre Northern Addition, which are similar to the distinguishing geographical features of the proposed 27,500-acre Fort Ross-Seaview viticultural area.

The Northern Addition petition explains that the western portion of the boundary line for the proposed Fort Ross-Seaview viticultural area would combine with the western portion of the proposed boundary line for the Northern Addition. The combined boundary line follows a high-elevation ridgeline that limits the inland intrusion of cooling marine fog off the Pacific Ocean. The northernmost portion of the proposed boundary line for the Northern Addition parallels the 600- to 400-foot elevations in the area of Buckeye Creek, a tributary of the South Fork of the Gualala River, as shown on USGS maps. The Northern Addition petition states that Buckeye Creek forms a natural boundary line between higher elevation areas to the south and north. The eastern portion of the proposed boundary line for the Northern Addition follows a 600-foot elevation line and roads on ridgelines between the generally mountainous coastal terrain and the very rugged interior mountains to the east. To the southeast, the proposed boundary line for the Northern Addition joins with the northeastern portion of the boundary line of the 27,500-acre proposed Fort Ross-Seaview viticultural area, according to the Northern Addition petition.

Distinguishing Features: The Northern Addition petition contends that the proposed Northern Addition shares the same distinguishing features of topography, climate, and soils as the proposed Fort Ross-Seaview viticultural area.

Topography: The Northern Addition petition states that the topography is similar in both the 27,500-acre proposed Fort Ross-Seaview viticultural area and the Northern Addition. According to the Northern Addition petition, the topography of the proposed Northern Addition consists of steep mountains with 5 to 70 percent slopes, 1,500-foot ridgetops, and valleys. In addition, the first ridgeline inland from the Pacific Ocean, which buffers coastal fog, forms the western portion of the boundary line of both the 27,500-acre proposed Fort Ross-Seaview viticultural area and the proposed Northern Addition, according to the boundary descriptions.

Climate: The Northern Addition petition asserts that the 27,500-acre proposed Fort Ross-Seaview viticultural area and the proposed Northern Addition share a similar climate, which is the primary defining feature of the area according to the Northern Commenters.

The Northern Addition petition compares the data on average annual heat accumulation, measured in growing degree days [1] (GDD), for three vineyards in the proposed Fort Ross-Seaview viticultural area to similar data for a vineyard located in the proposed Northern Addition. The data for the three vineyards in the proposed Fort Ross-Seaview viticultural area originated from the Shabram-Hirsch petition. According to the data, which is summarized in the below table, all of the vineyards are located in Winkler climatic region II, which has 2,501–3,000 GDDs per year.

Vineyard	Location	Average annual degree days
Jordan	27,500-acre proposed Fort Ross-Seaview viticultural area	2,605
Campmeeting Ridge	27,500-acre proposed Fort Ross-Seaview viticultural area	2,615
Nobles	27,500-acre proposed Fort Ross-Seaview viticultural area	2,580
La Crema	Northern Addition	2,580

In addition, according to the Northern Addition petition and the above data, all four vineyards have a Coastal Cool climate using the Sisson system of climactic classification cited in the Shabram-Hirsch petition, in which areas with degree day accumulations in the higher Region I or lower Region II range are considered to be Coastal Cool.

According to the Northern Addition petition, a map submitted with the Shabram-Hirsch petition that is based on Sisson's research also shows that all of the vineyards in the proposed Northern Addition are located within the Coastal Cool classification, including the lower 560- to 890-foot elevations of the vineyards in the Northern Addition (Vassen, ''Climate Types of Sonoma County Map,'' 1986). The Northern Addition petition contends that the Marine Cold and Coastal Cool climate classifications are not rigidly divided at the 900-foot elevation line, and that the vineyards at the lower, 560- to 890-foot elevations in the proposed Northern Addition receive adequate solar radiation for grape ripening because they are surrounded by a higher elevation ridge to the west that decreases the frequency of fog intrusion and its concomitant cooling effects.

The Northern Addition petition also provides a comparison of growing season temperatures for Fort Ross State Historic Park (located at the 112-foot elevation to the west of the proposed viticultural area) and La Crema Vineyard (located in the proposed Northern Addition) to establish that both the Northern Addition and the proposed Fort Ross-Seaview viticultural area have warmer temperatures during the growing season as compared to the coastal, lower elevation Fort Ross State Historic Park. As with the proposed Fort Ross-Seaview viticultural area, the data show that the Northern Addition has average temperatures that are roughly comparable to those at Fort Ross State Historic Park when little fog occurs during the coolest part of the year and in the evenings during the growing season. By contrast, and similar to the proposed Fort Ross-Seaview viticultural area, the Northern Addition has daytime high temperatures during the growing season that are significantly higher than the growing season daytime high

[1] In the Winkler climatic classification system, annual heat accumulation during the growing season, measured in annual GDD, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. Climatic region I has less than 2,500 GDD per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more (''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974, pages 61–64).

temperatures at Fort Ross State Historic Park. The Northern Addition petitioners attribute these significantly higher temperatures to the warming effect of solar radiation during the daytime that is similar to the growing season warming that occurs in the proposed Fort Ross-Seaview viticultural area.

The Northern Addition petition explains that the terrain of the region contributes to its distinctive climate because the high elevation ridge along the Pacific coastline blocks or slows the intrusion of marine fog currents flowing inland. According to the Northern Addition petition, the growing season climate of the proposed Fort Ross-Seaview viticultural area and the Northern Addition are similar because they both are affected by the fog-buffering caused by the coastal ridges and hills along the northernmost portions of the Sonoma Coast viticultural area. The Northern Addition petition further notes that the mountainous terrain in the region causes nighttime cool air to drain from the surrounding ridges and hillsides to the lower elevations, thereby extending the growing season on the higher ridges and hillsides and reducing the risk of springtime frost in both the proposed Fort Ross-Seaview viticultural area and the proposed Northern Addition.

Soils: The Northern Addition petition states that the soils in both the proposed Fort Ross-Seaview viticultural area and the proposed Northern Addition are varied, well drained, and nonalluvial (Soil Survey of Sonoma County, California, 1972, issued by the U.S. Department of Agriculture, Natural Resources Conservation Service). Goldridge, Yorkville, Josephine, and Laughlin soils are common in both areas, and Hugo soils make up 54 percent of the proposed Fort Ross-Seaview viticultural area and 45 percent of the proposed Northern Addition (*see publication cited above*), according to the Northern Addition petition.

Shabram Response to the Northern Addition Petition

Following the submission of the Northern Addition petition, Patrick Shabram, co-author of the Shabram-Hirsch petition, submitted additional documentation to support the establishment of the 27,500-acre Fort Ross-Seaview viticultural area as originally proposed (the Shabram response).

As a general matter, the Shabram response emphasizes that the Northern Addition area, which is known as the Annapolis region, is a grape growing area distinct and separate from the petitioned-for Fort Ross-Seaview viticultural area, notwithstanding some similar characteristics. The Shabram response further contends that the arguments presented in favor of the Northern Addition, especially the argument premised on the similar Coastal Cool climate classification in both regions, are equally applicable to other nearby California coastal regions. Accordingly, the Shabram response argues that an expansion of the proposed Fort Ross-Seaview viticultural area based on the grounds stated in the Northern Addition petition would warrant a larger expansion into other neighboring regions, including the established Mendocino Ridge viticultural area (27 CFR 9.158) to the north, established by T.D. ATF–392 (published in the **Federal Register** at 62 FR 55512 (October 27, 1997)), and the proposed Freestone-Occidental viticultural area (a petition under TTB review) to the south, both of which generally share a similar Coastal Cool climate as a result of coastal fog and have some similar soil types. Such an expansion would create a larger, regional viticultural area more akin to the established Sonoma Coast viticultural area as compared to the smaller, local viticultural area that was sought by the Fort Ross-Seaview petitioners.

Name Evidence: The Shabram response states that the ''Fort Ross-Seaview'' name is not associated with the Northern Addition area, and it argues that use of the name to identify the viticulture of the Northern Addition would be confusing to consumers. According to the Shabram response, the Northern Addition area is instead recognized as a separate geographical region known as ''Annapolis,'' which is the reason why the area was not considered for inclusion when the Fort Ross-Seaview growers first considered petitioning for a viticultural area. The Shabram response notes that the Northern Addition petitioners' proposed amendment of the ''Fort Ross-Seaview'' name to either ''Fort Ross-Annapolis'' or ''Sonoma Coast Mountains'' for the proposed expanded viticultural area (including the Northern Addition) shows that the name lacks significance in the Annapolis area.

As explained in the Shabram response, the Fort Ross-Seaview vineyard owners considered various other potential names when discussing the best geographical name for their proposed viticultural area, including but not limited to Fort Ross, Fort Ross Ridges, Seaview, and Seaview Ridges (''California's New Frontier,'' by Steve Heimoff, ''Wine Enthusiast,'' July 2001). According to the Shabram response, the area vineyard owners ultimately agreed that the area is called both the ''Fort Ross area'' and the ''Seaview area,'' and that both names are significant to local viticulture (*see publication cited above*), resulting in the proposed ''Fort Ross-Seaview'' name.

In further support of the proposed Fort Ross-Seaview name, the Shabram response quotes two Fort Ross vineyard owners regarding the significance of the name. One area grower, Lester Schwartz, stated in a supplemental exhibit to the petition that ''[t]he petitioners chose 'Fort Ross-Seaview' because that is what locals call the area which produces fine grapes and wine'' (Schwartz letter to TTB, dated May 4, 2005). Another local grower, Daniel Schoenfeld, stated in his 2004 letter to Mr. Shabram about the ''Fort Ross-Seaview'' name that ''[t]he region that constitutes the proposed AVA is known as the 'Fort Ross' area, as the 'Seaview' area, and as the 'Fort Ross-Seaview' area. All three names have been used interchangeably to describe the area. 'Fort Ross-Seaview' has been used for a number of years in verbal communication to eliminate confusion associated with the different names'' (in conversation with TTB personnel, May 18, 2004).

The Shabram response further states that writers consistently do not include the Northern Addition (or Annapolis) region when referring to the Fort Ross-Seaview area, or vice versa. As noted in the discussion of the Shabram-Hirsch petition above, Charles Sullivan used the ''Fort Ross-Seaview'' name to refer to the area, which was before the local growers reached a consensus on the name of the proposed viticultural area, and the Shabram Response notes that Mr. Sullivan does not mention Annapolis or the Northern Addition when discussing Fort Ross-Seaview viticulture. In addition, the Shabram response points out that the Friends of the Gualala River Web site (available at *http://gualalariver.org/*) has a map that shows the location of local Annapolis vineyards, but it does not include the vineyards in the proposed Fort Ross-Seaview viticultural area to the south.

The Shabram response also notes that the location of the vineyards of two of the Northern Addition petitioners, Brice Jones and Don Hartford, has been referred to as ''Annapolis'' rather than ''Fort Ross-Seaview'': Mr. Jones was described as an ''Annapolis vintner'' in a news article (''Brice Jones, Artesa Open Routes Across Land for Animals: Annapolis Winegrowers to Establish Wildlife Corridors,'' by Carol Benfell, [Santa Rosa] Press Democrat, September 11, 2001); and the Hartford Family

Winery notes that the Lands Edge Vineyards 2007 Pinot Noir ''is sourced predominantly from our estate's Annapolis vineyard'' (*http://www.hartfordwines.com/wines/pinotnoir/landsedge.html*).

Boundary Evidence: The Shabram response contends that there are three geographically distinctive viticultural areas in coastal Sonoma County: Annapolis (north), Fort Ross-Seaview (middle), and Freestone-Occidental (south).

As stated in ''A Wine Journey along the Russian River,'' a source cited in the Shabram response, Sonoma County coastal viticulture ''is clustered in three areas close to the shore: Annapolis up north, near the Mendocino County line; Fort Ross in the center; and (merging these two areas into one) Occidental Ridges and Freestone, to the south (which some people refer to as the Bodega plantings)'' (Steve Heimoff, University of California Press, 2005, pages 234–5). The Shabram response also refers to a map that depicts the separate vineyard clusters in the Annapolis, Fort Ross-Seaview, and Freestone-Occidental areas (''Sonoma Coast,'' map no. 11, in ''North American Pinot Noir,'' by John Winthrop Haeger, University of California Press, 2004) and notes that none of the Fort Ross-Seaview wine growers that Mr. Heimoff specifically names in his book are located in the Annapolis area of the map.

The Shabram response explains that the Fort Ross-Seaview vineyards are clustered together along several higher ridges in close proximity to the Pacific Ocean, unlike the vineyards generally clustered at the lower elevations further inland around the town of Annapolis to the north. The Wheatfield Fork of the Gualala River is located between the two clusters of vineyards on the ridges, and the area adjacent to the Fork is characterized by fog intrusion and a steep valley that drops to an elevation of 160 feet. Commercial viticulture is difficult, if not impossible, in the area adjacent to the Wheatfield Fork because of the fog and the steep terrain, according to the Shabram response.

The Shabram response also states that the Annapolis area consists of the ridges surrounding the Wheatfield Fork and Buckeye and Grasshopper Creeks (located in the proposed Northern Addition). By contrast, the proposed Fort Ross-Seaview viticultural area is located to the south of the Annapolis area and consists of a series of ridges that are separated from the surrounding areas by the Wheatfield Fork and the South Fork of the Gualala River and tributary creeks (''North American Pinot Noir,'' page 92). The Shabram response states that further south, the Freestone-Occidental area contains ridges that are separated from one another by tributaries of Salmon Creek (*see publication cited above*). The Shabram response also notes that, in the Northern Addition, the vineyard closest to the northernmost vineyard in the proposed Fort Ross-Seaview viticultural area is approximately 3.5 miles away (measured in a straight line), whereas all of the vineyards within the proposed Fort Ross-Seaview viticultural area are located within an approximately 10 mile stretch, with no vineyard more than 1.5 miles away from another vineyard.

Distinguishing Features: The Shabram response states that subtle climatic and geographic differences exist between the Annapolis and Fort Ross-Seaview regions. Although both areas broadly share a Coastal Cool climate classification, the Shabram response explains that there are differences in the nature of the coastal cooling in each area, which are largely based on the higher elevations of vineyards in the Fort Ross-Seaview area as compared to those in the Annapolis area. As a result, each area receives different amounts of total solar radiation, which in turn affects the ripening times for grapes in those areas, according to the Shabram response.

The Shabram response states that vineyards in the proposed Fort Ross-Seaview viticultural area are located at high elevations above the fog line, so they receive a full day of solar radiation. David Hirsch, Joan and Walt Flowers, and Daniel Schoenfeld, all local growers in the proposed Fort Ross-Seaview viticultural area, attested to Mr. Shabram and to Wine News magazine (Jeff Cox, ''Cool Climate Pioneers—Sonoma's Ridgetop Winegrowers Scale New Heights,'' Wine News, August/September 2002) that foggy conditions transition to clear skies beginning at the 900-foot elevations of the Fort Ross-Seaview area. Although the 900-foot elevation line does not mark an absolute break in the fog, it is the best available evidence of a fog ceiling, according to the Shabram response.

Further, the Shabram response states that, although the convection and conduction of fog from the Pacific Ocean cool both the Annapolis and Fort Ross-Seaview areas, the vineyards in the Annapolis area are cooler because they are situated at lower elevations, where partial fog reduces total solar radiation, despite the presence of a ridgeline to the west that buffers the fog. For example, the Shabram response quotes a description of Peay Vineyards (located in the Northern Addition), in which it is described as sitting ''on a hilltop that is not way up in the air, but just at the top of the fog level, low enough to be very cool, but high enough not to be too cool and wet for grapes'' (*http://www.peayvineyards.com/*). [TTB notes that Peay Vineyards is located at an elevation of approximately 755 feet, as shown on a topographical map provided by the Northern Commenters.] By comparison, the vineyards in the Fort Ross-Seaview area typically are located at higher elevations that are above the fog inversion layer, so they are therefore less cooled by fog and receive greater solar radiation warming while still receiving some cooling via conduction due to the close proximity of the fog layer, according to the Shabram response.

The Shabram response also provides a statement from Vanessa Wong, a grape grower and winemaker at Peay Vineyards who has worked with vineyards located in both the proposed Fort Ross-Seaview viticultural area and the Northern Addition for the past nine vintages and has also made wines from grapes grown in both areas. Ms. Wong explains that the inversion layer of cool ocean fog persists throughout the day in her vineyards in the Northern Addition. According to Ms. Wong, coastal breezes blow cool air along unobstructed land between sea level and 1,000 feet in altitude, which is the mean top of the inversion layer. By contrast, vineyards located above the much cooler inversion layer—including vineyards located along the Fort Ross-Seaview ridges and areas further inland—have warmer temperatures.

Ms. Wong further states that grape maturity dates differ significantly between vineyards in the proposed Fort Ross-Seaview viticultural area and those in the Northern Addition. According to Ms. Wong, for the same vintage and grape variety, the harvest dates in the Northern Addition are consistently later than those in proposed Fort Ross-Seaview viticultural area, adding that ripening generally occurs 10 to 14 days earlier in the Fort Ross-Seaview area than at the lower-elevation Peay Vineyards. Ms. Wong attributes the later ripening in the Annapolis area to the cooler temperatures in that region: ''I believe that the pick dates for the Annapolis area are later than those of the Fort Ross-Seaview area because the Annapolis area is cooler than the Fort Ross-Seaview area.''

The following table, which was provided by Ms. Wong, illustrates the difference in pick dates between the Fort Ross-Seaview and Annapolis areas and shows that, for the years that Ms.

Wong provided data, the pick dates of the vineyards in the proposed Fort Ross-Seaview viticultural area are significantly earlier than those of the vineyards in the Northern Addition area:

Variety	Fort Ross-Seaview Vineyard	Pick date	Annapolis Vineyard	Pick date	Pick date difference (days)
Pinot Noir-Pommard	Hirsch	9/12/02	Peay	9/23/02	11
Chardonnay	Hirsch	9/29/06	Peay	10/9/06	11
Pinot Noir 777	Nobles	9/4/09	Peay	9/18/09	14
Chardonnay	Hirsch	9/10/09	Peay	10/6/09	26

Determination To Reopen Public Comment Period

Given the conflicting evidence provided by the original petitioner and by the Northern Commenters with respect to the distinguishing features and boundary line of the proposed viticultural area, as well as the length of time that had elapsed since TTB published Notice No. 34 and solicited public comments on the proposed establishment of the Fort Ross-Seaview viticultural area, TTB determined that it was appropriate to reopen the comment period for Notice No. 34 before taking any final action regarding the proposed Fort Ross-Seaview viticultural area.

Accordingly, TTB reopened the comment period for Notice No. 34 for an additional 45 days on April 21, 2011, with comments due on or before June 6, 2011 (see Notice No. 117, published in the **Federal Register** at 76 FR 22338). Notice No. 117 did not contain the details of the northern expansion documentation (referred to here as the ''Northern Addition petition'') or of the Shabram response due to the length of those documents, but TTB informed the public in Notice No. 117 that those documents, as well as the original Shabram-Hirsch petition, Notice No. 34, and the original comments received in response to Notice No. 34, were posted for public viewing on Regulations.gov, the Federal e-rulemaking portal.

In Notice No. 117, TTB specifically invited comments on the following issues: (1) Whether TTB should establish the proposed ''Fort Ross-Seaview'' viticultural area; (2) the sufficiency and accuracy of the proposed viticultural area's name, ''Fort Ross-Seaview,'' including comments on the name's applicability to the proposed Northern Addition and any alternative names for the proposed viticultural area and the Northern Addition area; and (3) the appropriateness of the proposed viticultural area's boundary line and whether the proposed viticultural area is limited to the area within the boundary line described in Notice No. 34 or if it also extends further to the north as stated by the Northern Commenters.

Comments Received in Response to Notice No. 117

TTB received three comments in response to Notice No. 117, all strongly supporting the establishment of the Fort Ross-Seaview viticultural area as proposed in Notice No. 34. Two of the comments, Nos. 8 and 9, were submitted by local growers who had previously submitted supporting comments in response to Notice No. 34, Lester Schwartz of Fort Ross Vineyard & Winery LLC and David Hirsch, respectively; the third comment, No. 10, was submitted by Patrick Shabram. There were no comments submitted by the Northern Commenters in response to Notice No. 117.

The supporting comments state their opposition to the proposed Northern Addition based on the distinctiveness of the proposed Fort Ross-Seaview viticultural area and their contention that the Northern Addition (or the Annapolis area) is a separate, viticulturally distinct area. Comment 9 specifically notes the proposed viticultural area's distinctiveness based on its location, soils, and climate, stating that the area's climate is influenced by its close proximity to the ocean as well as its altitude. In comment 10, Patrick Shabram reiterates his prior contention that the main distinction between the proposed viticultural area and the Northern Addition is that the vineyards located within the proposed Fort Ross-Seaview viticultural area are located above or in close proximity to the intruding coastal fog, as compared to the Northern Addition vineyards, which are typically below the fog line. Mr. Shabram adds that various local grape growers have attested to the fact that vineyards within the proposed Fort Ross-Seaview viticultural area are located above the fog, an assertion that Mr. Shabram notes has not been disputed by any growers inside or outside of the proposed viticultural area.

In support of the argument that the Northern Addition is a unique area that is separate and viticulturally distinct from the proposed Fort Ross-Seaview viticultural area, comments 8 and 10 refer to recent articles that recognize that the Fort Ross-Seaview and Annapolis areas are separate grape-growing areas with different climates within the larger Sonoma Coast region. For example, both comments quote an August 2, 2010 article by Eric Asimov, the chief wine critic for the New York Times, that discusses the diversity within the large Sonoma Coast viticultural area, stating that ''[e]ven along the narrow swath of land close to the coast, numerous microclimates emerge, making vineyards around Annapolis to the north very different from vineyards on the ridges above Fort Ross in the appellation's western midsection, not to mention those to the south near Freestone and Occidental'' (Eric Asimov, ''The Evolution of Sonoma Coast Chardonnay,'' The New York Times, August 2, 2010).

Comment 10 also quotes an April 27, 2011 article from the Santa Rosa Press Democrat that similarly identifies the same ''three particular coastal areas'' of the Sonoma Coast and distinguishes the Annapolis area from the area to its immediate south (the location of the proposed Fort Ross-Seaview viticultural area) based on the Annapolis area's lower elevation ridges and its location five to six miles inland from the Pacific Ocean (Virginia Boone, ''Wine Way Out West,'' Santa Rosa Press Democrat, April 27, 2011).

In addition, comments 8 and 10 quote a 2009 article by the wine editor of the San Francisco Chronicle that names Peay Vineyards as its Winery of the Year and describes the cooler climate in the Annapolis area as compared to the warmer vineyards to the south (within the proposed Fort Ross-Seaview viticultural area), which are located closer to the coast but above the inversion layer: ''Even by Sonoma Coast standards, Peay occupies a chilly slice of the world. While vineyards just to the south like Hirsch * * * or Flowers * * * may sit closer to the coast, they're above the inversion layer. The site in Annapolis is lower, between 600 and 800 feet, with colder temperatures'' (Jon Bonne, ''Winery of the Year: Peay

Vineyards,'' San Francisco Chronicle, December 27, 2009).

In another article about Peay that is quoted in comments 8 and 10, Randy Caparoso of Sommelier Journal recounted Nick Peay's description of the distinctiveness of the Annapolis area as contrasted to the Fort Ross-Seaview area to the south:

> Peay attributes the tightly wound characteristics of Annapolis to the macroclimate, with temperatures typically ranging in the 60s and 70s during the growing season—as frigid as it gets in the entire county. As in Fort Ross-Seaview, days are moderated by the ocean, only 4 miles away, and nights are never too cold. But unlike Fort Ross-Seaview, he says, the lower-elevation growths near Annapolis are influenced by ''unobstructed fog coming straight up the river valley each day. We are *in* the inversion layer, not above it'' (Randy Caparoso, ''Sonoma Extreme,'' Sommelier Journal, January 31, 2011, pp. 70–80) (emphasis in original).

According to comment 10, Greg LaFollette, a winemaker who has worked with grape growers in various coastal Sonoma locations (including Fort Ross-Seaview), is quoted in that same article as stating that he ''always experienced much higher degree-day accumulation [in Fort Ross-Seaview]''.

Comments 8 and 10 also cite the lack of evidence demonstrating that the ''Fort Ross-Seaview'' name applies to the Northern Addition area as an additional reason for establishing the petitioned-for viticultural area as proposed in Notice No. 34. In comment 10, Patrick Shabram refers to his earlier argument from the Shabram response that the names ''Fort Ross,'' ''Seaview,'' or ''Fort Ross-Seaview'' lack viticultural significance in relation to the Northern Addition area, which is instead known as the ''Annapolis area.'' Noting that he was unable to find any reference to the Annapolis area as ''Fort Ross,'' Mr. Shabram states that a number of recent news articles refer to the Northern Addition area as ''Annapolis'' in conjunction with other sub-regions of the west Sonoma Coast region, including Fort-Ross Seaview and Freestone-Occidental, further underscoring his contention that the ''Fort Ross'' name is not used in conjunction with the proposed Northern Addition.

TTB Analysis

TTB has carefully considered the comments received in response to Notice Nos. 34 and 117 and has reviewed all petition evidence and subsequent documentation received in support of, or in opposition to, the proposed Fort Ross-Seaview viticultural area, including all comments and documentation relating to the proposed Northern Addition.

Name Evidence

The evidence submitted both by the Northern Commenters and by Mr. Shabram raised significant questions regarding whether the ''Fort Ross-Seaview'' name is applicable to the proposed Northern Addition.

Based on TTB's review of the evidence provided by the Northern Commenters to support their assertion that the ''Fort Ross'' and ''Fort Ross Region'' names are used in connection with the Northern Addition area, it appears that this use of these names reflects very limited historic name usage during the Russian occupation only (1812–41); the evidence provided does not include more recent references to the area by those names. Regarding the archaeology and ethnohistory study of the Russian occupation of the Fort Ross area that the Northern Addition petition cites for a historical perspective of the occupation's effect on native populations, TTB notes that the study details the historic boundaries of the occupation, but not the current boundary lines of the Fort Ross geographical area.

By contrast, the evidence that was submitted in the Shabram response and in comments 8 and 10 supports the original petitioners' contention in response to the Northern Addition petition that local growers as well as the wine press recognize the Fort Ross-Seaview area as a separate and distinct area from the Annapolis area, and that the ''Fort Ross-Seaview'' geographical place name is commonly used by local growers to identify only the grape-growing region in the immediate area around Fort Ross and Seaview, but not the neighboring region to the north.

Accordingly, TTB has determined that the name evidence provided in the Northern Addition petition does not substantiate the Northern Commenters' assertion that the ''Fort Ross-Seaview,'' ''Fort Ross,'' or ''Seaview'' names currently apply to the Northern Addition, including the Annapolis area.

Boundary Line

As described in Notice No. 34, the Shabram-Hirsch petitioned-for boundary line largely incorporates the hills and mountains located along the Pacific coast near Fort Ross and Seaview in western Sonoma County that are mostly above 900 feet, which generally marks the separation between the higher, sunnier elevations of the proposed area and the surrounding lower, foggier elevations.

TTB notes that the USGS maps show a clear distinction between the Fort Ross-Seaview area and the Annapolis area to the north, with the Wheatfield Fork of the Gualala River creating a natural separation of the lower elevations of the Northern Addition from the steep, higher elevation terrain of the proposed Fort Ross-Seaview viticultural area. TTB also notes that the northernmost vineyard in the proposed Fort Ross-Seaview viticultural area is more than 3 miles from the closest vineyard in the Northern Addition, as shown on an exhibit submitted by the Northern Commenters. In contrast, as pointed out in the Shabram response, all of the vineyards within the proposed Fort Ross-Seaview viticultural area are located within an approximately 10 mile stretch, with no vineyard more than 1.5 miles away from another vineyard.

In addition, the evidence and comments submitted in this case demonstrate that there are two distinct geographical differences between the two areas that affect the proposed boundary line and suggest that they should be considered separate regions: (1) Distance from the Pacific coastline; and (2) elevation. Most locations within the proposed Fort Ross-Seaview viticultural area are located only 0.5 to 2.5 miles from the Pacific coastline, whereas most locations within the Northern Addition are located 4 to 6 miles from the coastline, as shown on USGS maps. The elevation of the vineyards in the two areas is also significantly different; vineyards in the Fort Ross-Seaview area are generally located at elevations between 920 to 1,800 feet, which are above the coastal fog according to local growers and the Shabram-Hirsch petition, as compared to the lower 560- to 890-foot elevations of vineyards in the Northern Addition, which are more influenced by the marine fog.

Finally, TTB notes that the separate identities of the Fort Ross-Seaview and the Northern Addition (or Annapolis) areas have been recognized in recent newspaper articles and wine magazines. As noted above, the Shabram response and comments 8 and 10 cite to multiple articles that refer to the two regions as separate areas and describe their different grape-growing conditions, which further highlights the distinction between the proposed Fort Ross-Seaview viticultural area and the Annapolis area to the north.

TTB thus finds that the boundary line for the proposed Fort Ross-Seaview viticultural area should not include the Annapolis area to the north.

Distinguishing Features

In Notice No. 34, the climate, topography, and soils of the proposed Fort Ross-Seaview viticultural area were identified as the area's distinguishing features. In the Northern Addition petition, the Northern Commenters contend that these same distinctive features are shared by the Northern Addition area, thus warranting a modification of the proposed boundary line to include the Northern Addition. More specifically, the Northern Addition petition asserts that both the proposed Fort Ross-Seaview viticultural area and the Northern Addition have a Coastal Cool climate and similar soil types, which is not challenged in the Shabram response.

Based on the Shabram-Hirsch petition, the Northern Addition petition, the Shabram response, and the public comments, TTB finds that there are some similarities in the soil, topography, and growing season climate of the proposed Fort Ross-Seaview viticultural area and the Northern Addition. As discussed below, however, given that both areas are wholly contained within two larger existing viticultural areas—the North Coast and Sonoma Coast viticultural areas—some general similarities in distinguishing features can be expected, especially in regard to the regional climate because both the proposed Fort Ross-Seaview viticultural area and the Northern Addition have a Coastal Cool climate, which is a distinguishing feature of the surrounding Sonoma Coast viticultural area according to T.D. ATF–253. In addition, as noted in the Shabram response, an expansion of the proposed Fort Ross-Seaview viticultural area based on the general grounds stated in the Northern Addition petition could warrant the inclusion of other nearby coastal areas with broadly similar features. Accordingly, the general regional similarities described in the Northern Addition petition would not necessarily preclude a finding that the microclimate and specific topography of a particular area (such as the proposed Fort Ross-Seaview viticultural area) are sufficiently distinct from those of the adjacent areas as to warrant its recognition as a distinct viticultural area.

While conceding that there are some broad similarities in the climate and topography between the proposed Fort Ross-Seaview viticultural area and the Northern Addition, the Shabram-Hirsch petition, the Shabram response, and the supporting comments also assert that the proposed Fort Ross-Seaview viticultural area has warmer growing conditions with increased solar radiation due to the lack of fog at the high elevation vineyards in the area. The petitioners submitted both statistical and anecdotal evidence in support of their position.

First, the degree day data provided by the petitioners in the Shabram-Hirsch petition for three vineyards in the proposed viticultural area shows that the vineyards are in Winkler region II, and that those vineyards on average had degree days that were greater than or equal to the average degree days for the single vineyard for which data was provided by the Northern Commenters.[2] The average degree days for two of the vineyards within the proposed Fort Ross-Seaview viticultural area were significantly greater than the average degree days for the vineyard within the Northern Addition, and the third vineyard had an equal number of degree days on average, suggesting that the growing season temperatures in the proposed viticultural area are somewhat warmer than those in the Northern Addition.

The pick date data provided by Ms. Wong in the Shabram response further supports the assertion that the proposed Fort Ross-Seaview viticultural area has warmer growing conditions than the Northern Addition. According to the data provided by Ms. Wong, for the same growing seasons for the same grapes, the vineyards located within the proposed viticultural area had a pick date that was significantly earlier than the pick date for the vineyard located in the Northern Addition. Ms. Wong specifically attributed the later pick dates in the Northern Addition to the cooler temperatures in the lower elevation vineyards in that area.

In addition, observations by local grape growers as well as articles in the wine press, as described above, further indicate that the higher elevation vineyards located in the proposed Fort Ross-Seaview viticultural area are warmer and receive more solar radiation than the lower elevation vineyards in the Northern Addition because the Fort Ross-Seaview vineyards are located above both the cooler temperature inversion layer as well as the fog line. As noted above, local growers in the proposed Fort Ross-Seaview viticultural area claim that their vineyards benefit from day-long solar radiation because they are located above the fog line and the cool inversion layer. This distinction has also been recognized by two winemakers in the Northern Addition—Ms. Wong and Nick Peay—with the latter contrasting his vineyards in the cooler Annapolis area to the Fort Ross-Seaview area based on the location of his vineyards in (not above) the inversion layer and the influence of unobstructed fog in the area (Jon Bonne, ''Winery of the Year: Peay Vineyards,'' San Francisco Chronicle, December 27, 2009; Randy Caparoso, ''Sonoma Extreme,'' Sommelier Journal, January 31, 2011, pp. 70–80).

Finally, TTB notes that the Northern Commenters did not dispute the distinction made in the Shabram response relating to the location of the Fort Ross-Seaview vineyards above the fog line. Although the Northern Addition petition states that the lower elevation vineyards in the Northern Addition are protected from the cooling effects of marine fog intrusion by the surrounding higher elevation ridgelines, the evidence submitted with the Northern Addition petition and with other comments indicates that there is still some fog intrusion in the area. By contrast, the evidence submitted in support of the proposed Fort Ross-Seaview viticultural area demonstrates that vineyards in that area are located above the fog line, thereby resulting in warmer growing season conditions, increased solar radiation, and earlier harvest dates for those vineyards. TTB also notes that no other comments in support of the Northern Addition or in opposition to the proposed Fort Ross-Seaview viticultural area were submitted in response to Notice No. 117.

Accordingly, TTB concludes that the evidence submitted in the Shabram-Hirsch petition, in the Shabram response, and in the supporting comments is sufficient to demonstrate that the climate, topography, and other distinguishing features of the proposed Fort Ross-Seaview viticultural area are sufficiently distinct from those of the Northern Addition to warrant the establishment of the new viticultural area originally proposed in Notice No. 34.

Relationship to Existing Viticultural Areas

As noted earlier in this preamble, the proposed Fort Ross-Seaview viticultural area is located entirely within the Sonoma Coast and North Coast viticultural areas. The similarities and differences between the proposed viticultural area and the surrounding Sonoma Coast and North Coast viticultural areas are addressed in the following paragraphs.

[2] The degree day information from the Shabram-Hirsch petition was not included in Notice No. 34, but it was restated in the Northern Addition petition and is summarized above.

North Coast Viticultural Area

The large North Coast viticultural area was established by T.D. ATF–145 (published in the **Federal Register** at 48 FR 42973 on September 21, 1983) and includes all or portions of Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties, California. TTB notes that the North Coast viticultural area encompasses approximately 40 established viticultural areas in northern California, in addition to the proposed Fort Ross-Seaview viticultural area. T.D. ATF–145 explicitly recognizes that ''[d]ue to the enormous size of the North Coast, variations exist in climatic features such as temperatures, rainfall, and fog intrusion.'' (See 48 FR 42975–42976.)

The proposed Fort Ross-Seaview viticultural area shares the overall distinguishing feature of the North Coast viticultural area: The marine influence from the Pacific Ocean that results in cooler temperatures throughout the region during the growing season. The proposed Fort Ross-Seaview viticultural area, however, is much more uniform in its geographical features than the North Coast viticultural area as a result of its much smaller size. In this regard, T.D. ATF–145 specifically states that ''approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast'' and that ''smaller viticultural areas tend to be more uniform in their geographical and climatic characteristics'' (see 48 FR 42976). Thus, the proposal to establish the proposed Fort Ross-Seaview viticultural area is consistent with the clear intent expressed in T.D. ATF–145.

Sonoma Coast Viticultural Area

The Sonoma Coast viticultural area was established by T.D. ATF–253 (published in the **Federal Register** at 52 FR 22302 on June 11, 1987) within the established North Coast viticultural area. T.D. ATF–253 states that the Sonoma Coast viticultural area includes only the portion of Sonoma county ''which is under very strong marine climate influence.'' According to T.D. ATF–253, the Sonoma Coast viticultural area has a ''Coastal Cool'' climate, which is shared by the proposed Fort Ross-Seaview viticultural area that would be located within the Sonoma Coast viticultural area.

Notwithstanding this broad climactic similarity, the information before TTB indicates that there are some differences in the microclimate of the proposed Fort Ross-Seaview viticultural area that distinguish it from the surrounding Sonoma Coast viticultural area. According to the Shabram-Hirsch petition, although the petitioned-for viticultural area lies a short distance from the Pacific Ocean, the elevations of the vineyards located within the proposed viticultural area are generally located above the fog line. The petition also states that the proposed Fort Ross-Seaview viticultural area is warmer during the growing season than the surrounding areas in the Sonoma Coast viticultural area because it is located above the cool temperature inversion layer that results from the draining of cooler air from the high elevation ridges in the proposed viticultural area into the surrounding lower elevations.

The Shabram-Hirsch petition also notes that the topography of the Sonoma Coast viticultural area includes large, flat valley areas, gently rolling hilly regions, several mountainous areas, and a portion of the Russian River and its watershed, as shown on the Sonoma County USGS map. By contrast, the topography of the proposed Fort Ross-Seaview viticultural area generally is more uniform with mountains, steep slopes, and elevations mostly between 920 to 1,800 feet, as shown on USGS maps.

TTB Finding

After careful review of the Shabram-Hirsch petition, the Northern Addition petition, the Shabram response, and the comments received in response to Notice Nos. 34 and 117, TTB finds that the evidence submitted supports the establishment of the 27,500-acre Fort Ross-Seaview viticultural area within the Sonoma Coast and North Coast viticultural areas as originally proposed. The evidence submitted by the Northern Commenters to support modification of the proposed boundary line to include the Northern Addition, including the Annapolis region, within the Fort Ross-Seaview viticultural area failed to establish the requisite commonality of name and distinguishing features. TTB would be willing to consider a separate petition for the establishment of a viticultural area encompassing the Annapolis region.

In addition, TTB has determined that both ''Fort Ross-Seaview'' and ''Ft. Ross-Seaview'' are viticulturally significant. After consideration of the concerns of some commenters, TTB believes that it would not be appropriate to find that ''Fort Ross'' or ''Ft. Ross,'' standing alone, is viticulturally significant. TTB also has determined that the name ''Seaview,'' standing alone, does not have viticultural significance because of its wide geographical usage, both domestically and internationally. Therefore, the establishment of the Fort Ross-Seaview viticultural area will not affect use of the names ''Fort Ross,'' ''Ft. Ross,'' and ''Seaview'' on wine labels of domestic and foreign producers.

Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of the TTB regulations, TTB establishes the 27,500-acre ''Fort Ross-Seaview'' viticultural area in Sonoma County, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document. In this final rule, TTB altered some of the language in the written boundary description provided in the petition and published as part of Notice No. 34. TTB made these alterations in the written boundary description language for clarity and to conform the written boundary description to the boundary of the proposed viticultural area as marked on the USGS maps submitted with the petition.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, ''Fort Ross-Seaview'' and ''Ft. Ross-Seaview'' are recognized under 27 CFR 4.39(i)(3) as terms of viticultural significance. The text of the new regulation clarifies this point.

Once this final rule becomes effective, wine bottlers using ''Fort Ross-Seaview'' or ''Ft. Ross-Seaview'' in a brand name, including a trademark or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use ''Fort Ross-Seaview'' or ''Ft. Ross-Seaview'' as an appellation of origin. The establishment of the Fort Ross-Seaview viticultural area will not affect any existing viticultural area, and any bottlers using Sonoma Coast or North Coast as an appellation of origin or in a brand name for wines made from grapes grown within the Fort Ross-Seaview viticultural area will not be affected by the establishment of this new viticultural area.

For a wine to be labeled with a viticultural area name or with a brand

name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Elisabeth C. Kann of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, 27 CFR, chapter I, part 9, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.221 to read as follows:

§ 9.221 Fort Ross-Seaview.

(a) *Name.* The name of the viticultural area described in this section is ''Fort Ross-Seaview''. For purposes of part 4 of this chapter, ''Fort Ross-Seaview'' and ''Ft. Ross-Seaview'' are terms of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Fort Ross-Seaview viticultural area are titled—

(1) Arched Rock, California-Sonoma Co., 1977 edition;

(2) Fort Ross, California-Sonoma Co., 1978 edition;

(3) Plantation, California-Sonoma Co., 1977 edition;

(4) Annapolis, California-Sonoma Co., 1977 edition; and

(5) Tombs Creek, California-Sonoma Co., 1978 edition.

(c) *Boundary.* The Fort Ross-Seaview viticultural area is located in Sonoma County, California. The area's boundary is defined as follows:

(1) The beginning point is on the Arched Rock map at the intersection of the 920-foot elevation line and Meyers Grade Road, T8N, R12W. From the beginning point, proceed northwest on Meyers Grade Road approximately 4.3 miles, on to the Fort Ross map, to the intersection of Meyers Grade Road with Seaview and Fort Ross Roads, T8N, R12W; then

(2) Proceed northwest on Seaview Road approximately 6.4 miles, on to the Plantation map, to the intersection of Seaview Road with Kruse Ranch and Hauser Bridge Roads in the southeast corner of section 28, T9N, R13W; then

(3) Proceed west on Kruse Ranch Road approximately 0.2 mile to the intersection of Kruse Ranch Road with the 920-foot elevation line, T9N, R13W; then

(4) Proceed generally north then east along the 920-foot elevation line approximately 2.2 miles to the intersection of the elevation line with Hauser Bridge Road, section 27, T9N, R13W; then

(5) Proceed east on Hauser Bridge Road approximately 1.5 miles to the intersection of Hauser Bridge Road with the 920-foot elevation line, section 23, T9N, R13W; then

(6) Proceed generally northwest then east along the 920-foot elevation line, on to the Annapolis map, approximately 7.8 miles to the intersection of the elevation line with an unnamed, unimproved road that forks to the south from Tin Barn Road, section 8, T9N, R13W; then

(7) Proceed east then north along the unnamed, unimproved road to the intersection of that road with Tin Barn Road, section 8, T9N, R13W; then

(8) Proceed east in a straight line approximately 1.55 miles to Haupt Creek, section 10, T9N, R13W; then

(9) Proceed generally southeast along Haupt Creek approximately 1.2 miles to the western boundary of section 11, T9N, R13W; then

(10) Proceed straight north along the western boundary of section 11 approximately 0.9 mile to the northwest corner of section 11 (near Buck Spring), T9N, R13W; then

(11) Proceed straight east along the northern boundary of section 11 and then along the northern boundary of section 12 approximately 1.1 miles to the intersection of the section 12 northern boundary with an unnamed, unimproved road along Skyline Ridge, section 12, T9N, R13W;

(12) Proceed generally southeast along the unnamed, unimproved road, on to the Tombs Creek map, approximately 1.3 miles to the intersection of that road with the 1,200-foot elevation line, section 13, T9N, R13W; then

(13) Proceed generally southeast along the 1,200-foot elevation line approximately 0.6 mile to the intersection of that elevation line with Allen Creek, section 18, T9N, R12W; then

(14) Proceed generally north along Allen Creek approximately 0.2 mile to the intersection of Allen Creek with the 920-foot elevation line, section 18, T9N, R12W; then

(15) Proceed generally east and then southeast along the meandering 920-foot elevation line, on to the Fort Ross map, to the intersection of that elevation line with Jim Creek, section 21, T9N, R12W; then

(16) Proceed generally southeast along Jim Creek approximately 0.7 mile to the northern boundary of section 27, T9N, R12W; then

(17) Proceed east along the northern boundary of section 27, T9N, R12W, to the northeast corner of section 27; then

(18) Proceed south along the eastern boundaries of sections 27 and 34, T9N, R12W, and continue south along the eastern boundaries of sections 3, 10, 15, and 22, T8N, R12W, to Fort Ross Road; then

(19) Proceed east along Fort Ross Road to the intersection of Fort Ross Road with the Middle Branch of Russian Gulch Creek, and then proceed south along that creek for approximately 1.2 miles to the intersection of that creek

with the 920-foot elevation line, section 26, T8N, R12W; then

(20) Proceed generally south along the meandering 920-foot elevation line approximately 8.1 miles, passing back and forth on the Fort Ross and Arched Rock maps as the 920-foot elevation line meanders north then south around the West Branch of Russian Gulch, returning to the beginning point, T8N, R12W.

Signed: October 4, 2011.

John J. Manfreda,

Administrator.

Approved: October 20, 2011.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2011–32016 Filed 12–13–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0005; T.D. TTB–99; Ref: Notice No. 118]

RIN 1513–AB80

Establishment of the Naches Heights Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: This final rule establishes the 13,254-acre ''Naches Heights'' viticultural area in Yakima County, Washington. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* January 13, 2012.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Washington, DC 20220; telephone (202) 453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 (27 CFR 9.12) of the TTB regulations prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Petition for the Naches Heights Viticultural Area

TTB received a petition from R. Paul Beveridge, owner of Wilridge Winery and Vineyard, to establish the ''Naches Heights'' American viticultural area in the State of Washington. The proposed Naches Heights viticultural area is located entirely within the larger Columbia Valley viticultural area (27 CFR 9.74) of Washington and Oregon. The city of Yakima lies to the southeast of the proposed viticultural area in a valley at lower elevations.

According to the petition, the proposed Naches Heights viticultural area encompasses 13,254 acres and contains 105 acres of commercial vineyards either producing or expecting to produce wine grapes in the foreseeable future.

Name Evidence

The ''Naches Heights'' name applies to an elevated plateau area in Yakima County, Washington, according to the petition and USGS maps. The USGS topographical maps of Naches, Selah, Yakima West, and Wiley City are used in the written boundary description in the petition to define the boundary of the proposed viticultural area. The area between the Naches River and Cowiche Creek is identified as ''Naches Heights'' on the USGS maps as well as on a public lands map (Yakima Public Lands Quadrangle map, 2001, Washington State Department of Natural Resources), according to the petition.

TTB notes that a search of the USGS Geographical Names Information System (GNIS) describes Naches Heights as a summit in Yakima County, Washington. Also, a general Internet search for ''Naches Heights'' produced many hits relating to the geographical region in which the proposed viticultural area falls.

The petition provided evidence of local usage of the name ''Naches Heights,'' including listings for the ''Naches Heights Community Center'' and the ''Little Store on Naches Heights'' in The DexOnline.com, Qwest, 2008 Yakima Valley telephone

directory. The petition also included multiple articles from the Yakima Herald-Republic referring to ''Naches Heights,'' including an October 22, 2008, obituary of Albert Robert Couchman, who had worked in orchards in Naches Heights; an October 24, 2008, article about a cross-country competition entitled ''Local Report: GNAC's best heading to Naches Heights''; and an October 26, 2008, article entitled ''Naches Heights: Senior Marcie Mullen turned in Central Washington University's top performance in Saturday's GNAC cross country championship * * *.'' In addition, the petition included a 1990 Cowiche Canyon brochure issued by the Bureau of Land Management's Spokane District that contained a drawing showing the Naches Heights geographical area, with Cowiche Canyon to the immediate west at lower elevations.

Boundary Evidence

According to USGS maps submitted with the petition, the Naches Heights plateau landform is surrounded by lower elevation valleys and the lower Tieton River to the west, the Naches River to the north and east, and Cowiche Creek to the south and west. The man-made Congdon (Schuler) Canal is located along a portion of the proposed eastern boundary line, closely following the 1,300-foot elevation line. TTB notes that these landforms are distinguishable on both the aerial photographs and the USGS maps submitted with the petition.

Comparison of the Proposed Naches Heights Viticultural Area to the Existing Columbia Valley Viticultural Area

The proposed Naches Heights viticultural area lies entirely within, and is 0.001 percent the size of, the Columbia Valley viticultural area. The 11.6 million acre Columbia Valley viticultural area was established by T.D. ATF–190, published in the **Federal Register** (49 FR 44895) on November 13, 1984. It was described as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers in portions of Washington and Oregon. The topography of the Columbia Valley viticultural area was described as a rolling terrain, cut by rivers and broken by long, sloping, basaltic, east-west uplifts. In addition, T.D. ATF–190 stated that the Columbia Valley viticultural area is dominated by major rivers and has a long, dry growing season. The Naches Heights petition notes that the ancient Missoula Floods carved much of the basin geography within the Columbia Valley AVA.

The proposed viticultural area is a single, elevated Tieton andesite plateau landform that ends in andesite cliffs that descend into the valleys surrounding the plateau. Although this landform generally shares a similar climate, it is geographically and geologically distinguishable from the surrounding portions of the Columbia Valley viticultural area, according to the petition. The relatively flat terrain of the plateau gently increases in elevation over the 11 miles from southeast to northwest, as shown on the USGS maps, and the entire plateau is elevated over the surrounding valleys. Unlike the rest of the Columbia Valley, no major rivers cross the plateau landscape, although the proposed viticultural area contains several intermittent streams and small ponds.

Distinguishing Features

The petition states that geology, geography, and soils distinguish the proposed viticultural area from the surrounding areas.

Geology

The petition states that approximately one million years ago, the termination of andesite flow from the Cascade Mountains down the valley of the Tieton River formed the Naches Heights plateau. The proposed Naches Heights viticultural area is located on, and encompasses, a geological formation of Tieton andesite, a volcanic rock.

According to the petition, in contrast to the Naches Heights plateau, there are alluvial deposits, including those that are terraced and older, to the north, east, and south of the proposed viticultural area. To the west of the area are alluvial deposits and Grande Ronde Basalt, Ringold Formation gravels, the Ellensburg Formation, and the Cascade Mountains.

Geography

The petition states that the proposed Naches Heights viticultural area is a plateau that terminates in cliffs of andesite to the north, east, and south. The andesite cliffs distinguish the proposed viticultural area from the Naches River Valley, the Cowiche Creek Valley, and the nearby Yakima River Valley. The USGS maps show that the Naches Heights plateau is elevated in comparison to the surrounding river and creek valleys. Aerial photos submitted with the petition also show the Naches Heights plateau landform and the cliffs that surround it in contrast with the surrounding lower elevation valleys.

On the far west side of the proposed viticultural area, the andesite cliffs are subsumed by the foothills of the Cascade Mountains, according to the petition and the USGS maps. Although not distinguished by steep cliffs, the proposed western boundary line marks the end of andesite rocks and the beginning of the Cascade Mountains foothills, as shown in an aerial photo submitted with the petition. Elevations gradually rise heading west and northwest of the Naches Heights into the Cascade Mountains and the 3,578-foot Bethel Ridge. The high mountainous elevations to the west create a rain shadow effect that protects the Naches Heights plateau from Pacific winter storms.

Elevations on the Naches Heights and along the Tieton andesite cliffs also distinguish the plateau from the surrounding regions, according the petition. The lowest elevations of the proposed viticultural area are approximately 1,200 feet, which is at the tip of the andesite flow at the far eastern edge of the proposed viticultural area. From this point, the cliffs rise to 1,400 feet, according to the USGS maps. The highest elevation of the plateau, located near the far western end of the proposed viticultural area, is approximately 2,100 feet, at which point the cliffs drop immediately to 1,600 feet. The Yakima City Hall lies to the southeast of the proposed viticultural area at 1,061 feet, a significantly lower elevation than that of the Naches Heights. As explained in the petition, cold air drains off the plateau and into the surrounding valleys, thereby reducing potential frost damage and winterkill to vineyards on the Naches Heights.

Soils

After the volcanic flow of andesite cooled and hardened to form the Naches Heights plateau, pockets of loess, or wind-blown soil, were deposited on the plateau, according to the petition. After a period of about 1 million years marked by winds and volcanic eruptions in the Cascades, deep beds of unique soils formed in the loess pockets on the plateau. The predominant soils on the plateau are Tieton loam and Ritzville silt loam (U.S. Department of Agriculture, National Resource Conservation Service, Web Soil Survey at *http://websoilsurvey.nrcs.usda.gov/*). According to the petition, the only major difference between Tieton loam and Ritzville silt loam is that the latter formed in deeper pockets of loess, thus creating a very consistent soil type throughout the proposed viticultural area.

The Naches Heights plateau landform, according to the NRCS web soil survey, has generally deep loess soils with

adequate drainage and deep rooting depths conducive to successful viticulture. Further, the grape vine roots are not prone to freezing, or winterkill, in the deep plateau soils.

Unlike the plateau, much of the greater Columbia Valley region that surrounds the Naches Heights was covered by alluvial material deposited by the ancient Missoula Floods, according to the petition. Hence, the proposed viticultural area is surrounded mainly by gravelly alluvial soils readily distinguishable from the Tieton loam and Ritzville silt loam of Naches Heights. Harwood loam, a transitional soil formed in both loess and alluvium, is located in small areas of the southern portion of the Naches Heights that is outside the boundary line of the proposed viticultural area.

Rocks, cobbles, and shallow rooting depths are characteristics of the lower elevation valley region that surrounds the Naches Heights plateau, according to the NRCS data. In the valley region, the cold air from the surrounding mountain elevations drains onto the valley floor and ponds to create stagnant, cold air environments that make vine growth difficult during some seasons, the petition explains. Unlike the Naches Heights soils, the valley and floodplain soils, including the Weirman, Wenas, and Kittitas series, are subject to seasonal flooding and a water table close to the surface of the soil, according to NRCS data. In addition, the valley vines have shallow rooting depths that can reach the water table and be frozen during extreme cold weather. Further, seasonal flooding can affect some portions of the surrounding valley area.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 118 regarding the proposed Naches Heights viticultural area in the **Federal Register** (76 FR 30060) on May 24, 2011. In that notice, TTB requested comments from all interested persons by July 25, 2011. TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. TTB expressed particular interest in whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Columbia Valley viticultural area that the proposed Naches Heights viticultural area should no longer be a part of the Columbia Valley viticultural area. TTB also sought information on the impact of the establishment of the proposed Naches Heights viticultural area on wine labels that include the words ''Naches Heights,'' and whether there would be a conflict between the proposed viticulturally significant terms and currently used brand names.

TTB received no comments in response to Notice No. 118.

TTB Finding

After careful review of the petition, and after receiving no contrary evidence during the comment period, TTB finds that the evidence provided by the petitioner supports the establishment of the proposed Naches Heights viticultural area within the Columbia Valley viticultural area as proposed in Notice No. 118. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of TTB's regulations, TTB establishes the ''Naches Heights'' viticultural area in Yakima County, Washington, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice. In this final rule, TTB altered some of the language in the written boundary description provided in the petition and published as part of Notice No. 118. TTB made these alterations in the written boundary description language for clarity and to conform the written boundary description to the boundary of the proposed viticultural area as marked on the USGS maps submitted with the petition.

Maps

The maps for determining the boundary areas of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Naches Heights,'' is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Naches Heights'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

On the other hand, TTB finds that no single part of the proposed viticultural area name standing alone, such as ''Naches,'' has viticultural significance. Accordingly, the regulatory text set forth in this document specifies only the full ''Naches Heights'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations. The establishment of the Naches Heights viticultural area will not affect any existing viticultural area, and any bottlers using Columbia Valley as an appellation of origin or in a brand name for wines made from grapes grown within the Naches Heights viticultural area will not be affected by the establishment of this new viticultural area. The establishment of the Naches Heights viticultural area will allow vintners to use both ''Naches Heights'' and ''Columbia Valley'' as appellations of origin for wines made from grapes grown within the Naches Heights viticultural area.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This final rule is not a significant regulatory action as defined by

Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. Subpart C is amended by adding § 9.222 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.222 Naches Heights.

(a) *Name.* The name of the viticultural area described in this section is ''Naches Heights''. For purposes of part 4 of this chapter, ''Naches Heights'' is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Naches Heights viticultural area are titled:

(1) Selah, Wash., 1958, photorevised 1985;

(2) Yakima West, Wash., 1958, photorevised 1985;

(3) Wiley City, Wash., 1958, photorevised 1985;

(4) Naches, Wash., 1958, photorevised 1978; and

(5) Tieton, Wash., 1971, photoinspected 1981.

(c) *Boundary.* The Naches Heights viticultural area is located in Yakima County, Washington. The boundary of the Naches Heights viticultural area is as described below:

(1) The beginning point is on the Selah map at the intersection of the Burlington Northern single-track rail line and the Congdon (Schuler) Canal, section 9, T13N/R18E. From the beginning point, proceed south-southwesterly along the single rail line, onto the Yakima West map, approximately 0.35 mile to the first intersection of the rail line with an unnamed creek, locally known as Cowiche Creek, section 9, T13N/R18E; then

(2) Proceed upstream (westerly) along Cowiche Creek, onto the Wiley City map and then onto the Naches map, approximately 6.25 miles to the confluence of the North and South Forks of Cowiche Creek, south of Mahoney Road, section 3, T13N/R17E; then

(3) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.6 miles to the intersection of the North Fork with Livengood Road, section 34, T14N/R17E; then

(4) Proceed north and northwest on Livengood Road approximately 1.12 miles until the road turns west and joins Forney Road, and continue approximately 1.02 miles along Forney Road to the intersection of Forney Road with the North Fork of Cowiche Creek, section 28 northwest corner, T14N/R17E; then

(5) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.8 miles to the intersection of the North Fork with the section 17 west boundary line, T14N/R17E; then

(6) Proceed straight north along the section 17 west boundary line to its intersection with Cox Road, and then continue north along Cox Road to the intersection of Cox Road with Rosenkranz Road, section 17 northwest corner, T14N/R17E; then

(7) Proceed west on Rosenkranz Road, onto the Tieton map, approximately 0.6 mile to the intersection of Rosenkranz Road with North Tieton Road, section 7 south boundary line, T14N/R17E; then

(8) Proceed north on North Tieton Road approximately 0.5 mile to the intersection of North Tieton Road with Dilley Road, section 7, T14N/R17E; then

(9) Proceed west on Dilley Road approximately 0.5 mile to the intersection of Dilley Road with Franklin Road, section 7 west boundary line and the R16E and R17E common line, T14N; then

(10) Proceed north on Franklin Road approximately 0.8 mile to the intersection of Franklin Road with Schenk Road and the section 6 west boundary line, T14N/R16E; then

(11) Proceed west on Schenk Road approximately 0.55 mile to the intersection of Schenk Road with Section 1 Road, section 1, T14N/R16E; then

(12) Proceed straight north from the intersection of Schenk Road and Section 1 Road approximately 2.2 miles to the 1,600-foot elevation line, section 36, T15N/R16E; then

(13) Proceed easterly and then southeasterly along the 1,600-foot elevation line, onto the Naches map, approximately 7.5 miles to the intersection of the 1,600-foot elevation line with the section 26 north boundary line, T14N/R17E; then

(14) Proceed straight east along the section 26 north boundary line approximately 0.25 mile to the intersection of the section 26 north boundary line with the 1,400-foot elevation line, T14N/R17E; then

(15) Proceed southeasterly along the 1,400-foot elevation line approximately 2.5 miles to the intersection of the 1,400-foot elevation line with Young Grade Road, section 31, T14N/R18E; then

(16) Proceed east in a straight line approximately 0.15 mile to the Congdon (Schuler) Canal, which closely parallels the 1,300-foot elevation line, section 31, T14N/R18E; and then

(17) Proceed southeasterly along the Congdon (Schuler) Canal, onto the Selah map, approximately 3.25 miles, returning to the beginning point, section 9, T13N/R18E.

Signed: September 28, 2011.

John J. Manfreda,

Administrator.

Approved: October 20, 2011.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2011–32017 Filed 12–13–11; 8:45 am]

BILLING CODE 4810–31–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Special Procedural Rules Governing Periods When the National Labor Relations Board Lacks a Quorum of Members

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is revising its rules governing the consideration of certain pleadings that ordinarily require action by a quorum of at least three Board Members. The revisions are being adopted to facilitate, insofar as it is possible, the normal functioning of the Agency during periods when the number of Board members falls below three, the number required to establish a quorum of the Board. The effect of the revisions is to provide the public with avenues for resolving certain issues, while deferring full review by the Board until a quorum has been restored.

DATES: Effective December 14, 2011.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary,

National Labor Relations Board, 1099 14th Street NW., Room 11600, Washington, DC 20570. Telephone (202) 273–1067 (this is not a toll-free number), 1–(866) 315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board is revising its rules governing the consideration of certain pleadings that ordinarily require action by a quorum of at least three Board Members. The revisions are being adopted to facilitate, insofar as it is possible, the normal functioning of the Agency during periods when the number of Board members falls below three, the number required to establish a quorum of the Board. See 29 U.S.C. 153(b); *New Process Steel* v. *NLRB,* —U.S.—, 130 S.Ct. 2635 (2010). No Notice of Proposed Rulemaking (NPRM) is required with respect to this rules revision, as it falls under the Administrative Procedure Act's exception to the NPRM requirement for regulatory actions involving agency *organization, procedure, or practice.* See 5 U.S.C. 553.

At present, the rules of the National Labor Relations Board (NLRB) provide only for the adjudication of cases and the issuance of decisions by the Board when it is composed of three or more members, which constitutes the Congressionally-designated quorum of the Board. In *New Process Steel* v. *NLRB, supra,* 130 S. Ct. 2635, the Supreme Court held that Congress empowered the Board to delegate its powers to no fewer than three members, and that, to maintain a valid quorum, a membership of three must be maintained. *Id.* at 2640. It can be anticipated that, from time to time, the number of individuals appointed by the President and confirmed by Congress to serve as members of the National Labor Relations Board may fall below three. Thus, the Board has determined that the purposes of the National Labor Relations Act will best be served, and the Board's Congressional mandate will best be carried out, if its rules were revised to refer, under those circumstances only, certain motions and appeals to other offices of the Board, while preserving for the parties the right to ultimate review by the Board when a quorum is restored. In this regard, the Board has identified certain classes of disputes that are amendable to processing through other Board offices; *i.e.,* Motions for Summary Judgment, Motions for Default Judgment, Motions for Dismissal of Complaints, and requests for permission to file special appeals will be referred to the Chief Administrative Law Judge for ruling, and administrative and procedural motions will be referred to the Executive Secretary for ruling. In all cases of such referrals, parties will retain the right to full Board review by filing a request for review or exceptions to the ruling at the appropriate time. Normal time limits for filing will apply, and the case will be considered on its merits by the Board upon restoration of a quorum.

It is anticipated that these changes in the rules will serve the interest of the public and the parties in the speedy resolution of disputes, where that resolution is possible, as well as in the litigation of cases before administrative law judges with as few disruptions as possible. In addition, the Board anticipates that, as in some cases the parties will determine that no exception is warranted, these revisions may serve to reduce the backlog of cases that the Board will face when a quorum is restored.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as ''significant rules'' under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

This rule will not 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, 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.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely provide parties with avenues for expeditiously pursuing and defending claims before the Board under certain narrow circumstances.

Paperwork Reduction Act

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

Small Business Regulatory Enforcement Fairness Act

Because these rules relate to Agency procedure and practice and merely modify the Agency's internal processing of certain motions in narrow circumstances, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure; Labor-management relations.

To provide for the normal operation of the Board during periods when the number of Board members is insufficient to constitute a quorum, the Board amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Add subpart X to read as follows:

Subpart X—Special Procedures When the Board Lacks a Quorum

Sec.

102.178 Normal operations should continue.
102.179 Motions for default judgment, summary judgment, or dismissal referred to Chief Administrative Law Judge.
102.180 Requests for special permission to appeal referred to Chief Administrative Law Judge.
102.181 Administrative and procedural requests referred to Executive Secretary.

Subpart X—Special Procedures When the Board Lacks a Quorum

§ 102.178 Normal operations should continue.

The policy of the National Labor Relations Board is that during any period when the Board lacks a quorum normal Agency operations should continue to the greatest extent permitted by law.

§ 102.179 Motions for default judgment, summary judgment, or dismissal referred to Chief Administrative Law Judge.

During any period when the Board lacks a quorum, all motions for default judgment, summary judgment, or dismissal filed or pending pursuant to § 102.50 of this part shall be referred to the Chief Administrative Law Judge in Washington, DC, for ruling. Such rulings by the Chief Administrative Law Judge, and orders in connection therewith, shall not be appealed directly to the Board, but shall be considered by the Board in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Board pursuant to § 102.46 of this part.

§ 102.180 Requests for special permission to appeal referred to Chief Administrative Law Judge.

During any period when the Board lacks a quorum, any request for special permission to appeal filed or pending pursuant to § 102.26 of this part shall be referred to the Chief Administrative Law Judge in Washington, DC, for ruling. Such rulings by the Chief Administrative Law Judge, and orders in connection therewith, shall not be appealed directly to the Board, but shall be considered by the Board in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Board pursuant to § 102.46.

§ 102.181 Administrative and procedural requests referred to Executive Secretary.

During any period when the Board lacks a quorum, administrative and procedural requests that would normally be filed with the Office of the Executive Secretary for decision by the Board prior to the filing of a request for review under § 102.67 of this part, or exceptions under §§ 102.46 and 102.69 of this part, shall be referred to the Executive Secretary for ruling. Such rulings by the Executive Secretary, and orders in connection therewith, shall not be appealed directly to the Board, but shall be considered by the Board if such matters are raised by a party in its request for review or exceptions.

Signed in Washington, DC, on December 8, 2011.

Mark Gaston Pearce,

Chairman.

[FR Doc. 2011–32085 Filed 12–13–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and Part 70

[EPA–R07–OAR–2011–0822; FRL–9505–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to the Missouri rule entitled ''Submission of Emission Data, Emission Fees and Process Information.'' These revisions align the State's reporting requirements with the Federal Air Emissions Reporting Requirements Rule (AERR).

DATES: This direct final rule will be effective February 13, 2012, without further notice, unless EPA receives adverse comment by January 13, 2012. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2011–0822, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: bhesania.amy@epa.gov.*
3. *Mail or Hand Delivery:* Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2011–0822. 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 through *http://www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. 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. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. 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: Amy Bhesania at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA.

Outline

I. What is being addressed in this document?
II. What action is EPA taking?

I. What is being addressed in this document?

EPA is approving revisions to the Missouri SIP and Operating Permits Program submitted to EPA on August 31, 2010. On December 17, 2008, EPA finalized the Air Emissions Reporting

Requirements Rule (AERR). This rule outlines EPA's emission inventory reporting requirements. In the December 17, 2008 action, EPA consolidated, reduced and simplified the current requirements; added limited new requirements; provided additional flexibility to the states in the ways they collect and report emissions data; and accelerated the reporting of emissions data to EPA by state and local agencies. Revisions to the SIP amend 10 CSR 10–6.110 Submission of Emission Data, Emission Fees and Process Information to align the State's Air Pollution Control Program reporting requirements with EPA's reporting requirements. Specifically, the State moved the Emissions Inventory Questionnaire (EIQ) due date from June 1 to April 1; codified several long-standing practices for items such as initial EIQ reporting periods for partial year operation and reporting thresholds for required pollutants; added definitions; and clarified record keeping and reporting requirements. The State retained the emission fee at $40.00 and the fee payment due date of June 1, but recodified this section to section (3)(A), Emissions Fees from Section (3)(D). No changes are being made to the Emissions Fees, which is an integral part of the Title V operating permit program, but not approved as part of the SIP. Missouri's amendments ensure that their reporting requirements align with EPA's AERR. EPA has conducted an analysis of the State's amendments and concluded that these do not adversely affect the stringency of the SIP.

What action is EPA taking?

EPA is approving the request to amend the Missouri SIP and operating permits program by approving the State's request to amend 10 CSR 10–6.110 *Submission of Emission Data, Emission Fees and Process Information* to align the State's rule with EPA's reporting requirements. Approval of these revisions will ensure consistency between state and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 28, 2011.

Karl Brooks,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising entry for 10–6.110 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	09/30/2010	12/14/2011 [*insert FR page number where the document begins*].	Section (3)(A), Emissions Fees, has not been approved as part of the SIP
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to part 70 is amended by revising paragraph (v) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(v) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on August 31, 2010; approval of section (3)(A) effective February 13, 2012.

* * * * *

[FR Doc. 2011–31919 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0916; FRL–9327–7]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes new tolerances and revises existing tolerances for residues of hexythiazox in or on multiple commodities which are identified and discussed later in this document. Gowan Company and the Interregional Research Project Number 4 (IR–4) requested the tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 14, 2011. Objections and requests for hearings must be received on or before February 13, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0916. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9369; email address: *odiott.olga@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0916 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 13, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0916, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-for Tolerance

In the **Federal Registers** of December 15, 2010 (75 FR 78240) (FRL–8853–1) and February 4, 2011 (76 FR 6465) (FRL–8858–7), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 0F7773) by Gowan Company, 370 South Main St., Yuma, AZ 85364; and (PP 0E7787) by the Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petitions requested that 40 CFR 180.448 be amended by establishing tolerances for residues of the insecticide hexythiazox,(trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide), including its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, in or on aspirated grain fractions (PP 0F7773) at 0.5 parts per million (ppm) and greenhouse tomatoes (PP 0E7787) at 0.5 ppm; by increasing the existing tolerance for corn, field, stover from 2.5 ppm to 6 ppm, and by removing the designation of ''Tolerances with regional registrations'' from the tolerances for corn, field, forage; corn, field, grain; and corn, field, stover (PP 0F7773). That notice referenced a summary of the petition prepared by Gowan Company, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based on EPA's review, Gowan Company revised their petition (PP 0F7773) as follows:

i. By increasing the proposed tolerance for corn, field, stover to 7.0 ppm;

ii. By adding a request for an increase in the established tolerances for cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep, meat byproducts to 0.05 ppm; and

iii. By adding a request for a decrease in the established tolerance for corn, field, forage to 3.0 ppm.

The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for hexythiazox including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with hexythiazox follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Hexythiazox has low acute toxicity by the oral, dermal and inhalation routes of exposure. It produces mild eye irritation, is not a dermal irritant, and is negative for dermal sensitization. The

target organs of hexythiazox are the liver and adrenal glands. Developmental toxicity was not observed in rabbits at the limit dose. Developmental effects observed in the rat occurred only at a dose level where maternal toxicity was observed. Hexythiazox is not a reproductive toxicant. The toxicology database for hexythiazox provides no indication of increased susceptibility in rats or rabbits from in utero and postnatal exposure to hexythiazox. The database does not show any evidence of treatment-related effects on the nervous system or the immune system. Hexythiazox is classified as ''likely to be carcinogenic to humans''. EPA has determined that a non-quantitative risk assessment approach (*i.e.,* nonlinear, reference dose (RfD) approach) was appropriate and protective of all chronic effects including potential carcinogenicity of hexythiazox.

Specific information on the studies received and the nature of the adverse effects caused by hexythiazox as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Hexythiazox. Human Health Risk Assessment to Support Amended Use on Field Corn and New Use on Greenhouse Tomatoes'' in docket ID number EPA–HQ–OPP–2010–0916.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for hexythiazox used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR HEXYTHIAZOX FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations).	No risk is expected from this exposure scenario as no hazard was identified in any toxicity study for this duration of exposure.		
Chronic dietary (All populations).	NOAEL= 2.5 mg/kg/day .... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.025 mg/kg/day. cPAD = 0.025 mg/kg/day ..	One-Year Toxicity Feeding Study—Dog. LOAEL = 12.5 mg/kg/day based on increased absolute and relative adrenal weights and associated adrenal histopathology.
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL= 30 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2-Generation Reproduction Study—Rat. LOAEL = 180 mg/kg/day based on decreased pup body weight during lactation and delayed hair growth and/or eye opening, and decreased parental body-weight gain and increased absolute and relative liver, kidney, and adrenal weights. 13-Week Oral Toxicity Study—Rat. NOAEL = 5.5 mg/kg/day. LOAEL = 38 mg/kg/day, based on increased absolute and relative liver weights in both sexes, increased relative ovarian and kidney weights, and fatty degeneration of the adrenal zona fasciculata. @ 397.5/257.6 mg/kg/day, decreased body-weight gain in females, slight swelling of hepatocytes in central zone (both sexes), increased incidence of glomerulonephrosis in males, increased adrenal weights.
Cancer (oral, dermal, inhalation).	Classification: ''Likely to be Carcinogenic to Humans''. Insufficient evidence to warrant a quantitative estimation of human risk using a cancer slope factor based on the common liver tumors (benign and malignant) observed only in high dose female mice, and benign mammary gland tumors of no biological significance, observed only in high dose male rats in the absence of mutagenic concerns. The chronic RfD is protective of all chronic effects including potential carcinogenicity of hexythiazox.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to hexythiazox, EPA considered exposure under the petitioned-for tolerances as well as all existing hexythiazox tolerances in 40 CFR 180.448. EPA assessed dietary exposures from hexythiazox in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for hexythiazox; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance level residues, assumed 100 percent crop treated (PCT), and incorporated DEEM default processing factors.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A of the **Federal Register** of March 17, 2010 (75 FR 12691) (FRL–8813–7), EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to hexythiazox. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for hexythiazox. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for hexythiazox in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of hexythiazox. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), the estimated drinking water concentration (EDWC) of hexythiazox for chronic exposures for non-cancer and cancer assessments is estimated to be 4.5 parts per billion for surface water. Since surface water residues values greatly exceed groundwater EDWCs, surface water residues were used in the dietary risk assessment. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Hexythiazox is not currently registered for any specific use patterns that would result in residential exposure. However, the following uses that could result in residential exposures are pending registration and are included in this risk assessment: Turf, ornamental landscape plantings, ornamental plants, trees and vines in nurseries, residential fruit trees, nut trees, caneberries, and orchids.

Residential handler exposures are expected to be short-term (1 to 30 days) via either the dermal or inhalation routes of exposures. Since a quantitative dermal risk assessment is not needed for hexythiazox; MOEs were calculated for the inhalation route of exposure only. Both adults and children may be exposed to hexythiazox residues from contact with treated lawns or treated residential plants. Post application exposures are expected to be short-term (1 to 30 days) and intermediate-term (1 to 6 months) in duration. Adult postapplication exposures were not assessed since no quantitative dermal risk assessment is needed for hexythiazox and inhalation exposures are typically negligible in outdoor settings. The exposure assessment for children included incidental oral exposure resulting from transfer of residues from the hands or objects to the mouth, and from incidental ingestion of soil.

Details of the residential exposure and risk assessment can be found at *http://www.regulations.gov* in document ''Hexythiazox. Human Health Risk Assessment to Support Amended Use on Field Corn and New Use on Greenhouse Tomatoes,'' in docket ID number EPA–HQ–OPP–2010–0916.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found hexythiazox to share a common mechanism of toxicity with any other substances, and hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that hexythiazox does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology data base indicates no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to hexythiazox.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for hexythiazox is complete with the exception of certain new generic testing requirements under revised 40 CFR part 158, including acute and subchronic neurotoxicity studies and an immunotoxicity study. However, the toxicology database does not show any evidence of treatment-related effects on the nervous system or the immune system. The overall weight of evidence suggests that this chemical does not directly target either system. Although acute and subchronic neurotoxicity studies and an immunotoxicity study are required as a part of new data requirements in 40 CFR part 158 for conventional pesticide registrations, the Agency does not believe that conducting these studies will result in a lower POD than any currently used for risk assessment, and therefore, a database uncertainty factor (UF_{DB}) is not needed to account for the lack of these studies.

ii. There is no indication that hexythiazox is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that hexythiazox results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. The dietary risk assessment is highly conservative and not expected to underestimate risk. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to hexythiazox in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by hexythiazox.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, hexythiazox is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to hexythiazox from food and water will utilize 51% of the cPAD for children 1 to 2 years of age, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of hexythiazox is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

There are potential short-term exposures from the pending residential uses for hexythiazox. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to hexythiazox.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 14,000 for adults and 1,900 for children. Because EPA's level of concern for hexythiazox is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

There are potential intermediate-term exposures from the pending residential uses for hexythiazox. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to hexythiazox.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 14,000 for adults and 2,100 for children. Because EPA's level of concern for hexythiazox is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III. C.1.iii., EPA concluded that regulation based on the chronic reference dose will be protective for both chronic and carcinogenic risks. As noted in this unit there are no chronic risks of concern.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to hexythiazox residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography method with ultra violet detection (HPLC/UV) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex MRLs are established for residues of hexythiazox on ''edible offal (mammalian)'' and ''poultry, edible offal'' at 0.05 ppm. A Codex MRL is established for tomatoes at 0.1 ppm. No other Codex, Canadian or Mexican MRLs are established for the commodities that are the subject of these petitions. Codex and U.S.

tolerance expressions are harmonized at this time. Since the maximum residue seen in the U.S. green house tomato data is 0.34 ppm, harmonizing with the Codex MRL of 0.1 ppm at this time is not possible as over tolerance residues in the U.S. could result if the Codex MRL were adopted.

C. Revisions to Petitioned-For Tolerances

Based on EPA's review, Gowan Company revised their petition (PP 0F7773) by increasing the proposed tolerance for corn, field, stover to 7.0 ppm; by requesting an increase in the established tolerances for cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep, meat byproducts to 0.5 ppm; and by requesting a decrease in the established tolerance for corn, field, forage to 3.0 ppm. The Agency concluded that based on the residue data, these changes are required to support the amended and new uses. The decrease in the field corn forage tolerance and the increase in the stover tolerance were recommended by the Agency as a result of analyzing the submitted field trial data for these commodities using the OECD MRL (Maximum Residue Limit) calculator. The increase in the meat byproduct tolerances is driven by the anticipated increase in residues in field corn animal feed items as a result of the revised use pattern for hexythiazox on field corn and was set numerically to be harmonized with the current Codex MRL for meat byproducts.

EPA is also removing expired Section 18 tolerances for corn, field, forage; corn, field, grain; and corn, field, stover.

V. Conclusion

Therefore, tolerances are established for residues of hexythiazox, including its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, as requested in the revised petitions.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 23, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.448 as follows:

■ i. In the table to paragraph (a), revise the entries for ''cattle, meat byproducts;'' ''goat, meat by products;'' ''hog, meat byproducts;'' ''horse, meat byproducts;'' and ''sheep, meat byproducts.''

■ ii. In the table to paragraph (a), add entries for ''corn, field, forage;'' ''corn, field, grain;'' ''corn, field, stover;'' ''grain, aspirated fractions;'' and ''tomato.''

■ iii. In the table to paragraph (b), remove the entries for ''corn, field, forage;'' ''corn, field, grain;'' and ''corn, field, stover.''

The added and revised text reads as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cattle, meat byproducts	0.05
* * * * *	
Corn, field, forage	3.0
Corn, field, grain	0.02
Corn, field, stover	7.0
* * * * *	
Goat, meat byproducts	0.05
Grain, aspirated fractions	0.50
* * * * *	
Hog, meat byproducts	0.05

Commodity	Parts per million
* * * * *	
Horse, meat byproducts	0.05
* * * * *	
Sheep, meat byproducts	0.05
* * * * *	
Tomato	0.50

* * * * *

[FR Doc. 2011–32086 Filed 12–13–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0732; FRL–9327–6]

Butyl acrylate-methacrylic acid-styrene polymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene (CAS Reg. No. 25036–16–2); also known as butyl acrylate-methacrylic acid-styrene polymer when used as an inert ingredient in a pesticide chemical formulation. Momentive Performance Materials submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene on food or feed commodities.

DATES: This regulation is effective December 14, 2011. Objections and requests for hearings must be received on or before February 13, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0732. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; email address: *fertich.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. how can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I File an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0732 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 13, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0732, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 5, 2011 (76 FR 61647) (FRL–8890–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7909) filed by Momentive Performance Materials, 3500 South State Route 2; Friendly, WV 26146. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a

tolerance for residues of 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene; CAS Reg. No. 25036–16–2. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received one comment from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of FFDCA EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Butyl acrylate-methacrylic acid-styrene polymer conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 17,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, butyl acrylate-methacrylic acid-styrene polymer meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to butyl acrylate-methacrylic acid-styrene polymer.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that butyl acrylate-methacrylic acid-styrene polymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of butyl acrylate-methacrylic acid-styrene polymer is 17,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since butyl acrylate-methacrylic acid-styrene polymer conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found butyl acrylate-methacrylic acid-styrene polymer to share a common mechanism of toxicity with any other substances, and butyl acrylate-methacrylic acid-styrene polymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that butyl acrylate-methacrylic acid-styrene polymer does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of butyl acrylate-methacrylic acid-styrene polymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of butyl acrylate-methacrylic acid-styrene polymer.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for butyl acrylate-methacrylic acid-styrene polymer.

IX. Conclusion

Accordingly, EPA finds that exempting residues of butyl acrylate-methacrylic acid-styrene polymer from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 29, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymers to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * *	
2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene, minimum number average molecular weight (in amu), 17,000	25036–16–2
* * * * *	

[FR Doc. 2011–32072 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 24, 30, 70, 90, 91, and 188

[Docket No. USCG–2011–0363]

RIN 1625–AB71

Seagoing Barges

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is revising regulations for the inspection and certification of seagoing barges to align with the language of the applicable statutes. The statutory language exempts certain seagoing barges from inspection. Through this rule, we seek to make the language of the regulation consistent with the language of the statute.

DATES: This rule is effective April 12, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before February 13, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by February 13, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register.**

ADDRESSES: You may submit comments identified by docket number USCG–2011–0363 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call LT Douglas Tindall, Coast Guard; telephone (202) 372–1411, email *Douglas.Tindall@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Abbreviations
III. Regulatory Information
IV. Basis and Purpose
V. Discussion of the Rule
VI. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0363), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2011–0363'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0363'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

II. Abbreviations

DHS Department of Homeland Security
FR **Federal Register**
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
NVIC Navigation and Vessel Inspection Circular
Pub. L. Public Law
U.S.C. United States Code

III. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by February 13, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (*e.g.,* to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered adverse if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

IV. Basis and Purpose

The Coast Guard has the delegated authority to carry out the responsibilities related to vessel inspection enumerated in 46 U.S.C. 3301–3318. *See also* 46 U.S.C. 2104; DHS Delegation 0170.1(92b). Pursuant to this authority, the Coast Guard has issued regulations regarding inspection and certification of seagoing barges in 46 CFR parts 90 and 91.

In 1983, sec. 2101(32), Public Law 98–89, 97 Stat. 500 (46 U.S.C. 2101) redefined ''seagoing barge'' as a non self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. Coast Guard regulations at 46 CFR 91.01–10(c) do not reflect the language change and instead refer to seagoing barges as vessels ''on the high seas or ocean.'' The purpose of this rule is to change the language in 46 CFR 91.01–10 from ''on the high seas or ocean'' to ''beyond the Boundary Line'' to reflect the language of Public Law 98–89.

In 1993, Congress exempted from inspection seagoing barges that are unmanned and not carrying hazardous material as cargo, or carrying a flammable or combustible liquid, including oil, in bulk. *See* Coast Guard Authorization Act of 1993, Public Law 103–206, 107 Stat. 2419 (46 U.S.C. 3302(m)). In 1993, the Coast Guard stopped requiring the specified seagoing barges to be inspected to conform with Public Law 103–206. However, the Coast Guard did not amend its regulations to reflect the exemption. The purpose of this rule is to change the language concerning seagoing barges in 46 CFR 90.05–25, 46 CFR 91.01–10, and the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188 to reflect the exemption created by Public Law 103–206.

V. Discussion of the Rule

Coast Guard regulations contained in 46 CFR 91.01–10(c) provide for modification of the period of validity of the certificate of inspection for seagoing barges that: (1) Proceed on the high seas or ocean for the sole purpose of changing place of employment; or (2) make rare or infrequent voyages on the high seas or ocean and returning to the port of departure. This language does not reflect the language of Public Law 98–89 that redefined ''seagoing barge'' as a non self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. In this rule, the Coast Guard changes the language of &46 CFR 91.01–10(c)(1)(i) and (ii) to clarify that modification of the period of validity of the certificate of inspection is permissible for seagoing barges that make voyages beyond the ''Boundary Line'' vice the current language of ''high seas or ocean.''

Coast Guard regulations contained in 46 CFR 90.05–25 dictates inspection and certification requirements for seagoing barges, but currently do not reflect the exemptions enacted by Public Law 103–206. In this rule, the Coast Guard modifies the language of 46 CFR 90.05–25 exempting seagoing barges from inspection and certification that are unmanned, and not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk as enacted by Public Law 103–206.

To promote consistency and readability we are revising 46 CFR 91.01–10(c)(1)(i), 46 CFR 91.01–10(c)(1)(ii), and 46 CFR 91.01–10(c)(2) to replace the language ''non self-propelled vessels of 100 gross tons and over'' with the term ''seagoing barge'' as enacted by Public Law 98–89 and contained in 46 CFR 90.10–36.

The remaining revisions are intended to make the language of the vessel inspection table published in the CFR consistent with the language of the revised regulations. The vessel inspection table is a visual representation of when vessels must be inspected, and is organized by type of vessel, method of propulsion, cargo, mission, etc. This is a single table that is published in the multiple sections of the CFR that deal with inspection of vessels, namely 46 CFR parts 2, 24, 30, 70, 90, and 188. We are revising the vessel inspection table by removing from row 4, column 4 the text ''All seagoing barges except those covered by columns 2 and 3.'' and adding, in its place, the text ''All manned seagoing barges.''

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, 58 FR 51735 (Regulatory Planning and Review), as supplemented by Executive Order 13563, 76 FR 3821 (Improving Regulation and Regulatory Review), and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and

Budget has not reviewed it under these Executive Orders.

Sec. 2102 (32) of Public Law 98–89 redefined ''seagoing barge'' to mean ''a non-self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line.''

Sec. 311 of Public Law 103–206 amended 46 U.S.C. 3302 to exempt certain seagoing barges from inspection and certification when the barges are unmanned and not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk. This rule will align 46 CFR 90.05–24, 46 CFR 91.01–10, and the vessel inspection table in 46 CFR 2, 24, 30, 70, 90, and 188 with Public Law 98–89 and Public Law 103–206.

Based on Public Law 98–89 and Public Law 103–206, seagoing barges that do not need inspection are those that meet all of the following characteristics:

1. Coastwise or oceans route as per sec. 2102(32), Public Law 98–89;

2. 100 gross tons or greater as per sec. 2102 (32), Public Law 98–89;

3. Unmanned as per sec. 311, Public Law 103–206; and

4. Not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk as per sec. 311, Public Law 103–206.

Because the Coast Guard is aligning the text of the regulations with the current inspections laws enacted in 1993, only barges that are manned, or carrying hazardous material as cargo or a flammable or combustible liquid, including oil, in bulk are inspected. If owners or operators choose to voluntarily inspect barges that are exempt from inspection, these owners or operators do so voluntarily and would voluntarily incur the cost. We estimate that there are no additional costs to implement this rule.

The benefit of this rule is in making the CFR consistent with the current law. As this statutory change has been in effect for more than 18 years, we expect this rule will not provide additional cost savings to industry.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As previously discussed, the purpose of this rule is to align the language concerning seagoing barges in 46 CFR 90.05–25, 46 CFR 91.01–10, and the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188 with the language of Public Law 98–89 and Public Law 103–206. Public Law 98–89 redefined ''seagoing barge'' as a non-self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. Public Law 103–206 exempted certain seagoing barges from inspection and certification that are unmanned, and not carrying hazardous material as cargo, or carrying a flammable or combustible liquid, including oil, in bulk.

This rule does not result in additional costs for small entities because the Coast Guard is aligning the text of the regulations with the current law. Since exempted barges have not been inspected for more than 10 years, this rule will impose no additional impacts (costs or cost savings) to small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the ''Regulatory Information'' section of this preamble.

C. Assistance for Small Entities

Under sec. 213(a) of the Contract with America Act of 1996, Public Law104–121, 110 Stat. 847, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Douglas Tindall at (202) 372–1411 or by email at *Douglas.Tindall@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1-(888) 734–3247).

D. Collection of Information

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

E. Federalism

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

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves amendments to regulations which are editorial or procedural and merely align the text of the regulations with current law and Coast Guard practice. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 2, 24, 30, 70, 90, 91, and 188 as follows:

PART 2—VESSEL INSPECTIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. Note prec. 1).

§ 2.01–7 [Amended]

■ 2. In Table 2.01–7(a), row 4, column 4, of § 2.01–7, remove the text ''All seagoing barges except those covered by columns 2 and 3.'' and add, in its place, the text ''All manned seagoing barges.''.

PART 24—GENERAL PROVISIONS

■ 3. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; Pub. L. 103–206; 107 Stat. 2439; E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 24.01–5 [Amended]

■ 4. In Table 24.01–5(a), row 4, column 4, of § 24.01–5, remove the text ''All seagoing barges except those covered by columns 2 and 3.'' and add, in its place, the text ''All manned seagoing barges.''.

PART 30—GENERAL PROVISIONS

■ 5. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–5 [Amended]

■ 6. In Table 30.05–1(d), row 4, column 4, of § 30.01–5, remove the text ''All seagoing barges except those covered by columns 2 and 3.'' and add, in its place, the text ''All manned seagoing barges.''.

PART 70—GENERAL PROVISIONS

■ 7. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.05–1 [Amended]

■ 8. In Table 70.05–1(a), row 4, column 4, of § 70.05–1, remove the text ''All seagoing barges except those covered by columns 2 and 3.'' and add, in its place, the text ''All manned seagoing barges.''.

PART 90—GENERAL PROVISIONS

■ 9. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 90.05–1 [Amended]

■ 10. In Table 90.05–1(a), row 4, column 4, of § 90.05–1, remove the text ''All seagoing barges except those covered by columns 2 and 3.'' and add, in its place, the text ''All manned seagoing barges.''.

■ 11. Revise § 90.05–25(a) to read as follows:

§ 90.05–25 Seagoing barge.

(a) All non-self-propelled vessels of 100 gross tons or more are subject to inspection when proceeding beyond the Boundary Line if they—

(1) Carry a hazardous material as cargo; or

(2) Carry a flammable or combustible liquid, including oil, in bulk; or

(3) Are manned.

* * * * *

PART 91—INSPECTION AND CERTIFICATION

■ 12. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 13. Amend § 91.01–10 as follows:

■ a. Revise paragraphs (c)(1)(i) and (ii); and

■ b. In paragraph (c)(2), remove the words ''seagoing barges of 100 gross tons and over,'' and add, in their place, the words ''inspected seagoing barges''.

The revisions read as follows:

§ 91.01–10 Period of validity for a Certificate of Inspection

* * * * *

(c)(1) * * *

(i) Inspected seagoing barges proceeding beyond the Boundary Line for the sole purpose of changing place of employment.

(ii) Inspected seagoing barges making rare or infrequent voyages beyond the Boundary Line and returning to the port of departure.

* * * * *

PART 188—GENERAL PROVISIONS

■ 14. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 188.05–1 [Amended]

■ 15. In Table 188.05–1(a), row 4, column 4, of § 188.05–1, remove the text ''All seagoing barges except those covered by columns 2 and 3.'' and add, in its place, the text ''All manned seagoing barges.''.

Dated: December 6, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 269

[Docket No. FRA–2009–0108; Notice No. 2]

RIN 2130–AC19

Alternate Passenger Rail Service Pilot Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule is in response to a statutory mandate that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. The final rule develops this pilot program in conformance with the statutory directive.

DATES: This final rule is effective on February 13, 2012.

FOR FURTHER INFORMATION CONTACT: Alexander Roth, Office of Railroad Policy and Development, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590 (*telephone:* (202) 493–6109); or Zeb Schorr, Attorney-Advisor, Office of Chief Counsel, FRA, 1200 New Jersey Ave. SE., Mail Stop 10, Washington, DC 20590 (*telephone:* (202) 493–6072).

SUPPLEMENTARY INFORMATION:

I. Background

By notice of proposed rulemaking (NPRM) published on September 7, 2011 (76 FR 55335), FRA proposed an alternate passenger rail service pilot program in response to a statutory mandate—specifically, § 214 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Public Law No. 110–432, Division B (Oct. 16, 2008). The comment period for the NPRM closed on November 7, 2011. FRA received written comments submitted by Ratp Development America, the Transportation Trades Department of the AFL–CIO, the American Short Line and Regional Railroad Association, the Association of Independent Passenger Rail Operators, Herzog Transit Services, Inc., First Transit, Veolia Transportation N.A., and two individuals.

General comments are addressed in this section, and more specific comments are addressed in the relevant sections of the preamble below. Some comments were generally supportive of the NPRM, and other comments were generally unsupportive of the NPRM.

A comment sought clarification regarding whether an eligible rail carrier under the pilot program could create a separate company to manage and operate the passenger operation, or whether it could enter into a private access rights agreement with an alternative rail passenger operator. This final rule develops a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak. This final rule does not prohibit an eligible rail carrier from creating a separate company to manage and/or operate the passenger rail service, or from entering into an agreement with a third party to manage and/or operate the passenger rail service. However, a pilot program petition must be submitted by a rail carrier or rail carriers that own the infrastructure as described in § 269.7 of this final rule. In addition, such information regarding the management and/or operation of the service would be relevant to FRA's evaluation of the bid, and should be described in detail pursuant to § 269.9 of this final rule.

Several comments stated that the pilot program should allow a State to submit a petition (with the concurrence of the infrastructure owner), and/or that there should be a statutory role for States in the pilot program. Comments also stated that State involvement is particularly important to bidding on State-supported routes (which are eligible under the pilot program) as such routes are largely funded by States. A comment further stated that States should be able to participate in the pilot program process both out of a matter of fairness and to ensure that existing contracts between States and Amtrak would not be unconstitutionally impaired. As an initial matter, § 214 of PRIIA only provides that a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes may submit a petition. *See* 49 U.S.C. 24711(a)(1). Section 214 does not establish a statutory role for States in the pilot program petition process. In compliance with this statutory mandate, this final rule provides that only an eligible rail carrier may submit a petition. However, a State may participate in the pilot program process. Specifically, a

petitioning rail carrier may include, in its bid package, documentation of a State's approval of the bid for the particular State-supported route. Indeed, § 269.9(b)(4) of this final rule requires, in part, that a bidder describe the sources of non-Federal funding, including any State operating subsidy and any other State payments. *See also* 49 U.S.C. 24711(a)(3).

Comments stated that the pilot program should include the right-of-way owner as a full partner in the proposed service, and that the pilot program should recognize the importance of protecting the capacity required for freight operations. As an initial matter, FRA agrees that freight railroads (and commuter railroads, for that matter) are critical partners to the success of intercity passenger rail that makes use of their facilities. Furthermore, the pilot program recognizes that a bid submitted by an eligible rail carrier must describe how that rail carrier would operate over right-of-way on the route that it does not own. Specifically, § 269.9 of this final rule requires a bidder to describe the operating agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the bidder.

A comment stated that FRA should solicit the opinion of States on how the pilot program, as applied to State-supported routes, could best be made to successfully work. As noted, FRA published the proposed rule in the **Federal Register,** but did not receive any comments from a State.

Another comment contested the constitutionality of § 201 of PRIIA, which defines the national railroad passenger transportation system, but did not relate the comment to the proposed rule.

Lastly, one comment generally disagreed with the NPRM and stated that a better way to meet the requirements of PRIIA would be to convert Amtrak into a § 501(c)(3) nonprofit corporation. FRA disagrees. As discussed above, the NPRM (and this final rule) was in response to a specific statutory mandate that FRA complete a rulemaking proceeding to develop an alternate passenger rail service pilot program.

a. Summary of Final Rule

This final rule is in response to a statutory mandate that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after October 16, 2008 (the date of enactment of PRIIA). Section 214 further provides that those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702 are eligible for the pilot program, and that the program not be made available to more than two routes.

Section 214 also provides for, among other things, the following: The establishment of a petition, notification, and bid process through which FRA would evaluate bids to provide passenger rail service over particular routes by interested rail carriers and Amtrak; FRA's selection of a winning bidder by, among other things, evaluating the bids against the financial and performance metrics developed under section 207 of PRIIA; FRA's execution of a contract with the winning bidder awarding the right and obligation to provide passenger rail service over the route, along with an operating subsidy, as well as requiring compliance with the minimum standards established under section 207 of PRIIA, among other things; that Amtrak must provide access to its reservation system, stations, and facilities to a winning bidder; that employees used in the operation of a route under the pilot program would be considered an employee of that rail carrier and would be subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak; that the winning bidder must provide hiring preference to displaced qualified Amtrak employees; that the winning bidder would be subject to the grant conditions under 49 U.S.C. 24405; and that, if a winning bidder ceases to operate the service or to otherwise fulfill their obligations, the FRA Administrator, in collaboration with the Surface Transportation Board, would take any necessary action to enforce the contract and to ensure the continued provision of service.

b. Adequate Resources Certification

Section 214 provides that, before FRA may take any action allowed under 49 U.S.C. 24711, the Secretary of Transportation (Secretary) must certify that the FRA Administrator has sufficient resources that are adequate to undertake the pilot program. FRA understands this requirement to mean that FRA may not proceed with any action under a pilot program developed by this final rule until the Secretary has issued such a certification.

It should also be noted that section 214 requires FRA to award to a winning bidder, among other things, an operating subsidy. 49 U.S.C. 24711(a)(5)(B). PRIIA did not authorize funds for FRA to use to pay for any such operating subsidy, or any other costs arising from the proposed pilot program; nor did Congress appropriate funds for the pilot program.

Comments stated that the pilot program should allow for the transfer of current and existing service subsidies made by FRA to Amtrak to operators selected under the pilot program. However, FRA does not have the authority to transfer any such existing subsidies. Other comments stated that there should be a mechanism for FRA to award an operating subsidy to pay for costs associated with the pilot program. As described above, no funds have been appropriated to the FRA to provide such financial assistance.

A comment also stated that a mechanism needs to be created to clearly identify the route by route subsidy and the method of transfer, and that such information would be critical to a fair bidding process. The comment goes on to suggest that FRA analyze and rank all Amtrak routes (national and State-supported). In addition, the comment notes that the cost allocation methodology of § 209 of PRIIA should be the basis for determining the appropriate subsidy amount for these routes. FRA notes that useful route-by-route Amtrak cost information is published in the Quarterly Report on the Performance and Service Quality on Intercity Passenger Train Operations (available at *http://www.fra.dot.gov/rpd/passenger/2165.shtml*). FRA also notes that avoidable cost outputs are not yet available, and that eight quarters of comparable fully allocated cost data has not yet been accumulated. However, waiting for this data, and for the States and Amtrak to arrive at a final consensus on the § 209 methodology, could potentially delay publication of this final rule well beyond the expiration of the pilot program itself (October 16, 2013). Furthermore, in order to be competitive, prospective bidders will likely need to provide the service at cost levels below those of Amtrak's. It is the bidder's verifiable cost projections for their proposed service, rather than the historical Amtrak costs, that will be particularly important in the bidding process.

This final rule incorporates the adequate resources certification requirement by providing, in § 269.3(a), that part 269 is not applicable to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program. Only upon such certification does the pilot program become available. As described below,

the time period within which petitions may be filed with FRA is triggered by FRA providing notice of the Secretary's certification.

A comment stated that the Secretary must quickly certify that FRA has adequate resources to undertake the program; the comment further provided that substantial FRA resources would not be required for the pilot program. The Secretary will issue this certification when appropriate. In addition, it must be noted that FRA will expend valuable resources in administering the pilot program, especially in the thorough evaluation of each of the petitions and bid packages that may be received.

c. Timeline Established by the Final Rule

The final rule establishes deadlines for filing petitions, filing bids, and FRA's execution of contract(s) with any winning bidders. As to the filing of petitions, § 269.7(b) of the final rule requires a petition to be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification that the FRA Administrator has sufficient resources that are adequate to undertake the pilot program. This deadline is necessary in order to comply with the statutory mandate. Specifically, 49 U.S.C. 24711(a)(4) requires FRA to, as relevant here, ''give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under section 24710'' of title 49 of the United States Code. In order to comply with this statutory directive to ''give preference'' to ''the five worst performing Amtrak routes,'' FRA must be able to evaluate all bids at the same time. Section 269.7(b)'s petition deadline enables FRA to evaluate all bids at the same time and to ''give preference'' where appropriate as directed by the statute.

In addition, §§ 269.3(c) and 269.7(d) of the final rule also take into consideration the possibility that the period during which a railroad may provide passenger rail service under this pilot program, which is currently set by statute to expire on October 16, 2013, is extended by statute. In that event, the final rule requires petitions to be filed with FRA no later than 60 days after the enactment of such statutory authority and requires such petitions to otherwise comply with the requirements of this part.

A comment stated that the ''worst performing routes'' criteria must be modified to assure that other routes, including State-supported routes, be eligible for the pilot program. Another comment sought clarification regarding whether petitions for routes which were not one of the worst performing routes would be permitted to compete against one of the worst performing routes. Section 214 of PRIIA mandates which routes are eligible for the pilot program, as follows: Those routes described in 49 U.S.C. 24102(5)(B), (C), or (D) and 49 U.S.C. 24702. *See* 49 U.S.C. 24711(a)(1). As such, Amtrak State-supported routes under 49 U.S.C. 24702 are eligible for the pilot program. In addition, the worst performing routes preference is required by statute, and simply provides that FRA shall give preference in awarding contracts to bidders who are seeking to operate such routes. *See* 49 U.S.C. 24711(a)(4). FRA is not required to select such routes; instead, the worst performing routes preference is one factor in FRA's evaluation of the bids submitted.

As to the filing of bids, § 269.9 requires the Petitioner and Amtrak to both file bids with FRA no later than 60 days after the petition deadline established by § 269.7(b). Section 269.9(b) articulates the bid requirements. The 60-day time period gives a bidder sufficient time to prepare a bid that satisfies the bid requirements, while also limiting the duration of the bid process.

One comment stated that a petitioner's failure to submit a bid within the timeline established by this final rule should result in an automatic disqualification of that party from bidding on the route at issue. The comment stated that late bids would defeat what is already a short-duration program, and would allow a party to game the process. The final rule is clear that under § 269.9 both the petitioner and Amtrak must file bids with FRA no later than 60 days after the petition deadline established by § 269.7(b). No allowance is made for exceptions to this deadline. Furthermore, § 269.13 requires FRA to execute a contract with the winning bidder(s) no later than 90 days after the bid deadline established by § 269.9.

Lastly, as to the award and execution of contracts with winning bidders, § 269.13 requires FRA to execute a contract with the winning bidder(s) no later than 90 days after the bid deadline established by § 269.9. Section 214 of PRIIA requires FRA to ''execute a contract within a specified, limited time.'' 49 U.S.C. 24711(a)(5). The 90-day time period is a limited period for FRA and the winning bidder(s) to execute an agreement(s) that satisfies the requirements of § 269.13, including FRA's obligation of an operating subsidy in compliance with the statutory requirements.

II. Section-by-Section Analysis

Section 269.1 Purpose

This section provides that the final rule carries out the statutory mandate set forth in 49 U.S.C. 24711 that requires FRA to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

A comment sought clarification regarding the meaning of the term ''own'' as it is used in this section (and as it is used in § 269.7(a) of this final rule). The comment further stated that the party responsible for maintenance of such infrastructure under 49 CFR part 213 should be considered an owner for purposes of this section. However, § 214 of PRIIA is clear in that only a rail carrier or rail carriers that own such infrastructure may submit a petition under the pilot program. *See* 49 U.S.C. 24711(a)(1). The statute does not authorize FRA to expand this statutory directive by allowing a party responsible for maintenance of such infrastructure to submit a petition. Furthermore, and as noted above, this final rule does not prohibit an eligible rail carrier from entering into an agreement with a third party (such as an entity that maintains the infrastructure) to manage and/or operate the passenger rail service.

Section 269.3 Application

Paragraph (a) of this section provides that the final rule does not apply to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program. This section also states that, upon receipt, FRA will provide notice of the certification on the FRA public Web site. This paragraph is based on the statutory directive in 49 U.S.C. 24711(e). In addition, as discussed in § 269.7(a), FRA's notice of the Secretary's certification will trigger the 45-day deadline by which an eligible railroad may petition FRA under the pilot program.

Paragraph (b) of this section provides that the pilot program will not be made available to more than two Amtrak intercity passenger rail routes. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(b).

Paragraph (c) of this section provides that any rail carrier or rail carriers awarded a contract to provide passenger

rail service under the pilot program may only be able to provide such service for a period not to exceed five years after October 16, 2008 (the date of PRIIA's enactment), or a later date authorized by statute. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). In addition, this paragraph also takes into consideration the possibility that the 5-year limitation period established in PRIIA is extended by statute.

Several comments stated that the pilot program should be extended to allow for a longer program period (*e.g.,* extending the program to five years from the time an award is made), which the comments stated would allow pilot program operators to function more efficiently, and would be a more appropriate period of time considering the work necessary to operate a route. However, as discussed, § 214 of PRIIA requires that the pilot program not exceed five years after the date of PRIIA's enactment (October 16, 2008). In addition, the final rule does take into consideration the possibility that the period established in PRIIA may be extended by statute.

Section 269.5 Definitions

This section contains the definitions for the final rule. This section defines the following terms: Act; Administrator; Amtrak; File and filed; Financial plan; FRA; Operating plan; Passenger rail service route; Petitioner; Railroad, and Secretary. Among other definitions, this section defines ''passenger rail service route'' to mean those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702. This definition is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). In addition, this section defines ''railroad'' to mean a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5). This definition is based on the statutory directive contained in 49 U.S.C. 24711(a)(1) and (c)(3).

This section also defines ''financial plan'' to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan's contents. In addition, this section defines ''operating plan'' to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents. The final rule requires bidders to include a financial plan and an operating plan—as those terms are defined here—in their bids. These definitions will ensure that bids contain sufficient information to be evaluated.

Section 269.7 Petitions

Paragraph (a) of this section provides that a railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in section 269.3(c). This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). This paragraph does not require that a railroad own all of the infrastructure over which Amtrak operates a passenger rail service route in order to file a petition.

Comments sought clarification regarding the routes that are eligible under the pilot program (one comment sought confirmation that all current non-Northeast Corridor Amtrak-operated routes are eligible for the pilot program, whether part of Amtrak's national system or State-supported, and regardless of the length of the route). A related comment sought clarification regarding the eligibility of routes which connected with or utilized Northeast Corridor or other Amtrak-owned infrastructure. As discussed above, PRIIA and this final rule provide that all of the routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702 are eligible. *See* 49 U.S.C. 24711(a)(1). Amtrak's Northeast Corridor is not eligible for the pilot program. *See* 49 U.S.C. 24711(a)(1) (statute does not include 49 U.S.C. 24102(5)(A) in the description of eligible Amtrak routes). As noted, FRA will examine any agreement(s) necessary for the operation of the proposed passenger service over right-of-way on the route that is not owned by the petitioning railroad, as described in § 269.9(b)(2) of this final rule. This analysis would include any Amtrak-owned infrastructure on the route at issue (whether voluntary or pursuant to a Surface Transportation Board order under § 217 of PRIIA).

Another comment asked whether the proposed rule ''exercise[s] any jurisdiction'' over the process in which a State enters into a contract with a party other than Amtrak to operate a State-supported intercity passenger route (or whether such a situation more appropriately falls under § 217 of PRIIA). Section 214 of PRIIA does not address this issue, nor does this final rule.

In seeking clarification regarding the meaning of the term ''passenger rail service route'' as used in Paragraph (a) of this section, a comment questioned whether the Chicago-Milwaukee route 21 Hiawatha is included as part of the route 25 Empire Builder because it uses the same trackage, and whether route 25, which has two destinations, Seattle and Portland, is one route or two. Determination of these site-specific details can only be made in response to specific petitions. For this final rule to address every such situation—of which the national rail network could present more than one—would add needless complexity and would delay the rulemaking process.

A comment questioned FRA's authority to permit a rail carrier that does not own all of the infrastructure on a particular eligible route to access that portion of the infrastructure owned by another party. This comment misconstrues the proposed rule. Under the NPRM and this final rule, a railroad that owns infrastructure over which Amtrak operates certain passenger rail service routes may petition FRA. As noted, a railroad does not have to own all of the infrastructure over which Amtrak operates in order to file a petition. However, in that event, FRA would expect the railroad to describe in its bid the agreement(s) necessary to operate over right-of-way that is not owned by the bidding railroad, in compliance with § 269.9(b) of this final rule.

A comment also stated that a railroad should be able to offer service over a shorter route (as compared to the Amtrak route) if the omitted section of the route would continue to be provided with service by another passenger train. However, § 214 of PRIIA and this final rule require that a railroad selected to provide rail passenger service over a route under the pilot program must continue to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award. *See* 49 U.S.C. 24711(c)(1)(A).

Paragraph (b) of this section provides that a petition submitted to FRA under this rule must: Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to proposed § 269.3(a); describe the petition as a ''Petition to Provide Passenger Rail Service under 49 CFR part 269''; and describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace. This paragraph is intended to ensure that a petition provides clear notice to FRA.

Paragraph (c) of this section provides that, in the event that a later statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program, petitions would have to be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and that the petition must otherwise comply with the requirements of the pilot program. This paragraph takes into consideration the possibility that the 5-year limitations period established in PRIIA is extended by statute.

Section 269.9 Bid Process

Paragraph (a) of this section provides that FRA will notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(2).

A comment stated that Amtrak should be required to provide any bidder under the pilot program with route performance information for the previous five years (including ridership, passenger-miles, and revenues by class of service between each city-pair). However, such a requirement is beyond the authority created by § 214 of PRIIA.

A comment also stated that FRA and Amtrak should work with bidders under the pilot program to develop a proposal that is mutually beneficial to all parties (*e.g.,* a proposal in which Amtrak continues to provide some of its services for the route at issue). The statutory mandate sets forth a competitive process in which a railroad and Amtrak bid for a route. The statute does not authorize a requirement that Amtrak work on a collaborative bid with a railroad that is seeking to replace Amtrak.

A comment sought clarification regarding whether Amtrak is restricted to bidding its current fully-allocated financial performance under the route profitability system, or whether Amtrak could be allowed to propose anything materially different from its current performance. That comment went on to state that Amtrak should not be able to make a bid materially different from its current fully-allocated financial and performance metrics and that Amtrak should not be able to make a bid based on incremental costs because its overhead is devoted to servicing these passenger routes. However, § 214 of PRIIA and this final rule are intended to foster improved and more competitive passenger rail service. The comment's proposed restrictions would stifle innovation and work against that very purpose. Moreover, all bidders have an inherent interest in minimizing the cash losses of the service in question: Amtrak, because it operates under a limited Federal operating grant; and the competing bidder(s), which would need to minimize both the subsidy requirement and the cash drain on their corporate finances (so as to both win the bid and safeguard their profitability). FRA believes that these inherent factors will prohibit bids that do not cover their full costs, and in any event, FRA will be carefully evaluating all bids for their viability.

Paragraph (b) of this section describes the bid requirements, including a requirement that such bids must be filed with FRA no later than 60 days after the petition deadline established by § 269.7. Paragraph (b) further provides that such bids must: (1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements described in § 269.13(b); (2) describe how the bidder would operate the route (including an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad), and, if the bidder intends to generate any revenues from ancillary activities (*i.e.,* activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to § 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts; (3) describe what Amtrak passenger equipment would be needed, if any; (4) describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments; (5) contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and (6) describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to § 207 of PRIIA (at a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: A projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to § 207 of PRIIA; and the net cash used in operating activities per passenger-mile attributable to the route, both before and after the application of any expected public subsidies). This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(3) and (a)(6).

FRA is making one technical change to the rule text in Paragraph (b)(6) in order to permit FRA to better compare and evaluate bids. Paragraph (b)(6) provides that a bid must describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to § 207 of PRIIA, and then proceeds to list what that description must include. The last item in that list is the net cash used in operating activities per passenger-mile. FRA is making one technical change here by further stating that the net cash must be both before and after the application of any expected public subsidies. This clarification is consistent with the statutory mandate and the metrics developed pursuant to § 207 of PRIIA, and allows for FRA to be able to compare the net cash numbers provided by Amtrak and a rail carrier. *See* 49 U.S.C. 24711(a)(4).

Paragraph (c) of this section provides that FRA may request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA will establish a deadline by which the supplemental information must be submitted to FRA. This paragraph allows FRA to request additional information where the information provided in a bid prevents FRA from adequately evaluating the proposal.

Section 269.11 Evaluation

This section provides that FRA will select a winning bidder by evaluating the bids against the financial and

performance metrics developed under section 207 of PRIIA and the requirements of this part, and will give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(4).

Section 269.13 Award

Paragraph (a) of this section provides that FRA will execute a contract with the winning bidder(s) consistent with the requirements of § 269.13 and as FRA may otherwise require, no later than 90 days after the bid deadline established by § 269.9(b). This paragraph also provides that FRA will provide timely notice of these selections to all petitioners and to Amtrak. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(5).

Paragraph (b) of this section provides that, among other things, such a contract will: (1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under section 207 of PRIIA; (2) award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation; (3) condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; (4) condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under section 207 of PRIIA and such additional performance standards as FRA may establish; and (5) subject the winning bidder to the grant conditions established by 49 U.S.C. 24405. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(5), (c)(1), and (c)(4).

A comment stated that FRA should mandate contractual provisions for liability and insurance that are consistent for all parties. However, the statutory mandate does not authorize such a requirement. It should be noted that § 214 and this final rule do require that a winning bidder under the pilot program shall be subject to the grant conditions under 49 U.S.C. 24405. *See* 49 U.S.C. 24711(c)(4). One requirement under 49 U.S.C. 24405(c)(1)(D) is compliance with the liability requirements consistent with 49 U.S.C. 28103, which among other things limits rail passenger transportation liability.

Paragraph (c) of this section provides that the winning bidder will make their staffing plan, submitted as required by § 269.9(b)(4), available to the public after the bid award. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(6).

Section 269.15 Access to Facilities; Employees

Paragraph (a) of this section provides that, if an award under § 269.13 is made to a rail carrier other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract, in accordance with § 217 of PRIIA, necessary to carry out the purposes of the final rule. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(2).

A comment stated that the rolling stock, stations, and reservation systems that Amtrak uses need to be available to pilot program operators at no cost. As discussed, § 214 of PRIIA requires that Amtrak provide access to its reservation system, stations, and facilities. *See* 49 U.S.C. 24711(c)(2). However, § 214 does not authorize FRA to require Amtrak to provide such access at no cost.

A comment sought clarification regarding how FRA would establish an equitable cost basis for third party access to Amtrak's reservation system, stations, and facilities in a timely manner. As required by statute and this final rule, Amtrak is required to provide such access in accordance with § 217 of PRIIA, which provides a process by which a cost is agreed upon by the parties. *See* 49 U.S.C. 24711(c)(2).

A comment also sought clarification as to whether such access includes access to services provided by Amtrak employees, including reservation agents, redcaps, gate agents, Qualified Maintenance Persons or Qualified Persons. The statute and this final rule only provide that Amtrak shall be required to provide access to its reservation system, stations, and facilities; the statute does not authorize access to services performed by Amtrak employees.

A comment stated that Amtrak should not be able to prevent operation of a route by a private rail carrier by withholding services directly related to Amtrak's control of its facilities, stations, or reservation systems. FRA agrees that Amtrak must comply with the requirements of the statute and this final rule. In providing access to its reservation system, stations, and facilities, Amtrak would need to allow the third-party to successfully use the reservation system, stations and facilities.

A comment sought clarification regarding whether the term ''facilities'' as used in paragraph (a) of this section encompasses Amtrak's contracted right to use facilities it does not own and provided the hypothetical example of whether a bidder for the Vermonter route would have access to the portion of the Northeast Corridor between New Haven and New York City owned by Metro North. That comment went on to state that the definition should be broad and should encompass all facilities to which Amtrak has access through ownership, lease or contract. Section 214 of PRIIA does not authorize such a broad definition. Putting aside circumstances in which Amtrak owns the infrastructure and § 217 of PRIIA may apply, neither the statute nor this final rule require that owners of right-of-way not owned by a bidding railroad must provide access to their infrastructure. As described above, pursuant to the statutory mandate, the pilot program developed by this final rule only permits a rail carrier or rail carriers that own infrastructure to petition FRA. In the event that a bidder does not own all of the infrastructure on the route, the bid must describe the operating agreements necessary for operation on the right-of-way not owned by the railroad.

Paragraph (b) of this section provides that the employees of any person used by a rail carrier in the operation of a route under the final rule will be considered an employee of that carrier and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under § 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(3).

Paragraph (c) of this section provides that a winning bidder will provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(4).

Section 269.17 Cessation of Service

This section provides that, if a rail carrier awarded a route under this rule ceases to operate the service or fails to

fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the Surface Transportation Board, will take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. This section further provides that the entity providing service would either be Amtrak or a rail carrier eligible for the pilot program under § 269.7. This paragraph is based on the statutory directive contained in 49 U.S.C. 24711(d).

III. Regulatory Impact and Notices

1. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563, and U.S. Department of Transportation (DOT) policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this final rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; please refer to Docket No. FRA–2009–0108.

As part of a RIA, FRA generally assesses quantitative measurements of the cost and benefit streams expected to result from the adoption of a rule. However, in this case, due to the limited number of routes that can be awarded under the pilot program (only two routes can be awarded), and the short timeframe in which this pilot program will operate (until 2013), it is not feasible to perform an analysis for an extended period. There are no alternate service provider railroad regulatory costs because the program is voluntary with respect to such rail carriers. Regulatory costs will be triggered for Amtrak if one or more alternative service providers bid on a route(s). For informational purposes, FRA included in the RIA appendices detailing the estimated average costs for both a railroad and Amtrak to participate in the pilot program. FRA estimates the average cost for each individual railroad to participate in the program and to submit the required bid proposal (the majority of the cost) at about $300,000 per route, and the average cost for Amtrak at about $150,000 per route (regardless of how many individual railroads bid on the individual Amtrak route). Non-Amtrak railroads that participate voluntarily will do so because they consider the benefits to exceed the costs. Thus, any participation will be net-beneficial with respect to the voluntary participant. Any costs to Amtrak are regulatory costs incurred solely due to the requirements of this final rule, and will primarily be associated with costs associated with developing bids.

Given that this pilot program is voluntary for alternate service providers and is not currently funded by Congress, FRA estimates that this regulation will not result in any benefits or costs.

2. Regulatory Flexibility Act

To ensure potential impacts of rules on small entities are properly considered, FRA developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

Purpose

As noted earlier in this final rule, the purpose of this rulemaking is to respond to a statutory mandate to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed 5 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). The final rule develops this pilot program in conformance with the statutory directive.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary of Transportation certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. Title 49 Code of Federal Regulations CFR Part 209, Appendix C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.* Additionally, Section 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Such governments will not be directly impacted by this final rule.

Rationale for Choosing Regulatory Action and Legal Authority

FRA is initiating this final rule in response to a statutory mandate set forth in Section 214 of the PRIIA. Section 214 requires FRA to complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed 5 years after the date of enactment of the PRIIA. This final rule develops this pilot program in conformance with the statutory directive.

Description of Regulated Entities and Impacts

This final rule is applicable to railroads that own infrastructure upon which Amtrak operates those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702, which may include small railroads. ''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual

receipts of less than $7 million. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR Part 121, Subpart A. Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003) (codified at Appendix C to 49 CFR Part 209). The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for the final rule.

Minimum Requirements for Pilot Program Applications

Small railroads face the same requirements for entry in the pilot program as other railroads. The railroad must own infrastructure upon which Amtrak operates those routes described in 49 U.S.C. 24102(5)(B), (C), and (D), and in 49 U.S.C. 24702.

Disclosure of Assumptions

The purpose of this economic analysis is to provide pertinent information on the effects of the regulation, 49 CFR Part 269, Alternate Passenger Rail Service Pilot Program. FRA believes that the regulation will not have any effect on small railroads since participation in the pilot program is voluntary, only two routes are available for award, the program expires in 2013, and it is unlikely that Federal funding not currently available will be available for the program. FRA does not anticipate that any small railroads will be interested in taking over such an existing, eligible Amtrak route.

Criteria for Substantial Number

This regulation is voluntary for all rail carriers, except Amtrak, which will be impacted only if another carrier petitions to participate in the pilot program. Therefore, there are no mandates placed on large or small railroads. Consequently, this regulation will not affect a substantial number of small entities, and most likely will not impact any small entities.

Criteria for Significant Economic Impacts

The factual basis for the certification that this final rule will not have a significant economic impact on a substantial number of small entities is that the pilot program is voluntary for all rail carriers except Amtrak; and no small entities are anticipated to apply. Therefore, this regulation is not expected to have a significant economic impact on a substantial number of small entities.

FRA notes that this regulation does not disproportionately place any small railroads that are small entities at a significant competitive disadvantage. Small railroads are not excluded from participation, so long as they are eligible. This regulation and the underlying statute are aimed at railroads taking over an entire route. If Amtrak uses 30 miles of a small railroad's infrastructure in a route that is 750 miles long, the small railroad could not apply to take over just its own segment, but will have to apply to take over the whole route. Thus, the ability to bid on a route is not constrained by a railroad's size.

Request for Comments

FRA invited comments from all interested parties on this certification. FRA also requested comments on the regulatory impact analysis and its underlying assumptions. FRA particularly encouraged small entities that could potentially be impacted by the proposed regulation to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official DOT docket. Although FRA received comments on the proposed rule, none were related to either economic analysis.

Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not require, or otherwise impose, any requirements upon any small entities. Instead, this final rule develops a pilot program under which an eligible small entity may voluntarily elect to participate. Furthermore, the final rule establishes a very limited pilot program that applies to no more than two Amtrak routes.

3. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 and OMB's Implementing Guidance at 5 CFR 1320.3(c), ''collection of information means, except as provided in section 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' FRA expects that the requirements of this final rule will affect less than 10 railroads or ''persons'' as defined in 5 CFR 1320.(c)(4). Consequently, no information collection submission is necessary, and no approval is being sought from the Office of Management and Budget (OMB) at this time.

4. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because the rulemaking would not result in a change in current passenger service; instead, the program would only potentially result in a change in the operator of such service. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

5. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue

a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. This final rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. As explained, FRA has determined that this final rule has no federalism implications. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

6. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This final rule will not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

7. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

8. Privacy Act Information

Interested parties should be aware that anyone is able to search the electronic form of all written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 269

Railroads; Railroad employees.

The Rule

For the reasons discussed in the preamble, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations, by adding part 269 to read as follows:

PART 269—ALTERNATE PASSENGER RAIL SERVICE PILOT PROGRAM

Sec.

269.1 Purpose.
269.3 Application.
269.5 Definitions.
269.7 Petitions.
269.9 Bid process.
269.11 Evaluation.
269.13 Award.
269.15 Access to facilities; employees.
269.17 Cessation of service.

Authority: Sec. 214, Div. B, Pub. L. 110–432; 49 U.S.C. 24711; and 49 CFR 1.49.

§ 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in 49 U.S.C. 24711 requiring FRA to develop a pilot program that permits a railroad that owns infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

§ 269.3 Application.

(a) *Certification.* This part will not be applicable to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program developed by this part. FRA will provide notice of the certification on the FRA public Web site upon receipt.

(b) *Route limitations.* The pilot program developed by this part will not be made available to more than two Amtrak intercity passenger rail routes.

(c) *Time limitations.* Any railroad awarded a contract to provide passenger rail service under the pilot program developed by this part shall only provide such service for a period not to exceed either five years after October 16, 2008, or a later date authorized by statute.

§ 269.5 Definitions.

As used in this part—

Act means the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432, Division B (Oct. 16, 2008)).

Administrator means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

Amtrak means the National Railroad Passenger Corporation.

File and Filed mean submission of a document under this part on the date the document was postmarked, or the date the document was emailed to FRA.

Financial plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable

to the route; and a statement of the assumptions underlying the financial plan's contents.

FRA means the Federal Railroad Administration.

Operating plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents.

Passenger rail service route means those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) or in 49 U.S.C. 24702.

Petitioner means a railroad, other than Amtrak, that has submitted a petition to FRA under section 269.7 of this part.

Railroad means a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5).

Secretary means the Secretary of the U.S. Department of Transportation.

§ 269.7 Petitions.

(a) *In General.* A railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c) of this part.

(b) *Petition Requirements.* Each petition shall:

(1) Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to § 269.3(a) of this part using the following method: email to *Priia214@dot.gov;*

(2) Describe the petition as a ''Petition to Provide Passenger Rail Service under 49 CFR part 269''; and

(3) Describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace.

(c) *Future petitions.* In the event that a statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program developed by this part, petitions under this section shall be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and shall otherwise comply with the requirements of this part.

§ 269.9 Bid process.

(a) *Amtrak notification.* FRA will notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition.

(b) *Bid requirements.* A petitioner and Amtrak must both file a bid with FRA to provide passenger rail service over the route to which the petition relates no later than 60 days after the petition deadline established by § 269.7 of this part using the following method: email to *Priia214@dot.gov.* Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements described in § 269.13(b) of this part;

(2) Describe how the bidder would operate the route. This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad. In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.,* activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to section 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts;

(3) Describe what Amtrak passenger equipment would be needed, if any;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and

(6) Describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to section 207 of the Act. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: a projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to section 207 of the Act; and the net cash used in operating activities per passenger-mile (both before and after the application of any expected public subsidies) attributable to the route.

(c) *Supplemental information.* FRA may request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA will establish a deadline by which the supplemental information must be filed with FRA.

§ 269.11 Evaluation.

FRA will select a winning bidder by evaluating the bids against the financial and performance metrics developed under section 207 of the Act and the requirements of this part, and will give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710.

§ 269.13 Award.

(a) *Award.* FRA will execute a contract with the winning bidder(s), consistent with the requirements of this section and as FRA may otherwise require, no later than 90 days after the bid deadline established by § 269.9(b) of this part. FRA will provide timely notice of these selections to all petitioners and Amtrak.

(b) *Contract requirements.* Among other things, the contract between FRA and a winning bidder shall:

(1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under section 207 of the Act, for a duration consistent with § 269.3(c) of this part;

(2) Award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation;

(3) Condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance,

than Amtrak provided on that route before the award;

(4) Condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under section 207 of the Act and such additional performance standards as FRA may establish; and

(5) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405.

(c) *Staffing Plan Publication.* The winning bidder shall make their staffing plan required by § 269.9(b)(4) of this part available to the public after the bid award.

§ 269.15 Access to facilities; employees.

(a) *Access to facilities.* If the award under § 269.13 of this part is made to a railroad other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract under this part, in accordance with section 217 of the Act, necessary to carry out the purposes of this part.

(b) *Employees.* The employees of any person used by a railroad in the operation of a route under this part shall be considered an employee of that railroad and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees who provide food and beverage service.

(c) *Hiring preference.* The winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder.

§ 269.17 Cessation of service.

If a railroad awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13 of this part, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a railroad eligible for this pilot program under § 269.7 of this part.

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

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2011–31990 Filed 12–13–11; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register

Vol. 76, No. 240

Wednesday, December 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 71

[Docket No. FAA–2011–0627; Airspace Docket No. 11–ASO–27]

Proposed Amendment of Class E Airspace; Pelion, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), withdrawal.

SUMMARY: A notice of proposed rulemaking published in the **Federal Register** on August 22, 2011 amending Class E airspace at Lexington County Airport at Pelion, Pelion, SC, is being withdrawn. Upon review, the FAA found that controlled airspace already exists for this airport under a different city designator and airport name, and substantial corrections would need to be made. In the interest of clarity, a new proposal amending existing airspace and establishing airspace with the new information will be submitted under a separate rulemaking.

DATES: Effective December 14, 2011, the proposed rule published August 22, 2011 (76 FR 52290), is withdrawn. 0901 UTC.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On August 22, 2011, a NPRM was published in the **Federal Register** amending Class E airspace at Pelion, SC to accommodate new standard instrument approach procedures for Lexington County Airport at Pelion (76 FR 52290). Subsequent to publication the FAA found that the airspace currently existed under the airport's previous name of Corporate Airport and the city designator of Columbia, SC. To avoid confusion this proposed rule is being withdrawn and will be established under another rulemaking with the new airport name and designation, along with an amendment for the Columbia, SC controlled airspace area removing Corporate Airport from the description.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, as published in the **Federal Register** on August 22, 2011 (76 FR 52290) (FR Doc. 2011–21827), is hereby withdrawn.

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

Issued in College Park, Georgia, on December 5, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–32039 Filed 12–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1196; Airspace Docket No. 11–ASO–38]

Proposed Amendment of Class E Airspace; Columbia, SC, and Proposed Establishment of Class E Airspace; Pelion, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Columbia, SC by removing Corporate Airport from the airspace designation, and would establish Class E Airspace at Pelion, SC, using the new airport name, as new Standard Instrument Approach Procedures have been developed at Lexington County Airport at Pelion. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport.

DATES: Comments must be received on or before January 30, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; Telephone: 1–(800) 647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–1196; Airspace Docket No. 11–ASO–38, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1196; Airspace Docket No. 11–ASO–38) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1196; Airspace

Docket No. 11–ASO–38.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Columbia, SC, by removing Corporate Airport from the airspace designation and would establish Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Lexington County Airport at Pelion, Pelion, SC, formerly Corporate Airport. Airspace reconfiguration is necessary due to the design of new arrival procedures, and for continued safety and management of IFR operations at the airport. The geographic coordinates also would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Columbia, SC and establish Class E airspace at Lexington County Airport at Pelion, Pelion, SC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO SC E5 Columbia, SC [Amended]

Columbia Metropolitan Airport, SC
(Lat. 33°56′20″ N., long. 81°07′10″ W.)
Columbia Owens Downtown Airport
(Lat. 33°58′14″ N., long. 80°59′43″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbia Metropolitan Airport and within a 6.5-mile radius of Columbia Owens Downtown Airport.

* * * * *

ASO SC E5 Pelion, SC [New]

Lexington County Airport at Pelion, Pelion, SC
(Lat. 33°47′41″ N., long. 81°14′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Lexington County Airport at Pelion.

Issued in College Park, Georgia, on December 5, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–32041 Filed 12–13–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37 and 38

RIN 3038–AD18

Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing regulations that establish a process for a designated contract market (''DCM'') or swap execution facility (''SEF'') to make a swap ''available to trade'' as set forth in new Section 2(h)(8) of the Commodity Exchange Act (''CEA'') pursuant to Section 723 of the

Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Only comments pertaining to the regulations proposed in this document will be considered as part of this further notice of proposed rulemaking (''Notice'').

DATES: Submit comments on or before February 13, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD18 and Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Bella Rozenberg, Associate Director, Division of Market Oversight (''DMO''), (202) 418–5119, *brozenberg@cftc.gov,* Amir Zaidi, Special Counsel, DMO, (202) 418–6770, *azaidi@cftc.gov,* or Nhan Nguyen, Attorney Advisor, DMO, (202) 418–5932, *nnguyen@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act [1] requires that swap transactions subject to the clearing requirement [2] must be executed on a DCM or SEF,[3] subject to certain exceptions. Under Section 2(h)(8)(B) of the CEA, the exceptions to the trade execution requirement are if no board of trade [4] or SEF ''makes the swap available to trade'' or the related transaction is subject to the clearing exception under Section 2(h)(7) (*i.e.,* the end-user exception).[5]

On January 7, 2011, the Commission published proposed rules, guidance, and acceptable practices (''SEF NPRM'') to implement certain statutory provisions for SEFs enacted by Title VII of the Dodd-Frank Act.[6] In the SEF NPRM, the Commission proposed, among other rules, § 37.10 related to implementation of the available to trade provision under Section 2(h)(8) of the CEA.[7] Proposed § 37.10 requires each SEF to conduct an annual review and assessment of whether it has made a swap available for trading and to provide a report to the Commission regarding its assessment.[8] In its review and assessment, the SEF may consider the frequency of transactions, open interest, and any other factor requested by the Commission.[9] Proposed § 37.10 also requires that all SEFs are required to treat a swap as made available for trading, if at least one SEF has made the same or an economically equivalent swap available for trading.[10]

The SEF NPRM sought general public comment regarding the meaning of the phrase ''made available for trading.'' [11] The Commission also asked for comment on two specific questions: (1) Whether SEFs should consider the number of market participants trading a particular swap, and, if so, whether there should be a required minimum number of participants (*e.g.,* two or three participants); and (2) whether SEFs should consider any other factors or processes to make the determination that swaps are made available for trading.[12] The Commission received 26 comments on the proposed ''available to trade'' process.[13] The Commission has considered these comments, which are discussed below in the next section, in developing this Notice.

On December 22, 2010, the Commission also published proposed rules, guidance, and acceptable practices (''DCM NPRM'') to implement certain statutory provisions for DCMs enacted by Title VII of the Dodd-Frank Act.[14] The DCM NPRM did not establish any obligation for DCMs under Section 2(h)(8) of the CEA, but it did establish certain swap reporting obligations.[15]

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] Section 723(a)(3) of the Dodd-Frank Act amended the CEA to add a clearing requirement. This clearing requirement, under new Section 2(h)(1)(A) of the CEA, provides that ''[i]t shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.''

[3] Section 723(a)(3) of the Dodd-Frank Act amended the CEA to add a trade execution requirement. This trade execution requirement, under new Section 2(h)(8)(A) of the CEA, provides that with respect to transactions involving swaps subject to the clearing requirement of Section 2(h)(1), ''counterparties shall (i) execute the transaction on a board of trade designated as a contract market under section 5; or (ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.''

[4] The logical interpretation of the phrase ''board of trade'' in Section 2(h)(8)(B) means a board of trade designated as a contract market given such reference in Section 2(h)(8)(A).

[5] Section 2(h)(7) of the CEA provides an exception to the clearing requirement (''the end-user exception'') if one of the counterparties to a swap (i) is not a financial entity, (ii) is using the swap to hedge or mitigate commercial risk, and (iii) notifies the Commission how it generally meets its financial obligations associated with entering into a non-cleared swap.

[6] Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (Jan. 7, 2011).

[7] 76 FR at 1241.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] 76 FR at 1222. Comments on all aspects of the SEF NPRM were due by March 8, 2011. On May 4, 2011, the Commission reopened the SEF NPRM's comment period through June 3, 2011, as part of the global extension of comment periods for various rulemakings implementing the Dodd-Frank Act to allow the public additional time to comment on the proposed new regulatory framework for swaps. *See* Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274 (May 4, 2011).

[12] 76 FR at 1222.

[13] These comments are available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=955.*

[14] Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572 (Dec. 22, 2010).

[15] *See e.g.,* proposed Sections 38.8, 38.10, and 38.451. Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572 (Dec. 22, 2010).

II. Notice

A. Introduction

In this Notice, the Commission is proposing regulations to establish a process for a DCM or SEF to make a swap ''available to trade'' under Section 2(h)(8) of the CEA.[16] The proposed regulations would be included in proposed parts 37 and 38 of the Commission's regulations to implement the available to trade provision in Section 2(h)(8) of the CEA.

B. Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade Under Section 2(h)(8) of the CEA

1. Procedure To Make a Swap Available to Trade—Proposed §§ 37.10(a) and 38.12(a)

a. Comments Regarding Available To Trade Process

A key theme to emerge from the SEF NPRM comments is that the Commission should establish a process for determining when a swap is available to trade that includes greater Commission involvement.[17] For example, one commenter suggested that a SEF certify to the Commission those swaps that qualify as available to trade and that, following a public notice and comment period, the Commission confirm (or reject) the SEF's certification.[18] Similarly, another commenter recommended that a SEF submit to the Commission those swaps it determines to be available to trade and that the Commission review the submission and provide at least a thirty-day public comment period regarding its decision.[19] Another commenter encouraged the Commission to institute a process through which market participants could petition the Commission to review the appropriateness of a SEF's determination that a swap is available to trade.[20]

Some commenters requested that the Commission determine whether a particular swap is available to trade[21] while other commenters requested that SEFs make this determination.[22] Many commenters that supported a Commission determination noted that SEFs may have incentives to prematurely make certain swaps available to trade in order to mandate trading in these instruments on or through SEFs.[23] The commenters that supported a SEF determination stated that SEFs should have some discretion whether a swap is made available to trade.[24]

In light of these comments and the fact that the DCM NPRM did not establish any obligation for DCMs under Section 2(h)(8) of the CEA, the Commission has determined to issue this Notice.

b. Rule Submission Filing Procedure—Proposed §§ 37.10(a) and 38.12(a)

Proposed §§ 37.10(a) and 38.12(a) set forth the filing procedure that SEFs and DCMs would utilize in order to demonstrate that a swap is available to trade. Under this proposed procedure, a DCM or SEF would initially determine that a swap is available to trade. The Commission views such determination as a trading protocol issued by a DCM or SEF. Such trading protocol falls under the definition of a rule under § 40.1 of the Commission's regulations.[25] Therefore, pursuant to Section 5c(c) of the CEA, DCMs and SEFs would be required as ''registered entities''[26] to submit make available to trade determinations to the Commission, either for approval or self-certification, pursuant to the filing procedures of part 40 of the Commission's regulations.[27]

Specifically, under this proposal, a DCM or SEF would be required to submit its determination that a swap is available to trade under § 40.5 or § 40.6 of the Commission's regulations. Under § 40.5, a registered entity may request Commission approval of a new rule prior to its implementation.[28] Section 40.5(a) requires, among other things,[29] that a registered entity that requests Commission prior approval provide an explanation and analysis of that

[16] Sections 5(d)(1) and 5h(f)(1) of the CEA require DCMs and SEFs, respectively, to comply with any requirement that the Commission may impose by rule or regulation pursuant to Section 8a(5) of the CEA, 7 U.S.C. 12a(5), which authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. In addition, Section 721(b) of the Dodd-Frank Act provides the Commission with authority to adopt rules to define ''[any] term included in an amendment to the Commodity Exchange Act * * * made by [the Dodd-Frank Act].''

[17] *E.g.,* Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18–19; Letter from Kevin Gould, Markit, dated Mar. 8, 2011 at 3; Letter from Andrew Ertel, Evolution Markets Inc., dated Mar. 8, 2011 at 9; Letter from Wholesale Market Brokers' Association, Americas, dated Mar. 8, 2011 at 17–18.

[18] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 19.

[19] Letter from Kevin Gould, Markit, dated Mar. 8, 2011 at 3.

[20] Letter from Andrew Ertel, Evolution Markets Inc., dated Mar. 8, 2011 at 9.

[21] *E.g.,* Letter from Craig Donohue, CME Group Inc., dated Mar. 8, 2011 at 10; Letter from Patrick Durkin, Barclays Capital, dated Mar. 8, 2011 at 11; Letter from Kevin Budd and Todd Lurie, MetLife, dated Mar. 8, 2011 at 4; Letter from Richard McVey, MarketAxess Corporation, dated Mar. 8, 2011 at 27; Letter from Timothy Cameron, Securities Industry and Financial Markets Association Asset Management Group, dated Mar. 8, 2011 at 11; Letter from Richard Whiting, Financial Services Roundtable, dated Mar. 8, 2011 at 8; Letter from R. Martin Chavez, Goldman, Sachs & Co., dated Mar. 8, 2011 at 3; Letter from Warren Davis, Sutherland Asbill & Brennan LLP, on behalf of the Federal Home Loan Banks, dated Jun. 3, 2011 at 14; Letter from Wayne Pestone, FX Alliance Inc., dated Nov. 4, 2011 at 9–10.

[22] *E.g.,* Letter from Wholesale Market Brokers' Association, Americas, dated Mar. 8, 2011 at 17–18; Letter from Lee Olesky and Douglas Friedman, Tradeweb Markets LLC, dated Mar. 8, 2011 at 8–9; Letter from Coalition for Derivatives End-Users, dated Mar. 8, 2011 at 7–8.

[23] *E.g.,* Letter from Craig Donohue, CME Group Inc., dated Mar. 8, 2011 at 10; Letter from Patrick Durkin, Barclays Capital, dated Mar. 8, 2011 at 11; Letter from Kevin Budd and Todd Lurie, MetLife, dated Mar. 8, 2011 at 4; Letter from Timothy Cameron, Securities Industry and Financial Markets Association Asset Management Group, dated Mar. 8, 2011 at 11; Letter from Wayne Pestone, FX Alliance Inc., dated Nov. 4, 2011 at 9–10.

[24] *E.g.,* Letter from Wholesale Market Brokers' Association, Americas, dated Mar. 8, 2011 at 17–18; Letter from Lee Olesky and Douglas Friedman, Tradeweb Markets LLC, dated Mar. 8, 2011 at 8–9; Letter from Coalition for Derivatives End-Users, dated Mar. 8, 2011 at 7–8.

[25] Section 40.1(i) defines rule as ''any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.''

[26] The term ''registered entity'' is defined in the CEA to include both DCMs and SEFs. *See* Section 1a(40) of the CEA, 7 U.S.C. 1a(40).

[27] *See* Sections 40.5 and 40.6 and Provisions Common to Registered Entities, 76 FR 44776 (Jul. 27, 2011). The Commission notes that the proposed procedures to make a swap available to trade are different than the procedures to list a swap for trading. A DCM or SEF may list a swap for trading by complying with the certification or approval procedures under §§ 40.2 or 40.3 of the Commission's regulations. Under the certification procedures of § 40.2, a DCM or SEF may list a product on the business day following the Commission's receipt of the submission, if received by the open of business. Under the approval procedures of § 40.3, a product is deemed approved by the Commission 45 days after receipt by the Commission or at the conclusion of an extended review period. A DCM or SEF may list the submitted product at that time. The Commission notes, however, the mere listing or trading of a swap on a DCM or SEF would not mean that the swap is available to trade within the meaning of Section 2(h)(8) of the CEA. The Commission further notes that a DCM or SEF must submit an available to trade filing at the same time or after submitting a filing under Sections 40.2 or 40.3.

[28] Section 40.5(a).

[29] *E.g.,* Section 40.5(a)(6) requires a registered entity to post notice and a copy of the rule submission on its Web site, Section 40.5(a)(7) requires a registered entity to provide additional information which may be beneficial to the Commission in analyzing a new rule, and Section 40.5(a)(8) requires a registered entity to provide in the rule submission a brief explanation of any substantive opposing views.

proposed rule and its compliance with applicable provisions of the CEA, including core principles, and the Commission's regulations thereunder.[30] This explanation and analysis would detail the manner in which the SEF or DCM considered the factors under proposed §§ 37.10(b) or 38.12(b). Sections 40.5(c) and (d) provide the Commission a 45-day review period, which may be extended for an additional 45 days in specified circumstances.[31] At any time during its review, the Commission may notify the registered entity that it will not, or is unable to, approve a rule because it is inconsistent or appears to be inconsistent with the CEA or the Commission's regulations.[32]

Similar to the approval procedures under § 40.5, if a registered entity chooses to submit its available to trade determination under the certification procedures of § 40.6, then the registered entity must provide to the Commission an explanation and analysis of the proposed rule and a certification that the rule complies with the CEA and the Commission's regulations thereunder.[33] As in § 40.5, the explanation and analysis would detail the manner in which the SEF or DCM considered the factors under proposed §§ 37.10(b) or 38.12(b). Sections 40.6(b) and (c) provide the Commission 10 business days to review a rule before it is deemed certified and can be made effective, unless the Commission issues a stay of the certification for additional 90 days from the date of notification to the registered entity.[34] If the Commission issues a stay of certification, then it must provide a 30-day public comment period for the proposed rule.[35] During a stay period, the Commission may notify the registered entity that it objects to the proposed certification on the grounds that the proposed rule is inconsistent with the CEA or the Commission's regulations.[36]

Under this Notice, if the Commission either approves a DCM's or SEF's rule providing that a swap is available to trade or permits a certified available to trade filing to become effective, then the swap involved would be deemed available to trade.[37] If that swap also is subject to the clearing requirement, pursuant to CEA Section 2(h)(8), the swap must be executed pursuant to the rules of a DCM or SEF.[38] Under this Notice, until such time, the swap is not subject to the CEA Section 2(h)(8) trade execution requirement.

The Commission views the proposed procedure for DCMs and SEFs to make a swap available to trade as a balanced approach whereby a DCM or SEF—the facilities that may be most familiar with the trading of these swaps—has responsibility to make a swap available to trade, while the Commission has a role in reviewing such determination. Additionally, this proposed procedure is responsive to comments that the Commission should establish a process for DCMs and SEFs to make a swap available to trade, with Commission involvement in the determination. The Commission notes that as it gains experience with its oversight of swaps markets, it may decide, in its discretion, to determine that a swap is available to trade.

2. Factors To Consider To Make a Swap Available To Trade—Proposed §§ 37.10(b) and 38.12(b)

a. Comments Regarding Factors To Consider

Many commenters to the SEF NPRM supported a liquidity requirement for a determination that a swap is available to trade.[39] One commenter, for example, stated that ''Congress intended for the Commission[] to establish a higher liquidity threshold for mandatory execution than for mandatory clearing, and that a swap is not 'available to trade' merely because it is listed on a DCM/exchange or SEF.'' [40] However, other commenters said that a minimum level of liquidity should not be required for a determination that a swap is available to trade.[41] One commenter noted that a determination that a swap is available to trade should apply to each swap that is subject to the clearing requirement and that the determination should not require a minimum level of trading activity.[42]

Many commenters also recommended specific liquidity factors that a SEF should consider in determining whether a swap is available to trade such as trade frequency and average transaction size, bid/offer spreads, number and types of market participants, and volume.[43] Some commenters further suggested that the Commission set mandatory objective and transparent liquidity factors based upon an empirical analysis of swap

[30] Section 40.5(a)(5). This provision also requires, if applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the registered entity's framework of self-regulation.

[31] Sections 40.5(c) and (d). In determining whether to extend the review period, the Commission will consider whether the proposed rule raises novel or complex issues, the submission is incomplete, or the requestor does not respond completely to Commission questions in a timely manner. Section 40.5(d)(1).

[32] Section 40.5(e).

[33] Section 40.6(a). Section 40.6(a)(2) requires a registered entity to post notice and a copy of the rule submission on its Web site, Section 40.6(a)(7)(vi) requires a registered entity to provide in the rule submission a brief explanation of any substantive opposing views, and Section 40.6(a)(8) requires a registered entity to provide, if requested by Commission staff, additional evidence, information, or data that may be beneficial to the Commission in conducting due diligence of the filing.

[34] Sections 40.6(b) and (c). In determining whether to stay a certification, the Commission will consider whether the rule presents novel or complex issues, is accompanied by inadequate explanation, or is potentially inconsistent with the CEA. Section 40.6(c)(1).

[35] Section 40.6(c)(2).

[36] Section 40.6(c)(3).

[37] *See* proposed §§ 37.10(c) and 38.12(c). Under these sections, if a SEF or DCM makes a swap available to trade, all other SEFs and DCMs listing or offering for trading such swap and/or any economically equivalent swap, shall make those swaps available to trade for purposes of the trade execution requirement. The Commission notes that if a DCM or SEF makes a swap available to trade, these proposed provisions would not require other DCMs and SEFs to list or offer that swap, or an economically equivalent swap, for trading.

[38] *See* Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sep. 20, 2011), for the time frame in which a swap would be subject to the trade execution requirement. The Commission notes that the available to trade determination may precede the clearing requirement and vice versa; however, the trade execution requirement would not be in effect until the clearing requirement takes effect.

[39] *E.g.,* Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18; Letter from Kevin Gould, Markit, dated Mar. 8, 2011 at 2; Letter from Jeremy Barnum and Don Thompson, J.P. Morgan, dated Mar. 8, 2011 at 9; Letter from Robert Pickel and Kenneth Bentsen, International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, dated Mar. 8, 2011 at 8; Letter from R. Martin Chavez, Goldman, Sachs & Co., dated Mar. 8, 2011 at 3; Letter from Craig Donohue, CME Group Inc., dated Mar. 8, 2011 at 9.

[40] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18.

[41] Letter from Dennis Kelleher, Better Markets, Inc., dated Mar. 8, 2011 at 10–11; Letter from Wholesale Market Brokers' Association, Americas, dated Mar. 8, 2011 at 17–18; Letter from Ian K. Shepherd, Alice Corporation, dated May 31, 2011 at 7.

[42] Letter from Dennis Kelleher, Better Markets, Inc., dated Mar. 8, 2011 at 10–11.

[43] *E.g.,* Letter from Kevin Gould, Markit, dated Mar. 8, 2011 at 2; Letter from Craig Donohue, CME Group Inc., dated Mar. 8, 2011 at 10; Letter from John Gidman, Association of Institutional Investors, dated Jun. 10, 2011 at 3; Letter from Mark Vonderheide and Robert Creamer, Geneva Energy Markets, LLC, dated Jul. 29, 2011 at 2; Meeting between Commission staff and Evolution Markets and Ogilvy Government Relations, dated Jan. 19, 2011.

trading data.[44] One commenter stated that the Commission should undertake empirical analyses of swap market liquidity to set specific quantitative thresholds for metrics, such as minimum average daily trading volume and number of transactions.[45] Another commenter asserted that objective measures for determining when a swap is available to trade will provide for a consistent and meaningful assessment.[46]

b. Factors To Consider—Proposed §§ 37.10(b) and 38.12(b)

Proposed §§ 37.10(b) and 38.12(b) state that, to make a swap available to trade, for purposes of Section 2(h)(8) of the CEA, a SEF or DCM shall consider, as appropriate, the following factors with respect to such swap: (1) Whether there are ready and willing buyers and sellers; (2) The frequency or size of transactions on SEFs, DCMs, or of bilateral transactions; (3) The trading volume on SEFs, DCMs, or of bilateral transactions; (4) The number and types of market participants; (5) The bid/ask spread; (6) The usual number of resting firm or indicative bids and offers; (7) Whether a SEF's trading system or platform or a DCM's trading facility will support trading in the swap; or (8) Any other factor that the SEF or DCM may consider relevant.[47] No single factor would be dispositive, as the DCM or SEF may consider any one factor or several factors to make a swap available to trade. The Commission notes that, as the swaps markets evolve and the Commission gains experience with overseeing these markets, it may consider setting objective factors based upon an empirical analysis of swap trading data in a future rulemaking.

3. Economically Equivalent Swap—Proposed §§ 37.10(c) and 38.12(c)

a. Comments Regarding Economically Equivalent Swaps

In the SEF NPRM, the Commission proposed that all SEFs are required to treat a swap as ''made available for trading,'' if at least one SEF has made the same or an economically equivalent swap available for trading.[48] Many commenters to the SEF NPRM requested that the Commission clarify the term economically equivalent swap and some commenters provided recommendations as to how it should be defined.[49] Several commenters recommended a stringent fungibility test to determine whether a particular swap is economically equivalent to one made available to trade on another SEF, such that a derivatives clearing organization (''DCO'') would recognize the swaps as mutually off-settable without residual market risk.[50] Another commenter suggested that only identical swaps should be made available to trade.[51] Furthermore, one commenter cautioned that without a stringent fungibility test there may be unintended consequences, including unduly concentrating trading volume on a single SEF or preventing participants from entering into customized swaps in the same general swap category.[52]

b. Economically Equivalent Swap—Proposed §§ 37.10(c) and 38.12(c)

Under proposed §§ 37.10(c)(1) and 38.12(c)(1), upon a determination that a swap is available to trade, all other SEFs and DCMs listing or offering for trading such swap and/or any economically equivalent swap, must make those swaps available to trade for purposes of the trade execution requirement set forth in Section 2(h)(8) of the CEA. The Commission notes that if a DCM or SEF makes a swap available to trade, these proposed provisions would not require other DCMs and SEFs to list or offer that swap, or an economically equivalent swap, for trading.

In this Notice, the Commission is proposing a definition for the term ''economically equivalent swap.'' Proposed §§ 37.10(c)(2) and 38.12(c)(2) define the term ''economically equivalent swap'' as a swap that the SEF or DCM determines to be economically equivalent with another swap after consideration of each swap's material pricing terms.

4. Annual Review of Available To Trade Determinations—Proposed §§ 37.10(d) and 38.12(d)

a. Comments Regarding Annual Review

Several commenters to the SEF NPRM supported a Commission review requirement for swaps that have been determined to be available to trade.[53] One commenter asserted that SEF available to trade determinations should be revisited and reconsidered because the liquidity of swaps can experience significant changes over time and can dry up completely in some circumstances.[54] Similarly, another commenter stated that SEFs should revisit available to trade determinations on a quarterly basis because the level of liquidity for a swap can vary significantly over time.[55]

b. Annual Review—Proposed §§ 37.10(d) and 38.12(d)

The Commission is proposing to retain the annual review and assessment requirement set forth in the SEF NPRM and also require that DCMs perform an annual review and assessment. Regular reviews help ensure that DCMs and SEFs routinely evaluate whether swaps previously determined to be available to trade should continue to be treated in that manner. Thus, in conducting this review and assessment, the proposal would require a SEF or DCM to consider the factors in §§ 37.10(b) or 38.12(b), respectively. The Commission would also encourage DCMs and SEFs, in conducting this review and assessment, to evaluate their swaps that have not been determined to be available to trade and to submit them to the Commission as appropriate. Upon completion of the annual review, a DCM or SEF would be required to provide electronically to the Commission a report of such review and assessment, including any supporting information or data, no later than 30 days after its fiscal year end.

[44] *E.g.,* Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18; Letter from Ben Macdonald, Bloomberg L.P., dated Jun. 3, 2011 at 3; Letter from Stuart Kaswell, Managed Funds Association, dated Mar. 8, 2011 at 3–4; Letter from American Benefits Council and Committee on Investment of Employee Benefit Assets, dated Mar. 8, 2011 at 4–5.

[45] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18.

[46] Letter from Ben Macdonald, Bloomberg L.P., dated Jun. 3, 2011 at 3.

[47] As noted above, the mere listing or trading of a swap on a DCM or SEF does not mean that the swap is available to trade.

[48] 76 FR 1241.

[49] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 19; Letter from Robert Pickel and Kenneth Bentsen, International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, dated Mar. 8, 2011 at 9; Letter from Wholesale Market Brokers' Association, Americas, dated Mar. 8, 2011 at 18; Letter from Richard Whiting, Financial Services Roundtable, dated Mar. 8, 2011 at 7; Letter from Patrick Durkin, Barclays Capital, dated Mar. 8, 2011 at 11.

[50] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 19; Letter from Robert Pickel and Kenneth Bentsen, International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, dated Mar. 8, 2011 at 9; Letter from Patrick Durkin, Barclays Capital, dated Mar. 8, 2011 at 11.

[51] Letter from Richard Whiting, Financial Services Roundtable, dated Mar. 8, 2011 at 7.

[52] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 19.

[53] *E.g.,* Letter from Kevin Gould, Markit, dated Mar. 8, 2011 at 2; Letter from Dexter Senft, Morgan Stanley, dated Mar. 2, 2011 at 4; Letter from Stuart Kaswell, Managed Funds Association, dated Mar. 8, 2011 at 4; Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18–19.

[54] Letter from Kevin Gould, Markit, dated Mar. 8, 2011 at 2.

[55] Letter from Edward Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of certain dealers, dated Apr. 5, 2011 at 18–19.

5. Notice to the Public of Available To Trade Determinations

a. Comments Regarding Notice to the Public

Some commenters to the SEF NPRM requested that the Commission provide notice to market participants that a swap is available to trade.[56] One commenter, for example, suggested that the Commission provide public notice that a swap will be deemed available to trade and on which platform(s).[57] Another commenter stated that ''[w]ithout a notification system, market participants may not know to cease over-the-counter transactions in these swaps, stifling compliance with applicable rules.'' [58]

b. Public Notice

In consideration of the comments received, the Commission notes that there is a process for notifying the public that a DCM or SEF has made a swap available to trade. Sections 40.5 and 40.6 of the Commission's regulations require DCMs and SEFs to post a notice and a copy of rule submissions on their Web site concurrent with the filing of the submissions with the Commission.[59] The Commission, consistent with current practice, will also post DCM and SEF rule submission filings on its Web site. The Commission is currently assessing the feasibility of posting notices of all swaps that are determined to be available to trade on an easily accessible page on its Web site.

6. Effective Date of Available To Trade Determinations

a. Comments Regarding Effective Date

Commenters to the SEF NPRM requested a waiting period before the effective date of the available to trade determinations or before imposing the trade execution requirement under CEA Section 2(h)(8) so that other SEFs have adequate time to list or offer the swap or any economically equivalent swap for trading.[60] These commenters stated that a reasonable waiting period will promote competition among SEFs by reducing a SEF's first-mover advantage.[61] For example, the waiting period would allow other SEFs additional time to build the required connectivity.[62] A waiting period would also allow market participants the opportunity to make any related technological and trading strategy amendments.[63]

b. Effective Date

In response to commenters who requested a waiting period before the effective date of a determination that a swap is available to trade or before imposing the trade execution requirement under CEA Section 2(h)(8), the Commission has issued a notice of proposed rulemaking that proposes a schedule to phase in compliance with the trade execution requirement under CEA Section 2(h)(8).[64] Under that proposed rulemaking, a swap transaction shall be subject to the CEA Section 2(h)(8) trade execution requirement upon the later of the following: (1) the applicable deadline established under the compliance schedule for the clearing requirement or (2) 30 days after the swap is first made available to trade on either a SEF or DCM.[65]

C. Comment Requested

The Commission requests and will consider comments only on proposed regulations §§ 37.10 and 38.12. The Commission may consider alternatives to the proposed regulations and is requesting comment on the following questions:

- Should the Commission allow a SEF or DCM to submit its available to trade determination with respect to a group, category, type, or class of swaps based on the factors in §§ 37.10(b) or 38.12(b)? How should the Commission define group, category, type, or class of swaps?
- Is the Commission's proposed approach in §§ 37.10(b) and 38.12(b) regarding the determination that a swap is available to trade appropriate? If not, what approach is appropriate and why? Should a SEF or DCM consider total open interest and notional outstanding for similar tenors in §§ 37.10(b) and 38.12(b)?
- In evaluating the factors under proposed §§ 37.10(b) and 38.12(b), should the Commission allow a SEF or DCM to consider the same swap or an economically equivalent swap on another SEF or DCM? What are the advantages and disadvantages of such an approach? Should a SEF or DCM consider the amount of activity in the same swap or an economically equivalent swap available primarily or solely in bilateral transactions?
- Should the Commission allow a SEF or DCM to submit an available to trade determination under §§ 37.10(a) or 38.12(a), if such SEF or DCM does not itself list the subject swap for trading? If so, in evaluating the factors under §§ 37.10(b) or 38.12(b), should the Commission allow the SEF or DCM to consider the same swap or an economically equivalent swap on another SEF or DCM? What are the advantages and disadvantages of such an approach? Should a SEF or DCM consider the amount of activity in the same swap or an economically equivalent swap available primarily or solely in bilateral transactions?
- When a DCM or SEF makes a swap available to trade, should all other DCMs and SEFs listing or offering for trading such swap and/or any economically equivalent swap be required to make those swaps available to trade? What would be the economic impact on those DCMs and SEFs that would be required to make same swaps and/or economically equivalent swaps available to trade?
- If a SEF or DCM is required to make an economically equivalent swap available to trade, should that SEF or DCM be required to submit, under part 40 procedures, its reasoning for deciding that a certain swap is or is not economically equivalent to another swap? Should a SEF or DCM be required to consider the factors under §§ 37.10(b) or 38.12(b)? Should a SEF or DCM be able to use the factors under §§ 37.10(b) or 38.12(b) to submit to the Commission for consideration that an economically equivalent swap should not be subject to the requirement under §§ 37.10(c)(1) or 38.12(c)(1)? Should a DCM or SEF provide the Commission notice that an economically equivalent swap has been made available to trade? If so, should the Commission provide notice to the

[56] *E.g.,* Letter from Dexter Senft, Morgan Stanley, dated Mar. 2, 2011 at 4; Letter from Timothy Cameron, Securities Industry and Financial Markets Association Asset Management Group, dated Mar. 8, 2011 at 12; Letter from Wayne Pestone, FX Alliance Inc., dated Nov. 4, 2011 at 9–10.

[57] Letter from Dexter Senft, Morgan Stanley, dated Mar. 2, 2011 at 4.

[58] Letter from Timothy Cameron, Securities Industry and Financial Markets Association Asset Management Group, dated Mar. 8, 2011 at 12.

[59] *See* Sections 40.5(a)(6) and 40.6(a)(2).

[60] Letter from Kevin Budd and Todd Lurie, MetLife, dated Mar. 8, 2011 at 4; Letter from Dexter Senft, Morgan Stanley, dated Mar. 2, 2011 at 4; Letter from Stuart Kaswell, Managed Funds Association, dated Mar. 8, 2011 at 3. Some of these commenters requested that the Commission establish a waiting period after the available to trade determination and before the trade execution requirement becomes effective.

[61] Letter from Kevin Budd and Todd Lurie, MetLife, dated Mar. 8, 2011 at 4; Letter from Dexter Senft, Morgan Stanley, dated Mar. 2, 2011 at 4; Letter from Stuart Kaswell, Managed Funds Association, dated Mar. 8, 2011 at 3.

[62] Letter from Stuart Kaswell, Managed Funds Association, dated Mar. 8, 2011 at 3.

[63] Letter from Kevin Budd and Todd Lurie, MetLife, dated Mar. 8, 2011 at 4.

[64] *See* Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sep. 20, 2011). Comments to this notice of proposed rulemaking were due by November 4, 2011.

[65] *Id.*

public? If so, how? How would market participants conducting bilateral transactions know that an economically equivalent swap has been made available to trade?

• Is the Commission's proposed definition of the term ''economically equivalent swap'' appropriate? If not, how should the Commission revise the definition as applicable to proposed §§ 37.10 and 38.12 and why? Are there other factors that the Commission should consider when defining the term economically equivalent swap? Should the Commission require that DCMs and SEFs consider specific material pricing terms? If so, what terms and why? For instance, should DCMs and SEFs consider same tenor or same underlying instrument? Should the Commission or DCMs and SEFs make the determination of which swaps are economically equivalent?

• Is the Commission's proposal that DCMs and SEFs conduct reviews and assessments appropriate? If not, what is appropriate and why?

• Should the Commission specify a process whereby a swap that has been determined to be available to trade may be determined to no longer be available to trade? If so, should the Commission use the rule submission procedure under part 40 for this process and why? Please explain the details of this approach, including who would make the determination that a swap is no longer available to trade. Should such a determination apply to all DCMs and SEFs universally or should it only apply to the particular DCM or SEF that seeks to no longer make a swap available to trade? What are the advantages and disadvantages of such approach? If the Commission should not specify a process to no longer make a swap available to trade, please explain why.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[66] The Commission previously determined that DCMs and SEFs are not ''small entities'' for purposes of the RFA.[67] In determining that these registered entities are not ''small entities,'' the Commission reasoned that it designates a contract market or registers a SEF only if the entity meets a number of specific criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program.[68] Because DCMs and SEFs are required to demonstrate compliance with Core Principles, including principles concerning the maintenance or expenditure of financial resources, the Commission previously determined that SEFs, like DCMs, are not ''small entities'' for the purposes of the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission invites public comment on this determination.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[69] imposes certain requirements on federal agencies in connection with conducting or sponsoring any collection of information as defined by the PRA. The Commission may not conduct or sponsor, and a registered entity is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number. This proposed rulemaking will result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Parts 37 and 38—Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade.'' The OMB has not yet assigned this collection a control number.

Many of the responses to this new collection of information are mandatory. The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.''[70] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[71]

1. Information Provided by Reporting Entities/Persons

The proposed regulations require SEFs and DCMs to collect and submit to the Commission information concerning available to trade determinations pursuant to §§ 37.10 and 38.12. For instance, SEFs and DCMs must submit available to trade determinations to the Commission as rules under part 40 pursuant to proposed §§ 37.10(a) and 38.12(a). SEFs and DCMs must also submit annual reports to the Commission pursuant to proposed §§ 37.10(d) and 38.12(d).

The Commission has estimated the final information collection burdens on DCMs and SEFs below. These estimates account for the following: (1) The number of respondents; and (2) the average hours required to produce each response. The Commission estimates that 50 registered entities will be required to file rule submissions and annual reports.

SEFs and DCMs must submit available to trade determinations to the Commission as rules under part 40 pursuant to proposed §§ 37.10(a) and 38.12(a). The Commission previously estimated the hourly burdens for DCMs and SEFs to comply with part 40. While the Commission has no way of knowing the exact hourly burden upon a registered entity prior to implementation of the regulations governing that registered entity, the Commission estimates that the burden for a SEF or DCM under proposed §§ 37.10(a) and 38.12(a) will be similar to the previously estimated hours of burden under part 40—2.00 hours. However, the Commission notes that DCMs and SEFs would have to review certain factors and data (if applicable) to make a swap available to trade so these submissions may take additional time. Therefore, the Commission estimates that the hourly burden for a SEF or DCM under proposed §§ 37.10(a) and 38.12(a) will be as follows:

Estimated number of respondents: 50.

Estimated average hours per response: 8.00.

The Commission recognizes that DCMs and SEFs may submit several rule submission filings per year. At this time, it is not feasible to estimate the number of rule submission filings per year, on average, per DCM or SEF as the number

[66] 5 U.S.C. 601 *et seq.*

[67] *See* 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 67282 (Nov. 2, 2010); *see also* 47 FR 18618, 18619 (Apr. 30, 1982) and 66 FR 45604, 45609 (Aug. 29, 2001).

[68] *See, e.g.,* Core Principle 2 applicable to DCMs under Section 735 of the Dodd-Frank Act and Core Principle 2 applicable to SEFs under Section 733 of the Dodd-Frank Act.

[69] 44 U.S.C. 3501 *et seq.*

[70] 7 U.S.C. 12(a)(1).

[71] 5 U.S.C. 552a.

of swap contracts that will be traded on a DCM or SEF and the number of those swaps that a DCM or SEF will determine to make available to trade is presently unknown.

Proposed §§ 37.10(d) and 38.12(d) require SEFs and DCMs to submit annual reports, including any supporting information and data, to the Commission of their review and assessment of the swaps they made available to trade. The Commission previously estimated the number of filings and the hourly burdens for submissions by each DCO regarding swaps that they plan to accept for clearing under Section 39.5.[72] The Commission estimated that each DCO will submit to the Commission one filing annually for the swaps that they plan to accept for clearing. While the Commission has no way of knowing the exact hourly burden upon a registered entity prior to implementation of the regulations governing that registered entity, the Commission estimates that the burden for a SEF or DCM under proposed §§ 37.10(d) and 38.12(d) will be similar to the previously estimated hours of burden under Section 39.5—40.00 hours. The Commission estimates the burden for SEFs and DCMs under proposed §§ 37.10(d) and 38.12(d) as follows:

Estimated number of respondents: 50.

Annual responses by each respondent: 1.

Estimated average hours per response: 40.

Aggregate annual reporting burden hours (for all respondents): 2,000.

The Commission invites public comment on the accuracy of its estimate of the collection requirements that would result from the proposed regulations.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on the information collection requirements proposed in this Notice. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the estimated burden of the proposed information collection requirements, including the degree to which the methodology and the assumptions that the Commission employed were valid; (3) determine whether there are ways to enhance the quality, utility, or clarity of the information proposed to be collected; and (4) minimize the burden of the proposed collections of information on DCMs and SEFs, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

The public and other federal agencies may submit comments directly to the Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566 or by email at *OIRAsubmission@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be summarized and addressed in the final rule. Refer to the Addresses section of this Notice for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Therefore, a comment to OMB is best assured of receiving full consideration if OMB (and the Commission) receives it within 30 days of publication of this Notice. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed regulations.

C. Consideration of Costs and Benefits

In this section, the Commission addresses the costs and benefits of its proposed regulations and also considers the five broad areas of market and public concern under Section 15(a) of the CEA[73] within the context of the proposed regulations.

In this Notice, the Commission considers the costs and benefits that result from the regulations proposed herein; these costs and benefits are in addition to the costs and benefits associated with the SEF NPRM as previously proposed. In other words, the Commission is only considering the discrete costs and benefits of the regulations specifically proposed in this Notice. To this end, the Commission solicits comments only on the costs and benefits of the proposed requirements herein; only comments pertaining to these cost and benefit issues will be considered as part of this Notice.

1. Costs of Proposed Regulations

The Commission anticipates that the proposed regulations will result in some additional operational and monitoring costs to DCMs and SEFs. The Commission requests commenters provide quantitative estimates of the additional costs and benefits to DCMs and SEFs from this Notice.

Under these proposed regulations, DCMs and SEFs may incur additional costs in undertaking evaluations of whether a swap is available to trade and submitting to the Commission their determinations with respect to such swaps as rule submission filings pursuant to the procedures under part 40 of the Commission's regulations. Proposed §§ 37.10(b) and 38.12(b) require SEFs and DCMs to consider certain factors to make a swap available to trade. Proposed §§ 37.10(a) and 38.12(a) require SEFs and DCMs to submit to the Commission their determinations with respect to those swaps that they make available to trade as a rule pursuant to the procedures under part 40 of the Commission's regulations.

The above-described assessment and submission may be performed internally by one compliance personnel of the DCM or SEF. The Commission estimates that it would take the compliance personnel approximately eight hours, on average, to assess and submit the available to trade determination per rule submission filing. The compliance personnel would have to, for example, consider factors to make a swap available to trade and write a cover submission to the Commission, including a description of the swap or swaps that are covered and an explanation and analysis of the available to trade determination. The Commission notes that this is a general estimate and that it is difficult to determine with reasonable precision the number of hours involved given the novelty of this available to trade process. The Commission estimates the cost per hour for one compliance personnel to be $43.25 per hour.[74] Therefore, the Commission estimates that it would cost each DCM and SEF an additional $346.00 per rule submission filing to comply with the proposed requirements.

Certain additional factors may affect the cost estimates noted above. For example, swaps with complex terms and conditions or requests for

[72] *See* Process for Review of Swaps for Mandatory Clearing, 76 FR 44464 (Jul. 26, 2011).

[73] 7 U.S.C. 19(a).

[74] *See* Report on Management & Professional Earnings in the Securities Industry 2010, Securities Industry and Financial Markets Association at 4 (Sep. 2010). The report lists the average total annual compensation for a compliance specialist (intermediate) as $59,878. The Commission estimated the personnel's hourly cost by assuming an 1,800 hour work year and by multiplying by 1.3 to account for overhead and other benefits.

additional information or questions from Commission staff regarding the available to trade determination may result in higher costs.

The Commission also recognizes that DCMs and SEFs may submit several rule submission filings per year. At this time, it is not feasible to estimate the number of rule submission filings per year per DCM or SEF as the number of swap contracts that will be traded on a DCM or SEF and the number of those swaps that a DCM or SEF will determine to make available to trade is presently unknown.

Under proposed §§ 37.10(c) or 38.12(c), if a SEF or DCM makes a swap available to trade, all SEFs and DCMs listing or offering such swap and/or any economically equivalent swap, shall make those swaps available to trade for purposes of Section 2(h)(8) of the CEA. Further, such contracts may not be traded on a bilateral basis. In order to comply with this requirement, DCMs, SEFs, and market participants would have to monitor and identify those contracts that are either the same or economically equivalent to that swap made available to trade. At this time, it is not feasible to estimate the number of hours involved given the novelty of the available to trade process.

The Commission seeks comment on all aspects of the cost estimates provided above. Specifically, the Commission seeks comment on the period of time, the number and type of personnel, and the cost estimates for DCMs and SEFs to comply with the assessment process as described above. The Commission also seeks comment on the number of hours per year, on average, that a SEF or DCM will spend monitoring and evaluating swap contracts in order to comply with proposed §§ 37.10(c) and 38.12(c).

Proposed § 38.12(d) would require DCMs to incur additional costs to conduct an annual review and assessment of each swap it has made available to trade and submit its review and assessment to the Commission.[75] This assessment may be performed internally by one compliance personnel of the DCM. The Commission estimates that it would take the compliance personnel approximately 40 hours, on average, to conduct this review and assessment. The Commission notes that this is a general estimate and that it is difficult to determine with reasonable precision the number of hours involved given the novelty of this process. As noted above, the Commission estimates the cost per hour for one compliance personnel to be $43.25 per hour. Therefore, the Commission estimates that it would cost each DCM an additional $1,730.00 per review to comply with the proposed requirements.

2. Benefits of Proposed Regulations

The proposed regulations are expected to provide needed certainty for DCMs, SEFs, and market participants for the available to trade process. The proposed regulations, for example, set forth the procedure to make a swap available to trade, the factors to consider in making a swap available to trade, and visibility into which swaps are available to trade. Additionally, the proposed regulations are expected to promote the trading of swaps on DCMs and SEFs and promote competition among these entities. DCMs and SEFs, who may be most familiar with the trading of swaps, would make swaps available to trade based on factors specified by the Commission. DCMs and SEFs have discretion to consider any one factor or several factors to make a swap available to trade. These aspects of the proposed regulations are intended to facilitate DCMs and SEFs to make swaps available to trade, which is expected to promote the trading of swaps on DCMs and SEFs and competition among these entities. Finally, the proposed regulations are expected to promote price discovery because those swaps that DCMs and SEFs make available to trade would effectively be subject to the trade execution requirement, which would require them to trade solely on DCMs and SEFs.

The Commission seeks comment on all aspects of the benefits of its proposed regulations in this Notice.

3. Section 15(a) Discussion

Section 15(a) of the CEA [76] requires the Commission to consider the costs and benefits of its action before promulgating a regulation under the CEA. Section 15(a) of the CEA specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (a) Protection of market participants and the public; (b) efficiency, competitiveness and financial integrity of futures markets; (c) price discovery; (d) sound risk management practices; and (e) 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 regulation 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.[77]

a. Protection of Market Participants and the Public

The proposed regulations are intended to provide certainty for DCMs, SEFs, and market participants for the available to trade process. Under the proposed regulations, a SEF or DCM must consider certain factors specified by the Commission under Sections 37.10(b) or 38.12(b), respectively, to make a swap available to trade. A DCM or SEF must also submit available to trade determinations to the Commission, either for approval or under certification procedures, pursuant to the rule filing procedures of part 40 of the Commission's regulations. Part 40 also requires DCMs and SEFs to post a notice and a copy of rule submissions on their Web site concurrent with the filing of the submissions with the Commission. The Commission, consistent with current practice, will also post DCM and SEF rule submission filings on its Web site. Therefore, under the proposed regulations, DCMs, SEFs, and market participants would know the factors to consider in making a swap available to trade, the procedure to make a swap available to trade, and the swaps that are available to trade, which provides certainty to the available to trade process. This certainty also promotes the protection of market participants by ensuring that there is transparency in the available to trade process.

The proposed regulations are also expected to promote the protection of market participants and the public by providing for Commission review and oversight and public participation. Under the proposed regulations, the Commission would either approve or review the DCM's or SEF's available to trade determination. To facilitate this approval or review, the proposed regulations require DCMs and SEFs to provide the Commission with a brief explanation of any substantive opposing views in rule filings and, if the Commission extends the rule review period under the self-certification procedure, then there will be a 30-day public comment period. These aspects of the proposed regulations are expected to provide appropriate oversight, and may increase the transparency, of DCM and SEF available to trade

[75] The SEF NPRM imposed a review and assessment process for SEFs.

[76] 7 U.S.C. 19(a).

[77] *See, e.g., Fisherman's Doc Co-op., Inc* v. *Brown,* 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (DC Cir. 1985) (noting that an agency has discretion to weigh factors in undertaking cost-benefit analysis).

determinations. This oversight and transparency is expected to increase the likelihood that all important issues will be identified and weighed by the Commission, which may protect market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The proposed regulations are expected to promote the trading of swaps on DCMs and SEFs and promote competition among these entities. DCMs and SEFs, who may be most familiar with the trading of swaps, would make swaps available to trade based on factors specified by the Commission. DCMs and SEFs would have discretion to consider any one factor or several factors to make a swap available to trade. These aspects of the proposed regulations are intended to facilitate DCMs and SEFs to make swaps available to trade, which is expected to promote the trading of swaps on DCMs and SEFs and competition among these entities. Additionally, the requirement that DCMs and SEFs must make the same swap and any economically equivalent swap available to trade may increase the number of swaps trading on DCMs and SEFs, which is expected to promote the trading of swaps on DCMs and SEFs.

c. Price Discovery

As mentioned above, the proposed regulations are expected to promote the trading of swaps on DCMs and SEFs. Those swaps that DCMs and SEFs make available to trade could be subject to the trade execution requirement. These swaps would be required to trade solely on DCMs and SEFs, which would promote price discovery.

d. Sound Risk Management Practices

The proposed regulations are not expected to affect sound risk management practices.

e. Other Public Interest Considerations

The proposed regulations are not expected to affect public interest considerations other than those identified above.

The Commission specifically invites public comment on its application of the criteria contained in Section 15(a) of the CEA and further invites interested parties to submit any data, quantitative or qualitative, that they may have concerning the costs and benefits of the proposed regulations.

List of Subjects

17 CFR Part 37

Registered entities, Reporting and recordkeeping requirements, Swap execution facilities, Swaps.

17 CFR Part 38

Designated contract markets, Registered entities, Reporting and recordkeeping requirements, Swaps.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 37 and 38 as follows:

PART 37—SWAP EXECUTION FACILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3 and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. The heading of part 37 is revised to read as set forth above.

3. Add new § 37.10 to read as follows:

§ 37.10 Process for a swap execution facility to make a swap available to trade.

(a) *Required submission.* A swap execution facility that makes a swap available to trade in accordance with paragraph (b) of this section, shall submit to the Commission its determination with respect to such swap pursuant to the procedures under part 40 of this chapter.

(b) *Factors to consider.* To make a swap available to trade, for purposes of Section 2(h)(8) of the Commodity Exchange Act, a swap execution facility shall consider, as appropriate, the following factors with respect to such swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions on swap execution facilities, designated contract markets, or of bilateral transactions;

(3) The trading volume on swap execution facilities, designated contract markets, or of bilateral transactions;

(4) The number and types of market participants;

(5) The bid/ask spread;

(6) The usual number of resting firm or indicative bids and offers;

(7) Whether a swap execution facility's trading system or platform will support trading in the swap; or

(8) Any other factor that the swap execution facility may consider relevant.

(c) *Economically equivalent swap.* (1) Upon a determination that a swap is available to trade, all other swap execution facilities and designated contract markets listing or offering for trading such swap and/or any economically equivalent swap, shall make those swaps available to trade for purposes of Section 2(h)(8) of the Commodity Exchange Act.

(2) For purposes of this section, the term ''economically equivalent swap'' means a swap that the swap execution facility or designated contract market determines to be economically equivalent with another swap after consideration of each swap's material pricing terms.

(d) *Annual review.* (1) A swap execution facility shall conduct an annual review and assessment of each swap it has made available to trade to determine whether or not each swap should continue to be available to trade. The annual review shall be conducted at the swap execution facility's fiscal year end.

(2) When conducting its review and assessment pursuant to paragraph (d)(1) of this section, a swap execution facility shall consider the factors specified in paragraph (b) of this section.

(3) The swap execution facility shall provide electronically to the Commission a report of its review and assessment, including any supporting information or data, not more than 30 days after the swap execution facility's fiscal year end.

PART 38—DESIGNATED CONTRACT MARKETS

4. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

5. Add new § 38.12 to read as follows:

§ 38.12 Process for a designated contract market to make a swap available to trade.

(a) *Required submission.* A designated contract market that makes a swap available to trade in accordance with paragraph (b) of this section, shall submit to the Commission its determination with respect to such swap pursuant to the procedures under part 40 of this chapter.

(b) *Factors to consider.* To make a swap available to trade, for purposes of Section 2(h)(8) of the Commodity Exchange Act, a designated contract market shall consider, as appropriate, the following factors with respect to such swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions on designated contract markets, swap execution facilities, or of bilateral transactions;

(3) The trading volume on designated contract markets, swap execution facilities, or of bilateral transactions;

(4) The number and types of market participants;

(5) The bid/ask spread;

(6) The usual number of resting firm or indicative bids and offers;

(7) Whether a designated contract market's trading facility will support trading in the swap; or

(8) Any other factor that the designated contract market may consider relevant.

(c) *Economically equivalent swap.* (1) Upon a determination that a swap is available to trade, all other designated contract markets and swap execution facilities listing or offering for trading such swap and/or any economically equivalent swap, shall make those swaps available to trade for purposes of Section 2(h)(8) of the Commodity Exchange Act.

(2) For purposes of this section, the term ''economically equivalent swap'' means a swap that the designated contract market or swap execution facility determines to be economically equivalent with another swap after consideration of each swap's material pricing terms.

(d) *Annual review.* (1) A designated contract market shall conduct an annual review and assessment of each swap it has made available to trade to determine whether or not each swap should continue to be available to trade. The annual review shall be conducted at the designated contract market's fiscal year end.

(2) When conducting its review and assessment pursuant to paragraph (d)(1) of this section, a designated contract market shall consider the factors specified in paragraph (b) of this section.

(3) The designated contract market shall provide electronically to the Commission a report of its review and assessment, including any supporting information or data, not more than 30 days after the designated contract market's fiscal year end.

Issued in Washington, DC, on December 5, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

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

Appendices to Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade—Commissioners Voting Summary and Statements of Commissioners

Appendix 1—Commissioners Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule to implement a process for designated contract markets (DCMs) and swap execution facilities (SEFs) to make a swap ''available to trade.'' The Dodd-Frank Wall Street Reform and Consumer Protection Act requires that swaps subject to the clearing requirement be traded on a DCM or SEF, unless no DCM or SEF makes the swap available to trade or the swap transaction is subject to the end-user exception. This proposal will bring transparency to the process for making a swap available to trade on a DCM or SEF. It also will provide appropriate oversight of the process through Commodity Futures Trading Commission review.

[FR Doc. 2011–31646 Filed 12–13–11; 8:45 am]

BILLING CODE 6351–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

[Docket No. 2011–07]

RIN 3014–AA37

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of hearing.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two public hearings on its recent Advance Notice of Proposed Rulemaking to update its Telecommunications Act Accessibility Guidelines and its Electronic and Information Technology Accessibility Standards.

DATES: The hearings will be held on the following dates:

1. January 11, 2012, 9 to Noon, Washington, DC.

2. March 1, 2012, 1 to 3 p.m., San Diego, CA.

ADDRESSES: The hearing locations are:

1. Washington, DC: Access Board conference room, 1331 F Street NW., suite 800, Washington, DC 20004.

2. San Diego, CA: Manchester Grand Hyatt Hotel, One Market Place, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: Tim Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number: (202) 272–0016 (voice); (202) 272–0074 (TTY). Electronic mail address: *creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION: On December 8, 2011, the Access Board published an advance notice of proposed rulemaking in the **Federal Register** to continue the process of updating its guidelines for telecommunications equipment covered by Section 255 of the Telecommunications Act of 1996 and its standards for electronic and information technology covered by Section 508 of the Rehabilitation Act Amendments of 1998. 76 FR 76640 (December 8, 2011).

The comment period for the advance notice closes on March 7, 2012. The Board will hold two public hearings during the comment period. The first hearing will be in Washington, DC in the Access Board's conference room at 1331 F Street NW., suite 800, Washington, DC 20004. The second hearing will be held in conjunction with the 27th Annual International Technology and Persons with Disabilities Conference (CSUN Conference) in San Diego, CA at the Manchester Grand Hyatt Hotel, One Market Place, San Diego, CA 92101.

The hearing locations are accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. For the comfort of other participants, persons attending the hearings are requested to refrain from using perfume, cologne, and other fragrances. To pre-register to testify, please contact Kathy Johnson at (202) 272–0041, (202) 272–0082 (TTY), or *johnson@access-board.gov.* More information and any updates to the hearings will be posted on the Access Board's Web site at *http://www.access-board.gov/508.htm.*

David M. Capozzi,

Executive Director.

[FR Doc. 2011–32020 Filed 12–13–11; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2011–0879; A–1–FRL–9505–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and New Hampshire; Determination of Attainment of the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA–NH serious one-hour ozone nonattainment area met the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This proposed determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 2005–2007 monitoring period showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period and therefore attained the standard by its applicable deadline. EPA is proposing this determination under the Clean Air Act.

DATES: Written comments must be received on or before January 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2011–0879 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2011- 0879,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2011-0879. 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 through *http://www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

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

Organization of this document. The following outline is provided to aid in locating information in this preamble:

I. What is EPA proposing?
II. What is the background for this proposed action?
III. What is EPA's analysis of data for purposes of determining attainment of the one-hour ozone standard?
A. How does EPA compute whether an area meets the one-hour ozone standard?
B. EPA's Analysis of the One-Hour Ozone Data for the Boston-Lawrence-Worcester, MA-NH Area
IV. Proposed Determination
V. Statutory and Executive Order Reviews

I. What is EPA proposing?

EPA is proposing to determine that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH area attained the one hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date, November 15, 2007. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 2005 through 2007 ozone seasons.

II. What is the background for this proposed action?

EPA designated the Boston-Lawrence-Worcester, MA-NH area as nonattainment for one-hour ozone following the enactment of the Clean Air Act (CAA) Amendments of 1990. Most areas of the country that EPA designated nonattainment for the one-hour ozone NAAQS were classified by operation of law as marginal, moderate, serious, severe, or extreme, depending on the severity of the area's air quality problem. (See CAA sections 107(d)(1)(C) and 181(a).) The Boston-Lawrence-Worcester, MA-NH area was classified as serious. The one-hour ozone attainment deadline for the area was initially set for November 15, 1999 and later extended to November 15, 2007. See 67 FR 72574 (December 6, 2002). The Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area consists of all Massachusetts' counties east of, and including Worcester County, MA; along with parts of Hillsborough and Rockingham Counties in southern New Hampshire. (See 40 CFR 81.322, and 81.330.)

On July 18, 1997 (62 FR 38856), EPA promulgated a new standard for ozone based on an 8-hour average concentration (the ''1997 8-hour ozone NAAQS''). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). EPA designated Boston-Lawrence-Worcester, MA as nonattainment for the 1997 8-hour ozone NAAQS. At the time of designation the area did not meet the one-hour ozone standard. In addition, parts of southern New Hampshire were designated nonattainment for the 8-hour NAAQS. However, unlike the one-hour ozone standard, in the case of the 1997 8-hour ozone standard, southern New Hampshire was designated as a separate ozone nonattainment area. (See 40 CFR 81.330.)

On April 30, 2004, EPA issued a final rule (69 FR 23951) entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1,'' referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most areas of the country, effective June 15, 2005. (See 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005.) The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone NAAQS. Although EPA revoked the one-hour ozone standard (effective June 15, 2005), eight-hour ozone nonattainment areas remain subject to certain one-hour anti-backsliding requirements based on their one-hour ozone classification.[1] The United States Court of Appeals for the District of Columbia Circuit subsequently determined that EPA should have retained certain additional measures as one-hour ozone anti-backsliding requirements. These include one-hour ozone contingency measures under section 172(c)(9), which are to be implemented in the event an area fails to attain by its one-hour ozone attainment date. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) rehearing denied 489 F.3d 1245. EPA is proposing here to determine that the Boston-Lawrence-Worcester area attained the one-hour ozone standard by the applicable attainment date. Thus, if EPA finalizes its proposed determination, there will be no requirement to implement one-hour ozone contingency measures for failure to attain or any additional one-hour ozone anti-backsliding requirements.

III. What is EPA's analysis of data for purposes of determining attainment of the one-hour ozone standard?

A. How does EPA compute whether an area has attained the one-hour ozone standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: ''The level of the national one-hour primary and secondary ambient air quality standards for ozone * * * is 0.12 parts per million. * * * The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million * * * is equal to or less than 1, as determined by appendix H to this part.'' Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (See, ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19111, April 17, 2003; 68 FR 62043, October 31, 2003; and 69 FR 21719, April 22, 2004. Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (See, 60 FR 3349, January 17, 1995 and ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13506, April 16, 1992 (''General Preamble'').) EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS) database. To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances (''expected exceedance days'') at an air quality monitoring site. We determine if an area meets the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (*i.e.,* ''average number of expected exceedance days'') during the applicable 3-year period. See, the General Preamble, 57 FR 13498, April 16, 1992. The term ''exceedance'' is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125 ppm which is the level of the standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9 ''National one-hour primary and secondary ambient air quality standards for ozone'' and ''Interpretation of the one-hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

B. EPA's Analysis of the One-Hour Ozone Data for the Boston-Lawrence-Worcester, MA-NH Area

Table 1 shows the results of one-hour ozone data for all the ozone monitors in the Boston-Lawrence-Worcester, MA-NH area for the three-year period 2005–2007. In short, if the three-year average expected exceedances rate, shown in the far right column, is less than or equal to 1.0, the site meets the one-hour ozone NAAQS. If all sites in the area are shown to meet the one-hour ozone NAAQS, it can be determined that the area has attained the one-hour ozone NAAQS.

[1] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

TABLE 1—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE BOSTON-LAWRENCE-WORCESTER, MA-NH AREA FOR 2005–2007

EPA AQS ID	Site	Year	Exceedances (days over 0.124 ppm)		
			Actual	Adjusted for missing data	3-Year average expected exceedance rate
Massachusetts:					
250250041	Boston-Long Island	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250250042	Boston-Roxbury	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250170009	Chelmsford	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250051002	Fairhaven	2005	0	0.0	0.7
		2006	2	2.0	
		2007	0	0.0	
250095005	Haverhill	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250092006	Lynn	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250213003	Milton	2005	1	0.0	0.3
		2006	0	0.0	
		2007	0	0.0	
250094004	Newbury	2005	0	1.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250070001	Oak Bluffs	2005	0	0.0	0.7
		2006	2	2.1	
		2007	0	0.0	
250171102	Stow	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250010002	Truro	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250270015	Worcester	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
New Hampshire:					
330111011	Nashua	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	

As shown in Table 1, the Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area attained the one-hour ozone NAAQS by its attainment deadline of November 15, 2007, since all ozone monitors had expected exceedances rates below 1.0. Thus EPA is proposing to determine that, based on the 2005–2007 complete, quality-assured and certified ozone data in the AQS database, the Boston-Lawrence-Worcester, MA–NH area met the 1-hour ozone NAAQS by its applicable attainment date of November 15, 2007.

IV. Proposed Determination

For the reasons set forth in this notice, EPA is proposing to determine that the Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area met its applicable one-hour ozone attainment date of November 15, 2007, based on 2005–2007 complete, certified and quality-assured ozone monitoring data. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. EPA will consider these comments before final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on monitored air quality data, and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 6, 2011.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2011–32059 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2011–0822; FRL–9505–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program revisions submitted by the state of Missouri which align the state's rule entitled ''Submission of Emission Data, Emission Fees and Process Information'' with the Federal Air Emissions Reporting Requirements Rule (AERR).

DATES: Comments on this proposed action must be received in writing by January 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2011–0822, by mail to Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Amy Bhesania at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: November 28, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–31908 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[EPA–HQ–OW–2010–0192; FRL–9504–2]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On September 23, 2010, EPA proposed to approve a number of new and revised test procedures (*i.e.,* analytical methods) for measuring pollutants under the Clean Water Act. Today's notice announces the availability of new data on an analytical method for the measurement of oil and grease that EPA described in the earlier notice but did not propose to approve it for use. This notice discusses how EPA is considering revising its proposed regulatory requirements for this method. EPA is soliciting comment only on EPA's consideration of this method.

DATES: Comments must be received on or before February 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–2010–0192, by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Email: OW-docket@epamail.epa.gov* Attention Docket ID No. OW–2010–0192.

• *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

• *Hand Delivery:* EPA Water Center, EPA West Building, Room B102, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. OW–2010–0192. 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–HQ–OW–2010–0192. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index*. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Maria Gomez-Taylor, Office of Science and Technology, Office of Water (4303–T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW; Washington, DC 20460; *telephone number:* (202) 566–1005; *fax number:* (202) 566–1053; *email address: Gomez-taylor.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits with conditions designed to ensure compliance with the technology-based and water quality-based requirements of the Clean Water Act (CWA). These permits may include restrictions on the quantity of pollutants that may be discharged as well as pollutant measurement and reporting requirements. If EPA has approved a test procedure for analysis of a specific pollutant, the NPDES permittee must use an approved test procedure (or an approved alternate test procedure) for the specific pollutant when measuring the required waste constituent. Similarly, if EPA has established sampling requirements, measurements taken under an NPDES permit must comply with these requirements. Therefore, entities with NPDES permits will potentially be affected by the actions in this rulemaking. Categories and entities that may potentially be affected by the requirements of today's rule include:

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; State, Territorial, and Indian Tribal owned facilities that must conduct monitoring to comply with NPDES permits.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	POTWs or other municipality owned facilities that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability language at 40 CFR 122.1 (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 403.1 (Pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

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

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

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

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Summary of New Information and Request for Comment

A. Background on Proposed Rule

On September 23, 2010, EPA proposed to add new and revised EPA methods to its Part 136 test procedures (75 FR 58024). The regulated community and laboratories use these approved methods for determining compliance with National Pollutant Discharge Elimination System (NPDES) permits or other monitoring requirements under the Clean Water Act (CWA). EPA periodically updates the list of approved methods to reflect advances in technology and provide entities more choices of approved compliance monitoring methods. Among other methods, in the September 2010 proposal, EPA proposed to add two oil and grease methods published by the Standard Methods Committee that use the same solvent as the existing Part 136 oil and grease methods. In the Notice, EPA also described three oil and grease methods published by ASTM International or the Standard Methods Committee that require a different extractant and/or a different measurement (*i.e.,* determinative) technique than the existing Part 136 oil and grease methods. As explained in the Notice, oil and grease is a method-defined parameter. That is, the measurements obtained by the method are a specific artifact of the method and defined solely by the elements (solvent, determinative technique) used to measure the analyte. Because these three methods use a different extractant and/or a different determinative technique, how to translate measurements using these methods to those obtained under existing methods for purposes of comparison was not clear. Consequently, consistent with past practices, EPA did not propose to include these methods in Part 136.

B. Method-Defined Analytes

A method-defined analyte includes certain parameters where the measurement results obtained are solely dependent on the method used. As a consequence, the results obtained are not directly comparable to results obtained by another method (*i.e.,* the data derived from method-defined protocols cannot be reliably verified outside the method itself). EPA has defined a method-defined analyte in 40 CFR 136.6(a)(5) as ''.* * * an analyte defined solely by the method used to determine the analyte. Such an analyte may be a physical parameter, a parameter that is not a specific chemical, or a parameter that may be comprised of a number of substances. Examples of such analytes include temperature, oil and grease, total suspended solids, total phenolics, turbidity, chemical oxygen demand, and biochemical oxygen demand.''

C. Oil and Grease

Unlike many parameters, oil and grease is not a unique chemical entity, but is a mixture of chemical species that varies from source to source. Common substances that may contribute to oil and grease include petroleum based compounds such as fuels, motor oil, lubricating oil, soaps, waxes, and hydraulic oil and vegetable based compounds such as cooking oil and other fats. Oil and grease is defined by the method used to measure it (*i.e.,* a method-defined analyte). The CWA defines oil and grease as a conventional parameter and hundreds of thousands of NPDES permits and indirect discharging permits contain oil and grease numerical limits. Currently, Part 136 lists three references to analytical methods for the measurement of oil in grease in such discharge permits. Overwhelmingly, the vast majority of discharges use EPA Method 1664A to measure compliance with such discharge limits. Method 1664A is a liquid/liquid extraction (LLE), gravimetric procedure that employs normal hexane (*n*-hexane) as the extraction solvent. This method also allows the use of solid-phase extraction (SPE) provided that the results obtained by SPE are equivalent to the results obtained by LLE.

D. Public Comments Related to Oil and Grease

In response to the September 2010 proposal, EPA received several comments recommending that EPA approve recent methods that include new technologies, including alternative methods for oil and grease. One commenter stated that EPA's reasoning for not approving alternative test methods for oil and grease is contradictory to the Agency's ''Summary'' statement that these regulations will ''provide increased flexibility to the regulated community and laboratories in their selection of analytical methods (test procedures) for use in Clean Water Act programs.'' This commenter added that approving the new technologies would be more consistent with EPA's mission and purpose to ''ensure that all Americans are protected from significant risks to human health and the environment where they live, learn and work.''

Another commenter indicated that EPA should approve new technologies for oil and grease because n-hexane is a dangerous solvent. This commenter cited literature that describes n-hexane's toxicity to humans and to the environment. Still another commenter stated that fats, oils and greases are not exclusively ''hexane extractable'' compounds and claimed that other technologies and methods may be better at measuring these compounds, and may be used to better quantify how much fat, oil or grease is toxic to aquatic life or interferes with wastewater treatment. This commenter also stated that EPA should not specifically and uniquely endorse a solvent-specific method for ''oil and grease'' and requested that EPA reverse its decision that only n-hexane extractable oil and grease methods are acceptable.

III. ASTM Method D7575–10 for Oil and Grease

Some of the comments focused exclusively on one particular oil and grease method EPA discussed in its proposal, ASTM D7575–10. Unlike EPA Method 1664A which uses n-hexane as the extractant and gravimetry for the measurement of the extracted materials, ASTM D7575–10 uses an extracting membrane followed by infrared measurement of the sample materials that can be retained on the membrane. This method was originally developed by Orono Spectral Solutions (OSS), and approved by ASTM on January 1, 2010 (Standard Test Method for Solvent-Free Membrane Recoverable Oil and Grease by Infrared Determination, ASTM D7575–10). Certain commenters to EPA's September 2010 proposal, including ASTM and OSS, requested that EPA re-consider ASTM D7575–10 for the measurement of oil and grease under Clean Water Act programs. In particular, they cited that ASTM D7575–10 is solvent free and provides reliable and comparable results to EPA Method 1664A. As part of this re-consideration, these commenters submitted additional information on the health hazards associated with hexane as well as additional single laboratory comparability data between Method 1664A and ASTM D7575–10 and on additional matrices tested after the initial comparability study and associated statistical analysis. These data, EPA's analyses of these data, and

communications related to the alternative ASTM method between EPA, OSS and ASTM are included as part of the record for today's notice.

EPA's consideration of ASTM D7575–10 is entirely novel. Because oil and grease is a method-defined parameter, with one exception, EPA has not considered promulgating multiple methods to measure oil and grease that are based on different extractants. Moreover, EPA has not considered multiple oil and grease methods that are based on different determinative techniques. The only exception to this was EPA's promulgation of EPA Method 1664A in 1999 to replace Method 413.1, a similar procedure that used Freon® (1,1, 2-trichloro-1,2,2-trifluoroethane (CFC–113; Freon-113)) as the extraction solvent. EPA made this exception because Freon® was banned by an international treaty, and until the ban went into effect, EPA allowed either of these oil and grease methods for CWA compliance. In both methods, the determinative technique is gravimetry and the only change was the extraction solvent (n-hexane instead of Freon®).

EPA is persuaded by commenters to its September 23, 2010 Notice that it should re-consider its position on ASTM D7575–10. Such a consideration represents a new path for EPA. As is always the case, EPA is proceeding carefully, with a particular focus on the underlying data. EPA's consideration is specific to ASTM D7575–10 and should not be interpreted broadly to other oil and grease methods that use different extractants and/or determinative techniques, or more generally to other method-defined analytes. If EPA receives similar requests for other methods, it will evaluate each one individually.

Although the September 2010 proposal discussed the current use of EPA Method 1664A as a required testing method to determine the eligibility of materials for certain conditional exclusions for RCRA regulations under 40 CFR260.20 and 260.22 (*i.e.,* delistings), and additionally proposed to allow the revised version of this testing method (Method 1664, Rev. B) for future delistings, EPA is not considering ASTM D7575–10 for use under the RCRA program. Until ASTM D7575–10 is validated for a full range of matrices covered by the RCRA program, EPA considers this new testing method to be limited to the Clean Water Act program.

A. Technical Considerations Related to ASTM Method D7575–10

1. EPA Evaluation of This New Method

Based on the data and information available in EPA's record, EPA concludes ASTM D7575–10 is a good stand-alone method for the measurement of oil and grease in wastewater. The method was single- and multi-lab tested following ASTM Standard Practice D2777 (Standard Practice for the Determination of Precision and Bias of Applicable Test methods of Committee D19 on Water) and produces similar recoveries and precision to EPA Method 1664A for those matrices tested and in the range of method applicability (5–200 mg/L).

In reviewing the method, EPA requested that ASTM revise its new standard to provide additional details on the underlying procedural steps—specifically in regard to sample homogenization and calibration verification—and to clarify the applicability (or lack thereof) of the method to non-wastewater matrices. ASTM revised the method write-up accordingly. See DCN xxx for additional information.

2. Comparability of Results Between ASTM D7575–10 and EPA Method 1664A

As explained above, with the exception of EPA's promulgation of Method 1664A to replace Method 413.1, EPA has not considered promulgating multiple methods to measure oil and grease that are based on different extractants nor has EPA considered promulgating oil and grease methods with different determinative techniques. As a result, EPA does not have a defined ''process'' for such considerations. For non-method-defined parameters where the analyte being measured is a single compound (*e.g.,* copper, benzene), EPA often promulgates multiple methods that may be based on different determinative techniques for nationwide use. In such cases, EPA has a well-defined process for ensuring that the performance of a proposed method is acceptable (*i.e.,* the proposed test procedure must demonstrate an improvement over current EPA-approved methods such as fewer matrix interferences, and better sensitivity, precision and recovery). For a new candidate test method employing a determinative technique that is different from those techniques used in existing approved methods, the applicant must develop quality control (QC) acceptance criteria based on the validation protocol for nationwide use applications (9 laboratories, each analyzing a different matrix). The QC acceptance criteria for the candidate method must then be compared to the QC acceptance criteria specifications for methods in Part 136 and the performance of the candidate method must be as good or better than that of an approved method. This process is described in the ''Protocol for EPA Approval of New Methods for Organic and Inorganic Analytes in Wastewater and Drinking Water,'' March 1999.

In contrast, there is no well-defined process for the evaluation of a proposed test method for method-defined parameters. In addition to ensuring that the performance of the proposed method is acceptable as described above for non-method-defined parameters, EPA wants to ensure that results produced by the proposed method are comparable to results produced with the approved method. When EPA promulgated EPA Method 1664A to replace EPA Method 413.1, a similar procedure that used Freon® (1,1, 2-trichloro-1,2,2-trifluoroethane (CFC–113; Freon-113)) as the extraction solvent, EPA evaluated a variety of possible replacement extracting solvents in addition to n-hexane. EPA selected n-hexane and promulgated Method 1664A after conducting extensive side-by-side studies of several extracting solvents on a variety of samples representing a wide range of matrices (see ''Preliminary Report of EPA Efforts to Replace Freon for the Determination of Oil and Grease,'' EPA–821–R–93–011, September 1993, and Report of EPA Efforts to Replace Freon for the Determination of Oil and Grease and Total Petroleum Hydrocarbons, EPA–820–R–95003, April 1995). In considering which solvent produced results most comparable to results obtained with Freon®, EPA conducted a Root Mean Squared Deviation (RMSD) evaluation of the data collected in the side-by-side studies. None of the alternative solvents produced results statistically comparable to results produced by Freon®. However, EPA concluded at the time that n-hexane was appropriate as an alternative solvent, based on overall extraction results (96% versus 100% for Freon) and analytical practical considerations (*e.g.,* boiling point).

In considering ASTM D7575–10, EPA reviewed the available single laboratory comparability data between ASTM D7575–10 and EPA Method 1664A. Initially, these data included triplicate analyses of samples from seven different wastewater matrices (eight POTWs, dairy, machine shop, gunsmith, auto garage, auto salvage yard, and fish processor). Later, OSS submitted

additional data for three matrices (bilge water, peanut processor, and lunchmeat processor) that were collected after the single laboratory study.[1] EPA conducted a Root Mean Squared Deviation (RMSD) comparability assessment with these data, following the methodology set forth in ''Analytical Method Guidance for EPA Method 1664A Implementation and Use (40 CFR part 136), EPA/821–R–00–003, February 2000.'' For this assessment, EPA first used the original data set and subsequently included the additional data for three matrices and determined the results were not statistically comparable, with or without the data for the additional matrices. This outcome was not unexpected because of the intrinsic differences in the two methods and the nature of method-defined parameters. Similarly, when EPA performed an RMSD comparability assessment before promulgating EPA Method 1664A in place of EPA Method 413.1, EPA did not find the results to be statistically comparable.[2]

As explained in Section II.B, the comparability of results is a significant issue with method-defined analytes such as oil and grease because the results depend on the method used. For oil and grease, the amount of oil and grease material extracted depends on the solvent or membrane used for the extraction of oil and grease. As such, it may not be possible for results from methods that use different extraction techniques to be compared statistically. For example, EPA Method 1664A employs distillation at 85°C, and as such, petroleum materials from gasoline through #2 fuel oil and non-petroleum materials including carboxylic and other organic acids may be partially lost during this solvent removal operation. Similarly, some crude oils and heavy fuel oils contain a significant percentage of materials that are not soluble in the n-hexane solvent of EPA Method 1664A resulting in low recoveries for these materials. ASTM D7575–10 has no such solvent removal step which could increase or decrease the amount of petroleum and non-petroleum materials measured by ASTM D7575–10 relative to Method 1664A.

For the reason identified above, in the case of ASTM D7575–10, EPA concludes it is not appropriate to apply the same statistical assessment as is done for non-method-defined parameters. As a result, EPA applied similar comparison techniques as those performed in replacing EPA Method 413.1 with EPA Method 1664A. As mentioned above, during that replacement analysis, n-hexane was found to extract 96% of the oil and grease that could be extracted by Freon. This 4% difference was deemed insignificant based on the variability of oil and grease measurements (around the order of 10% relative standard deviation) and the confidence intervals about the 96% extraction (plus or minus 20% extracted). When comparing the results of ASTM D7575–10 to EPA Method 1664A, the non-solvent method removes an average of 99.6% of the oil and grease that was removed by n-hexane under the same conditions. The variability of the situational comparisons along with the 10% relative standard deviation for oil and grease measurements once again allow us to conclude that the 0.4% difference is not significant. Using this approach, for the range of the ASTM D7575–10 applicability (5–200 mg/L), ASTM D7575–10 could serve as a substitute for Method 1664A in the same fashion as n-hexane served as a replacement for Freon.

B. Summary of EPA's Reconsideration of ASTM D7575–10

Based on the information presented in today's Notice, EPA is re-considering its decision not to include ASTM D7575–10 in 40 CFR Part 136 as an alternative to EPA Method 1664A for measuring oil and grease. EPA has three main reasons for this reconsideration. First, EPA's analysis demonstrates ASTM D7575–10 is an acceptable stand-alone method for the measurement of oil in grease in wastewater for the applicable reporting range (5–200 mg/L) and it produces results that are generally very close to those obtained using EPA Method 1664A for the matrices tested. Second, this method has certain advantages over the currently approved method. EPA supports pollution prevention, and is particularly persuaded by the substantial advantages associated with the green aspects of this membrane technology (*e.g.,* it uses a solventless extraction, there is no solvent waste, and no analyst exposure to solvent). Finally, ASTM D7575–10 may offer other advantages such as ease of analysis, reduced analysis time, and lower analytical costs.

C. Implementation Considerations Related to Multiple Oil and Grease Methods

EPA recognizes that if it promulgates ASTM D7575–10 in 40 CFR Part 136 as an alternative to EPA method 1664A, permittees and control authorities may still have concerns related to the results obtained from ASTM D7575–10 relative to EPA Method 1664A, particularly for matrices not evaluated to date. While EPA has determined that the results of the two methods are comparable over the applicable range where the two methods overlap (5–200 mg/L), because of the wide variety and type of individual compounds that may be measured by oil and grease and because oil and grease are extensively incorporated in permits covering a wide variety of wastewater matrices, permittees or control authorities may continue to have compliance concerns (*i.e.,* a permittee could be in or out of compliance) simply due to a change in the test method used to evaluate samples.

When EPA promulgated EPA Method 1664A to replace EPA Method 413.1, EPA and other stakeholders had similar concerns. These concerns were magnified because Method 1664A was a replacement, rather than an alternative, to the existing method at that time. To accommodate concerns about differences in results, EPA allowed permitting authorities to establish a conversion factor by having the discharger perform a side-by-side comparison of Method 1664 and the Freon® extraction method and then adjusting the discharge limits, if necessary, to account for differences in the permit. EPA further recommended a specific process to follow for the side-by-side comparison in the guidance document mentioned earlier [Analytical Method Guidance for EPA Method 1664A Implementation and Use (40 CFR part 136), EPA/821–R–00–003, February 2000].

In contrast to EPA's replacement of Freon with n-hexane, if EPA were to promulgate ASTM D7575–10, it would not lead to any requirement on permit holders. In this case, unless ASTM D7575–10 is specified in the permit, promulgating ASTM D7575–10 would simply provide additional flexibility to permit holders in analyzing for oil and grease. Because this would be optional and because of the burden that would be placed on the permitting authorities in reviewing side-by-side data, EPA is not currently persuaded that it should include a provision providing the same

[1] OSS also submitted data for several other matrices that EPA did not include in the analysis because these data were based on only one sample result per matrix and thus lacked the required replicates for a statistical analysis. Additionally, ASTM recently submitted triplicate data for three other matrices. Because EPA received this data after conducting its statistical analysis, this data is not included in the RMSD assessment described in this paragraph, but is included in the record for today's notice.

[2] Note that in absence of statistical comparability, EPA ultimately determined that EPA Method 1664A could be used as a direct replacement for EPA Method 413.1.

ability to adjust discharge limits based on side-by side-comparison of EPA Method 1664A to ASTM D7575–10 as it did when it replaced Freon with n-hexane. However, to the extent that permittees would elect to use ASTM D7575–10 and permitting authorities would accept the use of ASTM D–7575–10 rather than EPA Method 1664A, nothing would prevent them from conducting a side-by-side comparison of the two methods. EPA would recommend such a side-by-side comparison if permittees and/or permitting authorities have concerns about a specific matrix, particularly when the measured oil and grease values when switching to ASTM D7575–10 are more than 20% lower from values routinely measured by EPA Method 1664A (the 20% variability around oil and grease measurements is discussed in section III.A.2 of today's Notice).

IV. Request for Comments

Based on the new information and EPA's analysis of this information as described in this Notice, EPA is reconsidering whether to promulgate ASTM D7575–10 in 40 CFR Part 136 as an alternative method for oil and grease where the applicable ranges overlap (5–200 mg/L) and requests public comments on this reconsideration, the supporting data, and the resulting analysis. While ASTM D7575–10 has significant pollution prevention advantages over the currently approved method, EPA recognizes the potential impact that this new method could have on the hundreds of thousands of oil and grease determinations in regulatory Clean Water Act programs and desires to obtain additional input from stakeholders. Specifically, EPA requests comments on the following:

1. Whether EPA should reconsider promulgating this additional method for oil and grease based on different extractants and determinative techniques than EPA Method 1664A.
2. EPA's current view, based on the data it has reviewed to date, that ASTM D7575–10 is an acceptable choice for the determination of oil and grease for the range (5 to 200 mg/L) evaluated.
3. EPA's current conclusion that permit limit adjustment based on side-by-side comparisons of EPA Method 1664A and ASTM D7575–10 is not appropriate. EPA is particularly interested in obtaining comments from permitting authorities on this issue and estimates of the burden associated with reviewing such requests.
4. If EPA were to allow a side-by-side comparison with limit adjustment as necessary, should EPA look to the approach used for n-hexane in place of Freon (see section III.C above) or should EPA consider a different approach?

V. Referenced New Docket Materials

1. January 16, 2009 Memorandum from Richard Reding on Modifications to Method 1664A.
2. May 14, 1999 **Federal Register** (64 FR 26315).
3. Preliminary Report of EPA Efforts to Replace Freon for the Determination of Oil and Grease, EPA–821–R–93–011, September 1993.
4. Report of EPA Efforts to Replace Freon for the Determination of Oil and Grease and Total Petroleum Hydrocarbons: Phase II, EPA–820–R–95–003, April 1995.
5. October 15, 2010 email from Tyler Martin containing the following data files:
   a. Multi-Lab Validation Raw Data
   b. Expanded ASTM D7575 Validation Report
   c. Single-Lab Validation Raw Data
   d. Comparability Analysis from Single-Lab Validation Results
6. October 19, 2010 email from Tyler Martin containing additional comparability data between Method 1664 and ASTM D7575.
7. October 21, 2010 email from Tyler Martin with clarification on data submitted.
8. June 28, 2011 letter from James A. Thomas, ASTM President to Mary Smith, EPA, with ASTM International D19 Water Response to US EPA Questions Concerning ASTM Standard D7575.
9. Analytical Method Guidance for EPA Method 1664A Implementation and Use (40 CFR part 136), EPA/821–R–00–003, February 2000.
10. Protocol for EPA Approval of New Methods for Organic and Inorganic Analytes in Wastewater and Drinking Water, March 1999.
11. Study Report from the Testing of Additional Industrial Wastewater Matrices in Support of ASTM D7575 for USEPA's Reconsideration of this Method in the Forthcoming Method Update Rule, November 2011.

Dated: December 2, 2011.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2011–32063 Filed 12–13–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 07–250; DA 11–1707]

Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on revisions to the Commission's wireless hearing aid compatibility rules. The Commission's rules define hearing aid compatibility by reference to a third party technical standard. Recently, a new version of that technical standard was developed to test the hearing aid compatibility of the newest generation of digital wireless handsets. The proposed rules would adopt the revised version of the technical standard into the Commission's rules.

DATES: Interested parties may file comments on or before January 13, 2012, and reply comments on or before January 30, 2012.

ADDRESSES: You may submit comments, identified by WT Docket No. 07–250, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of the document.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Wireless Telecommunications Bureau, (202) 418–1883, email *Michael.Rowan@fcc.gov*, or Saurbh Chhabra, Wireless Telecommunications Bureau, (202) 418–2266, email *Saurbh.Chhabra@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* (SFNPRM) in WT Docket No. 07–250, adopted *November 1, 2010,* and released on *November 1, 2010.* The full text of the SFNPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at

Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com*. Copies of the SFNPRM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 07–250. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

I. Introduction

1. The Commission's wireless hearing aid compatibility rules, 47 CFR 20.19, ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling radio frequency (RF) interference or other technical obstacles. In order to ensure that the hearing aid compatibility rules cover the greatest number of wireless handsets and reflect recent technological advances, the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) (collectively, ''the Bureaus'') propose in the SFNPRM, pursuant to authority delegated by the Commission, to adopt the most current hearing aid compatibility technical standard into the Commission's rules.

II. Background

2. To define and measure hearing aid compatibility, the Commission's rules reference the 2007 revision of American National Standards Institute (ANSI) technical standard C63.19 (the ''2007ANSI Standard''), formulated by the Accredited Standards Committee C63®—Electromagnetic Compatibility (ASC C63®). Grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid. A handset is considered hearing aid-compatible for acoustic coupling if it meets a rating of at least M3 under the 2007 ANSI Standard. A handset is considered hearing aid-compatible for inductive coupling if it meets a rating of at least T3. The 2007ANSI Standard specifies testing procedures for determining the M-rating and T-rating of digital wireless handsets that operate over air interfaces that, at the time it was promulgated, were commonly used for wireless services in the 800–950 MHz and 1.6–2.5 GHz bands.

3. When service rules were established for the 700 MHz band, the Commission stated its expectation that hearing aid compatibility standards would be developed for that band. It encouraged ASC C63® and others to work together to develop such standards in a timely manner. ASC C63® recently adopted an updated version of the standard, the 2011 ANSI Standard, which includes the 700 MHz band as well as other new frequencies and technologies. The new standard was published on May 27, 2011. The standard may be purchased from the Institute of Electrical and Electronics Engineers, Inc. (IEEE) at the address indicated in Section 20.19(b)(5) of the Proposed Rules, and a copy is available for inspection at the Commission's Reference Information Center. ASC C63® has requested the Commission to adopt the newer version of the standard. Some of the features of the 2011 ANSI Standard that are different from the 2007ANSI Standard include:

- The operating frequency range for wireless devices covered by the standard has been expanded to 698 MHz–6 GHz.
- The RF interference level of wireless devices to hearing aids is measured directly. Under the 2007 ANSI Standard, the RF field intensity of a wireless device was measured and then an adjustment was applied to estimate its potential for hearing aid interference. The new measurement method, along with the introduction of a Modulation Interference Factor (MIF), allows testing procedures to be applied to operations over any RF air interface or protocol. As a result of the change to a direct measurement methodology, the ANSI C63.19–2011 revision is also able to eliminate certain conservative assumptions that were incorporated into the 2007 standard. Thus, for example it will be approximately 2.2 dB easier for a Global System for Mobile Communications (GSM) phone to receive an M3 rating under the 2011 version.
- Certain low power transmitters that are unlikely to cause unacceptable RF interference to hearing aids are exempted from RF emissions testing and are deemed to meet an M4 rating.

ASC C63® states that the improved tests in the 2011 ANSI Standard ''are more correlated to the desired result.'' Thus, ''[t]he new test methods are improved at measuring the potential for hearing aid interference.''

4. The Commission has recognized that revisions to the ANSI Standard may be necessary over time to improve hearing aid compatibility technical standards and accommodate technological advances and that the Commission's rules should evolve to reflect such revisions. In particular, to ensure that the hearing aid compatibility standard codified in the rules would remain current, the Commission in Section 20.19(k)(2) of the rules delegated to the Chief of WTB and the Chief of OET the authority, by notice-and-comment rulemaking, to approve the use of future versions of the standard that do not raise major compliance issues. In addition, the Commission in Section 20.19(k)(1) of the rules delegated authority to the Chief of WTB and the Chief of OET to initiate a rulemaking proceeding to adopt future versions of the ANSI Standard that add additional frequency bands or air interfaces not covered by previous versions, if the new version does not impose materially greater obligations than those imposed on services already subject to the hearing aid compatibility rules. Under Section 20.19(k)(1), new obligations imposed on manufacturers and Commercial Mobile Radio Service (CMRS) providers as a result of WTB's and OET's adoption of technical standards for additional frequency bands and air interfaces shall become effective no less than one year after release of the order for manufacturers and Tier I (nationwide) carriers and no less than 15 months after release for other service providers.

5. The SFNPRM is limited in scope and does not address all pending issues regarding hearing aid compatibility. Specifically, on August 5, 2010, the Commission released the *2010 SFNPRM,* 75 FR 54546 September 8, 2010, which sought comment on extending the scope of the hearing aid compatibility rules beyond the current category of CMRS, extending the in-store testing requirement beyond retail stores owned or operated by service providers, and permitting a user-controlled reduction of power as a means to meet the hearing aid compatibility standard for all operations over the GSM air interface in the 1900 MHz band. In addition, on December 28, 2010, WTB sought comment on the operation and effectiveness of the Commission's hearing aid compatibility rules, 76 FR 2625 January 14, 2011. The issues raised in these notices will be addressed separately from the SFNPRM.

III. Discussion

6. The Bureaus propose to adopt the 2011 ANSI Standard into the Commission's rules as an applicable technical standard for evaluating the hearing aid compatibility of wireless phones. The Bureaus believe doing so would serve the public interest by aligning the Commission's rules with advances in technology and by bringing additional frequency bands and air interfaces under the hearing aid

compatibility regime. The Bureaus further tentatively conclude that adoption of the new technical standard would not raise any major compliance issues or impose materially greater obligations with respect to newly covered frequency bands and air interfaces than those already imposed under Commission rules. The Bureaus seek comment on these tentative conclusions and whether adoption of the 2011 ANSI Standard would impose new or additional costs on handset manufacturers.

7. Under the rules the Bureaus propose, a manufacturer would be permitted to submit handsets for certification using either the 2007 or 2011 version of the ANSI Standard. Consistent with the Commission's direction in the *2010 Second Report and Order,* FR 54546 (2010), and the Multi-Band Principles agreed by representatives of industry and consumer groups, a multi-band and/or multi-mode handset model would be considered hearing aid-compatible for operations covered under the 2007 ANSI Standard if it obtains certification as meeting at least an M3 or T3 rating for those operations and is launched within 12 months of the **Federal Register** publication of rules adopting the 2011 ANSI Standard. The will apply even if the handset model has not obtained certification as hearing aid-compatible for operations not covered under the 2007ANSI Standard. As under the existing rules, the Bureaus propose to continue requiring that a handset model meet ANSI technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interference for (1) multi-band and/or multi-mode handset models launched later than 12 months after **Federal Register** publication of rules adopting the 2011 ANSI Standard and (2) handset models that only include operations covered under the 2007 ANSI Standard. The Bureaus further note that the Commission's procedures do not permit a handset model to be tested and certified partly under one revision and partly under another. Therefore, if the proposed rule is adopted, during the 12-month transition period, a manufacturers that chooses to test the hearing aid compatibility of those operations within a handset that are only covered by the 2011 ANSI Standard and not covered under the 2007 ANSI Standard would have to test all of the operations in the handset using the 2011 ANSI Standard. Similarly, after the end of the transition period, any new handset containing operations that are not covered under the 2007 ANSI Standard would effectively have to be tested using the 2011 ANSI Standard. The Bureaus seek comment on these proposals.

8. Under the existing rules, the Commission's benchmarks for manufacturers and service providers to deploy hearing aid-compatible handsets apply to operations over those frequency bands that are covered under the 2007 ANSI Standard. Upon adoption of the proposed rules, a transition period would commence to apply these benchmarks to operations covered under the 2011 ANSI Standard. In the *2010 SFNPRM,* the Commission sought comment on a two-year transition period for applying hearing aid compatibility benchmarks and other requirements to wireless handsets that fall outside the subset of CMRS that is currently covered by Section 20.19(a). The Bureaus seek comment on whether a similar transition period would appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss in the context of the rulemaking Would a shorter transition period, but no less than the minimum periods of 12 months for manufacturers and Tier I carriers and 15 months for other service providers, better serve the public interest in expediting the availability of hearing aid-compatible phones while affording manufacturers sufficient time to test, produce, and ship such handsets? Alternatively is a period longer than two years necessary? Consistent with the Commission's current rules and the minimum periods permitted under the Bureau's delegated authority, should non-Tier I service providers be given an additional three months to meet deployment benchmarks in order to account for the difficulties they face in timely obtaining new handset models? Or, based on experience under the existing rules, do these service providers need more than three months additional time?

9. Finally, the Commission's rules provide that whenever a manufacturers or service provider discloses the hearing aid compatibility rating of a handset that has not been tested for hearing aid compatibility over a newly covered air interface, the disclosure shall include language stated in Section 20.19(f)(2). Handsets that have been tested and received certification as hearing aid-compatible, including those deemed to meet an M4 rating without testing under ANSI C63.19–2011, shall be labeled as such. Handsets launched within 12 months of **Federal Register** publication of rules adopting the 2011 ANSI Standard that meet hearing aid compatibility criteria under previously covered air interfaces, but that have been tested and found not to meet such criteria under one or more newly covered air interfaces, shall include adequate disclosure of the fact under rules to be promulgated by WTB and OET. In the absence of any suggestions as to specific language to be used for handsets that have been tested under newly covered air interfaces and found not to meet hearing aid compatibility criteria, the Bureaus propose not to prescribe disclosure language in this situation but to rely on a general disclosure requirement backed by case-by-case resolution in the event of disputes. The Bureaus understand that most handsets are expected to have little difficulty meeting the hearing aid compatibility rating criteria over Wi-Fi (Wireless Fidelity) and other currently existing or imminently expected air interfaces that are outside the 2007 ANSI Standard. The Bureaus seek comment on this proposal and invite alternative proposals, including any proposed disclosure language.

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) have prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the *Second Further Notice* of *Proposed Rule Making* (SFNPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the SFNPRM provided in the Dates section of this document. The Commission will send a copy of the SFNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the SFNPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

11. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Bureaus believe that it would serve the public interest to analyze the possible

significant economic impact of the proposed policy and rule changes in the band on small entities. Accordingly, the IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of the SFNPRM, including spectrum in the 746–806 MHz Band.

1. Need for, and Objectives of, the Proposed Rules

12. The SFNPRM proposes to amend Section 20.19 of the Commission's rules by adopting the new ANSI C63.19–2011 standard (the ''2011 ANSI Standard'') as an applicable hearing aid compatibility technical standard. The standard establishes testing procedures to establish the M-rating (acoustic coupling) and T-rating (inductive coupling) to gauge the hearing aid compatibility of handsets. Specifically, the SFNPRM seeks comment on tentative conclusions that adopting the new 2011 ANSI Standard would raise no major compliance issues and would not impose materially greater obligations with respect to proposed newly covered frequency bands and air interfaces than those already imposed under the Commission's rules. By bringing additional frequency bands and air interfaces under the hearing aid compatibility regime, and by aligning the Commission's rules with the most current measurement practices, the proposed rule change would help ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles.

13. Under the rules the Bureaus propose, beginning on the date that final rules become effective, a manufacturer would be permitted to submit handsets for certification using either ANSI C63.19 2007 (''the 2007 ANSI Standard'') or the 2011 ANSI Standard. A multi-band and/or multi-mode handset model launched earlier than 12 months after **Federal Register** publication of new rules codifying the 2011 ANSI Standard would be considered hearing aid-compatible for operations covered under the current the 2007 ANSI Standard. For multi-band and/or multi-mode handset models launched after this period, as well as for handset models that only include operations covered under the 2007 ANSI Standard, the Bureaus propose to continue applying the current principle that a handset model must meet ANSI C63.19 technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interface. The SFNPRM seeks comment on the proposal. The purpose of this proposed rule change is to limit the compliance burdens on businesses, both large and small, with respect to handset models that are already deployed or in development at the time new rules are adopted.

14. The SFNPRM also seeks comment on how to phase in the 2011 ANSI Standard over a defined period of time. The Bureaus seeks comment on whether a two-year period for applying the hearing aid-compatible handset deployment benchmarks to newly covered air interfaces would appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss for compatible handsets over the newest network technologies. The Bureaus also seek comment on whether non-Tier I service providers should be given additional time to meet deployment benchmarks in order to account for the difficulties they face in timely obtaining new handset models. The purpose of this proposed rule change is to create a time frame for implementation that would be the most efficient and least burdensome for businesses, both large and small, while ensuring that consumers with hearing loss have timely access to wireless communications.

15. Finally, the SFNPRM seeks comment on a proposal not to prescribe specific disclosure language to be used for handsets that meet hearing aid compatibility criteria over previously covered air interfaces but have been tested and found not to meet such criteria over Wi-Fi (Wireless Fidelity) or other air interfaces that are outside the 2007 ANSI Standard. Rather, the Bureaus would rely on a general requirement to disclose the hearing aid compatibility status of such handsets. The Bureaus seek comment on this tentative conclusion and invite alternative proposals. This proposed rule change would be a minimally intrusive means of ensuring that consumers with hearing loss have the information they need to choose a handset that will operate correctly with their hearing aid or cochlear implant.

2. Legal Basis

16. The potential actions about which comment is sought in the SFNPRM would be authorized pursuant to the authority contained in Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

17. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. To assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from the SFNPRM.

18. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Bureaus action may, over time, affect small entities that are not easily categorized at present. The Bureaus therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Bureaus estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, the Bureaus estimate that most governmental jurisdictions are small.

19. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of ''Cellular and Other

Wireless Telecommunications'' is no longer used and has been superseded by the larger category ''Wireless Telecommunications Carriers (except satellite).'' The Census Bureau defines this larger category to include ''* * * establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.''

20. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard.

21. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C– and F–Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F–Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C–Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the re-auction of 347 C–, D–, E–, and F–Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

22. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C–, D–, E–, and F–Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C–, D–, E–, and F–Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

23. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 Basic Economic Area licenses. One bidder claiming small business status won five licenses.

24. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic area licenses in the 800 MHz SMR band claimed status as small businesses.

25. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Bureaus do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Bureaus do not know how many of these firms have 1500 or fewer employees. The Bureaus assume, for purposes of the analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

26. *Advanced Wireless Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as small

businesses. For AWS–2 and AWS–3, although the Bureaus do not know for certain which entities are likely to apply for these frequencies, the Bureaus note that these bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

27. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, the Bureaus will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Bureaus estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

28. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

29. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (''MEA'') licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

30. *Upper 700 MHz Band Licenses.* In *the 700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

31. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

32. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

33. *Offshore Radiotelephone Service.* These services operate on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in the service. The Commission is unable to estimate at this time the number of Offshore Radiotelephone Service licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms in this category that operated that year. Of those 1,383, 1,368 had fewer than 1000 employees, and 15 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

34. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and

''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Bureaus estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Bureaus find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA standard or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

35. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the analysis as small entities. Thus, the Bureaus estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' For these services, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Bureaus must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

36. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' SBA has approved these small business size standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 47 U.S.C. 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

37. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

38. The proposed rules will not impose any new reporting, recordkeeping, or information collection requirements on small entities.

5. Steps Proposed To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant, specifically

small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.''

40. The Bureaus seek comment generally on the effect the rule changes considered in the SFNPRM would have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. The Bureaus invite comment on ways in which the Commission can achieve its goals while minimizing the burden on small wireless service providers, equipment manufacturers, and other entities.

41. More specifically, the Bureaus seek comment on possible alternatives to their tentative conclusion to adopt the new 2011 ANSI Standard into the Commission's rules as a permissible technical standard for evaluating the hearing aid compatibility of wireless phones. The Bureaus note that adopting the new technical standard as permissible rather than mandatory may ease burdens on manufacturers, including small entities, and the Bureaus invite commenters to suggest alternatives that may further reduce possible burdens on small entities. The Bureaus also tentatively conclude that adoption of this new technical standard would not raise any major compliance issues or impose materially greater obligations with respect to newly covered frequency bands and air interfaces than those already imposed under Commission rules. The Bureaus seek comment on whether alternatives to adopting this new technical standard would impose lesser obligations on small entities.

42. Under the rules the Bureaus propose in the SFNPRM, a multi-band and/or multi-mode handset model launched earlier than 12 months after **Federal Register** publication of new rules codifying the 2011 ANSI Standard would be considered hearing aid-compatible for operations covered under the 2007 ANSI Standard even if it has not obtained certification as being hearing aid-compatible for its other operations. This proposal is intended to reduce burdens on small entities and others with respect to handset models that are currently deployed or in development. For multi-band and/or multi-mode handset models launched after this period, as well as for handset models that only include operations covered under the 2007 ANSI Standard, the Bureaus propose to retain the current principle that a handset model must meet ANSI C63.19 technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interface. The Bureaus invite commenters to suggest similar alternatives that may ease compliance burdens on small entities.

43. As a result of the proposed adoption of the 2011 ANSI Standard, after an appropriate transition period the deployment benchmarks set forth in paragraphs (c) and (d) of Section 20.19 would become applicable to manufacturers and service providers offering handsets that operate over newly covered frequency bands and air interfaces. The Bureaus seek comment on alternatives to the two-year transition period that would appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss for compatible handsets over the newest network technologies. In recognition that smaller service providers may encounter greater difficulties transitioning to the 2011 ANSI Standard, the Bureaus propose in the SFNPRM that smaller service providers should have three months longer to transition than Tier I carriers. The Bureaus invite comment on whether alternative transition periods, particularly for small entities, would further lessen the burden on small entities while protecting the interest of hard-of-hearing consumers in having access to a wide variety of wireless handsets.

44. Finally, handsets launched up to 12 months after **Federal Register** publication of rules the 2011 ANSI Standard that meet hearing aid compatibility criteria under previously covered air interfaces, but that have been tested and found not to meet such criteria under one or more newly covered air interfaces, shall include adequate disclosure of this fact under rules to be promulgated by WTB and OET. In the absence of any suggestions as to specific language to be used for handsets that have been tested under newly covered air interfaces and found not to meet hearing aid compatibility criteria, the Bureaus propose not to prescribe disclosure language in this situation but to rely on a general disclosure requirement backed by case-by-case resolution in the event of disputes. The Bureaus seek comment on whether any alternative proposals may further reduce the impact on small entities.

45. For the duration of the docketed proceeding, the Commission will continue to examine alternatives with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

46. None.

B. Initial Paperwork Reduction Act Analysis

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

C. Other Procedural Matters

1. Ex Parte Rules—Permit-But-Disclose

48. The proceeding the SFNPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents

shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in the proceeding should familiarize themselves with the Commission's *ex parte* rules.

Comment Filing Procedures

49. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

■ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

■ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of the proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

■ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

50. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

51. For further information regarding the SFNPRM, contact Michael Rowan, Wireless Telecommunications Bureau, (202) 418–1883, email *Michael.Rowan@fcc.gov*, or Saurbh Chhabra, Wireless Telecommunications Bureau, (202) 418–2266, email *Saurbh.Chhabra@fcc.gov*.

Ordering Clauses

52. Accordingly, *it is ordered,* pursuant to Sections 4(i), 303(r), and 710 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r) and 610, that the *second further notice of proposed rulemaking is* hereby *adopted.*

53. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *second further notice of proposed rulemaking* on or before 30 days after publication of the *second further notice of proposed rulemaking* in the **Federal Register** and reply comments on or before 45 days after publication in the **Federal Register.**

54. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *second further notice of proposed rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

55. The action is taken under delegated authority pursuant to Sections 0.241(a)(1), 0.331(d), and 20.19(k) of the Commission's rules, 47 CFR 0.241(a)(1), 0.331(d), and 20.19(k).

List of Subjects 47 CFR Part 20

Communications common carriers, Communications equipment, Incorporated by reference, and Radio.

Federal Communications Commission.

Rick Kaplan,

Chief, Wireless Telecommunications Bureau.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

PART 20—COMMERICIAL MOBILE SERVICES

1. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302. Section 20.19 is also issued under 47 U.S.C. 610.

2. Section 20.19 is amended by revising paragraphs (a)(1), (b)(1) and (2), adding paragraph (b)(3), revising paragraphs (b)(5), (c) introductory text, (d) introductory text, revising (f)(2), (f)(2)(i), and (f)(2)(ii) and adding paragraph (f)(2)(iii) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) * * *

(1) The hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 698 MHz to 6 GHz bands.

* * * * *

(b) * * *

(1) *For radio frequency interference.* A wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in either the standard document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 (June 8, 2007) or ANSI C63.19–2011 (May 27, 2011). Any grants of certification issued before January 1, 2010, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) *For inductive coupling.* A wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in either the standard document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 (June 8, 2007) or ANSI C63.19–2011 (May 27, 2011). Any grants of certification issued before January 1, 2010, under previous

versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) *Handsets operating over multiple frequency bands or air interfaces.*

(i) Except as provided in paragraph (b)(3)(ii) of this section, a wireless handset used for digital CMRS only over the 698 MHz to 6 GHz frequency bands is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard(s) set forth in paragraphs (b)(1) and (b)(2) of this section for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of the chapter. A wireless handset that incorporates operations outside the 698 MHz to 6 GHz frequency bands is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(ii) A handset that is introduced by the manufacturer prior to [12 months after publication of the Final Rule in the **Federal Register**], and that does not meet the requirements for hearing aid compatibility under paragraph (b)(3)(i) of this section, is hearing aid-compatible for radio frequency interference or inductive coupling only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19–2007 (June 8, 2007) if it meets the applicable technical standard(s) set forth in paragraphs (b)(1) and (b)(2) of this section for all such frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter.

* * * * *

(5) The following standards are incorporated by reference in this section: Accredited Standards Committee C63™—Electromagnetic Compatibility, ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 (June 8, 2007), Institute of Electrical and Electronics Engineers, Inc., publisher; and Accredited Standards Committee C63™—Electromagnetic Compatibility, ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2011 (May 27, 2011), Institute of Electrical and Electronics Engineers, Inc., publisher. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at the Federal Communications Commission (FCC), 445 12th St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

The materials are also available for purchase from IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854–4141, by calling (732) 981–0060, or going to *http://www.ieee.org/portal/site*.

(c) Phase-in of requirements relating to radio frequency interference. The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section. However, prior to [24 months after date of publication of the Final Rule in the **Federal Register**] for manufacturers and Tier I carriers and [27 months after date of publication of the Final Rule in the **Federal Register**] for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19–2007 (June 8, 2007).

* * * * *

(d) Phase-in of requirements relating to inductive coupling capability. The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section. However, prior to [24 months after date of publication of the Final Rule in the **Federal Register**] for manufacturers and Tier I carriers and [27 month after date of publication of the Final Rules in the **Federal Register**] for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19–2007 (June 8, 2007).

* * * * *

(f) * * *

(2) Disclosure requirements relating to handsets treated as hearing aid-compatible over fewer than all their operations.

(i) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible for some of its operations under paragraph (b)(3)(ii) of this section and that has not been tested for hearing aid compatibility under ANSI C63.19–2011 (May 27, 2011), or any handset that operates over frequencies outside of the 698 MHz to 6 GHz bands, it discloses to consumers, by clear and effective means (*e.g.,* inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that the handset has not been rated for hearing aid compatibility with respect to some of its operation(s). The disclosure shall include the following language:

This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

(ii) However, service providers are not required to include this language in the packaging material for handsets that incorporate a Wi-Fi air interface and that were obtained by the service provider before March 8, 2011, provided that the service provider otherwise discloses by clear and effective means that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

(iii) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible for some of its operations under paragraph (b)(3)(ii) of this section and that has been tested and found not to meet hearing aid compatibility requirements under ANSI C63.19–2011 (May 27, 2011) for operations over one or more air interfaces or frequency bands for which technical standards are not stated in ANSI C63.19–2007 (June 8, 2007), it discloses to consumers, by clear and

effective means (*e.g.,* inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that the handset does not meet the relevant rating or ratings with respect to such operation(s).

* * * * *

[FR Doc. 2011–31404 Filed 12–13–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 110627357–1409–01]

RIN 0648–BB24

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Pollock Fishery; Amendment 93

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 93 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The proposed regulations would apply exclusively to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the Gulf of Alaska (GOA) (Central and Western GOA). If approved, Amendment 93 would establish separate prohibited species catch (PSC) limits in the Central and Western GOA for Chinook salmon (*Oncorhynchus tshawytscha*), which would cause NMFS to close the directed pollock fishery in the Central or Western regulatory areas of the Gulf of Alaska, if the applicable limit is reached. This action also would require retention of salmon by all vessels in the Central and Western GOA pollock fisheries until the catch is delivered to a processing facility where an observer is provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. Amendment 93 would increase observer coverage on vessels less than 60 feet (18.3 m) length overall that participate in the directed pollock fishery in the Central or Western regulatory areas of the GOA by January 2013, unless the restructured North Pacific Groundfish Observer Program is in place by this time. Amendment 93 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Written comments must be received no later than 5 p.m. Alaska local time (A.l.t.) January 30, 2012.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0156, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0156 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, emailed to *OIRA_Submission@omb.eop.gov*, or faxed to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Mary Grady, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 93 for review by the Secretary of Commerce, and a notice of availability of the FMP amendment was published in the **Federal Register** (76 FR 72384) on November 23, 2011, with written comments on the FMP amendment invited through January 23, 2012. Comments may address the FMP amendment, the proposed rule, or both, but must be received by NMFS, not just postmarked or otherwise transmitted, by 5 p.m. Alaska local time (A.l.t.) on January 23, 2012, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision.

The Application of This Action to the GOA Pollock Fishery and Current Management

This proposed rule would apply to owners and operators of catcher vessels, catcher/processors, and inshore processors participating in the pollock (*Theragra chalcogramma*) trawl fisheries in the Central and Western Reporting Areas of the GOA. The Central and Western Reporting Areas, defined at § 679.2 and shown in Figure 3 to 50 CFR part 679, include the Central and Western Regulatory Areas (Statistical Areas 610, 620, and 630), and the adjacent State of Alaska (State) waters.

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits (TACs) for groundfish species to sustainably manage the groundfish

fisheries in the GOA. To achieve these objectives, NMFS requires vessel operators participating in groundfish fisheries in the GOA to comply with various restrictions, such as fishery closures, to maintain catch within specified TACs and associated sector and seasonal allocations and apportionments, and PSC limits for species that are generally required to be discarded.

NMFS manages GOA pollock as a single stock independently of pollock in the Bering Sea and Aleutian Islands management area. In 2011, the Central and Western GOA pollock TAC is 84,631 metric tons (mt). Additional information about the pollock fishery is in Section 3.5 of the EA (see **ADDRESSES**), and in the final 2011 and 2012 harvest specifications for the GOA groundfish fisheries (76 FR 11111, March 1, 2011). Pollock is harvested with fishing vessels using trawl gear, which consists of nets towed through the water by the vessel.

NMFS apportions the GOA pollock TAC spatially and temporally in the GOA. Regulations at § 679.21 establish four seasons in the Central and Western GOA beginning January 20 (''A'' season), March 10 (''B'' season), August 25 (''C'' season), and October 1 (''D'' season), with 25 percent of the annual TAC allocated to each season. Allocations to the Western and Central GOA are based on the seasonal pollock biomass distribution as estimated by NMFS groundfish surveys. In addition, a harvest control rule requires suspension of directed pollock fishing when female spawning biomass is equal to or below 20 percent of the reference unfished level (§ 679.20(d)(4)) .

This proposed rule would apply only to the management of the pollock trawl directed fisheries in the Central and Western Reporting Areas of the GOA (Central GOA and Western GOA), which includes the Federal fisheries in the waters of the EEZ (3 nm to 200 nm), and the waters of the State of Alaska (State) (0 to 3 nm) that are managed under a parallel fishery. These fisheries in State waters, referred to as the parallel fisheries, are opened and closed by the State of Alaska and are prosecuted under rules similar to those which apply in the Federal fisheries, with catch accrued against the Federal TAC. The fisheries that would be affected by this action include the GOA State parallel fisheries for pollock that take place in State waters around Kodiak Island, in the Chignik Area, and along the South Alaska Peninsula. Pollock harvests in parallel fisheries that occur in State waters are typically opened and closed concurrently with Federal fisheries. This proposed rule would deduct salmon taken in the EEZ and the State parallel pollock fishery against the Central GOA and Western GOA Chinook salmon PSC limits.

Under this proposed rule NMFS would not deduct salmon taken during a pollock State-managed guideline harvest level (GHL) fishery in the Central or Western GOA against the Central GOA and Western GOA Chinook salmon PSC limits. For these fisheries, the State of Alaska establishes a GHL that the Council and NMFS deduct before NMFS sets the Federal ABC during the harvest specifications process. The State manages the GHL, which is available for harvest exclusively within State waters. The State deducts the GHL groundfish caught in a GHL fishery from the State GHL. Currently, the only pollock GHL fishery in those areas is the Prince William Sound pollock fishery.

Chinook Salmon Bycatch in the GOA Pollock Fishery

Chinook salmon and pollock occur in the same locations in the GOA. Chinook salmon is a prohibited species incidentally taken during the directed harvest of pollock in the GOA. The directed pollock fishery in the Central and Western GOA takes the majority of Chinook salmon PSC in the GOA groundfish fisheries. Additional details on Chinook salmon PSC among GOA groundfish fisheries are available in the (EA/RIR/IRFA) prepared for this action at *http://alaskafisheries.noaa.gov*.

The MSA defines bycatch as fish that are harvested in a fishery that are not sold or kept for personal use. Because of its value in non-groundfish fisheries, Chinook salmon are prohibited species in the groundfish fisheries and currently NMFS regulations require that catch must be minimized and discarded in the GOA groundfish fisheries (§ 679.21(b)). Therefore, Chinook salmon caught in the GOA pollock fishery are considered bycatch under the MSA, the FMP, and NMFS regulations at 50 CFR part 679. The Council and NMFS are concerned about bycatch of any species, including discard or other mortality caused by fishing. National Standard 9 of the MSA requires the Council to recommend, and NMFS to implement, conservation and management measures, that to the extent practicable, minimize bycatch and bycatch mortality.

In the GOA groundfish fisheries, PSC limits have been set for halibut, which close specific groundfish target fisheries after the limits are reached. Seasonal and permanent area closures have been established to protect red king crab and Tanner crab. There are currently no specific management measures to address Chinook salmon PSC in the GOA groundfish fisheries. This action would establish PSC limits for Chinook salmon and PSC management measures for the Central and Western GOA pollock fisheries.

Chinook salmon is a culturally and economically valuable species that is fully allocated and for which State and Federal managers seek to conservatively manage harvests. The FMP categorizes Chinook salmon as prohibited species, one of the most regulated and closely managed categories of bycatch in Alaska fisheries. Chinook salmon, all other species of salmon (a category called ''non-Chinook salmon''), steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are classified as prohibited species in the groundfish fisheries off Alaska (§ 679.2). Fishermen must avoid PSC when possible and return PSC to the water immediately, with a minimum of injury, after an observer has collected catch counts and any scientific data or biological samples. One reason for discarding prohibited species is that some PSC species may live if they are returned to the sea with a minimum of injury and delay. However, salmon caught incidentally in trawl nets often die as a result of that capture.

In an effort to minimize waste of salmon incidentally caught and killed, NMFS has established a prohibited species donation (PSD) program under § 679.26. Participants in the program may donate incidentally caught salmon to the PSD program. The PSD program was initiated to reduce the amount of edible protein discarded under PSC regulatory requirements (§ 679.21). The PSD program allows permitted participants to retain salmon for distribution to economically disadvantaged individuals through tax exempt hunger relief organizations.

NMFS tracks the harvest of pollock and incidental catch of salmon in the Catch Accounting System, which uses observer data to estimate PSC and groundfish harvest amounts for participants in the GOA pollock fishery. Vessels participating in the Central GOA pollock fishery averaged 36,051 metric tons (mt) of pollock catch per year from 2003 to 2010. During these years, the pollock catch in the Central GOA was greatest in 2005, when 46,802 mt were caught and smallest in 2009 when 22,700 mt were taken. From 2003 to 2010, vessels participating in the Central GOA pollock fishery took as few as 2,123 Chinook salmon (2009), and as many as 31,647 Chinook salmon (2007). Over those years the fleet caught an average of 12,607 Chinook salmon per

year. When the Council and NMFS compared the Chinook salmon catch to the pollock catch, the number of Chinook salmon per mt ranged from 0.09 Chinook salmon/mt of pollock in 2009 to 0.98 Chinook salmon/mt of pollock in 2007. NMFS estimates that, on average, 0.35 Chinook salmon/mt of pollock was taken from 2003 to 2010 in the Central GOA pollock fishery.

In the Western GOA, the pollock fleet caught between 14,010 mt (2009) and 30,756 mt (2005) of pollock, while averaging 20,773 mt per year of pollock catch from 2003 to 2010. Over that same period of time, the fleet caught between 441 Chinook salmon (2009) and 31,581 Chinook salmon (2010) annually. NMFS estimates the fleet took an average of 6,380 Chinook salmon per year from 2003 to 2010. NMFS estimates that from 2003 to 2010, the smallest ratio of Chinook salmon PSC to the pollock catch was 0.03 Chinook salmon/mt of pollock in 2009 and the largest was 1.23 Chinook salmon/mt of pollock in 2010. NMFS estimates that on average, 0.31 Chinook salmon/mt of pollock was taken from 2003 to 2010 in the Western GOA pollock fishery.

Objectives of and Rationale for Amendment 93 and This Proposed Rule

Although all species of Pacific salmon are taken incidentally in the groundfish fisheries within the GOA, the Council focused Amendment 93 specifically on Chinook salmon in the Central and Western GOA. The Council decided not to include the Eastern Regulatory Area of the GOA in Amendment 93 because it includes a large area closed to trawling, and Chinook salmon PSC in the Eastern Regulatory Area of the GOA accounts for less than 2 percent of total GOA Chinook salmon PSC.

In June 2011, the Council recommended Amendment 93, which would establish separate Chinook salmon PSC limits for the Central GOA and Western GOA pollock fisheries. Of all salmon species caught, Chinook salmon is the highest catch in the GOA groundfish fisheries in recent years. The Central and Western GOA pollock fisheries intercept the majority of Chinook salmon caught as bycatch in the GOA groundfish fisheries. The implementation of Chinook salmon PSC limits would likely prevent unusually high levels of bycatch of this prohibited species, such as occurred in 2010, from occurring in the fishery in the future. The Council acknowledged that the selection of a Chinook salmon PSC limit for the GOA pollock fishery requires a balance both of obligations under the MSA National Standards, and the needs of different user groups. The Council intends for the Chinook salmon PSC limits to allow the full prosecution of the pollock fishery in the Central and Western GOA in most years, while truncating the fishery in some years if necessary to prevent events of relatively high Chinook salmon PSC in these areas, such as occurred in 2010 (44,813 Chinook salmon). The Council also acknowledged that the implementation of Chinook salmon PSC limits proposed in this action may be followed by subsequent recommendations to address Chinook salmon PSC in other GOA groundfish fisheries.

The principal objective of Chinook salmon bycatch management in the GOA pollock fishery is to minimize Chinook salmon bycatch to the extent practicable while allowing the pollock fishery to contribute to the achievement of optimum yield in the groundfish fishery. Minimizing Chinook salmon bycatch while achieving optimum yield is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of Chinook salmon, provide maximum benefit to fishermen and communities that depend on Chinook salmon and pollock resources, and comply with the MSA and other applicable federal law.

In developing Amendment 93, the Council sought to ensure maximum consistency with the MSA's 10 National Standards. The Council designed Amendment 93 to balance the competing demands of the National Standards. Specifically, the Council recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The ability to harvest the entire pollock TAC in any given year is not determinative of whether the GOA groundfish fishery achieves optimum yield. Providing the opportunity for the fleet to harvest its TAC is one aspect of achieving optimum yield in the long term.

The Council also considered the importance of equity among user groups in recommending Amendment 93. In addition to providing an equitable apportionment of the total GOA-wide PSC limit between the Central and Western GOA pollock fisheries, the Council also considered the needs of Chinook salmon users. Information is currently unavailable for NMFS to assess the stock of origin of the Chinook salmon that are incidentally caught in the GOA pollock fisheries. A component of Amendment 93 would require full retention of salmon species incidentally caught in the Central or Western GOA pollock fisheries, which is a necessary step to facilitate future stock of origin analyses. The Council also noted that the Chinook salmon resource is of value to many stakeholders, including but not limited to commercial, recreational, and cultural user groups; and it is a resource that is currently fully utilized. By instituting a PSC limit that would reduce Chinook salmon bycatch, the Council and NMFS also are considering the needs of these other user groups and recommending this proposed action to promote their access to the Chinook salmon resource.

NMFS proposes Chinook salmon PSC limits that are based on the Council's recommended GOA-wide goal of limiting Chinook salmon bycatch to no more than 25,000 salmon in the Central and Western GOA pollock fisheries. In selecting this overall limit on Chinook salmon PSC, the Council considered a range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while preserving the potential for the full harvest of the pollock TAC. The Council considered the trade-offs between Chinook salmon saved and the forgone pollock catch. The EA and RIR include a description of the alternatives and a comparative analysis of the potential impacts of the alternative PSC limits (see **ADDRESSES**).

The Council noted that the pollock fishery accounts for approximately 75 percent of Chinook salmon PSC in the GOA groundfish fisheries, based on Catch Accounting System data regarding the average Chinook salmon PSC levels from 2001 to 2010. The Council recommended, and the rule proposes, to apportion the selected GOA-wide Chinook salmon PSC limit between the Central and Western GOA on the basis of annual Chinook salmon PSC levels and pollock harvests in each area during 2001 to 2010 excluding 2007 and 2010. The Council recommended excluding bycatch amounts from 2007 and 2010 from consideration because of specific conditions in the Central and Western GOA during those years. In the Central GOA, 2007 was a year of particularly high Chinook salmon PSC, as was 2010 in the Western GOA. The Council considered the conditions that contributed to these high levels of PSC during these years and did not include them for assigning Chinook salmon PSC. The Council considered and rejected those years because the conditions that contributed to the high levels of bycatch

were not representative for specific reasons detailed in section 2.1.2 of the Analysis. Inclusion of these years, which represent the highest levels of Chinook salmon PSC in each area, would increase the apportionment of PSC in that area, effectively rewarding the fleet in that area for its high levels of Chinook salmon PSC. The Council did not feel it was appropriate to reward the fleets for unacceptably high levels of Chinook salmon PSC.

Under this proposed rule, the Central and Western GOA pollock fisheries should be able to harvest the full pollock TAC in each area based on the lower, long-term (17 year) average Chinook salmon bycatch rate, although they would be unable to harvest the full TAC based on the recent (8 year), higher average Chinook salmon bycatch rate (see EA/RIR/IRFA in **ADDRESSES**). The proposed rule would maintain a constraint on the fleet to reduce bycatch, while still allowing for optimum yield from the GOA groundfish fishery. The proposed Chinook salmon PSC limits would require the fleet to work together to come up with mechanisms to reduce Chinook salmon bycatch in order to prevent an early closure to the pollock fishery. The Council acknowledged, and NMFS concurs, that bycatch rates are highly variable, and in years of high Chinook salmon encounters, the proposed PSC limit would prevent amounts of bycatch similar to or more than amounts that occurred in past high bycatch years. Based upon historical fishing activity and salmon bycatch rates, higher Chinook salmon PSC limits would not meet the intent of the Council to minimize bycatch to the extent practicable, as expressed in the problem statement.

Under the proposed rule, the Chinook salmon PSC limit would be divided into annual PSC limits of 18,316 (73 percent of the GOA-wide PSC limit) Chinook salmon for the Central GOA, and 6,684 Chinook salmon (27 percent of the GOA-wide PSC limit) for the Western GOA. As described further in the Notice of Availability for Amendment 93, the Council recommended the split of 73 percent for the Central GOA and 27 percent for the Western GOA because it balances the economic impacts to fishery participants in the Central GOA and fishery participants in the Western GOA. The Council based this apportionment of the GOA-wide Chinook salmon PSC limit between the Central and Western GOA on the pollock TAC for each area and the average number of salmon caught as bycatch in each area, set at an equal ratio, from 2001 through 2010, excluding 2007 and 2010, with an adjustment intended to prevent either area from bearing a disproportionate share of the economic impact of the GOA-wide PSC limit. The analysis indicated that a lower Chinook salmon PSC limit in the Central GOA, strictly based on historic catch in the two areas with no adjustment, was likely to be more constraining to the pollock fishery in the Central GOA than the selected Chinook salmon PSC limit in the Western GOA would be to the pollock fishery in the Western GOA.

The Council recommended that NMFS implement the PSC limits in mid-2012. If the Secretary approves Amendment 93 and the final rule, the reduced PSC limits could apply for the C and D seasons only (August 25 through November 1). The Council recommended the PSC limits for the 2012 C and D seasons to be 8,929 Chinook salmon in the Central GOA and 5,598 Chinook salmon in the Western GOA. These PSC limits were calculated by multiplying the annual PSC limit in each area by the average percentage of annual Chinook salmon PSC taken in the C and D seasons within each area, over the same time series of 2001 to 2010 but excluding 2007 and 2010, and adjusting upward by 25 percent. The Council adjusted the amount upward by 25 percent the first year to provide a buffer and reduce the constraint of mid-year implementation limits on the pollock fisheries.

The Council recommended that the GOA-wide Chinook salmon PSC limit be apportioned to the Central and Western GOA to prevent incidental catch of Chinook salmon in one area from triggering the closure of the pollock fishery throughout the GOA. Under the proposed rule, NMFS would manage all provisions of the PSC limits on a reporting area basis, except for NMFS's authority to close fisheries when the limits are reached, which would only extend to the Central and Western Regulatory Areas of the GOA. If the PSC limit in either the Central GOA or Western GOA were reached, NMFS would close the directed pollock fishery in the applicable regulatory area. The State of Alaska would be responsible for closing the adjacent state waters in the applicable reporting area.

In order to effectively monitor Chinook salmon PSC, the Council also recommended requiring observer coverage on vessels less than 60 feet (18.3 m) length overall (LOA) by January 2013. Chinook salmon PSC estimates for this portion of the fleet have a high degree of uncertainty, as observers are currently not required on this vessel class. Much of the Western GOA pollock fleet consists of vessels less than 60 feet (18.3 m) LOA. Observer coverage on this portion of the fleet would improve the accuracy of Chinook salmon PSC estimates. Currently, § 679.50(c)(1)(v) requires that a catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of § 679.50 in which the vessel participates. The proposed rule would require trawl vessels less than 60 feet (18.3 m) LOA that are directed fishing for pollock in the Central or Western GOA to also meet these observer coverage requirements.

In 2010, the Council approved a restructured observer program, and NMFS is currently drafting proposed regulations that will be sent out for public notice and comment. The Council's intent is that if the restructured observer program were approved by the Secretary and implemented by January 2013, the increased observer coverage that would be required under this proposed rule would not be extended to vessels less than 60 feet (18.3 m) LOA for the C and D seasons of 2012. The Council weighed the benefit of more accurate bycatch estimates that would accrue from expanding observer coverage for this portion of the fleet against the potential for confusion as vessel operators would be required to conform to the requirements of two new and different observer programs within a six month period. The Council determined, however, that 18 months (mid-2012 through 2014) without observer coverage in the less than 60 feet (18.3 m) LOA fleet was not acceptable if the observer program restructuring were delayed or otherwise not approved by the Secretary. If the implementation of the restructured observer program were delayed until 2014, then this proposed action would require vessels less than 60 ft (18.3 m) LOA to have 30 percent coverage while directed fishing for pollock in the Central GOA and Western GOA no later than January 1, 2013.

The majority of the fleet that would be affected by increased coverage would be vessels less than 60 feet (18.3 m) LOA in the Western GOA. Some of these vessels deliver their catch to tender vessels instead of shoreside processing facilities. Increased observer coverage on the less than 60 feet (18.3 m) LOA

fleet would result in more trips being observed, which may provide increased coverage in the Western GOA. However, the additional coverage in the Western GOA may improve only marginally the accuracy of salmon PSC estimates, since the PSC estimates for vessels delivering to tenders would be based on observer at-sea sampling for Chinook salmon, which is a relatively uncommon species. The increased observer coverage on vessels less than 60 feet (18.3 m) LOA under this action would only be effective until the restructured Observer Program is implemented. NMFS anticipates that, if the Secretary approves the restructured observer program, the program could be implemented by January 1, 2014.

This proposed action would require full retention of all salmon species in the Central and Western GOA pollock fisheries for both observed and unobserved vessels until the salmon are delivered to a shoreside processing plant and an observer at the plant has been given the opportunity to count the number of salmon and to collect biological samples. The retention requirement does not focus specifically on Chinook salmon because it can be difficult to differentiate among salmon species unless the fish is examined. Current regulations under § 679.21(b)(2)(ii) require vessel operators to discard salmon when an observer is not on board. When an observer is aboard, they are required to allow for sampling by an observer before discarding prohibited species. This proposed rule would revise the requirements at § 679.21(b), to require the operators of all vessels engaged in directed fishing for pollock in the Central and Western GOA, and all processors taking deliveries from these vessels, to retain all salmon until an observer at a processing plant has been given the opportunity to count the number of salmon and to collect biological samples, before discarding.

The proposed rule would require the operators of all vessels to retain all salmon caught in the pollock fishery in the Central and Western Gulf until those salmon are delivered to a processing plant, where an observer would be provided the opportunities to count and sample the salmon. Under the proposed rule, all salmon must then be discarded or donated to the PSD program. The full retention requirement would not modify the observer duties or the method by which NMFS calculates fleet-wide Chinook salmon PSC estimates. Observer sampling protocols would not be changed, other than the potential that there may be an increase in biological sampling at the plants. NMFS would continue to calculate Chinook salmon PSC numbers, and would manage PSC limits for Chinook salmon, using the existing system of extrapolating catch rates from observed vessels to the unobserved portion of the pollock fleet.

Salmon retained under this action may not be kept for sale or personal use, and must be discarded or donated to the prohibited species donation program, following collection of any scientific data or biological samples. This proposed rule would provide an exception to mandatory discard requirements if the Chinook salmon were delivered to a participant in the PSD program. Once salmon are counted and sampled at the processing plant, they may be donated to the PSD program, or they must be discarded. A list of participants in the PSD program in the GOA is available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/ram/psd/salmon072011.pdf.*

Proposed Regulatory Amendments

Several regulatory amendments would be necessary to implement Chinook salmon PSC limits in the Central and Western GOA pollock fishery under Amendment 93. The proposed rule would (1) Set PSC limits for Chinook salmon in the Central and Western GOA Reporting Areas, (2) increase observer coverage for all trawl vessels less than 60 feet (18.3 m) LOA directed fishing for pollock in the Central and Western GOA, and (3) revise retention requirements for all species of salmon in the Central and Western GOA pollock trawl fisheries. This proposed rule also would make minor changes to the regulations for the PSD program to be consistent with Amendment 93 and to provide updates to the reporting requirement and decision criteria for PSD program permitting.

Prohibitions

The proposed rule would add prohibitions under § 679.7(b)(8) to regulate discard in the Central and Western GOA directed pollock fisheries. Paragraph (b)(8) would be added to expressly prohibit any action that does not comply with the regulations described below for § 679.21(h). This is necessary to expressly inform fishery participants that certain activities are prohibited.

PSC Management

The proposed rule would revise PSC management measures under § 679.21 to establish Chinook salmon PSC limits and management measures for directed pollock trawl fishing in the Central and Western Reporting Areas of the GOA. Paragraph (b)(2)(ii) would be revised to add GOA pollock fisheries described under paragraph (h) and PSD program clarifications to the exception for immediate sorting and returning to the sea of salmon PSC. This is necessary to ensure participants in the PSD program may retain salmon for donation purposes and to facilitate observer sampling and counting of all salmon. Paragraph (b)(3) would be revised to establish that there will not be a rebuttable presumption that any salmon retained on board during a directed pollock fishery in the Central or Western GOA was caught and retained in violation of § 679.21. This is necessary to ensure that vessels that comply with the requirement to retain salmon are not presumed to violate § 679.21. In addition, this is necessary to maintain the existing rebuttable presumption that any Chinook salmon retained on board during a directed pollock fishery in the GOA outside of the Western and Central reporting areas was caught and retained in violation of this section.

The proposed rule would add PSC management measures under § 679.21(h) to establish Chinook salmon PSC limits for the pollock trawl fisheries in the Central and Western GOA. Paragraph (h)(1) would specify applicability of regulations in this paragraph to federally permitted vessels directed fishing for pollock in the Central and Western GOA reporting areas and processors taking deliveries from such vessels. Paragraph (h)(2) would establish GOA Chinook salmon PSC limits. Paragraph (h)(2)(i) would specify an annual PSC limit of 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA. Paragraph (h)(2)(ii) would specify an annual limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA. Paragraph (h)(3) would set Chinook salmon PSC limits and allocations for the Central and Western GOA pollock fisheries C and D seasons in 2012. The 2012 annual PSC limits would be effective until January 1, 2013. If the Chinook salmon PSC limits come into effect for only the C and D seasons in 2012, paragraphs (h)(3)(i) and (ii) would specify a PSC limit of 8,929 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA and a PSC limit of 5,598 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA for the C and D seasons in

2012. These revisions would be necessary to establish the annual Chinook salmon PSC limits and the 2012 C and D season limits recommended by the Council and approved by the Secretary.

Paragraph (h)(4) of § 679.21 would require temporary salmon retention in the Central and Western GOA directed pollock fisheries. The operator of a vessel and the manager of a shoreside processor or stationary floating processor would be prohibited from discarding any salmon or transferring or processing any salmon under the PSD program at § 679.26, if the salmon were taken incidental to a Central or Western GOA directed pollock fishery, until an observer at the processing facility is provided the opportunity to estimate the number of salmon and to collect any scientific data or biological samples from the salmon.

Paragraph (h)(5) of § 679.21 would require that all salmon, except for salmon under the PSD program at § 679.26, must be discarded following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed. This requirement is necessary to ensure observers are provided the opportunity to count salmon and to take biological samples and to ensure that the salmon not donated is discarded, as required of all PSC.

Proposed new paragraph (h)(6) of § 679.21 would establish Chinook salmon PSC closure management. Closures for pollock fisheries using trawl gear would be established, if, during the fishing year, the Regional Administrator determines that vessels engaged in directed fishing for pollock in the Central or Western GOA will catch the Chinook salmon PSC limits specified for that area. NMFS would publish notification in the **Federal Register** closing the applicable regulatory area to directed fishing for pollock. This is necessary to allow NMFS to manage area closures for the pollock fisheries in the Central and Western Regulatory Areas of the GOA based on Chinook salmon PSC reaching the Chinook salmon PSC limits for the Central and Western Reporting Areas. The State of Alaska would manage the closure of the parallel pollock fishery based on the federal closure.

Prohibited Species Donation Program

This proposed rule would revise § 679.26(c)(1) reporting and recordkeeping requirements for the PSD program to add the Central and Western GOA pollock fishery to ensure observer sampling of donated fish. This is necessary to facilitate the counting and biological sampling of donated salmon and to ensure NMFS applies the Chinook salmon donated to the PSD program to the PSC limits.

In addition, the proposed rule would modify the PSD program regulations to implement the intent of the program to allow participation by all types of near shore, stationary processors for halibut donations. It also would revise paragraph (a)(2) of § 679.26 to include stationary floating processors as eligible to receive and process donated halibut. Stationary floating processors are generally located near shore and remain in one location and are therefore similar to a shoreside processor for purposes of the halibut donation program. This proposed revision is necessary to meet the Council's intent that halibut that cannot be sorted at sea and delivered to a processor located in one location in a near shore area may be donated to the PSD program.

The proposed rule would revise paragraph (b)(1)(xi) of § 679.26 to clarify information required for the application process to become an authorized PSD distributor. This proposed rule would remove the requirement that the vessel or processor provide a fax number, as faxes are no longer used for communication between NMFS and the vessels or processors for the purposes of this program. This revision would reduce the reporting burden for the PSD applicant.

Paragraph (b)(2)(iv) of § 679.26 would be revised to change the selection criteria considered by the Regional Administrator in issuing a PSD permit. The revision would change the consideration of the potential number of groundfish trawl vessels and processors in the fishery to the potential number of vessels and processors participating in the PSD program. The number of vessels and processors in the groundfish fishery is not an important consideration to determine who should participate in the program. The number of vessels and processors in the PSD program and the capacity of that program for a number of participants is a more meaningful consideration for determining participation in the program. This revision would focus the considerations for issuing a permit on pertinent vessel and processor information.

Groundfish Observer Program

This proposed rule would revise the groundfish observer program under § 679.50 to establish observer coverage for pollock vessels under 60 feet (18.3 m) LOA in the Central and Western GOA. Paragraph (c)(1)(x) would be added to require a catcher/processor or catcher vessel less than 60 feet (18.3 m) LOA that participates for more than three fishing days in a directed pollock fishery in the Central or Western reporting areas of the GOA in a calendar quarter to carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter in the directed pollock fishery in the applicable area(s). Vessels less than 60 feet (18.3 m) LOA therefore would be required to comply with the 30 percent observer coverage requirements while directed fishing for pollock in the Central or Western GOA. This would only be effective if the Secretary does not approve and implement the restructured observer program recommended by the Council by 2013, and would only remain effective until an approved restructured observer program is implemented. NMFS anticipates that, if the Secretary approves the restructured observer program, the program would not be implemented any later than January 1, 2014.

Classification

Pursuant to sections 304(b) and 305(d) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the MSA, and other applicable law, subject to further considerations received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

IRFA

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act. The IRFA for this proposed action describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; impacts of the action on small entities; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the MSA, and any other applicable statutes, and would minimize any significant adverse impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary

of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The entities directly regulated by this proposed action are those Federally-permitted or licensed entities that participate in harvesting groundfish from the Federal or parallel pollock target fisheries of the Central or Western GOA. Fishing vessels are considered small entities if their total annual gross receipts, from all their activities combined, are less than $4.0 million. The analysis identified 63 vessels in 2010 that would be affected by this action, 37 catcher vessels of which fished for pollock in the Central or Western GOA pollock fisheries and are members of a cooperative. These vessels are members of an American Fisheries Act cooperative for Bering Sea pollock, a rockfish program cooperative in the GOA, a Bering Sea crab cooperative, or members of two or more of these cooperatives. The remaining 26 vessels are not part of a cooperative and are considered to be small entities.

An IRFA requires a description of any significant alternatives to the proposed action(s) that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The preferred alternative chosen by the Council and proposed by NMFS has several elements: (1) A GOA-wide Chinook salmon PSC limit of 25,000 fish with closure of directed fishing for pollock if the PSC limit is reached; (2) allocation of this limit between the Central and Western GOA Reporting Areas considering the historical pollock TACs in the two areas, and historical Chinook salmon PSC in the two areas; (3) retention of all salmon; and (4) a requirement that pollock trawlers less than 60 feet (18.3 m) LOA carry 30 percent observer coverage after January 1, 2013. This observer requirement is likely to be moot, or at most temporary, if the Secretary approves and NMFS implements a requirement for this coverage by January 2013 under the restructured observer program.

During consideration of this action, the Council evaluated a number of alternatives to the preferred alternative, including: (1) No action, (2) GOA-wide PSC limits of 15,000, 22,500, and 30,000 Chinook salmon, (3) alternative ways of allocating the PSC limits between the Central and Western Reporting Areas, (4) a 25-percent buffer for the PSC limit in one out of three consecutive years, and (5) mandatory bycatch reduction cooperatives. None of these alternatives both met the objectives of the action, and had a smaller impact on small entities.

No action would have left the Chinook salmon PSC unlimited, which would have failed to meet the objective of the action. The 30,000 GOA-wide Chinook salmon PSC limit would likewise have failed to significantly control Chinook salmon PSC, and therefore failed to balance the benefits of the action to the targeted Chinook salmon fisheries with the needs of pollock trawlers in the way sought by the Council. A Chinook salmon PSC limit of 15,000 would have imposed a greater burden on small entities by resulting in constraints on pollock fishing beyond the preferred alternative. The Chinook salmon PSC limit of 22,500 would be constraining in more years for the Central GOA in comparison to the recommended 25,000 PSC limit. The option for a 25-percent buffer to the PSC limits did not meet the intended objectives of reducing Chinook salmon PSC to the extent practicable. Under the apportionment options, the Central GOA's proportion of the GOA-wide PSC limit ranges from 61 percent to 77 percent, or 9,122 Chinook salmon to 23,224 Chinook salmon, depending on the overall PSC limit. For the Western GOA, the range is from 23 percent to 39 percent, which results in a range of 3,388 Chinook salmon to 11,757 Chinook salmon. The Council determined lower percentages were unnecessarily constraining to the pollock fisheries while larger percentages did not provide the incentive to minimize PSC to the extent practicable. The Council considered an alternative for the administration of mandatory cooperatives, including approval of annual cooperative contracts and any penalties for violation of the cooperative agreement. This alternative would have needed to be implemented in a manner that maintains NMFS' management authority over the fishery. The Council did not recommend mandatory cooperatives because the Council was uncertain whether NMFS could maintain ultimate management authority over the fishery under a system where mandatory cooperatives must develop agreements that would effectively limit cooperative members' harvest of Chinook salmon PSC, and establish penalties for violations of the cooperative agreement.

The Council developed Chinook salmon PSC limits based on the ability of the Central and Western GOA pollock fisheries to harvest the full pollock TAC in each reporting area in most years while being constrained in years of relatively high Chinook salmon bycatch. In this way, the Council would maintain a constraint on the fleet as an incentive to reduce bycatch while still allowing for optimum yield from the groundfish fishery. The Council's recommended apportionment (73 percent of the limit for the Central GOA and 27 percent of the limit for the Western GOA) divides the total GOA-wide Chinook salmon PSC limit between the Central and Western GOA proportional to the historical pollock TAC for each reporting area and the average number of salmon caught as bycatch in each reporting area, set at an equal ratio, with an adjustment intended to prevent either area from bearing a disproportionate share of the economic impact of the PSC limit.

The proposed observer coverage is necessary to monitor the Chinook salmon PSC in a way that meets the objectives of the action, and is in any event, at most a temporary measure. This would only be effective if the Secretary does not approve and implement the restructured observer program recommended by the Council by 2013, and would only remain effective until an approved restructured observer program is implemented. NMFS anticipates that, if the Secretary approves the restructured observer program, the program would not be implemented any later than January 1, 2014.

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Tribal Consultation

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to E.O. 13175 which establishes several requirements for NMFS, including: (1) To provide regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of Federal regulatory practices that significantly or uniquely affect their

communities; (2) to reduce the imposition of unfunded mandates on Indian tribal governments; and (3) to streamline the applications process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires Federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

Due to the expedited time frame of this action to implement Chinook salmon PSC management measures in the GOA, NMFS will consult on this action by mailing letters to all Alaska tribal governments, Alaska Native corporations, and related organizations (''Alaska Native representatives'') by notifying them of the opportunity to comment when the Notice of Availability for Amendment 93 and this proposed rule are published in the **Federal Register**.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves Amendment 93, a tribal impact summary statement that summarizes and responds to issues raised on the proposed action—and describes the extent to which the concerns of tribal officials have been met—will be included in the final rule for Amendment 93.

Collection-of-Information Requirements

This proposed rule includes a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval, OMB No. 0648–0316, PSD program. Public reporting burden for Application to become a NMFS Authorized Distributor in the PSD program is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS seeks public comment regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 7, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

2. In § 679.7, add paragraph (b)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) * * *

(8) *Prohibitions specific to salmon discard in the Central and Western Reporting Areas of the GOA directed fisheries for pollock.* Fail to comply with any requirement of § 679.21(h).

* * * * *

3. In § 679.21,

A. Revise paragraphs (b)(2)(ii) and (b)(3); and

B. Add paragraph (h) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS and GOA pollock fisheries under paragraph (c) or (h) of this section, or any prohibited species catch as provided (in permits issued) under § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) and (h) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(h) *GOA Chinook Salmon PSC Management*—(1) *Applicability.* Regulations in this paragraph apply to vessels directed fishing for pollock with trawl gear in the Central and Western reporting areas of the GOA and processors taking deliveries from these vessels.

(2) *GOA Chinook salmon prohibited species catch (PSC) limits* (effective January 1, 2013).

(i) NMFS establishes an annual PSC limit of 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA.

(ii) NMFS establishes an annual PSC limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA.

(3) *Chinook salmon PSC limit for the GOA pollock fishery C and D seasons in 2012.* (Effective from August 25, 2012 until November 1, 2012). NMFS establishes the GOA Chinook salmon PSC limits for the Central and Western GOA pollock fisheries during the 2012 C and D seasons as follows:

(i) A PSC limit of 8,929 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA; and

(ii) A PSC limit of 5,598 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA.

(4) *Salmon retention.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD program at § 679.26, if the salmon were taken incidental to a Central or Western GOA directed pollock fishery, until an observer at the processing facility that takes delivery of the catch is provided

the opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon.

(5) *Salmon discard.* Except for salmon under the PSD program at § 679.26, all salmon must be discarded, following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed.

(6) *Chinook salmon PSC closures in Pollock trawl gear fisheries.* If, during the fishing year, the Regional Administrator determines that vessels engaged in directed fishing for pollock in the Central reporting area or Western reporting area of the GOA will catch the applicable Chinook salmon PSC limit specified for that reporting area under paragraph (h)(2) of this section, NMFS will publish notification in the **Federal Register** closing the applicable regulatory area to directed fishing for pollock.

4. In § 679.26, revise paragraphs (a)(2), (b)(1)(xi) introductory text, (b)(1)(xi)(C), (b)(2)(iv), and (c)(1) to read as follows:

§ 679.26 Prohibited Species Donation Program.

(a) * * *

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors and stationary floating processors.

(b) * * *

(1) * * *

(xi) A list of all vessels and processors, and food bank networks or food bank distributors participating in the PSD program. The list of vessels and processors must include:

* * * * *

(C) The vessel's or processor's telephone number.

* * * * *

(2) * * *

(iv) The potential number of vessels and processors participating in the PSD program.

* * * * *

(c) * * *

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program. A vessel or processor participating in the PSD program:

(i) In the BS pollock fishery must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28; and

(ii) In the Central or Western GOA pollock fishery must comply with applicable regulations at §§ 679.7(b), 679.21(h) and 679.28.

* * * * *

5. In § 679.50, add paragraph (c)(1)(x) to read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(1) * * *

(x) A catcher/processor or catcher vessel less than 60 ft (18.3 m) LOA that participates for more than 3 fishing days in a directed pollock fishery (as defined in paragraph (c)(2)(i) of this section) in the Central or Western reporting areas of the GOA in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter in that directed pollock fishery and at all times during at least one fishing trip in that calendar quarter in that directed pollock fishery.

* * * * *

[FR Doc. 2011–31973 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 240

Wednesday, December 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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0043]

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB), 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 a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The CFPB is soliciting comments on an information collection request that will be submitted to the Office of Management and Budget (OMB) for review and clearance on or after the date of publication of this notice. A copy of the submission may be obtained by contacting the agency contacts listed below.

DATES: Written comments are encouraged and must be received on or before January 13, 2012 to be assured of consideration.

COMMENTS: You may submit comments, identified by Docket No. CFPB–2011–0043, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Mitchell E. Hochberg or Jane Gao, Office of Regulations, Consumer Financial Protection Bureau, 1500 Pennsylvania Avenue NW., (*Attn:* 1801 L Street), Washington, DC 20220, with a copy to Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.
- *Hand Delivery/Courier:* Mitchell E. Hochberg or Jane Gao, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006, with a copy to Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the agency contacts listed below.

SUPPLEMENTARY INFORMATION: *OMB Number:* 3170–XXXX.

Type of Review: Emergency Clearance Request.

Title: Qualitative Testing of Mortgage Servicing Related Model Forms and Disclosures.

Description: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, Title XIV (the ''Dodd-Frank Act''), requires CFPB to publish, in final form, certain mortgage servicing rules by January 21, 2013. These rules implement Sections 1418 (Reset of Hybrid Adjustable Rate Mortgages), 1420 (Periodic Mortgage Loan Statements) and 1463 (Force-Placed Insurance Disclosures) of the Dodd-Frank Act. The CFPB has determined that model forms and disclosures are required for these rules.

The CFPB will collect data, including through one-on-one cognitive think-aloud interviews, to inform its design, development and implementation of the required forms. The CFPB will use an iterative process to improve any drafts to make it easier for a consumer to use the documents and understand the information presented in the documents with respect the consumer's mortgage loan.

The data collection will include:

- Consent forms that will be used to obtain the consent of participants for the cognitive interview process;
- Participant questionnaires to obtain demographic information about the participants; and
- Interview protocols for conducting the interviews.

The core objective of the data collection is to help refine specific features of the content and design of the forms to maximize communication effectiveness while minimizing compliance burden. The CFPB will evaluate one or more draft forms through iterative qualitative testing with consumers, including observation of consumers' usage of the disclosures, their understanding of the contents, and the choices they make.

The qualitative testing is focused on the purposes of the disclosures. These purposes include, among other things:

- With respect to mortgage loan periodic statements, improving consumer understanding by better disclosing information regarding the consumer's mortgage loan;
- With respect to disclosures concerning interest rate adjustments for hybrid adjustable rate mortgages, informing consumers of pending interest rate adjustments, enabling a consumer to consider alternative options with respect to the consumer's mortgage loan, and providing information to a consumer to facilitate pursuing such alternative options; and
- With respect to force-placed insurance disclosures, reminding a consumer of the obligation to maintain hazard insurance on the property securing a mortgage; informing the consumer that the servicer does not have evidence of hazard insurance coverage, informing the consumer of the manner in which the consumer may demonstrate to a mortgage servicer that the consumer has obtained hazard insurance coverage, and informing the consumer that if the consumer fails to obtain hazard insurance coverage, the lender may obtain such coverage at the consumer's expense.

The CFPB plans to test at three sites in three rounds to allow for improvement to the forms between rounds. Below is an estimate of the aggregate burden hours for the three rounds of testing.

Process	Number of respondents	Average burden per response (in minutes)	Total burden hours
Cognitive Think-Aloud Interviews	36	60	36

Process	Number of respondents	Average burden per response (in minutes)	Total burden hours
Screening	360	6	36
Travel time to sites	36	60	36
Total			108

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments will become a matter of public record.

Agency Contact: Mitchell E. Hochberg or Jane Gao, Office of Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006; (202) 435–7700.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dated: December 9, 2011.

Robert Dahl,

PRA Clearance Officer, Department of the Treasury.

[FR Doc. 2011–32080 Filed 12–13–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 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.

Animal Plant and Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.

OMB Control Number: 0579–0013.

Summary of Collection: The Virus-Serum-Toxin Act (37 Stat. 832–833, 21 U.S.C. 151–159) gives the United States Department of Agriculture, the Animal and Plant Health Inspection Service (APHIS) the authority to promulgate regulations designed to prevent the importation, preparation, sale, or shipment of harmful veterinary biological products. A veterinary biological product is defined as all viruses, serums, toxins, and analogous products of natural or synthetic origin. In order to effectively implement the licensing, production, labeling, importation, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms and field study summaries.

Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also, APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing. Failing to collect this information would severely cripple APHIS' ability to prevent harmful veterinary biologics from being distributed in the United States.

Description of Respondents: Business or other for profit; State, Local or Tribal Government.

Number of Respondents: 202.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 74,386.

Animal and Plant Health Inspection Service

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Control Number: 0579–0101.

Summary of Collection: Under the Farm Security and Rural Investment Act of 2002, Public Law 107–71, subtitle E, Animal Health Protection, Section 10401–10418, the Secretary of Agriculture, in order to protect the agriculture, environment, economy, and health and welfare of the people of the United States by preventing, detecting, controlling, and eradicating diseases and pests of animal, is authorized to cooperate with foreign countries, States, and other jurisdictions, or other person, to prevent and eliminate burdens on interstate commerce and foreign commerce, and to regulate effectively interstate commerce and foreign commerce. Scrapie is a progressive, degenerative and eventually fatal disease affecting the central nervous system of sheep and goats. Its control is complicated because the disease has an extremely long incubation period

without clinical signs of disease, and there is no test for the disease and or known treatment. The Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain sheep and goats to help prevent the spread of scrapie. APHIS has regulations at 9 CFR part 54 for an indemnity program to compensate owners of sheep and goats destroyed because of scrapie.

Need and Use of the Information: APHIS will collect information using cooperative agreements; applications from owners to participate in the Scrapie Flock Certification Program; post-exposure management and monitoring plans; scrapie test records; application for indemnity payments; certificates, permits, and owner statements for the interstate movement of certain sheep and goats; application for premises identification numbers; and applications for APHIS-approved eartags, backtags, or tattoos, etc. Without this information APHIS' efforts to more aggressively prevent the spread of scrapie would be severely hindered.

Description of Respondents: Business or other for-profit; Not for Profit; and State, Local, or Tribal Government.

Number of Respondents: 112,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 897,030.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–32004 Filed 12–13–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Flathead and McKenzie Rivers and McKenzie National Recreational Trail Visitor Surveys

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Flathead Wild and Scenic River Visitor Survey and McKenzie River Visitor Survey.

DATES: Comments must be received in writing on or before February 13, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, *Attn:* Chris Ryan, Northern Region, P.O. Box 7669, Missoula, MT 59807. Comments also may be submitted via email to: *cryan@fs.fed.us.*

The public may inspect comments received at the Northern Region, 200 E. Broadway, Missoula, MT, during normal business hours. Visitors are encouraged to call ahead to (406) 329–3522 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Flathead—Colter Pence, Flathead National Forests, (406) 387–3949 and Willamette—Matt Peterson, Willamette National Forest at (541) 225–6421. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–(800) 877–8339, between 8am and 8pm, Eastern Standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Flathead Wild and Scenic River Visitor Survey and McKenzie River Visitor Survey.

OMB Number: 0596–NEW.

Expiration Date of Approval: NA.

Type of Request: New.

Abstract: The Flathead and Willamette National Forests are proposing to implement an information collection from forest visitors who are recreating on or near the Flathead Wild and Scenic River or on or near the McKenzie Wild and Scenic River or McKenzie National Recreational Trail. There are different issues on each river creating a need to collect different information; therefore, two separate surveys will be administered for the Flathead and Willamette Rivers though the methodology for collection will be essentially identical.

The visitor survey will support development of the Flathead Comprehensive River Management Plan (CRMP), implementation of the exiting Upper McKenzie River Management Plan, and will provide needed information for managers to protect and enhance the outstandingly remarkable values for which the Flathead and McKenzie Rivers were designated. In addition, the survey proposed will help managers to identify the most important indicators to monitor over the life of the plan to determine if any thresholds are being approached and if management action may need to occur.

Information will be collected from visitors who are recreating on or near the Flathead and McKenzie Rivers and McKenzie National Recreational Trail by in-person, written surveys which will be administered by Forest Service or National Park Service (Flathead) employees, volunteers, or study cooperators to randomly selected visitors. Surveys will ask visitors to provide information about their trip and activities, environmental and social conditions that may alter the quality of their recreational experience, and their attitudes toward different existing and potential recreation management policies and practices. Visitors' responses are voluntary and anonymous.

Data will be entered into an Excel database. Once data entry has been completed and validated, the hardcopy questionnaires will be discarded. Data will be imported into SPSS (Statistical Package for the Social Sciences) for analysis. The database will be maintained at the respective National Forest to and used for development of subsequent management plans and direction.

Collecting thoughts from the public on how these areas should be managed and consideration of their interests and priorities is a critical component to developing a fair and balanced management plan and strategy. Without the public's involvement, a plan has the risk of being biased and ineffective.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: National Forest and National Park (Flathead) visitors (adults, age 16 and older) who are recreating on or near the Flathead or McKenzie Rivers or the McKenzie National Recreational Trail.

Estimated Annual Number of Respondents: 1000 (Willamette) and 1200 (Flathead).

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 333 hours (Willamette) and 400 hours (Flathead).

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 8, 2011.

Leanne M. Marten,

Acting Deputy Chief, NFS.

[FR Doc. 2011–32006 Filed 12–13–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Finger Grazing Authorization Project, Malheur National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose environmental effects on a proposed action to authorize grazing on all or portions of allotments within the North Finger Landscape. These allotments are within the Upper Deer Creek, Basin Creek, Upper Long Creek, Lower Fox Creek, Upper Fox Creek, and Upper Cottonwood Creek subwatersheds. The North Finger Grazing Authorization Project area, located approximately 20 miles northwest of John Day, Oregon, encompasses approximately 18,076 acres of National Forest System Lands administered by the Blue Mountain Ranger District, Malheur National Forest.

DATES: Comments concerning the scope of the analysis must be received by January 13, 2012. The draft environmental impact statement is expected June 2012 and the final environmental impact statement is expected September 2012.

ADDRESSES: Send written comments to the Responsible Official, Teresa Raaf, Forest Supervisor, Malheur National Forest, 431 Patterson Bridge Road, P.O. Box 909, John Day, Oregon 97845. Comments may also be sent via email to *comments-pacificnorthwest-malheur@fs.fed.us,* or via facsimile to (541) 575–3002.

FOR FURTHER INFORMATION CONTACT: Kelly Ware, Project Lead, Malheur National Forest, 431 Patterson Bridge Road, P.O. Box 909, John Day, Oregon, telephone (541) 575–3432, email *kware@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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to authorize grazing on all or portions of the North Finger landscape in such a manner that will continue to move resource conditions toward desired conditions and be consistent with Forest Plan standards and guidelines.

The reason we are undertaking this process at this time is that courts in the 1990s found grazing permits should not be issued without an environmental analysis under the National Environmental Policy Act. In response, Congress passed the Range Rescission Act of 1995, requiring the Forest Service to develop and adhere to a schedule for completion of NEPA analysis on all its grazing allotments. This proposal and upcoming analysis are being undertaken in order to help meet that schedule as mandated by law.

Proposed Action

The proposed action is to continue to permit livestock grazing by incorporating adaptive management strategies across the North Finger landscape. Adaptive Management is defined as, ''The process of making use of monitoring information to determine if management changes are needed, and if so, what changes, and to what degree.'' An adaptive management strategy would define the desired resource conditions, monitoring requirements, resource triggers or thresholds, and actions to be taken if triggers are reached. Site-specific actions to move the existing ground conditions toward desired conditions could also be identified.

Possible Alternatives

Alternatives will include the proposed action, no action (no grazing), and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decisionmaking process so interested and affected people may participate and contribute to the final decision.

Responsible Official

Teresa Raaf, Malheur National Forest Supervisor.

Nature of Decision To Be Made

The Responsible Official will decide if the proposed project will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations. The responsibility for preparing the DEIS and FEIS has been delegated to John Gubel, District Ranger, Blue Mountain Ranger District.

Preliminary Issues

During internal review, the Blue Mountain Ranger District has identified the following concerns or issues with the proposal: Livestock can affect plant community species compositions and vigor; Livestock can impact riparian areas and watershed conditions.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Initial scoping began with the project listed in the 2011 Winter Edition of the Malheur National Forest's Schedule of Proposed Actions and public scoping conducted in June 2011.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 7, 2011.

Teresa Raaf,

Forest Supervisor.

[FR Doc. 2011–32022 Filed 12–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 78–2011]

Foreign-Trade Zone 49—Newark/Elizabeth, NJ; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting authority to expand its zone in the Newark/Elizabeth, New Jersey, area, within the New York/

Newark Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 7, 2011.

FTZ 49 was approved by the Board on April 6, 1979 (Board Order 146, 44 FR 22502, 4/16/79) and expanded on May 26, 1983 (Board Order 211, 48 FR 24958, 6/3/83), on October 23, 1987 (Board Order 365, 52 FR 41599, 10/29/87), on April 19, 1990 (Board Order 470, 55 FR 17478, 4/25/90), on December 15, 1999 (Board Order 1067, 64 FR 72462–72643, 12/28/99), on April 14, 2006 (71 FR 23895, 4/25/06), on February 28, 2007 (Board Order 1504, 72 FR 10642–10643, 3/9/07), and on July 16, 2009 (Board Order 1634, 74 FR 37688–37689, 7/29/09).

The current zone project includes the following sites in the Newark/Elizabeth area: *Site 1* (total—2,121 acres)—Port Newark/Elizabeth Port Authority Marine Terminal (2,075 acres), a parcel (23 acres) located at 888 Doremus Avenue, Newark, a parcel (6 acres) located at 580 Division Street, Elizabeth, and a parcel (17 acres) located at 251–259 Kapowski Road, Elizabeth; *Site 2* (64 acres)—Global Terminal and Container Services facility (41 acres) and adjacent Jersey Distribution Services facility (23 acres) Jersey City/Bayonne; *Site 3* (124 acres)—Port Authority Industrial Park, adjacent to the Port Newark/Elizabeth Port Authority Marine Terminal; *Site 4* (198 acres)—Port Authority Auto Marine Terminal (145 acres) and adjacent 53-acre Greenville Industrial Park on Upper New York Bay's Port Jersey Channel in Bayonne and Jersey City; *Site 5* (40 acres)—Newark International Airport jet fuel storage and distribution system in the Cities of Newark and Elizabeth (Union and Essex Counties); *Site 6* (407 acres)—within an industrial park located at 100 Central Avenue, Kearny; *Site 7* (114 acres, sunset 3/31/14)—within the I–Port 12 industrial park, located at exit 12 of the NJ Turnpike, Carteret; *Site 8* (176 acres, sunset 3/31/14)—within the I–Port 440 industrial park, located east of State St. and north of the Outer Bridge Crossing, Perth Amboy; *Site 9* (317 acres, sunset 3/31/14)—Port Reading Business Park located on Port Reading Avenue, Woodbridge; *Site 10* (73 acres, sunset 3/31/14)—Port Elizabeth Business Park located at 10 North Avenue East, Elizabeth; *Site 11* (379 acres, sunset 7/31/14)—Heller Industrial Park located at 205 Mill Road, Edison; and, *Site 12* (23 acres, sunset 7/31/14)—located at 400, 440, 490 Heller Park Court and 1 Industrial Road, South Brunswick.

The applicant is now requesting authority to expand the zone to include the following site: *Proposed Site 13* (546 acres)—Raritan Center Business Park, Woodbridge Avenue & Raritan Center Parkway, Townships of Edison and Woodbridge, Middlesex County. No specific manufacturing authority is being requested at this time. Such requests would be made on a case-by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 13, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 27, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: December 7, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–32090 Filed 12–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 10, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico.[1] This administrative review covers mandatory respondents Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller), Southland Pipe Nipples Company, Inc. (Southland), Lamina y Placa Comercial, S.A. de C.V. (Lamina), and Tuberia Nacional, S.A. de C.V. (TUNA).[2]

We determine that the respondents did not have reviewable sales, shipments, or entries during the POR.

DATES: *Effective Date:* December 14, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2011, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico for the period November 1, 2009, to October 31, 2010. *See* Preliminary Results.

In response to the Department's invitation to comment on the preliminary results of this review, Petitioner Wheatland Tube Company filed a case brief on September 9, 2011. Respondents Lamina and TUNA jointly filed a rebuttal brief on September 13, 2011.

Scope of the Order

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning

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[1] *See Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 49437 (August 10, 2011) (*Preliminary Results*).

[2] The Department determined that Lamina is the successor-in-interest to TUNA. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe From Mexico,* 75 FR 82374 (December 30, 2010).

units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

The merchandise covered by the order and subject to this review are currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Analysis of Comments Received

All issues raised in the case brief and rebuttal brief are addressed in the Issues and Decision Memorandum (Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated December 2, 2011, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Because we have found that the respondents did not have reviewable sales, shipments, or entries during the POR, there is no change in the antidumping duties for any of the respondents.

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Act and 19 CFR 351.212(b). We will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.

Since the implementation of the 1997 regulations, our practice concerning no shipment respondents had been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data, as well as a no-shipment query to the ports, that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997); *see also Oil Country Tubular Goods From Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 70 FR 53161, 53162 (September 5, 2005), unchanged in *Oil Country Tubular Goods From Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006). In such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the respondents, and exported by other parties at the all-others rate. *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989, 56990 (September 17, 2010). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in its entirety but, rather, to complete the review with respect to the respondents, issuing appropriate instructions to CBP based on the final results of the review. *See* the ''Assessment Rates'' section of this notice below.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, consistent with section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates in effect from the most recently-completed POR; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.62 percent, the all-others rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico,* 57 FR 42953 (September 17, 1992). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final 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 Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 2, 2011.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues in Decision Memorandum

Comment 1: Allegedly Incorrect Classification of Entry Documents

Comment 2: Verification

[FR Doc. 2011–32102 Filed 12–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 10, 2011, the Department of Commerce (''Department'') published the preliminary results of the first administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''), covering the period November 20, 2008, through April 30, 2010. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review,* 76 FR 34048 (June 10, 2011) (''*Preliminary Results*''). We invited interested parties to comment on our *Preliminary Results.* Based on our findings from on-site verifications and analysis of the comments received, we made certain changes to our margin calculations for the respondents. The final dumping margins for this review are listed in the ''Final Results of the Review'' section below.

DATES: *Effective Date:* December 14, 2011.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2011, the Department published the *Preliminary Results* of the first administrative review of the antidumping duty order on citric acid from the PRC. On June 30, 2011, both respondents, RZBC Co., Ltd., RZCB Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd. (collectively ''RZBC'') and Yixing Union Biochemical Co., Ltd. (''Yixing Union''), submitted surrogate value comments. On July 20, 2011, the Department released a Memorandum to the File, titled ''First Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratio Adjustments,'' dated July 20, 2011 (''Wage Rate Memorandum''), for use in these final results. On June 30, 2010, both RZBC and Yixing Union submitted surrogate value comments. On August 3, 2011, Petitioners submitted comments on the industry-specific surrogate wage rate methodology and offered an alternative source to value the wage rate.[1] On August 4, 2011, the Department published a notice in the **Federal Register** fully extending the time limit for the final results of review by the full 60 days allowed under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), to December 7, 2011.[2]

In preparation for verification, the Department issued supplemental questionnaires to RZBC and Yixing Union on August 8, 2011. Yixing Union submitted its supplemental questionnaire response, with an updated factor of production (''FOP'') database, on August 23, 2011. RZBC submitted its supplemental questionnaire response, with updated U.S. sales and FOP databases, on August 24, 2011. From August 29, 2011, to September 2, 2011, and from September 5, 2011, to September 9, 2011, the Department conducted on-site verifications of RZBC and Yixing Union, respectively. On October 12, 2011, RZBC, Yixing Union, Petitioners, and the Government of the People's Republic of China, Ministry of Commerce, Bureau of Fair Trade for Imports and Exports, submitted case briefs. RZBC, Yixing Union, and Petitioners submitted rebuttal briefs on October 18, 2011.

Period of Review

The period of review (''POR'') is November 20, 2008, through April 30, 2010.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and

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[1] Petitioners are Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas LLC.

[2] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review,* 76 FR 47146 (August 4, 2011).

monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, titled ''Issues and Decision Memorandum for the Final Results of the 2008–2010 Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China,'' dated concurrently with this notice (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on an analysis of the comments received from interested parties, the Department has made certain changes to the margin calculations. For the final results, the Department has made the following changes:

Changes to Financial Ratio Calculations

- We treated other income as an offset to selling, general and administrative (''SG&A'') expenses.[3]
- We capped the foreign exchange gains and losses (net figure) to not more than total financial expenses (*i.e.,* financial expenses, which includes interest expenses and provision and bank charges, cannot be less than zero).[4] Also, we made a profit adjustment to exclude the amounts of foreign exchange gains above the total financial expenses.
- We included the change in finished goods inventory in the denominators of the SG&A and profit surrogate ratios for the final results.[5]
- We adjusted profit to exclude interest income.
- We excluded the current and deferred income tax expenses from SG&A/interest expense.

Changes to RZBC's Margin Calculation

- We adjusted RZBC's reported by-product offsets by adding the cost of packaging high-protein corn feed and mycelium to the normal value.[6]

Changes to Yixing Union's Margin Calculation

- We adjusted Yixing Union's reported by-product offsets by adding the cost of packaging corn feed, mycelium, and calcium sulfate dihydrate to the normal value.[7]

Changes to Surrogate Values

- We changed the surrogate value used to value the respondents' sulfuric acid input.[8] For the final results, we have inflated the Indonesian sulfuric acid value used in the preceding less than fair value investigation to the current POR.

Changes to Calculation of Wage Rate

- For the *Preliminary Results,* we calculated a wage-rate based upon a simple average of industry-specific wage rates from countries that were both economically comparable and significant producers of comparable merchandise.[9] However, for the final results, we relied on a single surrogate country to value labor. Specifically, we valued labor using an Indonesian industry-specific wage rate based on labor cost and compensation data from Chapter 5B of the International Labor Organization, under Sub-Classification 24 of the ISIC–Revision 3 standard.[10]

Surrogate Country

In the *Preliminary Results,* the Department stated that it selected Indonesia as the appropriate surrogate country to use in this administrative review for the following reasons: (1) It is a significant producer of comparable merchandise; and (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act. We used Thai and Indian surrogate values in certain instances where Indonesian data was unavailable. Since the Department did not receive comments on surrogate country selection after the *Preliminary Results,* we have not made changes with respect to surrogate country selection for the final results.

Separate Rates Determination

In proceedings involving non-market economy (''NME'') countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[11]

The Department determined that RZBC and Yixing Union met the criteria for separate rate status in the *Preliminary Results.*[12] We have not received any information since issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. For the final results, the Department continues to find that the evidence placed on the record of this administrative review by the two respondents demonstrates both *de jure* and *de facto* absence of government control with respect to each

[3] *See* Issues and Decision Memorandum at Comment 9.

[4] *See* Issues and Decision Memorandum at Comment 10.

[5] *See* Issues and Decision Memorandum at Comment 11.

[6] *See* Issues and Decision Memorandum at Comment 6.

[7] *See* Issues and Decision Memorandum at Comment 6.

[8] *See* Issues and Decision Memorandum at Comment 12.

[9] *See* Memorandum to the File regarding ''First Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratio Adjustments,'' dated July 20, 2011.

[10] *See* Issues and Decision Memorandum at Comment 7.

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[12] *See Preliminary Results,* 76 FR at 34049–50.

company's respective exports of the subject merchandise. Therefore, the Department continues to find that RZBC and Yixing Union meet the criteria for a separate rate.

Export Subsidy Adjustment

Section 772(c)(1)(C) of the Act unconditionally states that U.S. price ''shall be increased by the amount of any countervailing duty imposed on the subject merchandise * * * to offset an export subsidy.'' [13] The Department determined in its final results of the companion countervailing duty administrative review that RZBC's merchandise benefited from export subsidies.[14] [15] Therefore, we have increased RZBC's U.S. price for countervailing duties imposed attributable to export subsidies, where appropriate.[16]

Final Results of the Review

The Department has determined that the following margins exist for the period November 20, 2008, through April 30, 2010:

Exporter	Margin
RZBC Co., Ltd./RZBC Imp. & Exp. Co., Ltd./RZBC (Juxian) Co., Ltd..	0%
Yixing Union Biochemical Co., Ltd. ...	1.11%

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For assessment purposes, we calculated exporter/importer (or customer) specific assessment rates for merchandise subject to this review consistent with 19 CFR. 351.212(b)(1). Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer) specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer's (or customer's) entries of subject merchandise without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions directly to CBP 15 days after the publication of this notice.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For RZBC and Yixing Union, the cash deposit rate will be the margins listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 156.87 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2011.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

Appendix

General Issues

Comment 1: Whether the Department Should Exclude Water from the Margin Calculation
Comment 2: Whether the Department Failed to Inflate the Water Value
Comment 3: Certifications in Petitioners' Previous Submissions
Comment 4: Double Remedy
Comment 5: Zeroing
Comment 6: Whether the Department Should Disallow RZBC's and Yixing Union's By-product Offsets
Comment 7: Whether to Use an Alternate Source to Calculate the Surrogate Wage Rate and Financial Ratios
Comment 8: Whether the Department Should Use Multiple Financial Statements from a Single Company
Comment 9: Whether the Department Should Adjust the Financial Ratio Calculation to Account for Interest Income and Other Income
Comment 10: Whether the Department Should Adjust the Financial Ratio Calculation to Account for Foreign Exchange Gains and Losses

[13] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review,* 75 FR 38076, 38077 (July 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

[14] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review,* dated December 5, 2011 (not yet published).

[15] Yixing Union's merchandise was not found to have benefitted from export subsidies. *Id.*

[16] *See* Memorandum to the File regarding, ''Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Final Results Margin Calculation for RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd.,'' dated December 7, 2011.

Comment 11: Whether the Department Should Adjust the Financial Ratio Calculation to Account for Finished Goods

General Surrogate Value Issues

Comment 12: Surrogate Value for Sulfuric Acid

Mandatory Respondent Specific Issues

RZBC

Comment 13: Whether the Department Verified RZBC's Corn Usage Rate
Comment 14: Calcium Carbonate and Sulfuric Acid Usage Rates
Comment 15: Adjustment of Financial Ratios for Corn and Sulfuric Acid

Yixing Union

Comment 16: Whether the Department Verified Yixing Union's Corn Usage Rate
Comment 17: Whether the Department Should Deny Yixing Union's Claimed By-Product Offset for Mycelium or, At a Minimum, Reduce the Valuation of this Offset
Comment 18: Possible Unreported Inputs in the Chromatographic Process

[FR Doc. 2011–32097 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida, *et al.;* Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 11–065. *Applicant:* University of Florida, Gainesville, FL 32610–0245. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., Czech Republic. *Intended Use:* See notice at 76 FR 70410, November 14, 2011.

Docket Number: 11–066. *Applicant:* University of Florida, Gainesville, FL 32610–0245. *Instrument:* Electron Microscope. Manufacturer: FEI Co., Czech Republic. *Intended Use:* See notice at 76 FR 70410, November 14, 2011.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered.

Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: December 8, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–32081 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2011, the Department of Commerce (''the Department'') published a notice of preliminary results of the administrative review of the countervailing duty order on corrosion-resistant carbon steel flat products from the Republic of Korea covering the period January 1, 2009, through December 31, 2009. *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 54209 (August 31, 2011) (''*Preliminary Results*''). The final results were originally due no later than December 29, 2011.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a final determination within 120 days after the date on which the preliminary results is published. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 120-day period to issue its final results to up to 180 days.

We have determined that it is not practicable to complete the final results within the 120-day period. Specifically, after the issuance of the *Preliminary Results,* complex issues arose concerning the short-term benchmark interest rate. Therefore, to allow sufficient time to collect and analyze the additional information, and to conduct the briefing process, the Department is fully extending the final results. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of the review by 60 days. The final results are now due no later than February 27, 2012.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: December 7, 2011.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–32092 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 29, 2011, the Court of International Trade (CIT) issued an order in *Tata Steel Limited* v. *United States, and United States Steel Corporation and Nucor Corporation,* Court No. 10–00219, Order of Judgment By Stipulation of the Parties (November 29, 2011) (*Tata*) pertaining to the Department's agreement with Tata Steel Limited (Tata), setting the final countervailing rate for the period of review (POR) of January 1, 2008, through December 31, 2008 (2008 POR) to 102.74 percent, and specifying the future countervailing duty cash deposit rate to 102.74 percent for that company. The Department is amending the final results of the administrative review of the countervailing duty order on certain

hot-rolled carbon steel flat products (HRCS) from India covering the 2008 POR, to reflect the CIT's order in *Tata.*

DATES: *Effective Date:* December 14, 2011.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2010, the Department published its final results in the countervailing duty administrative review of HRCS from India covering the POR of January 1, 2008, through December 31, 2008. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review,* 75 FR 43448 (July 26, 2010) (*Final Results*), and accompanying Issues and Decision Memorandum.

Tata filed a lawsuit challenging certain aspects of the final results concerning Tata. The Department entered into a settlement agreement with Tata.

Pursuant to the Order Of Judgment By Stipulation Of The Parties, the CIT directed the Department to: (1) Amend the *Final Results* with respect to Tata, setting the final countervailing duty rate for the 2008 POR to 102.74 percent, and specifying the future countervailing duty cash deposit rate for Tata to be 102.74 percent; (2) calculate the total amount of duties due on the three entries covered by the litigation based on 102.74 percent and issue instructions to U.S. Customs and Border Protection (CBP) requiring the total amount of duties due to be assessed on the remaining two entries; and (3) issue instructions to CBP establishing the future cash deposit rate for Tata at the rate of 102.74 percent, which will remain in place until it is changed by the Department in a future administrative review of the firm with respect to the countervailing duty order on HRCS from India.

Amended Final Results

In accordance with the CIT's order, the countervailing duty rate for Tata for the period January 1, 2008, through December 31, 2008, is 102.74 percent. In addition, the cash deposit rate for Tata is 102.74 percent.

Assessment of Duties

In accordance with the CIT's order, CBP shall assess countervailing duties on all appropriate entries covered by these amended final results. The Department intends to issue liquidation instructions to CBP 15 days after publication of these amended final results in the **Federal Register**. The Department will also instruct CBP to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise produced by Tata, entered or withdrawn from warehouse, for consumption on or after the date of publication of these amended final results.

Notification

We are issuing and publishing these amended final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: December 8, 2011.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–32103 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Thursday, January 26, 2012, at 9 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 3407 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (*Phone:* (202) 482–4877; *Fax:* (202) 482–5665; *email: todd.delelle@trade.gov*). This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9 a.m. to 3:30 p.m. This meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for the January 26, 2012 ETTAC meeting will be set by the recent activities of the group's four subcommittees: Trade Promotion Subcommittee; Trade Liberalization Subcommittee; Standards, Regulations, and Certification Subcommittee; and Innovation Subcommittee. Each group will provide an overview of the issues on which they have been gathering information since the previous quarterly ETTAC meeting. The full ETTAC will discuss those issues further and begin to develop related policy recommendations.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until October 2012.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–32101 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The teleconference meeting is scheduled for Thursday, December 29, 2011, at 2 p.m. Eastern Standard Time

(EST). Please register by 5 p.m. EST on Thursday, December 22, 2011 to listen in on the teleconference meeting.

ADDRESSES: The meeting will take place via teleconference. For logistical reasons, all participants are required to register in advance by the date specified above. Please contact Mr. Todd DeLelle at the contact information below to register and obtain call-in information.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. Phone: (202) 482–4877; Fax: (202) 482–5665; email: *todd.delelle@trade.gov.*

SUPPLEMENTARY INFORMATION: The meeting will take place from 2 p.m. to 3 p.m. This meeting is open to the public. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topic to be considered: The agenda for the December 29, 2011 ETTAC meeting has only the following item: Deliberation on an ETTAC draft recommendation letter to the U.S. Secretary of Commerce regarding U.S. Government's efforts to liberalize environmental trade within the Asia-Pacific Economic Cooperation forum.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was originally chartered in May of 1994. It was most recently re-chartered until October 2012.

The teleconference will be accessible to people with disabilities. Please specify any requests for reasonable accommodation when registering to participate in the teleconference. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public during this meeting. As noted above, any member of the public may submit pertinent written comments concerning the Committee's affairs at any time before or after the meeting. Comments may be submitted to Mr. Todd DeLelle at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Standard Time on Thursday, December 22, 2011, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–32098 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: On December 6, 2011, a Motion to Terminate Panel Review of the U.S. International Trade Commission's final determination of Seamless Refined Copper Pipe and Tube from Mexico was filed by the Government of Mexico (Secretariat File No. USA–MEX–2010–1904–02).

SUMMARY: Pursuant to the Motion to Terminate Panel Review by a participant and consented to by all the participants, the panel review is terminated as of December 6, 2011. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: December 8, 2011.

Ellen Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–32011 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the U.S. Department of Commerce's final determination of Seamless Refined Copper Pipe and Tube from Mexico (Secretariat File No. USA–MEX–2010–1904–03).

SUMMARY: Pursuant to Rule 71(3) of the *Rules of Procedure for Article 1904 Binational Panel Review,* ''A panel review is deemed to be terminated on the day after the expiration of the limitation period established pursuant to subrule 39(1) if no Complaint has been filed in a timely manner.'' Pursuant to Rule 39(1), no Complaint was filed on January 21, 2011. No panel was appointed to this panel review. The panel review terminated effective January 22, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or

countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: December 8, 2011.

Ellen Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–32013 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Amendment to Notice of Establishment of the Advisory Committee on Supply Chain Competitiveness and Solicitation of Nominations for Membership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Amendment to notice of establishment of the Advisory Committee on Supply Chain Competitiveness and solicitation of nominations for membership.

SUMMARY: The Under Secretary of Commerce for International Trade announced in the November 3, 2011, **Federal Register** the establishment of the Advisory Committee on Supply Chain Competitiveness (the Committee) by the Secretary of Commerce and the solicitation of nominations for membership on the Committee (see 76 FR 68159). This amendment clarifies the scope of the Committee's work and the nominations being sought for the Committee, and extends the deadline for nominations.

The Committee shall advise the Secretary on the necessary elements of a comprehensive, holistic national freight infrastructure and a national freight policy designed to support U.S. export growth and competitiveness, foster national economic competitiveness, and improve U.S. supply chain competitiveness in the domestic and global economy.

DATES: Nominations for members must be received on or before January 6, 2012.

ADDRESSES: Richard Boll, Office of Service Industries, *Room CC307,* U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Service Industries, *Room CC307,* U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Committee was established on November 21, 2011, for a two-year term under the discretionary authority of the Secretary, in response to an identified need for consensus advice from U.S. firms, associations, community organizations, and others directly affected by the supply chain, as well as experts from academia to the U.S. government on the necessary elements of a comprehensive, holistic national freight infrastructure and a national freight policy designed to support U.S. export growth and competitiveness, foster national economic competitiveness, and improve U.S. supply chain competitiveness in the domestic and global economy. The Federal Advisory Committee Act (5 U.S.C. App.) governs the Committee and sets forth standards for the formation and use of advisory committees.

The Committee shall provide detailed policy and technical advice, information, and recommendations to the Secretary regarding:

- National, state, or local factors that inhibit the efficient domestic and international movement of goods from point of origin to destination, and the competitiveness of domestic and international supply chains;
- Infrastructure capacity, inter- and cross-modal connectivity, investment, regulatory, and intra- or inter-governmental coordination factors that affect supply chain competitiveness, goods movement, and sustainability;
- Emerging trends in goods movement that affect supply chain competitiveness; and
- Metrics that can be used to quantify supply chain performance.

II. Structure, Membership, and Operation

The Committee shall consist of a maximum of 40 private sector members appointed by the Secretary in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. These members shall represent a balanced and broad range of interests, including representatives from supply chain firms or their associations (including shippers and all modes of freight transportation (trucking, rail, maritime, and air)), stakeholders, community organizations, and others directly affected by the supply chain, as well as experts from academia. Membership shall reflect the diversity of goods and services movement activities, including a variety of users that ship through the global supply chain, entities that operate various parts of the supply chain, and individual academic experts in the field. Membership will also be diverse in terms of organization size, and geographic location. Appointments will be made without regard to political affiliation. In addition to the private sector members, the Secretary of Transportation and the Administrator of the Environmental Protection Agency (EPA) (or their respective designees) will serve on the Committee as *ex officio,* non-voting members. The Secretary will consult with the Department of Transportation, EPA, and other agencies as appropriate in making appointments of private sector members.

The Committee chair and vice chair or vice chairs shall be selected from the members of the Committee by the Assistant Secretary for Manufacturing and Services after consulting with the members. The International Trade Administration may authorize subcommittees as needed, subject to the provisions of FACA, the FACA implementing regulations, and applicable Department of Commerce guidance. Subcommittees must report to the Committee and must not provide advice or work products directly to the Secretary. The Assistant Secretary for Manufacturing and Services shall appoint a Designated Federal Officer (DFO), as well as a Secondary DFO, from among the employees of the Department of Commerce. The DFO or Secondary DFO will be present at all meetings and will approve or call all of the advisory committee meetings and the meetings of any subcommittees; prepare and approve all meeting agendas; adjourn any meeting when the DFO or Secondary DFO; and chair meetings when directed to do so by the Assistant Secretary for Manufacturing and Services.

Nominations

The Secretary of Commerce invites nominations to the Committee for the charter term beginning November 21, 2011, for appointments for a two-year term concurrent with the charter term. Members will be selected, in accordance with applicable Department of Commerce guidelines, based upon their

ability to advise the Secretary of Commerce on the necessary elements of a comprehensive, holistic national freight infrastructure and a national freight policy designed to support U.S. export growth and competitiveness, foster national economic competitiveness, and improve U.S. supply chain competitiveness in the domestic and global economy. Members shall represent a balanced and broad range of interests, including representatives from supply chain firms or their associations (including shippers and all modes of freight transportation (trucking, rail, maritime, and air)), stakeholders, community organizations, and others directly affected by the supply chain as well as experts from academia. The membership should reflect the general composition of the U.S. supply chain industry. Other than the experts from academia, all members shall serve in a representative capacity, expressing their views and interests of a U.S. entity or organization, as well as its particular sector. Members serving in such a representative capacity are not Special Government Employees. The members from academia serve as experts and therefore are Special Government Employees (SGEs) and shall be subject to the ethical standards applicable to SGEs.

Each private sector member of the Committee must be a U.S. citizen, not a federally-registered lobbyist, and not registered as a foreign agent under the Foreign Agents Registration Act. All appointments are made without regard to political affiliation. Self-nominations will be accepted. Members of the Committee will not be compensated for their services or reimbursed for their travel expenses. The Committee shall meet as often as necessary as determined by the DFO, but not less than once per year.

Members shall serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates.

All nominations to become a member of the Committee should provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration;

(2) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938;

(3) An affirmative statement that the applicant is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a Committee member if the applicant becomes a federally-registered lobbyist; and

In addition to the above requirements for all nominations, nominations for representatives from supply chain firms or their associations, stakeholders, community organizations, and others directly affected by the supply chain, should also provide the following information:

(1) A sponsor letter on the firm's, association's, community organization's or other entity's letterhead containing a brief description why the nominee should be considered for membership;

(2) Short biography of nominee including credentials; and

(3) Brief description of the firm, association, community organization, or other entity to be represented and its activities and size (number of employees or members and annual sales, if applicable);

(4) An affirmative statement that the applicant meets all Committee eligibility requirements for representative members, including that the applicant represents a U.S. company or U.S. organization.

a. For purposes of Committee eligibility, a U.S. company is at least 51 percent owned by U.S. persons.

b. For purposes of Committee eligibility, a U.S. organization is controlled by U.S. persons, as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable.

In addition to the above requirements for all nominations, nominations for experts from academia should also provide the following information:

(1) A description of the nominee's area(s) of expertise;

(2) A concise Curriculum Vitae (CV) or resume that covers education, experience, and relevant publications and summarizes how this expertise addresses supply chain competitiveness; and

(3) An affirmative statement that the applicant meets all Committee eligibility requirements.

Please do not send firm, association, or community organization brochures.

Nominations may be emailed to: *richard.boll@trade.gov* or faxed to the attention of Richard Boll at 202–482–2669, or mailed to Richard Boll, Office of Service Industries, *Room CC307,* U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and must be received before January 6, 2012. Nominees selected for appointment to the Committee will be notified.

Dated: December 8, 2011.

David Long,

Director, Office of Service Industries.

[FR Doc. 2011–32096 Filed 12–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Native Hawaiian Representative, Ocean Related Tourism Representative, Conservation Alternate, Native Hawaiian (Elder) Alternate, and, two Native Hawaiian Alternates. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the protection and management of marine and cultural resources. Applicants, who are chosen as members, should expect to serve 2 year terms, pursuant to the council's charter, or until a Monument Alliance is formed in compliance with the Federal Advisory Committee Act (FACA).

DATES: Applications are due by January 31, 2012.

ADDRESSES: Application kits may be obtained from Wesley Byers, Reserve Advisory Council Coordinator, Office of National Marine Sanctuaries, Pacific Island Region, 6600 Kalaniana'ole Hwy, #300, Honolulu, HI 96825, and at the following link: *http://www.papahanaumokuakea.gov*. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Wesley Byers, Reserve Advisory Council Coordinator, Office of National Marine Sanctuaries, Pacific Island Region, 6600 Kalaniana'ole Hwy, #300, Honolulu, HI 96825. *Phone:* (808) 694–3920, *wesley.byers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a

marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The NWHI Reserve was established by Executive Order 13178 (12/00) and Executive Order 13196 (1/01) pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513). The Reserve was incorporated into Papahanaumokuakea Marine National Monument when the Monument was established in 2006 and is now also part of the Papahanaumokuakea Marine National Monument World Heritage site established by UNESCO in July, 2010.

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit, and can be found on the Monument's Web site *http://www.papahanaumokuakea.gov*.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the management of the natural and cultural resources within the Reserve.

The Office of National Marine Sanctuaries has established the Reserve Advisory Council and is now accepting applications from interested individuals for Representatives and/or Alternates for each of the following citizen/constituent positions on the Council:

1. One (1) Native Hawaiian Representatives (Native Hawaiian).
2. One (1) Ocean-Related Tourism Representative (Ocean-Related Tourism).
3. One (1) Native Hawaiian (Elder) Alternate (Native Hawaiian)
3. Two (2) Native Hawaiian Alternates (Native Hawaiian).
4. One (1) Conservation Alternate (Conservation).

Current Reserve Council Representatives and Alternates may re-apply for these vacant seats.

The Council consists of 25 members, 15 of which are non-government voting members (the State of Hawai'i representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation (2), Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research (3), Commercial Fishing, Education, State of Hawai'i and Native Hawaiian (3). The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior., Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's Papahanaumokuakea Marine National Monument.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 7, 2011.

Daniel Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–31915 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Fagatele Bay National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Fagatele Bay National Marine Sanctuary Advisory Council: Community-at-Large: West Side of Tutuila, Community-at-Large: East Side of Tutuila, and Student (including youth). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as Community-at-Large members should expect to serve 3-year terms, pursuant to the council's Charter. Applicants who are chosen as Student members should expect to serve 2-year terms, pursuant to the council's Charter.

DATES: Applications are due by January 30, 2012.

ADDRESSES: Application kits may be obtained from Emily Gaskin, Fagatele Bay National Marine Sanctuary, American Samoa Department of Commerce Office, Executive Office Building, Utulei. Completed applications should be returned to the same address.

FOR FURTHER INFORMATION CONTACT: Emily Gaskin at (684) 633–5155 ext. 271 or *emily.gaskin@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Fagatele Bay National Marine Sanctuary Advisory Council was established in 1986 pursuant to Federal law to ensure continued public participation in the management of the sanctuary. The Sanctuary Advisory Council brings members of a diverse community together to provide advice to the Sanctuary Manager (delegated from the Secretary of Commerce and the Under Secretary for Oceans and Atmosphere) on the management and protection of the Sanctuary, or to assist the National Marine Sanctuary Program in guiding a proposed site through the designation or the periodic management plan review process.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 2, 2011.

Daniel Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–31913 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA867

Endangered Species; File No. 10022

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that Raymond Carthy, University of Florida, Florida Cooperative Fish and Wildlife Research Unit, 117 Newins-Ziegler Hall, P.O. Box 110450, Gainesville, FL 32611,

has been issued a modification to scientific research Permit No. 10022–01.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On December 17, 2010, notice was published in the **Federal Register** (75 FR 78974) that a modification of Permit No. 10022–01, issued May 12, 2010 (75 FR 26715), had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit 10022–01 authorizes the permit holder to conduct research off the northwest coast of Florida. Researchers may capture loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles by strike-net or set-net. Animals may be weighed, measured, photographed, skin biopsied, flipper and passive integrated transponder (PIT) tagged, and released. Researchers also are authorized to perform a subset of activities on sea turtles legally captured by relocation trawlers. A subset of sea turtles may have transmitters attached to assess habitat use and study whether relocation distances for sea turtles captured by relocation trawlers are appropriate.

The modification authorizes: (1) An increase in the number of sea turtles that may be taken annually; (2) satellite tagging for captured loggerhead and Kemp's ridleys; and (3) epibiota removal, blood sampling, and carapace swabbing for a subset of captured animals. A subset of the green sea turtles may also be captured by hand/dip net, flipper and PIT tagged, measured, weighed, photographed, and temporarily carapace marked. This work will assess changes in sea turtle abundance, physical characteristics, and habitat use in the area relative to historical data. The modification is valid until the permit expires on April 30, 2013.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 9, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32091 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA603

Endangered Species; File No. 15802

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

ACTION: Notice; requested change to permit application.

SUMMARY: Notice is hereby given that Florida Fish and Wildlife Conservation Commission, 100 Eighth Avenue SE, St. Petersburg, FL 33701 [Gregg Poulakis, Responsible Party], has requested a change to the application for a permit (File No. 15802).

DATES: Written, telefaxed, or email comments must be received on or before January 13, 2012

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15802 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. 15802 in the subject line of the email),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

On July 28, 2011 (76 FR 45230), notice was published that a permit had been requested by the applicant for scientific research and monitoring of smalltooth sawfish (*Pristis pectinata*) populations of Florida, primarily in the greater Charlotte Harbor estuarine system. The applicant is requesting to take up to 205 sawfish by gillnet, seine, or longline. These animals would be handled, measured, passive integrated transponder, roto, and external satellite tagged, tissue, blood, and biopsy sampled, examined by ultrasound, and released. Receipt of sawfish samples acquired through strandings, law enforcement confiscations, or other permitted researchers is also requested. The applicant also seeks authorization to capture green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and loggerhead (*Caretta caretta*) sea turtles. Sea turtles would be measured, photographed, and released. The permit is requested for a duration of 5 years.

Dated: December 9, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32089 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ66

Marine Mammals; File No. 781–1824

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 781–1824–01 has been issued to the Northwest Fisheries Science Center (NWFSC, Dr. M. Bradley Hanson, Principal Investigator), 2725 Montlake Blvd. East, Seattle, Washington 98112–2097.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 9, 2010, notice was published in the **Federal Register** (75 FR 68757) that a request for an amendment to Permit No. 781–1824–01 to conduct research on cetacean species in the eastern North Pacific off the coast of Washington, Oregon, and California for scientific research had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit amendment authorizes an increase in the number of Southern Resident killer whales (SRKW, *Orcinus orca*) suction cup tagged (from 10 to 20 animals annually) and allows satellite tagging of six SRKW with dart tags annually.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on November 22, 2011.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 8, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32084 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT57

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Commonwealth of the Northern Mariana Islands, February to March 2012

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

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey in the Commonwealth of the Northern Mariana Islands (CNMI), a commonwealth in a political union with the U.S., February to March, 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to L–DEO to incidentally harass, by Level B harassment only, 22 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than January 13, 2012.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

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#applications* 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 containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The National Science Foundation (NSF), which is providing funding to L–DEO to conduct the survey, has prepared a draft ''Environmental Assessment Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and Executive Order 12114 Marine Seismic Survey in the Commonwealth of the Northern Mariana Islands, 2012'' (EA). NSF's EA incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Commonwealth of the Northern Mariana Islands, February-March 2012,'' prepared by LGL Ltd., Environmental Research Associates (LGL), on behalf of NSF and L–DEO, which is also available at the same Internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. 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 United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public 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

On December 16, 2009, NMFS received an application from the L–DEO requesting NMFS to issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a marine seismic survey in the CNMI during June to July, 2010. NMFS published a notice in the **Federal Register** (75 FR 8652) with preliminary determinations and a proposed IHA. Ship maintenance issues resulted in schedule challenges that forced the survey into an inclement weather period and after further consideration by the principal investigator and ship operator, the proposed seismic survey was postponed until a more suitable operational period could be achieved.

NMFS received a revised application on September 29, 2011, from L–DEO for the taking by harassment, of marine mammals, incidental to conducting a marine seismic survey in the CNMI within the U.S. Exclusive Economic Zone (EEZ) in depths from approximately 2,000 meters (m) (6,561.7 feet [ft]) to greater than 8,000 m (26,246.7 ft). L–DEO plans to conduct the proposed survey from approximately February 2 to March 21, 2012.

L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to collect seismic data over the Mariana outer forearc, the trench and the outer rise of the subducting and bending Pacific plate. In addition to the proposed operations of the seismic airgun array, L–DEO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

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 survey area. This is the principal means of marine mammal taking associated with these activities and L–DEO has requested an authorization to take 22 species of marine mammals by Level B harassment. Take is not expected to result from the use of the MBES or SBP, for reasons discussed 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 46 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

L–DEO's proposed seismic survey in the CNMI will take place during February to March, 2012, in the area 16.5° to 19° North, 146.5° to 150.5° East (see Figure 1 of the IHA application). The proposed seismic survey will take place in water depths ranging from 2,000 m to greater than 8,000 m and consists of approximately 2,800 kilometers (km) 1,511.9 nautical miles [nmi]) of transect lines (including turns) in the study area. The seismic survey will be conducted in the U.S. Exclusive Economic Zone (EEZ) and in International Waters. The closest that the vessel will approach to any island is approximately 50 km (27 nmi) from Alamagan. The project is scheduled to occur from approximately February 2 to March 2, 2012. Some minor deviation from these dates is possible, depending on logistics and weather. The proposed seismic survey will be conducted over the Mariana outer forearc, the trench, and the outer rise of the subducting and bending Pacific plate. The objective is to understand the water cycle within subduction-zone systems. Subduction systems are where the basic building blocks of continental crust are made and where Earth's great earthquakes occur. Little is known about either of these processes, but water cycling through the system is thought to be the primary controlling factor in both arc-crust generation and megathrust seismicity.

The survey will involve one source vessel, the *Langseth.* The *Langseth* will deploy an array of 36 airguns as an energy source at a tow depth of 9 m (29.5 ft). The acoustic receiving system will consist of a single 6 km (3.2 nmi) long hydrophone streamer and 85 ocean bottom seismometers (OBSs). As the airgun 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. The OBSs record the returning acoustic signals internally for later analysis. The OBSs to be used for the 2012 program will be deployed and most (approximately 60) will be retrieved during the cruise, whereas 25 will be left in place for one year.

The planned seismic survey (*e.g.,* equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 2,800 km of transect lines (including turns) in the CNMI survey area (see Figure 1 of the IHA application). This includes one line and parts of three lines shown in Figure 1 of the IHA application that are shot twice at different shot intervals: The westernmost north-south line and the

western portions of the east-west lines. In addition to the operations of the airgun array, a Kongsberg EM 122 MBES and Knudsen Chirp 3260 SBP will also be operated from the *Langseth* continuously throughout the cruise. There will be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In L–DEO's calculations, 25% has been added for those additional operations.

All planned seismic data acquisition activities will be conducted by L–DEO, the *Langseth's* operator, with on-board assistance by the scientists who have proposed the study. The Principal Investigators are Drs. Doug Wiens (Washington University) and Daniel Lizarralde (Woods Hole Oceanographic Institution [WHOI]). The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Vessel Specifications

The *Langseth,* owned by the National Science Foundation, will tow the 36 airgun array, as well as the hydrophone streamer, along predetermined lines. The *Langseth* will also deploy and retrieve the OBSs. When the *Langseth* is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to five degrees per minute. 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 17.0 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 (13,499 nmi) (the distance the vessel can travel without refueling).

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

Seismic Airguns

The *Langseth* will deploy a 36 airgun array, with a total volume of approximately 6,600 cubic inches (in^3). The airgun array will consist of a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch (psi). The airguns will be configured as four identical linear arrays or ''strings'' (see Figure 2 of the application). Each string will have 10 airguns, the first and last airguns in the strings are spaced 16 m (52 ft) apart. Of the 10 airguns, nine airguns in each string will be fired simultaneously, whereas the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The four airgun strings will be distributed across an area of approximately 24 x 16 m (78.7 x 52.5 ft) behind the *Langseth* and will be towed approximately 140 m (459.3 ft) behind the vessel. The shot interval will be 37.5 m or 150 m (123 or 492.1 ft) during the study. The shot interval will be relatively short, approximately 15 to 18 seconds (s), for the MCS surveying with the hydrophone streamer (most of the seismic operations), and relatively longer, 150 m (or approximately 58 to 73 s), when recording data on the OBSs. During firing, a brief (approximately 0.1 s) pulse sound is emitted; the airguns will be silent during the intervening periods. The dominant frequency components range from two to 188 Hertz (Hz).

The tow depth of the array will be 9 m (29.5 ft) during the surveys. Because the actual source is a distributed sound source (36 airguns) rather than a single point source, the highest sound 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.

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 the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun arrays used by L–DEO on the *Langseth* are 236 to 265 dB re 1 μPa (p-p) and the rms value for a given airgun pulse is typically 16 dB re 1 μPa lower than the peak-to-peak value (Greene, 1997; McCauley *et al.,* 1998, 2000a). However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, L–DEO has predicted the received sound levels in relation to distance and direction from the 36 airgun array and the single Bolt 1900LL 40 in^3 airgun, which will be used during power-downs. A detailed description of L–DEO's modeling for marine seismic source arrays for protected species mitigation is provided in Appendix A of NSF's EA. These are the nominal source levels applicable to downward propagation. The effective source levels

for horizontal propagation are lower than those for downward propagation when the source consists of numerous airguns spaced apart from one another.

Appendix B(3) of NSF's EA discusses the characteristics of the airgun pulses. NMFS refers the reviewers to the IHA application and EA documents for additional information.

Predicted Sound Levels for the Airguns

To determine exclusion zones (EZs) for the airgun array to be used in the CNMI, it would be prudent to use the empirical values that resulted from the propagation measurements in the Gulf of Mexico (GOM) (Tolstoy *et al.,* 2009). Tolstoy *et al.,* (2009) reported results for propagation measurements of pulses from the *Langseth's* 36 airgun, 6,600 in^3 array in shallow-water (approximately 50 m [164 ft]) and deep-water depths (approximately 1,600 m [5,249 ft]) in the Gulf of Mexico (GOM) in 2007 and 2008. L–DEO has used these corrected empirical values to determine exclusion zones (EZs) for the 36 airgun array and modeled measurements for the single airgun; to designate EZs for purposes of mitigation, and to estimate take for marine mammals in the CNMI.

Results of the GOM calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. The propagation also varies with the airgun array's tow depth. The depth of the airgun array was different in the GOM calibration study (6 m [19.7 ft]) than in the proposed survey (9 m); thus correction factors have been applied to the distances reported by Tolstoy *et al.* (2009). The correction factors used were the ratios of the 160, 180, and 190 dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m vs. 9 m. For a single airgun, 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 EZs are essentially the same at different tow depths. The L–DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water. A detailed description of the modeling effort is provided in Appendix A of NSF's EA.

Using the corrected measurements (airgun array) or model (single airgun), Table 1 (below) shows the distances at which three rms sound levels are expected to be received from the 36 airgun array and a single airgun. The 180 and 190 dB re 1 μPa (rms) distances are the safety criteria for potential Level A harassment as specified by NMFS (2000) and are applicable to cetaceans and pinnipeds, respectively. If marine mammals are detected within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down, if necessary) immediately.

Table 1 summarizes the measured or predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the 36 airgun array and a single airgun operating in deep water depths.

Table 1. Measured (array) or predicted (single airgun) 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 CNMI, February to March, 2012.

Source and volume	Tow depth (m)	Water depth (m)	Predicted RMS radii distances (m)		
			190 dB	180 dB	160 dB
Single Bolt airgun (40 in^3)	9	Deep (> 1,000)	12	40	385
4 Strings 36 airguns (6,600 in^3)	9	Deep (> 1,000)	400	940	3,850

OBS Description and Deployment

Approximately 85 OBSs will be deployed by the *Langseth* before the survey, in water depths of 3,100 to 8,100 m (10,170 to 26,574.8ft). There are three types of OBS deployments:

(1) Approximately 20 broadband OBSs located on the bottom in a wide two-dimensional (2D) array with a spacing of no more than 100 km (54nmi);

(2) Approximately 5 short-period OBSs tethered in the water column above the trench areas deeper than 6 km (3.2 nmi); and

(3) Approximately 60 short-period OBSs located on the bottom in a 2D array with a spacing of about 75 km (40.5nmi) (see Figure 1 of L–DEO's application).

The first two types will be left in place for one year for passive recording, and the third type will be retrieved after the seismic operations. OBSs deployed in water deeper than 5,500 m (18,044.6 ft) will require a tether to keep the instruments at a depth of 5,500 to 6,000 m (18,044.6 to 19,685 ft), as the instruments are rated to a maximum depth of 6,000 m. The lengths of the tethers will vary from 65 to 2,600 m (213.3 to 8,530.2 ft). The tether will fall to the seafloor when the OBS is released.

Two different types of OBSs may be used during the 2012 program. The WHOI ''D2'' OBS has a height of approximately 1 m (3.3 ft) and a maximum diameter of 50 cm (inches [19.7 in]). The anchor is made of hot-rolled steel and weighs 23 kilograms (kg; pounds [50.7 lb]). The anchor dimensions are 2.5 × 30.5 × 38.1 cm (1 × 12 × 15 in). The Scripps Institution of Oceanography LC4x4 OBSs will also be used during the cruise. This OBS has a volume of approximately 1 m^3 (35.3 ft^3), with an anchor that consists of a large piece of steel grating (approximately 1 m^2). Once an OBS is ready to be retrieved, an acoustic release transponder interrogates the OBS at a frequency of 9 to 11 kHz, and a response is received at a frequency of 9 to 13 kHz. The burn-wire release assembly is then activated, and the instrument is released from the anchor to float to the surface.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated from the *Langseth* continuously during the survey. The ocean floor will be mapped with the Kongsberg EM 122 MBES and a Knudsen 320B SBP. These sound sources will be operated continuously from the *Langseth* throughout the cruise.

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, usually 12 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

Each ping consists of eight (in water greater than 1,000 m) or four (less than 1,000 m) 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 (FM) chirp pulses up to 100 ms long are used in water greater than 2,600 m. The successive transmissions span an overall cross-track angular

extent of about 150°, with 2 ms gaps between the pulses for successive sectors.

SBP

The *Langseth* will also operate a Knudsen Chirp 3260 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 nominal power output is 10 kilowatts (kW), but the actual maximum radiated power is 3 kW or 222 dB re 1 μPam. The pulse duration is up to 64 milliseconds (ms), and the pulse interval is one second, but a common mode of operation is to broadcast five pulses at one second intervals followed by a five second pause.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 36 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 (4.6 knots [kts]; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Description of the Proposed Dates, Duration, and Specified Geographic Region

The survey will occur in the CNMI in the area 16.5° to 19° North, 146.5 to 150.5° East. The seismic survey will take place in water depths of 2,000 m to greater than 8,000 m. The *Langseth* will depart from Guam on February 5, 2012, and return to Guam on March 21, 2012. The *Langseth* will return to port from March 2 to 5, 2012. Seismic operations will be carried out for 16 days, with the balance of the cruise occupied in transit (approximately 2 days) and in deployment and retrieval of OBSs and maintenance (25 days). Some minor deviation from this schedule is possible, depending on logistics and weather (*i.e.,* the cruise may depart earlier or be extended due to poor weather; there could be additional days (up to three) of seismic operations if collected data are deemed to be of substandard quality).

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Twenty-seven marine mammal species (20 odontocetes [dolphins and small- and large-toothed whales] and 7 mysticetes [baleen whales]) are known to or could occur in the CNMI study area. Several of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the North Pacific right (*Eubalaena japonica*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales

Cetaceans are the subject of the IHA application to NMFS. There are not reported sightings of pinnipeds in the CNMI (*e.g.,* Department of the Navy, 2005). The dugong (*Dugong dugon*) is distributed throughout most of the Indo-Pacific region between approximately 27° North and South of the equator (Marsh, 2002), but it seems unlikely that dugongs have ever inhabited the Mariana Islands (Nishiwaki *et al.,* 1979). The dugong is also listed as endangered under the ESA. There have been some extralimital sightings in Guam, including a single dugong in Cocos Lagoon in 1974 (Randall *et al.,* 1975) and several sightings of an individual in 1985 along the southeastern coast (Eldredge, 2003). The dugong is the one marine mammal species mentioned in this document that is managed by the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis; all others are managed by NMFS. Table 2 (below) presents information on the abundance, distribution, population status, conservation status, and density of the marine mammals that may occur in the proposed survey area during February to March, 2012.

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Table 2. The habitat, regional abundance, and conservation status of marine mammals that may occur in or near the proposed seismic survey area in the CNMI. (See text and Tables 2 and 3 in L-DEO's application for further details.)

Species	Habitat	Regional Abundance[4]	ESA[1]	MMPA[2]	Density (#/1,000 km^2)[3]
Mysticetes					
North Pacific right whale (*Eubalaena japonica*)	Pelagic and coastal	Few 100s	EN	D	0
Humpback whale (*Megaptera novaeangliae*)	Mainly nearshore, banks	938 to 1,107[5]	EN	D	0
Minke whale (*Balaenoptera acutorostrata*)	Pelagic and coastal	25,000[6]	NL	NC	0
Bryde's whale (*Balaenoptera edeni*)	Pelagic and coastal	20,000 to 30,000	NL	NC	0.41
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	7,260 to 12,620[7]	EN	D	0.29
Fin whale (*Balaenoptera physalus*)	Continental slope, pelagic	13,620 to 18,680[8]	EN	D	0
Blue whale (*Balaneoptera musculus*)	Pelagic, shelf, coastal	NA	EN	D	0
Odontocetes					
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep sea	29,674[9]	EN	D	1.23
Pygmy sperm whale (*Kogia breviceps*)	Deep waters off the shelf	NA	NL	NC	3.19
Dwarf sperm whale (*Kogia sima*)	Deep waters off the shelf	11,200[10]	NL	NC	7.65
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	20,000[10]	NL	NC	6.66
Longman's beaked whale (*Indopacetus pacificus*)	Deep water	NA	NL	NC	0.44
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	25,300[11]	NL	NC	1.28
Ginkgo-toothed beaked whale	Pelagic	NA	NL	NC	0

(*Mesoplodon ginkgodens*)					
Rough-toothed dolphin (*Steno bredanensis*)	Deep water	146,000[10]	NL	NC	
Bottlenose dolphin (*Tursiops truncatus*)	Coastal, oceanic, shelf break	243,500[10]	NL	NC D - Western North Atlantic coastal	0.29
Pantropical spotted dolphin (*Stenella attenuata*)	Coastal and pelagic	800,000[10]	NL	NC D - Northeastern offshore	0.21
Spinner dolphin (*Stenella longirostris*)	Coastal and pelagic	800,000[10]	NL	NC D - Eastern	3.14
Striped dolphin (*Stenella coeruleoalba*)	Off continental shelf	1,000,000[10]	NL	NC	6.16
Fraser's dolphin (*Lagenodelphis hosei*)	Deep water	289,000[10]	NL	NC	4.47
Short-beaked common dolphin (*Delphinus delphis*)	Shelf, pelagic, seamounts	3,000,000[10]	NL	NC	9.63
Risso's dolphin (*Grampus griseus*)	Deep water, seamounts	175,000[10]	NL	NC	0.81
Melon-headed whale (*Peponocephala electra*)	Oceanic	45,000[10]	NL	NC	4.28
Pygmy killer whale (*Feresa attenuata*)	Deep, pantropical waters	39,000[10]	NL	NC	0.14
False killer whale (*Pseudorca crassidens*)	Pelagic	40,000[10]	NL Proposed EN - insular Hawaiian	NC	1.11
Killer whale (*Orcinus orca*)	Pelagic, shelf, coastal	8,500[10]	NL EN - Southern resident	NC D - Southern resident, AT1 transient	0.15
Short-finned pilot whale (*Globicephala macrorhynchus*)	Pelagic, shelf coastal	500,000[10]	NL	NC	1.59

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] Density estimate as listed in Table 3 of the application.
[4] North Pacific (Jefferson et al., 2008) unless otherwise indicated.

[5] Western North Pacific (Calambokidis et al., 2008).
[6] Northwest Pacific and Okhotsk Sea (IWC, 2010).
[7] North Pacific (Tillman, 1977).
[8] North Pacific (Ohsumi and Wada, 1974).
[9] Western North Pacific (Whitehead, 2002b).
[10] Eastern Tropical Pacific (Wade and Gerrodette, 1993).
[11] Eastern Tropical Pacific all Mesoplodon spp. (Wade and Gerrodette, 1993).

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Refer to sections III and IV of L–DEO's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the proposed project area. The application also presents how L–DEO 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.

Potential Effects 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). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

Tolerance to Sound

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defines 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 kms. Several studies have shown that marine mammals at distances more than a few kms from operating seismic vessels often show no apparent response (see Appendix B[5] in NSF's EA). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions. The relative responsiveness of baleen and toothed whales are quite variable.

Masking of Natural Sounds

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). 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).

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.

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 NSF's 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 (*Eschrichtius robustus*), bowhead (*Balaena mysticetus*), 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 kms, 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 four to 15 km 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 source level of 227 dB re 1 μPa (p-p). In the 1998 study, they documented that avoidance reactions began at five to eight km from the array, and that those reactions kept most pods approximately three to four km (1.6 to 2.2 nmi) from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of four to five km (2.2 to 2.7 nmi) by traveling pods and seven to 12 km (3.8 to 6.5 nmi) 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 (rms) for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 μPa (rms). The initial avoidance response generally occurred at distances of five to eight km (2.7 to 4.3 nmi) from the airgun array and two km (1.1 nmi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Data collected by observers during several seismic surveys in the Northwest Atlantic showed that sighting rates of humpback whales were significantly greater during non-seismic periods 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 1.64–L (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). However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the Northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

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).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus 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 to 30 km (10.8 to 16.2 nmi) 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 percent 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 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa (rms). 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). 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 Protected Species Observers (PSOs) 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 one km or less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) 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 to 20 km (5.4 to 10.8 nmi) compared with 20 to 30 km from an operating airgun array, and PSOs on seismic boats in that area rarely see belugas (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) 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 review). However, controlled exposure experiments in the GOM 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 (*Hyperoodon ampullatus*) 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).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (*e.g.,* Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the ''Stranding and Mortality'' section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

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 (Appendix B of NSF's EA).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. 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 to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 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

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). 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.

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 (above) presents the distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 dB re 1 μPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms). NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms). The 180 dB level is a shutdown criterion applicable to cetaceans, as specified by NMFS (2000); these levels were used to establish the EZs. NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment.

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). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). For this proposed study, L–DEO expects no cases of TTS given the low abundance of baleen whales in the planned study area at the time of the survey, and 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 an 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).

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, 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 dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise times—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 six 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.

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 in 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, an 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. The evidence for this remains circumstantial and 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 one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 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 (*Ziphius cavirostris*) 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 of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

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.

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, some odontocetes, and some pinnipeds, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

MBES

L–DEO will operate the Kongsberg EM 122 MBES from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for two to 15 ms once every five to 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 to 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 deep) or four (in water less than 1,000 m 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 to 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 an 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 L–DEO's operations, 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 an MBES on marine mammals are outlined below.

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 to 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 (656.2 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler 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 L–DEO, 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 an 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. However, pinnipeds are not expected to occur in the proposed study area.

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 by L–DEO 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.

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.

SBP

L–DEO will also operate a SBP from the source vessel during the proposed survey. Sounds from the SBP are very short pulses, occurring for one to four 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 222 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 an 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 will 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.

Acoustic Release Signals

The acoustic release transponder used to communicate with the OBSs uses frequencies 9 to 13 kHz. These signals will be used very intermittently. It is unlikely that the acoustic release signals would have a significant effect on marine mammals through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumably low levels.

The potential effects to marine mammals 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 effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey will not result in 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) 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.

Anticipated 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 D 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. This makes drawing conclusions about impacts on fish problematic because, ultimately, the most important issues concern effects on marine fish populations, their viability, and their availability to fisheries.

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 D 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 L–DEO 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) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. 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 nine m in the former case and less than two m 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 D 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.

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 Fisheries

It is possible that the *Langseth's* streamer may become entangled with various types of fishing gear. L–DEO will employ avoidance tactics as necessary to prevent conflict. It is not expected that L–DEO's operations will have a significant impact on fisheries in the CNMI. Nonetheless, L–DEO will minimize the potential to have a negative impact on the fisheries by avoiding areas where fishing is actively underway.

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 (CPUE) 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).

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 E 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 E 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. Andre *et al.* (2011) exposed cephalopods, primarily cuttlefish, to continuous 50 to 400 Hz sinusoidal wave sweeps for two hours while captive in relatively small tanks, and reported morphological and ultrastructural evidence of massive acoustic trauma (*i.e.,* permanent and substantial alterations of statocyst sensory hair cells). The received SPL was reported as 157+/−5 dB re 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

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).

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must 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 the availability of such species or stock for taking for certain subsistence uses.

L–DEO has based the 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;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) 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 activities, L–DEO 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—This seismic survey was originally proposed for 2010. A National Environmental Policy Act (NEPA) document was prepared for the proposed survey and was posted for public comment on NSF's Web site. No public comments were received by NSF in response to the public comment period during that process. Because of ship maintenance issues, weather, and timing constraints of the IHA process, the proposed survey was unable to be supported on the *Langseth* in 2010 as proposed, and as a result the survey was deferred to a future time when the ship would be able to support the effort. An IHA application was submitted to NMFS for the proposed 2010 survey,

however it was withdrawn when it became apparent the ship would not be able to support the survey. An ESA section 7 consultation request that was also initiated with NMFS was withdrawn.

Subsequently, the PIs worked with L–DEO and NSF to identify potential time periods to carry out the survey taking into consideration key factors such as environmental conditions (*i.e.,* the seasonal presence of marine mammals, sea turtles, and sea birds), weather conditions, equipment, and optimal timing for other proposed seismic surveys using the *Langseth.* Most marine mammal species are expected to occur in the area year-round, so altering the timing of the proposed project likely would result in no net benefits for those species. After considering what energy source level was necessary to achieve the research goals, the PIs determined the use of the 36-airgun array with a total volume of 6,600 in^3 would be required. Given the research goals, location of the survey, and associated deep water, this energy source level was viewed appropriate. The draft NEPA documentation prepared for the proposed 2010 survey forms the basis for this assessment; however, it has been updated to reflect current scientific information and any revisions of the proposed survey and timing. NEPA documentation for the proposed 2012 survey will also be open for a public comment period, and an ESA section 7 consultation has been requested and reinitiated.

Proposed Exclusion Zones—Received sound levels have been predicted by L–DEO, in relation to distance and direction from the airguns, for the 36 airgun array and for the single 1900LL 40 in^3 airgun, which will be used during power-downs. Results were recently reported for propagation measurements of pulses from the 36 airgun array in two water depths (approximately 1,600 m and 50 m [5,249 and 164 ft]) in the GOM in 2007 to 2008 (Tolstoy *et al.,* 2009). It would be prudent to use the corrected empirical values that resulted to determine EZs for the airgun array. Results of the propagation measurements (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. In addition, propagation varies with array tow depth. The empirical values that resulted from Tolstoy *et al.* (2009) are used here to determine EZs for the 36 airgun array. However, the depth of the array was different in the GOM calibration study (6 m [19.7 ft]) than in the proposed survey (9 m); thus, correction factors have been applied to the distances reported by Tolstoy *et al.* (2009). The correction factors used were the ratios of the 160, 180, and 190 dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m versus 9 m, from LGL (2008): 1.285, 1.338, and 1.364, respectively.

Measurements were not reported for a single airgun, so model results will be used. The L–DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water and to relatively short ranges. A detailed description of the modeling effort is predicted in Appendix A of the EA.

Based on the corrected propagation measurements (airgun array) and modeling (single airgun), the distances from the source where sound levels are predicted to be 190, 180, and 160 dB re 1 μPa (rms) were determined (see Table 1 above). The 180 and 190 dB radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. 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.

Power-down Procedures—A power-down involves decreasing the number of airguns in use to one airgun, 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, 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 all airgun activity is suspended.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, L–DEO will power-down the airguns before the animal is within the EZ. Likewise, if a mammal is already within the EZ, when first detected L–DEO will power-down the airguns immediately. During a power-down of the airgun array, L–DEO will operate the single 40 in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), L–DEO will shut-down the airgun (see next section).

Following a power-down, L–DEO will not resume airgun activity until the marine mammal has cleared the EZ. 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 and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

During airgun operations following a power down or shut-down whose duration has exceeded the time limits specified previously, L–DEO will ramp-up the airgun array gradually (see Shut-down and Ramp-up Procedures).

Shut-down Procedures—L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. L–DEO will implement a shut-down:

(1) If an animal enters the EZ of the single airgun after L–DEO has initiated a power-down; or

(2) If a an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

L–DEO will 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.

Considering the conservation status for the North Pacific right whale, the airguns will be shut-down immediately in the unlikely event that this species is observed, regardless of the distance from the *Langseth.* Ramp-up will only begin if the right whale has not been seen for 30 min.

Ramp-up Procedures—L–DEO will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a power-down shut down has exceeded that period. L–DEO proposes that, for the present cruise, this period would be approximately eight min. This period is based on the 180 dB radius (940 m) for the 36 airgun array towed at a depth of 9 m in relation to the minimum planned speed of the *Langseth* while shooting (7.4 km/hr). 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 six dB per five min period over a total duration of approximately 35 min. During ramp-up, the Protected Species Observers will

monitor the EZ, and if marine mammals are sighted, 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, L–DEO will not commence the ramp-up 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 EZ 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. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must 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 IHAs 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 action area.

Monitoring

L–DEO 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. L–DEO's proposed ''Monitoring Plan'' is described below this section. L–DEO understands that this monitoring plan will be subject to review by NMFS, 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. L–DEO 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 of the airguns 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 (*i.e.,* greater than approximately 8 min for this proposed cruise). When feasible, 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. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the CNMI, at least four PSOs (PSVO and/or Protected Species Acoustic Observer [PSAO]) will be based aboard the *Langseth.* L–DEO will appoint the PSOs with NMFS's 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 PSAO will monitor the 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 PSAO 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 PSVO(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 and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

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. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans 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 cetaceans are detected.

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 tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). 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, signal conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One PSAO, an expert bioacoustician in addition to the four PSVOs, with primary responsibility for PAM, will be onboard the *Langseth.* The towed hydrophones will ideally be monitored by the PSAO 24 hours per day while at the proposed 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 the array or back-up systems during operations. The primary PAM streamer on the *Langseth* is a digitial hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. One PSAO will monitor the acoustic detection system 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 cetaceans. The PSAO monitoring the acoustical data will be on shift for one to six hours at a time. All PSOs are expected to rotate through the PAM position, although the expert PSAO 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 cetaceans (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be related to the PSVO(s) to help him/her sight the calling animal. 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. In addition to transits to, from, and through the study area, there will also be opportunities to collect baseline biological data during the deployment and recovery of OBSs.

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.

L–DEO 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 this IHA, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), L–DEO will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Pacific Islands Regional Office Stranding Coordinator at (808) 944–2269 (*David.Schofield@noaa.gov*). 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 shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with L–DEO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. L–DEO may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that L–DEO 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), L–DEO will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, and/or by email to *Michael.Payne@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Pacific Islands Regional Office (808) 944–2269) and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*). 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 L–DEO to determine whether modifications in the activities are appropriate.

In the event that L–DEO 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), L–DEO will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, and/or by email to *Michael.Payne@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Pacific Islands Regional Office (808) 944–2269), and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*), within 24 hours of discovery. L–DEO 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 CNMI. 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. There is no evidence that the planned activities could result in injury, serious injury, or mortality within the specified geographic area for which L–DEO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe L–DEO'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 36 airgun array to be used during approximately 2,800 km of survey lines in the CNMI.

L–DEO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP 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 and SBP given their characteristics (*e.g.,* narrow, downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, L–DEO provides no additional allowance for animals that could be affected by sound sources other than airguns.

The only systematic marine mammal survey conducted in the CNMI was a ship-based survey conducted for the U.S. Navy during January to April, 2007, in four legs: January 16 to February 2, February 6 to 25, March 1 to 20, and March 24 to 12 (SRS–Parsons *et al.,* 2007; Fulling *et al.,* 2011). The cruise area was defined by the boundaries 10 to 18° North and 142 to 148° East, encompassing an area approximately 585,000 km^2 (170,558.7 nmi^2) including the islands of Guam and the southern CNMI almost as far north as Pagan. The systematic line-transect survey effort was conducted from the flying bridge (10.5 m [34.5 ft] above sea level) of the 56 m (183.7 ft) long M/V *Kahana* using standard line-transect protocols developed by NMFS Southwest Fisheries Science Center (SWFSC). Observers visually surveyed 11,033 km (5,957.3 nmi) of trackline, mostly in high Beaufort sea states (88% of the time in the Beaufort sea states 4 to 6).

L–DEO used the densities calculated in Fulling *et al.* (2011) for the 12 species sighted in that survey. For eight species not sighted in that survey but expected to occur in the CNMI, relevant densities are available for the ''outer EEZ stratum'' of Hawaiian waters, based on a 13,500 km (7,289.4 nmi) survey conducted by NMFS SWFSC in August to November, 2002 (Barlow, 2006). Another potential source of relevant densities are the SWFSC surveys conducted in the ETP during summer/fall 1986 to 1996 (Ferguson and Barlow, 2001, 2003). However, for five of the

remaining seven species that could occur in the survey area, there were no sightings in more than 50 offshore tropical (< 20° latitude) 5° × 5° strata. The short-beaked common dolphin was sighted in a number of offshore tropical strata, so its density was calculated as the effort-weighted mean of densities in the 17 offshore 5° × 5° strata between 10° North and 20° North (Ferguson and Barlow, 2003).

Table 2 (Table 3 of the IHA application) gives the estimated densities of each marine mammal species expected to occur in the waters of the proposed survey area. L–DEO used the densities reported by Fulling *et al.* (2011), Barlow (2006), and Ferguson and Barlow (2001, 2003), and those have been corrected, by the original authors, for detectability bias, and in two of the three areas, for availability bias. Detectability bias is associated with diminishing sightability with increasing lateral distance from the trackline ($f[0]$). Availability bias refers to the fact that there is less-than-100% probability of sighting an animal that is present along the survey trackline $f(0)$, and it is measured by g(0). Fulling *et al.* (2011) did not correct the Marianas densities for g(0), which, for all but large (≤ 20) groups of dolphins (where g[0] = 1), resulted in underestimates of density.

There is some uncertainty about the representativeness of the density data and the assumptions used in the calculations. For example, the seasonal timing of the surveys either overlapped (Marianas) or followed (Hawaii and ETP) the proposed surveys. Also, most of the Marianas survey was in high sea states that would have presented detection of many marine mammals, especially cryptic species such as beaked whales and *Kogia* spp. However, the approach used here is believed to be the best available approach.

L–DEO's estimates of exposures to various sound levels assume that the proposed surveys will be fully completed; in fact, the ensonified areas calculated using the planned number of line-km have been increased by 25% to accommodate 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. Furthermore, any marine mammal sightings within or near the designated EZs will result in the power-down or shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to sound levels of 160 dB re 1 μPa (rms) are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates also assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

L–DEO 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 1.4 times the area excluding overlap, so a marine mammal that stayed in the survey area during the entire survey could be exposed approximately two times, on average. Thus, few individual marine mammals would be exposed more than once during the survey. However, 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 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 of 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 included only once when estimating the number of individuals exposed.

Applying the approach described above, approximately 15,685 km^2 (4,573 nmi^2) (approximately 19,607 km^2 [5,716.5 nmi^2] including the 25% contingency) would be within the 160 dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the marine mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. In addition, the approach assumes that no cetaceans 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.

Table 3 (Table 4 of the IHA application) shows the estimates of the number of different individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization, given in Table 3 (the far right column of Table 4 of the IHA application), has been increased to the mean group size for the particular species in cases where the calculated number of individuals exposed was between one and the mean group size. Mean group sizes are from the same source as densities (see Table 3 of L–DEO's application). For the minke whale, which was not sighted during the January to April, 2007 survey in the waters of Guam and the southern CNMI, but was the baleen whale species most frequently detected acoustically, the requested take authorization (given in the far right column of Table 5 of L–DEO's application) has also been increased to the mean group size.

The estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the proposed survey is 1,487 (see Table 4 of the IHA application). That total includes 14 baleen whales, 6 of which are sei whales (0.06% of the regional population). In addition, 24 sperm whales or 0.08% of the regional population, could be exposed during the survey, and 165 beaked whales, including Cuvier's, Longman's, and Blainville's beaked whales. Most (72.1%) of the cetaceans potentially exposed are delphinids; pantropical spotted, short-beaked common, striped, and Fraser's dolphins, and melon-headed whales are estimated to be the most common species in the area, with estimates of 443, 189, 121, 88, and 84, which would represent 0.06%, 0.01%, 0.01%, 0.03%, and 0.19% of the regional populations, respectively.

In monitoring reports for seismic surveys, NMFS sometimes receives reports of unidentified species of marine mammals documented within areas around active airgun arrays and the animals may have been potentially

exposed to received levels of greater than or equal to 160 dB (rms) (*i.e.,* the threshold for Level B harassment). These animals may be reported as an unidentified species of marine mammal by PSOs due to poor environmental conditions (*e.g.,* high Beaufort sea state/wind force, sun glare, clouds, rain, fog, darkness, *etc.*), the distance of the animal(s) relative to the vessel, brief activity of animal(s) at the surface, animal(s) avoidance behavior and/or lack of expertise of PSOs in identifying the species of marine mammals that may occur in the study area. Due to these circumstances, NMFS proposes to include the take unidentified large whales (*i.e.,* minke, Bryde's, sei, and sperm whales), unidentified beaked whales (*i.e.,* Cuvier's, Longman's, and Blainville's beaked whales), unidentified *Kogia* spp. (*i.e.,* pygmy and dwarf sperm whales), unidentified blackfish (*i.e.,* melon-headed, pygmy killer, false killer, killer, and short-finned pilot whales), and unidentified small dolphins (rough-toothed, bottlenose, pantropical spotted, spinner, striped, Fraser's, short-beaked common, and Risso's dolphins) for L–DEO's planned seismic survey in the CNMI. In order to estimate the potential number of takes for unidentified marine mammals, NMFS added up all of the calculated exposures and requested takes for each marine mammal species in the determined ''unidentified'' categories. The total estimated number of unidentified large whales, unidentified *Kogia* spp. unidentified beaked whales, unidentified blackfish, and unidentified small dolphins are 38, 212, 165, 143, and 929, respectively, which would represent less than 2% of the regional population for any species of marine mammals expected to occur in the proposed study area.

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Table 3. Estimates of the possible numbers of marine mammals exposed to different sound levels ≥160 dB during L-DEO's proposed seismic survey in the CNMI during February to March, 2012.

Species	Estimated Number of Individuals Exposed to Sound Levels ≥ 160 dB re 1 μPa	Requested or Adjusted Take Authorization	Approximate Percent of Regional Population[1]
Mysticetes			
North Pacific right whale	0	0	0
Humpback whale	0	0	0
Minke whale	0	3[2]	0
Bryde's whale	8	8	0.03
Sei whale	6	6	0.06
Blue whale	0	0	0
Unidentified large whale (includes minke, Bryde's, sei, and sperm whale)	38	41	0.15 0.19 0.52 0.13
Odontocetes			
Sperm whale	24	24	0.08
Pygmy sperm whale	62	62	NA
Dwarf sperm whale	150	150	1.34
Cuvier's beaked whale	131	131	0.65
Longman's beaked whale	9	18[3]	NA
Blainville's beaked whale	25	25	0.10
Ginkgo-toothed beaked whale	0	0	0
Rough-toothed dolphin	6	9[3]	< 0.01
Bottlenose dolphin	4	4	< 0.01
Pantropical spotted dolphin	443	443	0.06
Spinner dolphin	62	98[3]	0.01
Striped dolphin	121	121	0.01
Fraser's dolphin	88	286[3]	0.03
Short-beaked common dolphin	189	189	0.01
Risso's dolphin	16	16	0.01
Melon-headed whale	84	95[3]	0.19
Pygmy killer whale	3	6[3]	0.01
False killer whale	22	22	0.05
Killer whale	3	5[3]	0.03
Short-finned pilot whale	31	31	0.01
Unidentified *Kogia* spp. (includes pygmy and dwarf sperm whale)	212	212	NA 1.89
Unidentified beaked whale (includes Cuvier's, Longman's, and Blainville's beaked whale)	165	174	0.83 NA 0.65
Unidentified blackfish (includes melon-headed, pygmy killer, false killer, killer, and short-finned pilot whale)	143	159	0.32 0.37 0.36 1.68 0.03
Unidentified small dolphin (includes rough-toothed, bottlenose, pantropical spotted, spinner, striped, Fraser's, short-	929	1,166	0.64 0.38 0.12 0.12

beaked common, and Risso's dolphin)			0.09 0.32 0.03 0.53

NA = Not available or not assessed.
[1] Regional population sizes are from Table 3 in L-DEO's application.
[2] Requested take authorization increased to mean group size from Jefferson et al. (2008).
[3] Requested take authorization increased to mean group size from density sources in Table 4 of L-DEO's application.

Encouraging and Coordinating Research

L–DEO and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey in the CNMI with other parties that may have an interest in the area and/or be conducting marine mammal studies in the same region during the proposed seismic survey. L–DEO and NSF have coordinated, and will continue to coordinate with other applicable agencies, and will comply with their requirements. Actions of this type that are underway include (but are not limited to) the following:

- Contact the U.S. Army Corps of Engineers (ACOE), to confirm that no permits will be required by the ACOE for the proposed survey.
- Contact CNMI history preservation office regarding the National Historic Preservation Act.
- Contact the CNMI Coastal Resources Management Office and submit a Scientific Research Permit application.
- Contact U.S. Navy Pacific Fleet Environmental and Geo-Marine, Inc. for recent information on cetacean surveys in the area.

Negligible Impact and Small Numbers Analysis and 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 evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures (described above);

(3) The fact that cetaceans would have to be closer than 940 m (3,084 ft) in deep water when the 36 airgun array is in use at 9 m tow depth, and 40 m (131.2 ft) in deep water when the single airgun is in use at 9 m from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS; and

(4) The likelihood that marine mammal detection ability by trained PSOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the L–DEO's planned marine seismic survey, and none are proposed to be authorized by NMFS. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. Table 3 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, the activity is not expected to impact rates of recruitment or survival for any affected species or stock. Additionally, the seismic survey will not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While seismic operations are anticipated to occur on consecutive days, the entire duration of the survey is not expected to last more than approximately 46 days (*i.e.,* 16 days of seismic operations, 2 days of transit, and 25 days of deployment and retrieval of OBSs and maintenance) and the *Langseth* will be continuously moving along planned tracklines that are geographically spread-out. Therefore, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel, which is constantly travelling over far distances, for a relatively short time period (*i.e.,* several weeks) in the study area.

Of the 27 marine mammal species under NMFS jurisdiction that are known to or likely to occur in the study area, six are listed as threatened or endangered under the ESA: North Pacific right, humpback, sei, fin, blue, and sperm whales. These species are also considered depleted under the MMPA. Of these ESA-listed species, incidental take has been requested to be authorized for sei and sperm whales. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), L–DEO must cease or reduce airgun operations if animals enter designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the

activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 22 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent, except for dwarf sperm whales [1.3%] whales) relative to the regional population size. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 2 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine seismic survey in the CNMI, February to March, 2012, may 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. See Table 3 (above) for the requested authorized take numbers of cetaceans.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that this action will have a negligible impact on the species in the specified geographic region.

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 L–DEO's planned research activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey will have a negligible impact on the affected species or stocks of marine mammals; and that impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (offshore waters of the CNMI) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the North Pacific right, humpback, sei, fin, blue, and sperm whales. Under section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered 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, NSF and L–DEO, 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.

National Environmental Policy Act

With L–DEO's complete application, NSF provided NMFS a draft ''Environmental Assessment Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and Executive Order 12114 Marine Seismic Survey in the Commonwealth of the Northern Marian Islands, 2012,'' which incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Commonwealth of the Northern Mariana Islands, February–March 2012,'' prepared by LGL on behalf of NSF and L–DEO. The EA analyzes 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. 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 of Environmental Quality (CEQ) 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 (FONSI).

Proposed Authorization

NMFS proposes to issue an IHA to L–DEO for conducting a marine seismic survey in the CNMI, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the *Federal Register,* NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 8, 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–XA868

International Affairs; U.S. Fish Quotas in the Northwest Atlantic Fisheries Organization Regulatory Area

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

ACTION: Notification of U.S. fish quotas.

SUMMARY: NMFS announces that fish quotas are available for harvest in the Northwest Atlantic Fisheries

Organization (NAFO) Regulatory Area. This action is necessary to make fishing privileges available on an equitable basis.

DATES: Effective January 1, 2012, through December 31, 2012. Expressions of interest regarding U.S. fish quota allocations for all species except Division 3L shrimp and Division 3M redfish will be accepted throughout 2012. Expressions of interest regarding the U.S. 3L shrimp and 3M redfish quota allocations and the Division 3LNO yellowtail flounder to be transferred by Canada will be accepted through December 29, 2011.

ADDRESSES: Expressions of interest regarding U.S. quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of International Affairs, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: (301) 427–8370, fax: (301) 713–2313, email: *Pat.Moran@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Douglas Christel, at the NMFS Northeast Regional Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: (978) 281–9141, fax: (978) 281–9135, email: *douglas.christel@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.int.*

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, (301) 427–8370.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, hake, capelin, shrimp, skates and squid. At the 2011 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks to be fished during 2012. Please note that the Division 3M shrimp effort allocation available in recent years remains unavailable for 2012 due to conservation concerns. Fishing opportunities for this stock will be re-opened when the NAFO Scientific Council advice estimates that the stock is showing signs of recovery.

The species, location, and allocation (in metric tons) of 2012 U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2011 NAFO Conservation and Enforcement Measures, are as follows:

1. Redfish	NAFO Division 3M	69 mt
2. Squid (*Illex*)	NAFO Subareas 3 & 4	453 mt
3. Shrimp	NAFO Division 3L	133 mt

Additionally, the United States may be transferred up to 1,000 mt of 3LNO yellowtail flounder from Canada's quota allocation if requested before January 1 of 2012, or any succeeding year through 2017. If such a request is made, an additional 500 mt of 3LNO yellowtail flounder could be made available on the condition that the United States transfers its 3L shrimp allocation to Canada or through some other arrangement. Participants in this fishery will be restricted to an overall bycatch harvest limit for American plaice equal to 15% of the total yellowtail fishery.

Fishing opportunities may also be authorized for U.S. fishermen in the ''Others'' category for: Division 3NO white hake (295 mt); Division 3LNO skates (314 mt); Division 3M cod (37 mt), 3LN redfish (36 mt) and Division 3O redfish (100 mt). Procedures for obtaining NMFS authorization are specified below.

U.S. Fishing Vessel Applicants

Expressions of interest to fish for any or all of the 2012 U.S. fish quota allocations, including the up to 1,500 mt of yellowtail flounder to be transferred by Canada under the circumstances described above, and ''Others'' category allocations in NAFO will be considered from U.S. vessels in possession of, or eligible for, a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. Any available information on intended target species and dates of fishing operations should be included. In addition, expressions of interest should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the applicant vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

1. The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

2. For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

3. When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

4. The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Transfer and Chartering of U.S. Quota Allocations

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2012 NAFO Division 3M redfish quota allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties through a transfer of quota allocated to the United States. Under NAFO rules in effect for 2012, the United States may transfer fishing possibilities with the consent of the receiving Contracting Party and with prior notification to the NAFO Executive Secretary. Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party through a transfer of quota allocated to the United States should include a letter of consent from the vessel's flag state. In addition, expressions of interest for transfers should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the recipient NAFO Contracting Party actually would take place; and any available documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2012 NAFO Division 3L shrimp quota allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2012 U.S. quota allocation for 3L shrimp. Under NAFO rules in effect through 2012, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. shrimp quota provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocation is transferred to that flag state. NAFO Parties must be notified of such a chartering operation through a mail notification process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: Provisional monthly catches within 30 days following the calendar month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention; and notification to NMFS of the termination of the charter fishing activities. Furthermore, the United States may also consider a Contracting Party's previous compliance with NAFO bycatch, reporting and other provisions, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: The name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed six months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the transfer of Division 3M redfish quota allocated to the United States, or chartering operations to fish Division 3L shrimp quota allocated to the United States, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing transfer or the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded, NMFS will immediately take appropriate steps to notify NAFO to take appropriate action.

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be contacted if an allocation has been awarded.

Chartering Operations for Division 3LNO Yellowtail Flounder Transferred From Canada

In the event that no adequate expressions of interest in harvesting NAFO Division 3LNO yellowtail flounder transferred from Canada during 2012 are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. processors and other fishing interests intending to make use of a Canadian vessel under a chartering arrangement. Under the bilateral arrangement with Canada, the United States may enter into a chartering (or other) arrangement with a Canadian vessel to harvest the transferred yellowtail flounder. Prior notification to the NAFO Executive Secretary is necessary in this case. Expressions of interest from U.S. processors and other fishing interests intending to make use of a Canadian vessel under chartering arrangements should provide the following information: The name and registration number of the intended vessel; a copy of the charter; a detailed fishing plan, and a written letter of consent from the Department of Fisheries and Oceans, Canada. In addition, expressions of interest using a Canadian vessel under charter should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; marketing of the product in the United States; other specific positive effects on U.S. employment; evidence that fishing by the Canadian vessel will actually take place; and any available documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

Any Canadian vessel wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary:

Provisional monthly catches within 30 days following the calendar month in which the catches were made; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention; and notification to NMFS of the termination of the charter fishing activities. Furthermore, the United States may also consider the vessel's previous compliance with NAFO bycatch, reporting and other provisions, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement. More details on NAFO requirements are available from NMFS (see **ADDRESSES**).

In the event that multiple expressions of interest are made by U.S. fishing interests to fish for NAFO Division 3LNO yellowtail in 2012, the information submitted regarding benefits to the United States will be used in making a selection. After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. Once a decision has been made regarding the disposition of the fishing opportunity, NMFS will immediately take appropriate steps to notify all applicants and will contact Canada and NAFO to take appropriate action. Please note that if any 3LNO yellowtail flounder is transferred from Canada and subsequently awarded to a U.S. vessel or a specified chartering operation during 2012, it may not be transferred without the express, written consent of NMFS.

Dated: December 9, 2011.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2011–32099 Filed 12–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–43]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–43 with attached transmittal and policy justification.

Dated: December 9, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 6 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-43, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Hungary for defense articles and services estimated to cost $426 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 11–43

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Hungary

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0 million.
Other	$426 million.
Total	$426 million.

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* modification and inspection of 32 UH–1N Utility Helicopters and 20 T–400 spare engines being provided as grant Excess Defense Articles (EDA). Also provided are Forward Looking Infrared Radar, Night Vision Devices, simulators, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (SAA, TAA, AAF)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 6 December 2011

POLICY JUSTIFICATION

Hungary—UH–1N Helicopters

The Government of Hungary has requested a possible sale of the modification and inspection of 32 UH–1N Utility Helicopters and 20 T–400 spare engines being provided as grant Excess Defense Articles (EDA). Also provided are Forward Looking Infrared Radar, Night Vision Devices, simulators, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $426 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the military capabilities of Hungary and furthering NATO standardization and interoperability between United States and other NATO allies.

The proposed sale will help improve Hungary's overall ability to conduct humanitarian and search and rescue medical evacuation missions. The proposed sale would further enhance and enable interoperability with U.S. Armed Forces and other coalition partners in the region. Similar items have not previously been provided to Hungary.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the U.S. Navy, Naval Air Systems Command. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple U.S. Government and contractor representatives to travel to Hungary for one week intervals, semi-annually, for a period of three years for program and technical reviews, and training and maintenance support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–32049 Filed 12–13–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID; DOD–2011–OS–0144]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, Department of Defense (DoD).

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Department of Veterans Affairs (VA) and DoD, Defense Manpower Data Center (DMDC) that their records are being matched by computer. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

DATES: This proposed action will become effective January 13, 2012 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins, Director, Defense Privacy and Civil Liberties Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512, or by telephone at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate. The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the VA to identify ineligible VA disability compensation recipients who have returned to active duty. This matching agreement will identify those veterans who have returned to active duty, but are still receiving disability compensation. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the Director for Privacy, Defense Privacy and Civil Liberties Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512 or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on December 8, 2011, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435).

Dated: December 9, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Verification of Disability Compensation

A. Participating Agencies: Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match: The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

VA will provide identifying information on disability compensation recipients to DMDC to match against a file of active duty (including full-time National Guard and Reserve) personnel. The purpose is to identify those recipients who have returned to active duty and are ineligible to receive VA compensation so that benefits can be adjusted or terminated, if in order.

C. Authority for Conducting the Match: The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Program is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information which respect thereto.

D. Records to be Matched: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

VA will use the system of records identified as ''VA Compensation, Pension, Education and Vocational Rehabilitation and Employment Records—VA'' (58 VA 21/22/28), published at 74 FR 29275 (June 19, 2009), and last amended at 75 FR 22187 (April 27, 2010).

DoD will use the system of records identified as DMDC 01, entitled, ''Defense Manpower Data Center Data Base'', published November 23, 2011, 76 FR 72391.

E. Description of Computer Matching Program: The Veterans Benefits Administration will provide DMDC with an electronic file that contains specified data elements of individual VA disability compensation recipients. Upon receipt of the electronic file, DMDC will perform a computer match using all nine digits of the SSNs in the VA file against a DMDC computer database. The DMDC database consists of pay records of active duty (including full-time National Guard and Reserve) military members. Matching records, ''hits'' based on the SSN, will produce the member's name, branch of service, and unit designation, and other pertinent data elements. The hits will be furnished to the Veterans Benefits Administration, which is responsible for verifying and determining that the data on the electronic reply file are consistent with the source file and for resolving all discrepancies or inconsistencies on an individual basis. The Veterans Benefits Administration will also be responsible for making final determinations as to positive identification, eligibility for benefits, and verifying any other information with respect thereto.

The listing will be sorted by VA file number by Regional Office number. VA will then take necessary action to terminate compensation payments of any benefit recipient identified as being on active duty while receiving compensation pay after following the verification of procedures detailed in this agreement.

F. Inclusive Dates of the Matching Program: This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries: Director, Defense Privacy and Civil Liberties Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 2011–32071 Filed 12–13–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Acting 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 January 13, 2012.

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 emailed 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: December 9, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Pending.

Title of Collection: Evaluation of Response to Intervention Practices for Elementary School Reading (School and Staff Practices).

OMB Control Number: 1850—New.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 4,720.

Total Estimated Annual Burden Hours: 11,886.

Abstract: The Evaluation of Response to Intervention (RtI) Practices for Elementary School Reading will inform the National Assessment of Individuals With Disabilities Education Improvement Act of 2004, and the choices of districts and schools, by studying the implementation and impact of practices to identify and intervene early with struggling readers, and when needed, determine students' eligibility for special education. The Department seeks clearance for instruments to collect data for an in-depth study of the design, implementation, and impact of RtI programs.

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 4734. 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. 2011–32082 Filed 12–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–43–000.

Applicants: El Paso Marketing Company, L.L.C., Sherpa Acquisition, LLC.

Description: Application for authorization for disposition of jurisdictional facilities of El Paso Marketing Company, L.L.C., *et al.*

Filed Date: 12/5/11.

Accession Number: 20111205–5186.

Comments Due: 5 p.m. ET 12/27/11

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1414–001; ER11–1881–003; ER10–3166–001; ER11–1890–003; ER01–138–009; ER11–1882–003; ER10–1406–002; ER11–1883–003; ER11–1885–003; ER10–1416–002; ER11–1892–003; ER11–1886–003; ER11–1893–003; ER11–1887–003; ER11–1889–003; ER11–1894–003; ER10–1345–003; ER10–1343–003; ER10–1346–002; ER10–1348–002; ER11–2534–002.

Applicants: Burley Butte Wind Park, LLC, Cadillac Renewable Energy LLC, Camp Reed Wind Park, LLC, CPI Energy Services (US) LLC, CPIDC, Inc., Delta Person Limited Partnership, Frederickson Power L.P., Golden Valley Wind Park, LLC, Lake Cogen Ltd., ManChief Power Company LLC, Milner Dam Wind Park, LLC, Morris Cogeneration, LLC, Oregon Trail Wind Park, LLC, Pasco Cogen, Ltd., Payne's Ferry Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Salmon Falls Wind Park, LLC, Thousand Springs Wind Park, LLC, Tuana Gulch Wind Park, LLC, Yahoo Creek Wind Park, LLC, Auburndale Power Partners, Limited Partnership.

Description: Auburndale Power Partners, L.P., et al. Notice of Non-Material Change in Status and Request for Category 1 Seller Determination.

Filed Date: 12/5/11.

Accession Number: 20111205–5187.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–536–000.

Applicants: Pacific Gas and Electric Company.

Description: Western's Work Performance Agreement under PG&E Rate Schedule FERC No. 228 to be effective 12/9/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5121.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–537–000.

Applicants: Ohio Valley Electric Corporation.

Description: Transmission Planning Process (Attachment M) Compliance Filing to be effective 9/10/2010.

Filed Date: 12/5/11.

Accession Number: 20111205–5130.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–538–000.

Applicants: Southern California Edison Company.

Description: LGIA Antelope Valley Solar PV2 Project—Solar Star California XX, LLC to be effective 12/6/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5132.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–539–000.

Applicants: CPI Energy Services (US) LLC.

Description: Notice of Non-Material Change to be effective 2/3/2012.

Filed Date: 12/5/11.

Accession Number: 20111205–5133.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–540–000.

Applicants: CPIDC, Inc.

Description: Notice of Non-Material Change to be effective 2/3/2012.

Filed Date: 12/5/11

Accession Number: 20111205–5137.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–541–000.

Applicants: Frederickson Power L.P.

Description: Notice of Non-Material Change to be effective 2/3/2012.

Filed Date: 12/5/11.

Accession Number: 20111205–5142.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–542–000.

Applicants: Manchief Power Company LLC.

Description: Notice of Non-Material Change to be effective 2/3/2012.

Filed Date: 12/5/11.

Accession Number: 20111205–5146.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–543–000.

Applicants: Ethical Electric Benefit Co.

Description: Ethical Electric Benefit Co. Market Based Rate Filing—Clone to be effective 12/6/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5150.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–544–000.

Applicants: Morris Cogeneration, LLC.

Description: Notice of Non-Material Change to be effective 2/3/2012.
Filed Date: 12/5/11.
Accession Number: 20111205–5151.
Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–545–000.
Applicants: Lake Cogen, Ltd.
Description: Notice of Non-Material Change to be effective 2/3/2012.
Filed Date: 12/5/11.
Accession Number: 20111205–5152.
Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–546–000.
Applicants: Pasco Cogen, Ltd.
Description: Notice of Non-Material Change to be effective 2/3/2012.
Filed Date: 12/5/11.
Accession Number: 20111205–5153.
Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–547–000.
Applicants: Auburndale Power Partners, Limited Partnership.
Description: Notice of Non-Material Change to be effective 2/3/2012.
Filed Date: 12/5/11.
Accession Number: 20111205–5154.
Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–548–000.
Applicants: CP Energy Marketing (US) Inc.
Description: Request for Category 1 Status of CP Energy Marketing (US) Inc. to be effective 11/5/2011.
Filed Date: 12/5/11.
Accession Number: 20111205–5155.
Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–549–000.
Applicants: CPI USA North Carolina LLC.
Description: Request for Category 1 Seller Status of CPI USA North Carolina LLC to be effective 11/5/2011.
Filed Date: 12/5/11
Accession Number: 20111205–5156.
Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–550–000.
Applicants: Southwest Power Pool, Inc.
Description: Order No. 719 Compliance Filing—Docket Nos. ER09–1050, ER09–748, and ER09–1192 to be effective 12/5/2011.
Filed Date: 12/5/11.
Accession Number: 20111205–5161.
Comments Due: 5 p.m. ET 12/27/11.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 6, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31979 Filed 12–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–15–000]

Cameron LNG, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed BOG Liquefaction Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the BOG Liquefaction Project involving construction and operation of facilities by Cameron LNG, LLC (Cameron LNG) in Cameron Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. Please note that the scoping period will close on January 13, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Cameron LNG plans to construct and operate facilities necessary to liquefy boil-off gas (BOG) at its existing liquefied natural gas (LNG) terminal in Cameron Parish, Louisiana. According to Cameron LNG, the BOG Liquefaction Project would provide a more economical means of maintaining sufficient LNG in each of the terminal's storage tanks. Currently, BOG is sent out via delivery into the Cameron Interstate Pipeline.

The proposed BOG Liquefaction Project would consist of the following facilities:

- An electric-motor driven centrifugal refrigeration compressor;
- A cryogenic plate-fin heat exchanger;
- Ancillary aerial coolers, knockout vessels, pumps, and piping for the closed loop refrigeration cycle;
- Four small (less than 10,000 pounds each) pressure vessels for refrigerant;
- Interconnecting gas piping (4-inch-diameter) from the existing pipeline compressors to the liquefaction unit; and
- A single 3-inch-diameter interconnecting LNG line from the liquefaction unit back to the terminal's LNG return header.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The BOG Liquefaction Project would occupy an area approximately 1 acre in size wholly within the existing terminal and would not require any new land.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers an authorization of a project. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

proposed project under these general headings:

- Geology and soils;
- Land use;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. It will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before January 13, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP12–15–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the project docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP12–15). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31938 Filed 12–13–11; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, part 1501.6.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–543–000]

Ethical Electric Benefit Co.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ethical Electric Benefit Co.'s application for market-based rate authority, with an accompanying rate tariff, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31978 Filed 12–13–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9329–2]

Access to Confidential Business Information by Guident Technologies, Inc. and Subcontractor, Impact Innovations Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Guident Technologies, Inc. of Herndon, VA and subcontractor, Impact Innovations Systems, Inc. of Manassas, VA to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur on or about November 23, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–35F–0799M, Order Number EP–B12D–00005, contractor Guident Technologies, Inc. of 198 Van Buren Street, Herndon VA; and subcontractor, Impact Innovations Systems, Inc. of 9720 Capital Court, Suite 403, Manassas, VA will assist the Office of Pollution Prevention and Toxics (OPPT) by developing/modifying the scanning capability for MTS Phase 1 and Phase 2. Development will be transferred (Captiva) from the development environment to the EPA confidential business environment. They will also provide maintenance support of production-level CBITS application. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–0799M, Order Number EP–B12D–00005, Guident and Impact Innovations will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Guident and Impact Innovations Systems, Inc.'s personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Guident and Impact Innovations access to these CBI materials on a need-to-

know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until November 9, 2012. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Guident and Impact Innovations Systems, Inc.'s personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: December 1, 2011.

Matthew G. Leopard,

Director,

Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–31826 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9329–1]

Access to Confidential Business Information by CGI Federal, Inc. and Subcontractor, Innovate, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, CGI Federal Inc. (CGI) of Fairfax, VA, and subcontractor, Innovate, Inc. of Alexandria, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur on or about November 23, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–35F–4797H, Task Order Number EP–G11D–00168, contractor CGI of 12601 Fair Lakes Circle, Fairfax, VA, and subcontractor, Innovate, Inc. of 5835 Valley View Drive, Alexandria, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) by conducting routine system administration (SA) and database administration (DBA) as required to support OPPT computer applications, OPPT staff, and their development staff. Specific types of duties will be configuration changes, assistance in backups/restoration of data, installation of operating systems maintenance, database maintenance, troubleshooting problems, and security fixes. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–4797H, Task Order Number EP–G11D–00168, CGI and subcontractor, Innovate, Inc. will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CGI and Innovate, Inc.'s personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CGI and Innovate, Inc. access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and the Research Triangle Park facilities in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until September 30, 2016. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CGI and Innovate, Inc.'s personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: December 1, 2011.

Matthew G. Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–31647 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9327–8]

Agency Information Collection Activities; Proposed Renewal of Several Currently Approved Collections; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit requests to renew several currently approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICRs are specifically identified in this document by their corresponding titles, EPA ICR numbers, OMB Control numbers, and related docket identification (ID) numbers. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection activities.

DATES: Comments must be received on or before February 13, 2012.

ADDRESSES: Submit your comments, identified by the docket ID number for the corresponding ICR as identified in this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number for the corresponding ICR as identified in this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the 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 docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rame Cromwell, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–9068; *fax number:* (703) 308–5884; *email address: cromwell.rame@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates 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.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What do I need to know about PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

Under PRA, *burden* means the total time, effort, or financial resources expended by persons to generate,

maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

IV. Which ICRs are being renewed?

EPA is planning to submit a number of currently approved ICRs to OMB for review and approval under PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The Supporting Statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

A. Docket ID Number EPA–HQ–OPP–2011–0737

Title: Application and Summary Report for an Emergency Exemption for Pesticides.

ICR numbers: EPA ICR No. 0596.10, OMB Control No. 2070–0032.

ICR status: The approval for this ICR is scheduled to expire on July 31, 2012.

Affected entities: Entities potentially affected by this ICR include Administration of Environmental Quality Programs, subsector groups, or government establishments primarily engaged in the administration of environmental quality.

Abstract: This Information Collection Request (ICR) is a renewal of an existing ICR that is currently approved by OMB and is due to expire July 31, 2012. Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to grant emergency exemptions to states and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist. A section 18 action arises when growers and others encounter a pest problem on a site for which there is either no registered pesticide available, or for which there is a registered pesticide that would be effective but is not yet approved for use on that particular site. Section 18 also allows EPA to grant unregistered pesticide use exemptions for public health and quarantine reasons.

Most requests for emergency exemptions are made by state lead agricultural agencies, although agencies such as the United States Departments of Agriculture (USDA), Defense (DOD) and Interior (USDI) also request exemptions. This process is generally initiated when growers in particular regions identify an urgent, non-routine situation which registered pesticides will not alleviate. The growers contact their state lead agency (usually a state's department of agriculture) and request that the state agency apply to EPA for a section 18 emergency exemption for a particular use. The state agency evaluates the requests and submits requests to EPA for emergency exemptions they believe are warranted. The uses are requested for a limited period of time to address the emergency situation only.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15,741 for state government applicants for FIFRA section 18 program. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 60.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 2–3.

Estimated total annual burden hours: 15,741 hours.

Estimated total annual costs: $917,993. This is the estimated burden cost; there is no cost for capital investment or maintenance and operational costs in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall decrease of 33,759 hours in the total estimated respondent burden identified in the currently approved ICR. The total annual respondent burden cost has decreased due to a change in the average number of section 18s requested per year from 494 to 159. For the next renewal cycle the Agency projects it will receive approximately 159 section 18 applications each year over the next three years. The Agency believes that respondents will experience some burden reduction over the next three years due to the streamlined recertification process for section 18 applications.

B. Docket ID Number EPA–HQ–OPP–2011–0843

Title: Notice of Arrival of Pesticides and Devices under Section 17(c) of FIFRA.

ICR numbers: EPA ICR No. 0152.10, OMB Control No. 2070–0020.

ICR status: The approval for this ICR is scheduled to expire on August 31, 2012.

Affected entities: Entities potentially affected by this ICR are individuals or entities that import pesticides into the United States. The North American Industrial Classification System (NAICS) codes assigned to the parties responding to this information collection include NAICS code 236220 (commercial and institutional building construction), sector 11 (agriculture, forestry, fishing, and hunting), and sector 42 (wholesale trade). The majority of responses come from entities that fall under NAICS code 325300 (pesticide and other agricultural chemical manufacturing).

Abstract: The Customs and Border Protection (CBP) regulations at 19 CFR 12.112 require that an importer desiring to import a pesticide or device into the United States shall, prior to the shipment's arrival in the United States, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA. EPA Form 3540–1 requires the identification and contact information of parties involved in the importation of the pesticide or device and information on the identity of the imported pesticide or device shipment. EPA will review the form and indicate the disposition of the shipment upon its arrival in the United States. Upon completing Form 3540–1, EPA returns the form to the importer of record or authorized agent, who must present the form to CBP upon arrival of the shipment at the port of entry. This is necessary to ensure that EPA is notified of the arrival of pesticides and devices as required under the FIFRA section 17(c), and that EPA has the ability to examine such shipments to determine compliance with FIFRA. Upon the arrival of the shipment, the importer presents the completed notice of arrival (NOA) to the CBP District Director at the port of entry. CBP compares entry documents for the shipment with the NOA and notifies the EPA regional office of any discrepancies.

During this renewal of this information collection, EPA proposes to amend Form 3540–1. The proposed amendments clarify the instructions for completing the form, revise the data items, and update the terminology used on the form to be consistent with those

used by CBP. In addition, EPA is capturing the burden of providing supplemental information submitted with Form 3540–1 to the Agency by most importers on a voluntary basis.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.43 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 28,000.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 12,040 hours.

Estimated total annual costs: $685,146. This is the estimated burden cost; there is no cost for capital investment or maintenance and operational costs in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall increase of 4,540 hours in the total estimated respondent burden identified in the currently approved ICR. This increase is a result of an increase in the annual number of NOAs submitted and an increase in the burden hours per response. The annual number of NOAs submitted to EPA increased from 25,000 to 28,000. The average burden hours per response will change from 0.3 hours for the previous ICR renewal to 0.43 hours for this ICR renewal. This change in burden hours per response is a result of changes to the data items on Form 3450–1, as well as an accounting of the burden of voluntarily submitting certain information. Specifically, this burden estimate accounts for the new burdens related to providing information for the telephone numbers and email addresses of the shipper, importer of record, licensed broker, and ultimate consignee when supplying name and address information, and that the complete address, including telephone and email address, of the carrier be provided. In addition, EPA is accounting for the burden of voluntarily providing active ingredients and percentage of each, supporting documentation for registered and unregistered pesticides, as well as intended use information for unregistered pesticides. This change is an adjustment.

C. Docket ID Number EPA–HQ–OPP–2011–0886

Title: Application for New and Amended Pesticide Registration.

ICR numbers: EPA ICR No. 0277.16, OMB Control No. 2070–0060.

ICR status: The approval for this ICR is scheduled to expire on July 31, 2012.

Affected entities: Entities potentially affected by this ICR are individuals or entities engaged in activities related to the registration of pesticide products. The NAICS code assigned to the entities responding to this information is 325300 (pesticide and other agricultural and chemical manufacturing).

Abstract: This ICR renewal will allow EPA to collect necessary data to evaluate an application of a pesticide product as required under section 3 of FIFRA, and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of August 3, 1996. Under FIFRA, EPA must evaluate pesticides thoroughly before they can be marketed and used in the United States, to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or ''registration'' which permits their distribution, sale, and use according to requirements set by EPA to protect human health and the environment. The producer of the pesticide must provide data from tests done according to EPA guidelines or other test methods that provide acceptable data. These tests must determine whether a pesticide has the potential to cause adverse effects on humans, wildlife, fish and plants, including endangered species and non-target organisms, as well as possible contamination of surface water or groundwater from leaching, runoff and spray drift. EPA also must approve the language that appears on each pesticide label. A pesticide product can only be used according to the directions on the labeling accompanying it at the time of sale, through its use and disposal.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range from 14 hours to 840 hours, depending upon the type of response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,758.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 55,412 hours.

Estimated total annual costs: $4,101,100. This is the estimated burden cost; there is no cost for capital investment or maintenance and operational costs in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall decrease of 20,768 hours in the total estimated respondent burden identified in the currently approved ICR. This decrease reflects fewer expected responses across all response types. The reduction in EPA's response estimate is primarily from a reduction in ''Type B'' activities, which include amendments and notifications, in the Antimicrobial Division. Based on experience over the past three years, the Agency has reduced the number of responses to reflect estimates closer to actual number of responses. In addition, due to some industry consolidation and based on registration maintenance fee data, EPA has identified 42 fewer ICR respondents. This change is an adjustment.

V. What is the Next Step in the Process for these ICRs?

EPA will consider the comments received and amend the individual ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of these ICRs to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about any of these ICRs or the approval process in general, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 7, 2011.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–32075 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0015 and EPA–HQ–OAR–2004–0016; FRL–9506–5]

Agency Information Collection Activities; Proposed Collections; Comment Request; State Operating Permit Program (Renewal) and Federal Operating Permit Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit a request to renew two existing approved Information Collection Requests (ICR) to the Office of Management and Budget (OMB). The two ICRs are scheduled to expire on April 30, 2012. Before submitting the two ICRs to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before February 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0015 (for the part 70 state program) or Docket ID No. EPA–HQ–OAR–2004–0016 (for the part 71 Federal program), by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Attention: Docket ID No. EPA–HQ–OAR–2004–0015 (for Part 70) or Docket ID No. EPA–HQ–OAR–2004–0016 (for Part 71). Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. 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–HQ–OAR–2004–0015 for the ICR renewal for the part 70 state permitting program or EPA–HQ–OAR–2004–0016 for the ICR renewal for the part 71 Federal (EPA) permitting program. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3195; fax number: (919) 541–5509; email address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for the Part 70 ICR renewal under Docket ID No. EPA–HQ–OAR–2004–0015 and a public docket for the Part 71 ICR renewal under Docket ID No. EPA–HQ–OAR–2004–0016, which are available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is the EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity does this apply to?

Affected entities: Entities potentially affected by this action are those which

must apply for and obtain an operating permit under title V of the Clean Air Act (Act). These, in general, include sources which are defined as ''major'' under any title of the Act.

Title: Part 70 State Operating Permit Program (Renewal) and Part 71 Federal Operating Permit Program (Renewal).

ICR number: For the Part 70 regulations, EPA ICR No. 1587.12 and OMB Control No. 2060–0243. For the Part 71 regulations, EPA ICR No. 1713.10 and OMB Control No. 2060–0336.

ICR status: The two ICRs are both scheduled to expire on April 30, 2012.

Abstract: Title V of the Act requires states to develop and implement a program for issuing operating permits to all sources that fall under any Act definition of ''major'' and certain other non-major sources that are subject to federal air quality regulations. The Act further requires the EPA to develop regulations that establish the minimum requirements for those state operating permits programs, to oversee implementation of the state programs, and to operate a federal operating permits program in areas not subject to an approved state program. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA regulations setting forth requirements for the state operating permit program are at 40 CFR part 70 and the EPA regulations setting forth the requirements for the federal (EPA) operating permit program are at 40 CFR part 71. The part 70 program is designed to be implemented primarily by state and local permitting authorities in all areas where they have jurisdiction. The part 71 program is designed to be implemented primarily by the EPA in all areas where state and local agencies do not have jurisdiction, such as Indian Country and offshore beyond states' seaward boundaries.

In order to receive an operating permit for a major or other source subject to either of the permitting programs, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory requirements. Specific activities and requirements are listed and described in the Supporting Statements for the two ICRs.

State and local agencies under part 70 and the EPA (or a delegate agency) under part 71 review permit applications, provide for public review of proposed permits, issue permits based on consideration of all technical factors and public input, and review information submittals required of sources during the term of the permit. Also, under part 70, the EPA reviews certain actions of the state and local agencies and provides oversight of the programs to ensure that they are being adequately implemented and enforced. Under part 71, the EPA reviews certain actions and performs oversight for any delegate agency, consistent with the terms of a delegation agreement. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for Federal, state, and local permitting agencies to adequately review the permit applications and thereby properly administer and manage the program.

Since the previous renewal of this ICR, the EPA has promulgated two changes to the part 70 and 71 regulations: the Flexible Air Permits rule and the Greenhouse Gas (GHG) Tailoring rule. The first rule provides a mechanism for sources to establish provisions in their operating permits that result in fewer permit revisions necessary during the term of the permit. The second rule establishes levels where GHG emissions trigger permitting requirements. The information collection requirements for these regulatory revisions were approved by OMB after the approval of the 2007 ICR renewal and those approved changes are included and updated in these ICR renewals. Also, the previous part 71 ICR renewal identifed the EPA as the sole permitting authority, while this part 71 renewal identifies the EPA and one delegate agency, the Navajo Nation, as permitting authorities (the EPA continues to serve as a permitting authority in all areas, while the delegate agency serves as a permitting authority in a limited portion of Indian country).

Information that is collected is handled according to the EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2). See also section 114(c) of the Act.

Burden Statement: Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for the collection of information under parts 70 and part 71 is broken down as follows:

Type of permit action	Part 70	Part 71
Permitting Authority:		
Number of Sources	15,940	174
Burden Hours per Response:		
Sources	250	215
Permitting Authority	84	94
Total Annual Burden Hours:		
Sources	3,977,118	37,413
Permitting Authority	1,334,766	1,318 [a]

Any minor discrepencies are due to rounding.

[a] Only delegate agency burden is shown for part 71.

Respondents/Affected Entities: Industrial plants (sources); state, local, and tribal permitting authorities.

Estimated Number of Respondents: For part 70, there are 15,940 sources and 112 state and local permitting authorities. For part 71, there are 174 industry sources and 1 tribal delegate permitting authority (the EPA serves as

a permitting authority but is not a respondent).

Estimated Total Annual Burden: For part 70, the total annual burden for sources and state and local permitting authorities is 5,311,884 hours and the total annual cost is $226,736,622. For part 71, the total annual burden for sources and the one delegate agency (tribal) is 38,731 hours and the total annual cost is $1,865,183.

Are there changes in the estimates from the last approval?

Since the last renewal of the part 70 ICR (in 2007), there is a decrease of 214 thousand hours (or about a 4 percent decrease) of annual respondent burden. This change is primarily due to an updated estimate of the number of permits expected compared to the last ICR renewal. To a lesser extent, this decrease is due to reduced permit renewal activity related to implementation of the Flexible Permits rule. Although the GHG Tailoring rule increased the number of source respondents by 552, the increase in burden was more than offset by the decrease in burden from the updated estimate of the number of permits and the decreased burden from the implementation of the Flexible Air Permits rule. Also, the annual per respondent burden has changed very little since the last part 70 ICR renewal (248 hours previously compared to the new estimate of 250 hours or about a 1 percent increase).

Since the last renewal of the part 71 ICR (in 2007), there is an increase of 10 thousand hours of total annual respondent burden (about a 36 percent increase). This is primarily due to an updated estimate of the number of permits expected (123 permits in the prior renewal versus 174 permits in this renewal or a 42 percent increase), which is due to increased energy development (oil and gas exploration and alternative energy development) in offshore areas under the EPA jurisdiction. In the current part 71 renewal, the Flexible Air Permits rule and the GHG Tailoring rule result in nearly offseting decreases and increases in burden. Also, even though the total annual burden has increased compared to the prior ICR renewal, the annual per source burden has decreased by about 3 percent.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: December 8, 2011.

Mary E. Henigin,

Acting Office Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–32062 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0218; FRL–9501–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Metallic Mineral Processing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 13, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0218, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822IT, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0218, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Metallic Mineral Processing Plants (Renewal).

ICR Numbers: EPA ICR Number 0982.10, OMB Control Number 2060–0016.

ICR Status: This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for

Metallic Mineral Processing Plants (40 CFR part 60, subpart LL) were promulgated on February 21, 1984, and amended on October 17, 2000. This NSPS affects both owners and operators of metallic mineral processing plants.

Owners and operators must conduct initial performance tests, maintain records of startups, shutdowns, malfunctions, and continuous monitoring system parameters, and submit semiannual reports. These notifications, reports, and records are essential in determining compliance; and, in general, are required of all sources subject to NSPS.

Notifications are to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operating, and that the standards are being met. Performance test reports are required as these are the Agency's records of a source's initial capability to comply with the emission standards and to serve as a record of the operating conditions under which compliance are to be achieved. The information generated by monitoring, recordkeeping, and reporting requirements described in this ICR are used by the Agency to ensure that facilities affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart LL, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Metallic mineral processing plants.

Estimated Number of Respondents: 20.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 2,306.

Estimated Total Annual Cost: $233,712, which includes $220,712 in labor costs, no capital/startup costs, and $13,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours to the respondents in this ICR compared to the previous ICR. After consulting the Office of Air Quality Planning and Standards (OAQPS) and trade associations, our data indicates that there are approximately 20 sources subject to the rule, with no additional new sources over the next three years.

However, there is an increase in the estimated burden cost as currently identified in the OMB Inventory of approved Burdens. The increase is not due to any program changes, but the change in burden is due to the use of the most updated labor rates.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32088 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0220; FRL–9326–5]

Dicofol; Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of products containing dicofol, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a June 22, 2011 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel these product registrations. These are the last products containing this pesticide registered for use in the United States. In the June 22, 2011 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order. 11P–1531

DATES: The cancellation of the technical dicofol product is effective December 14, 2011. The cancellations of the end use registrations are effective October 31, 2013.

FOR FURTHER INFORMATION CONTACT: Susan M. Bartow, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; email address: *bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0220. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only

available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr. Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces the cancellation of dicofol products, as requested by registrants, pursuant to section 6(f) of FIFRA. These registrations are listed in sequence by registration number in Table 1 and Table 2 of this unit.

TABLE 1—DICOFOL TECHNICAL PRODUCT CANCELLATION

EPA registration No.	Product name
11603–26	Mitigan (Dicofol) Technical.

TABLE 2—DICOFOL END USE PRODUCT CANCELLATIONS

EPA registration No.	Product name
66222–21	MANA Dicofol 4E.
66222–56	Dicofol 4E.
66222–95	Dicofol 50WSB.

Table 3 of this unit includes the names and addresses of record for all registrants of the products listed in Tables 1 and 2 of this unit, in sequence by EPA company number.

TABLE 3—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
11603	Agan Chemical Manufacturing Ltd, 4515 Falls of Neuse Rd. Suite 300, Raleigh, NC 27609.
66222	Makhteshim Agan of North America, Inc, 4515 Falls of Neuse Rd. Suite 300, Raleigh, NC 27609.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the June 22, 2011 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Tables 1 and 2 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations and amendments to terminate the uses of dicofol registrations identified in Tables 1 and 2 of Unit II. Accordingly, the cancellation of the technical dicofol product is effective immediately. The cancellation of the end use registrations is effective October 31, 2013. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on June 22, 2011 (76 FR 36535) (FRL–8875–7). The comment period closed on July 22, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows:

a. Sale, distribution and use of the technical dicofol is prohibited, except: Registrants of dicofol end-use products shall be allowed to reformulate existing stocks of dicofol technical into products identified in Table 2 of Unit II, until October 31, 2013, or for products intended for export consistent with the requirements of FIFRA section 17 or for purposes of proper disposal.

b. Sale and distribution by registrants of end use products after October 31, 2013 is prohibited except for export consistent with the requirements of FIFRA section 17 or for purposes of proper disposal.

c. Sale and distribution of end use products by persons other than registrants is permitted until December 31, 2013. Thereafter, sale and distribution of end use products by persons other than registrants is prohibited except for export consistent with the requirements of FIFRA section 17 or for purposes of proper disposal.

d. Use of existing stocks of any end-use product consistent with the terms of the previously approved labeling on, or accompanied by, the deleted products identified shall be allowed until October 31, 2016, and thereafter, only for the purposes of proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 6, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–31987 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0953; FRL–9506–6]

Human Studies Review Board; Notification of a Public Teleconference

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The EPA Office of the Science Advisor announces a public teleconference of the HSRB to discuss its draft report from the October 19–20, 2011 HSRB meeting.

DATES: The teleconference will be held on Wednesday, January 11, 2012 from approximately 1 p.m. to approximately 4 p.m. Eastern Time. Comments may be submitted on or before Wednesday, January 4, 2012.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2011–0953, by one of the following methods:

Internet: http://www.regulations.gov: Follow the Web site instructions for submitting comments.

Email: ORD.Docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center EPA/DC, ORD Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m.

Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available online at *http://www.epa.gov/epahome/dockets.htm.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0953. The Agency'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 comments includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Any members of the public who wish to receive further information should contact Jim Downing on telephone number (202) 564–2468; fax (202) 564–2070; email address *downing.jim@epa.gov* or Lu-Ann Kleibacker on telephone number (202) 564–7189; *fax:* (202) 564–2070; email address *kleibacker.lu-ann@epa.gov;* mailing address Environmental Protection Agency, Office of the Science Advisor, Mail Code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb.*

SUPPLEMENTARY INFORMATION:

Location: The meeting will take place via telephone only.

Meeting access: For information on access or services for individuals with disabilities, please contact Lu-Ann Kleibacker at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for providing public input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in section I, ''Public Meeting,'' under subsection D, ''How May I Participate in this Meeting?'' of this notice.

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

You may use *http://www.regulations.gov,* or you may access this **Federal Register** document via the EPA's Internet site under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460; its hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744, or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates regarding the Public Reading Room access are available at *http://www.epa.gov/epahome/dockets.htm.*

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data used that support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by the EPA, it is imperative that you identify Docket ID No. EPA–HQ–ORD–2011–0953 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to and including Wednesday, January 4, 2012. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments during the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing or Lu-Ann Kleibacker under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Wednesday, January 4, 2012, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an

appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Please submit written comments prior to the meeting. For the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, Wednesday, January 4, 2012. You should submit your comments using the instructions in section I, under subsection C, ''What Should I Consider as I Prepare My Comments for EPA?'' In addition, the Agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the EPA Science Advisor.

1. *Topics for Discussion.* The HSRB will be reviewing its draft report from the October 19–20, 2011, HSRB meeting. The Board may also discuss planning for future HSRB meetings. Background on the October 19–20, 2011 HSRB meeting can be found at the HSRB Web site: *http://www.epa.gov/osa/hsrb*. The October 19–20, 2011 meeting draft report is now available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from regulations.gov Web site and the HSRB Web site at *http://www.epa.gov/osa/hsrb*. For questions on document availability or if you do not have Internet access, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov*. In addition, information regarding the Board's final meeting report will be found at *http://www.epa.gov/osa/hsrb* or from the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 7, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–32060 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9506–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Murphy Oil USA, Inc., Meraux Refinery in St. Bernard Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit (Permit Number 2500–00001–V5) issued by the Louisiana Department of Environmental Quality (LDEQ). Specifically, the Administrator has granted in part and denied in part the December 10, 2009 petition, submitted by Tulane Environmental Law Clinic on behalf of Concerned Citizens Around Murphy (Petitioners). The petition asked the Administrator to object to the October 15, 2009 operating permit that LDEQ issued to Murphy Oil, USA, Inc. (Murphy Oil) for the Meraux Refinery. Pursuant to sections 307(b) and 505(b)(2) of the Clean Air Act (CAA), a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue Dallas, Texas 75202–2733.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally the final order for the Murphy Oil, Meraux Refinery is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/murphy_response2011.pdf.*

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza at (214) 665–7340, email address *braganza.bonnie@epa.gov,* or the above EPA, Region 6 address.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issue arose after this period.

EPA received a petition from the Petitioners dated December 10, 2009, requesting that EPA object to the issuance of the Title V operating permit to Murphy Oil, for the operation of the

Meraux Refinery in St. Bernard Parish, Louisiana for the following reasons: (1) Murphy Oil did not provide information sufficient to evaluate the source and its application and to determine applicable requirements; (2) the netting analysis fails to include emergency flaring emissions; (3) the project triggers NSR review for sulfur dioxide and volatile organic compounds; and (4) the netting analyses relies on limitations that are not practically enforceable.

On September 21, 2011, the Administrator issued an order granting in part and denying in part the petition. The order explains the reasons behind EPA's decisions.

Dated: December 5, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–32061 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9506–4]

Regulation of Fuel and Fuel Additives: Modification to Octamix Waiver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 1, 1988, the Environmental Protection Agency (EPA) conditionally granted a waiver requested by the Texas Methanol Corporation (Texas Methanol) for a gasoline-alcohol fuel, pursuant to section 211(f) of the Clean Air Act.[1] A minor correction was made on May 12, 1988.[2] A modification to the original conditions was made on October 21, 1988.[3] Spirit of 21st Century LLC submitted a request to modify the waiver. The new request seeks approval on an alternative corrosion inhibitor, TXCeed, to be used within Texas Methanol's gasoline-alcohol fuel, also known as OCTAMIX. EPA considers this to be a request for modification of the waiver under 211(f) of the Clean Air Act (Act).

DATES: Comments or a request for a public hearing must be received on or before January 13, 2012. EPA does not plan to hold a public hearing on this notice, unless one is requested. If requested by December 29, 2011, a public hearing will be held. If such a hearing is held, comments must be received within 90 days after the date of such hearing.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2011–0893, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* ''EPA–HQ–OAR–2011–0893, Environmental Protection Agency, Mailcode: 2822T, 1301 Constitution Ave. NW., Washington, DC 20460.''
- *Hand Delivery:* EPA Headquarters Library, Room 3334, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–OAR–2011–0893. EPA's policy is that 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit 1.B of the **SUPPLEMENTARY INFORMATION** section of this document: *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA Headquarters Library, Mail Code: 2822T, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1742, and the facsimile number for the Air Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For information regarding this proposal contact, Joseph R. Sopata, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality, (202) 343–9034.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (''CAA'' or ''the Act'') makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. The Environmental Protection Agency (''EPA'' or ''the Agency'') last issued an interpretive rule on the phrase ''substantially similar'' at 73 FR 22281 (April 25, 2008). Generally speaking, this interpretive rule describes the types of unleaded gasoline that are likely to be considered ''substantially similar'' to the unleaded gasoline utilized in EPA's certification program by placing limits on a gasoline's chemical composition as well as its physical properties, including the amount of alcohols and ethers (oxygenates) that may be added to gasoline. Fuels that are found to be ''substantially similar'' to EPA's certification fuels may be registered and introduced into commerce. The current ''substantially similar'' interpretive rule for unleaded gasoline allows oxygen content up to 2.7 weight for certain ethers and alcohols.

[1] 53 FR 3636, February 8, 1988.

[2] 53 FR 17977, May 19, 1988.

[3] 53 FR 43768, October 28, 1988.

Section 211(f)(4) of the Act provides that upon application of any fuel or fuel additive manufacturer, the Administrator may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that the fuel or fuel additive, or a specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to sections 206 and 213(a) of the Act. The statute requires that the Administrator shall take final action to grant or deny an application after public notice and comment, within 270 days of receipt of the application.

The Texas Methanol Corporation received a waiver under CAA section 211(f)(4) for a gasoline-alcohol fuel blend, known as OCTAMIX,[4] provided that the resultant fuel is composed of a maximum of 3.7 percent by weight fuel oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume co-solvents [5] and 42.7 milligrams per liter (mg/l) of Petrolite TOLAD MFA–10 corrosion inhibitor [6]. In the OCTAMIX waiver, the Agency invited other corrosion inhibitor manufacturers to submit test data to establish, on a case-by-case basis, whether their fuel additive formulations are acceptable as alternatives to TOLAD MFA–10.[7]

II. Today's Announcement

On March 23, 2011, Spirit of 21st Century LLC requested EPA allow the use of its alternative corrosion inhibitor, TXCeed, in the OCTAMIX gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver.[8] Spirit of 21st Century LLC subsequently followed up its March 23rd request with additional information on May 17, 2011 and August 15, 2011.[9] [10] TXCeed is a fuel additive formulation consisting of a corrosion inhibitor. The physical properties of TXCeed are shown in Docket ID Number EPA–HQ–OAR–2011–0893.

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility data could show a potential failure of fuel systems, emissions related parts and emission control parts from use of the fuel or fuel additive. Any failure could result in greater emissions that would cause or contribute to the engines or vehicles exceeding their emissions standards. Initially, Texas Methanol requested the use of TOLAD MFA–10 or an appropriate concentration of any other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineer's TM–01–72 (NACE RUST TEST). However, EPA concluded that compliance with the NACE Rust Test alone was not adequate in determining suitability of a corrosion inhibitor for use under the OCTAMIX waiver.[11] The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation would be acceptable as an alternative to the formulation of the original corrosion inhibitor used in the OCTAMIX waiver.[12]

Therefore, pursuant to section 211(f)(4), EPA will examine the data submitted by Spirit of 21st Century LLC, along with all comments received from interested parties, to determine whether use of the corrosion inhibitor, TXCeed, in place of the original corrosion inhibitor TOLAD MFA–10, would cause or contribute to vehicles or engines failing to meet their emissions standards when using OCTAMIX. If use of TXCeed does not cause or contribute to such failures, EPA will modify the OCTAMIX waiver to allow the use of TXCeed as an alternative corrosion inhibitor to TOLAD MFA–10.

Dated: December 7, 2011.

Gina McCarthy,

Assistant Administrator.

[FR Doc. 2011–32056 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

[4] OCTAMIX decision, 53 FR 3636 (February 8, 1988).

[5] The co-solvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols with the following constraints; the ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 percent by weight of the co-solvent mixture; a maximum limit of 40 percent by weight of the co-solvents mixture is placed on the pentanols, hexanols, heptanols and octanols; and the heptanols and octanols are limited to 5 percent by weight of the co-solvent mixture.

[6] Additional conditions were the final fuel must meet ASTM volatility specifications contained in ASTM D439–85a, as well as phase separation conditions specified in ASTM D–2 Proposal P–176 and Texas Methanol alcohol purity specifications.

[7] 53 FR at 3637.

[8] EPA–HQ–OAR–2011–0893–01.

[9] EPA–HQ–OAR–2011–0893–02.

[10] EPA–HQ–OAR–2011–0893–03.

[11] 53 FR at 3637.

[12] 53 FR at 3637.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9506–7; Docket ID No. EPA–HQ–ORD–2011–0895]

Draft Research Report: Investigation of Ground Water Contamination Near Pavillion, Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 45-day public comment period for the external review of the draft research report titled, ''Investigation of Ground Water Contamination near Pavillion, Wyoming.'' The draft research report was prepared by the National Risk Management Research Laboratory (NRMRL), within the EPA Office of Research and Development (ORD), and EPA Region 8. EPA is releasing this draft research report solely for the purpose of pre-dissemination peer review. This draft research report has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. Eastern Research Group, Inc. (ERG), an EPA contractor for external peer review, will convene an independent panel of experts for peer review of this draft research report. Public comments submitted during the public comment period will be made available to the peer review panel for consideration in their review. In preparing a final report, EPA will consider the recommendations of the peer review panel.

DATES: The public comment period begins December 14, 2011, and ends January 27, 2011. Comments should be submitted to the docket or received in writing by EPA by January 27, 2011.

ADDRESSES: The draft ''Investigation of Ground Water Contamination near Pavillion, Wyoming'' is available via the Internet on the EPA Region 8 home page under the Key Issues menu, Pavillion Groundwater Investigation at *http://www.epa.gov/region8/superfund/wy/pavillion/.*

Comments may be submitted electronically via *http://www.regulations.gov,* by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

Additional Information: For information on the docket, *http://www.regulations.gov,* or the public comment period, please contact the

Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 566–1752; facsimile: (202) 566–1753; or email: *ORD.Docket@epa.gov.*

For information on the draft research report, please contact Rebecca Foster, U.S. Environmental Protection Agency, P.O. Box 1198, Ada, OK 74821; telephone: (580) 436–8750; facsimile: (580) 436–8529; or email: *foster.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About Pavillion Ground Water Investigation

Pavillion, Wyoming is located in Fremont County, about 20 miles northwest of Riverton. The concern at the site is potential ground water contamination, based on resident complaints about smells, tastes, and adverse changes in the quality of the water in their domestic wells. In collaboration with ORD, Region 8 has been conducting a ground water investigation. The purpose of this ground water investigation is to better understand the basic ground water hydrology and how the constituents of concern may be occurring in the aquifer. More information is available at *http://www.epa.gov/region8/superfund/wy/pavillion/.*

II. How To Submit Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0895, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov.*
- *Facsimile:* (202) 566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The telephone number is (202) 566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0895. Please ensure that your comments are submitted within the specified comment period. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send email comments directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 5, 2011.

Cynthia Sonich-Mullin,

Director, National Risk Management Research Laboratory.

[FR Doc. 2011–32064 Filed 12–13–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Tuesday, December 13, 2011

December 6, 2011.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, December 13, 2011. This meeting is scheduled to commence at 10:45 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item Nos.	Bureau	Subject
1	Media	*Title:* Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act (MB Docket No. 11–93) *Summary:* The Commission will consider a Report and Order that protects consumers by implementing the Commercial Advertisement Loudness Mitigation (CALM) Act to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany.
2	International	*Title:* Third Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services (IB Docket No. 09–16) and Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services (IB Docket No. 10–99)

Item Nos.	Bureau	Subject
		Summary: The Commission will consider the Third Report to the U.S. Congress on the status of competition in domestic and international satellite communications services as required by Section 703 of the Communications Satellite Act of 1962, as amended. The Report covers calendar years 2008, 2009 and 2010.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–(888) 835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2011–32193 Filed 12–12–11; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2011–17]

2012 Presidential Candidate Matching Fund Submission Dates and Post Date of Ineligibility Dates To Submit Statements of Net Outstanding Campaign Obligations

AGENCY: Federal Election Commission.

ACTION: Notice of matching fund submission dates and submission dates for statements of net outstanding campaign obligations for 2012 presidential candidates.

SUMMARY: The Federal Election Commission is publishing matching fund submission dates for publicly funded 2012 presidential primary candidates. Eligible candidates may present one submission and/or resubmission per month on the designated date. The Commission is also publishing the dates on which publicly funded 2012 presidential primary candidates must submit their statements of net outstanding campaign obligations (''NOCO statement'') after their dates of ineligibility (''DOI''). Candidates are required to submit a NOCO statement prior to each regularly scheduled date on which they receive federal matching funds, on dates set forth in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Mr. Marty Kuest, Audit Division, 999 E Street NW., Washington, DC 20463, (202) 694–1200 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Matching Fund Submissions

Presidential candidates eligible to receive federal matching funds may present submissions and/or resubmissions to the Federal Election Commission once a month on designated submission dates. The Commission will review the submissions/resubmissions and forward certifications for eligible candidates to the Secretary of Treasury. Because no payments can be made during 2011, submissions received during 2011 will be certified in late December 2011, for payment in 2012. 11 CFR 9036.2(c). Treasury Department regulations require that funds for the convention and general election grants be set aside before any matching fund payments are made. Information provided by the Treasury Department shows the balance in the fund as of October 31, 2011 was $198,123,942 and the Commission estimates that funds will be available for matching payments in January 2012. During 2012 and 2013, certifications will be made on a monthly basis. The last date a candidate may make a submission is March 1, 2013.

The submission dates specified in the following list pertain to non-threshold matching fund submissions and resubmissions *after the candidate establishes eligibility.* The threshold submission on which that eligibility will be determined may be filed at any time and will be processed within fifteen business days, unless review of the threshold submission determines that eligibility has not been met.

NOCO Submissions

Under 11 CFR 9034.5, a candidate who received Federal matching funds must submit a NOCO statement to the Commission within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5. The candidate's net outstanding campaign obligations is equal to the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs less cash on hand, the fair market value of capital assets, and accounts receivable. 11 CFR 9034.5(a). Candidates will be notified of their DOI by the Commission.

A Candidate who has net outstanding campaign obligations post-DOI may continue to submit matching payment requests as long as the candidate certifies that the remaining net outstanding campaign obligations equal or exceed the amount submitted for matching. 11 CFR 9034.5(f)(1). If the candidate so certifies, the Commission will process the request and certify the appropriate amount of matching funds.

Candidates must also file revised NOCO statements in connection with each matching fund request submitted after the candidate's DOI. These statements are due just before the next regularly scheduled payment date, on a date to be determined by the Commission. They must reflect the financial status of the campaign as of the close of business three business days before the due date of the statement and must also contain a brief explanation of

each change in the committee's assets and obligations from the most recent NOCO statement. 11 CFR 9034.5(f)(2).

The Commission will review the revised NOCO statement and adjust the committee's certification to reflect any change in the committee's financial position that occurs after submission of the matching payment request and the date of the revised NOCO statement. The following schedule includes both matching fund submission dates and submission dates for revised NOCO statements.

SCHEDULE OF MATCHING FUND SUBMISSION DATES AND DATES TO SUBMIT REVISED STATEMENTS OF NET OUTSTANDING CAMPAIGN OBLIGATIONS (NOCO) FOR 2012 PRESIDENTIAL CANDIDATES

Matching fund submission dates	*Revised NOCO submission dates*
January 3, 2012	December 23, 2011.
February 1, 2012	January 25, 2012.
March 1, 2012	February 23, 2012.
April 2, 2012	March 26, 2012.
May 1, 2012	April 24, 2012.
June 1, 2012	May 24, 2012.
July 2, 2012	June 25, 2012.
August 1, 2012	July 25, 2012.
September 4, 2012	August 27, 2012.
October 1, 2012	September 24, 2012.
November 1, 2012	October 25, 2012.
December 3, 2012	November 26, 2012.
January 2, 2013	December 24, 2012.
February 1, 2013	January 25, 2013.
March 1, 2013	February 22, 2013.

On behalf of the Commission.

Dated: December 8, 2011.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–31996 Filed 12–13–11; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Draft NTP Technical Reports; Request for Comments; Announcement of a Public Meeting To Peer Review Draft NTP Technical Reports

AGENCY: National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health, HHS.

ACTION: Availability of Draft Reports; Request for Comments; and Announcement of a Public Meeting.

SUMMARY: The NTP announces the availability of seven draft NTP Technical Reports (TRs) tentatively scheduled for peer review by an NTP Technical Reports Peer-Review Panel at a meeting on February 8–9, 2012. The meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on the draft reports (see ''Request for Comments'' below). Information about this meeting, including draft reports and preliminary agenda, will be available on the NTP Web site (*http://ntp.niehs.nih.gov/go/36051*). Summary minutes from the peer review will be posted on the NTP Web site following the meeting.

DATES: The meeting will be held on February 8–9, 2012. The draft NTP TRs should be available for public comment by December 19, 2011. The deadline to submit written comments is January 25, 2012, and the deadline for pre-registration to attend the meeting and/or provide oral comments at the meeting is February 1, 2012.

ADDRESSES: The meeting will be held at the Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence on the draft TRs should be sent to Danica Andrews, Designated Federal Official, Office of Liaison, Policy and Review, Division of the NTP, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709, FAX: (919) 541–0295, or *andrewsda@niehs.nih.gov.* Courier address: 530 Davis Drive, Room 2136, Morrisville, NC 27560. Persons needing interpreting services in order to attend should contact (301) 402–8180 (voice) or (301) 435–1908 (TTY). Requests should be made at least five business days in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Danica Andrews, Designated Federal Official, (919) 541–2595, *andrewsda@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

The agenda topic is the peer review of the findings and conclusions of draft NTP TRs of toxicology and carcinogenesis studies in conventional or genetically modified rodent models. The preliminary agenda listing the draft reports and electronic files (PDF) of the draft reports should be available on the NTP Web site by December 19, 2011. Any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/36051*) or may be requested in hardcopy from the Designated Federal Official (see **ADDRESSES** above). Following the meeting, summary minutes will be prepared and made available on the NTP Web site. Information about the NTP testing program is found at *http://ntp.niehs.nih.gov/go/test.*

Attendance and Registration

The meeting is scheduled for February 8–9, 2012, from 8:30 a.m. EST to adjournment at approximately 4:30 p.m. on February 8 and approximately noon on February 9 and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/36051*) by February 1, 2012, to facilitate access to the NIEHS campus. A photo ID is required to access the NIEHS campus. The NTP is making plans to webcast the meeting at *http://www.niehs.nih.gov/news/video/live.* Registered attendees are encouraged to access the meeting page to stay abreast of the most current information regarding the meeting.

Request for Comments

The NTP invites written comments on the draft reports, which should be received by January 25, 2012, to enable review by the peer-review panel and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public input at this meeting is also invited, and time is set aside for the presentation of oral comments on the draft reports. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8 a.m. until adjournment on February 8 and 9, although public comments will be received only during the formal public comment period for each draft report. Each organization is allowed one time slot per draft report. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair. Persons wishing to make an oral presentation are asked to register via online registration at *http://ntp.niehs.nih.gov/go/36051,* phone, or email (see **ADDRESSES** above) by February 1, 2012, and if possible, to send a copy of the statement or talking points at that time to Ms. Andrews. Written statements can supplement and

may expand the oral presentation. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register on-site.

Background Information on NTP Panels

NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and to advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide a current curriculum vita to Ms. Andrews (see **ADDRESSES**). The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 7, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–32106 Filed 12–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on CYP2C19 Variants and Platelet Reactivity Tests

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of CYP2C19 variants and platelet reactivity tests. Scientific information is being solicited to inform our Comparative Effectiveness Review of Testing of CYP2C19 Variants and Platelet Reactivity for Guiding Antiplatelet Treatment, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before January 13, 2012.

ADDRESSES: *Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/.* Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: (503) 494–0147 or Email: *ehcsrcohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for testing of CYP2C19 variants and platelet reactivity for guiding antiplatelet treatment.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (*e.g.,* details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on CYP2C19 variants and platelet reactivity tests, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.AHRQ.gov/index.cfm/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=854#3962.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The Key Questions

Key Question 1

In patient populations who are candidates for clopidogrel therapy, does

genetic testing for CYP2C19 variants predict intermediate and clinical outcomes following treatment initiation?

a. What is the analytic validity (technical test performance) of the various assays used for CYP2C19 genetic testing?

b. What is the clinical validity (predictive accuracy) of genetic testing for predicting intermediate and clinical outcomes in patients who are receiving clopidogrel therapy?

c. Do the following factors modify the association between genetic test results and clinical outcomes?

i. Co-medications.

ii. Patient-level factors (*e.g.,* race or ethnicity, age, sex, disease severity, or comorbidities).

iii. Test-related factors (*e.g.,* between-assay differences).

iv. System-level factors (*e.g.,* settings where testing is performed).

Key Question 2

In patient populations receiving clopidogrel therapy, does phenotypic testing of platelet reactivity predict intermediate and clinical outcomes?

a. What is the analytic validity (technical test performance) of the various assays used in phenotypic testing of platelet reactivity?

b. What is the clinical validity (predictive accuracy) of phenotypic testing for predicting intermediate and clinical outcomes in patients who are receiving clopidogrel therapy?

c. Do the following factors modify the association between phenotypic test results and clinical outcomes?

i. Co-medications.

ii. Patient-level factors (*e.g.,* race or ethnicity, age, sex, disease severity, or comorbidities).

iii. Test-related factors (*e.g.,* between-assay differences).

iv. System-level factors (*e.g.,* settings where testing is performed).

Key Question 3

What is the comparative effectiveness of alternative test-and-treat strategies (including a no-testing strategy) for therapeutic decision making regarding antiplatelet therapy among patients who are candidates for clopidogrel-based treatment?

a. What is the comparative effectiveness of the following testing strategies on therapeutic decision making, platelet reactivity during followup, and clinical outcomes in patients who are candidates for antiplatelet treatment?

i. Genetic testing for CYP2C19.

ii. Genetic testing for CYP2C19 followed by phenotypic testing for platelet reactivity.

iii. Phenotypic testing for platelet reactivity.

iv. No testing.

b. How do modifying factors (*e.g.,* race or ethnicity, age, sex, comorbidities, diet, or the time between conducting the test and obtaining results) affect the association of alternative phenotypic or genetic test-and-treat strategies and patient outcomes? Alternative test-guided treatments can include non-clopidogrel antiplatelet agents or high-dose clopidogrel regimens.

Key Question 4

What are the potential adverse effects or harms from genetic or phenotypic testing per se or from test-directed treatments?

Dated: December 2, 2011.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2011–32047 Filed 12–13–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Intravascular Diagnostic and Imaging Medical Devices

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of intravascular diagnostic and imaging medical devices, including: Fractional Flow Reserve (FFR), Coronary Flow Reserve (CFR), Intravascular Ultrasound (IVUS), Intravascular Ultrasound (VH–IVUS) with Virtual Histology, Optical Coherent Tomography (OCT), Near-Infrared Spectroscopy (NIR), Angioscopy, Intravascular Magnetic Resonance Imaging (MRI), Elastrography, and Thermography. Scientific information is being solicited to inform our Comparative Effectiveness Review of Intravascular Diagnostic Procedures and Imaging Techniques versus Angiography Alone, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before January 13, 2012.

ADDRESSES:

Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/. Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: (503) 494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for intravascular diagnostic procedures and imaging techniques versus angiography alone.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on intravascular diagnostic and imaging medical devices, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=766#3456.*

This notice is a request for industry stakeholders to submit the following:

• A current product label, if applicable (preferably an electronic PDF file).

• Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.

• Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.

• Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law. The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

Key Questions

• Key Question 1: For patients undergoing diagnostic coronary angiography to evaluate the presence/extent of Coronary Artery Disease (CAD) in order to decide on the necessity for coronary intervention, what is the impact of using an IVDx technique—when compared to angiography alone—on the diagnostic thinking and therapeutic decision making, short-term outcomes, and long-term outcomes?

• Key Question 2: For patients undergoing Percutaneous Coronary Intervention (PCI), what is the impact of using an Intravascular Diagnostic Device (IVDx) technique to guide the PCI procedure (either immediately prior to or during the procedure)—when compared to angiography-guided PCI—on the diagnostic thinking and therapeutic decision making, short-term outcomes, and long-term outcomes?

• Key Question 3: For patients having just undergone a PCI, what is the impact of using an IVDx technique to evaluate the success of PCI immediately after the procedure—when compared to angiography alone—on the diagnostic thinking and therapeutic decision making, short-term outcomes, and long-term outcomes?

• Key Question 4: How do different IVDx techniques compare to each other in their effects on the diagnostic thinking and therapeutic decision making, short-term outcomes, and long-term outcomes?

• During diagnostic coronary angiography for the evaluation of the presence/extent of CAD and the potential necessity of coronary intervention?

• During PCI to guide the procedure?

• Immediately after PCI to evaluate the success of PCI?

• Key Question 5: What factors (e.g., patient/physician characteristics, availability of prior noninvasive testing, type of PCI performed) influence the effect of IVDx techniques—when compared to angiography (or among different IVDx techniques)—on the diagnostic thinking and therapeutic decision making, short-term outcomes, and long-term outcomes?

• During diagnostic coronary angiography for the evaluation of the presence/extent of CAD and the potential need for coronary intervention?

• During PCI to guide the procedure?

• Immediately after PCI to evaluate the success of PCI?

Dated: November 23, 2011.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2011–32048 Filed 12–13–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-12–12BW]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—new—Centers for Disease Control and Prevention (CDC), National Center on Birth Defects and Developmental Disabilities (NCBDDD).

As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the CDC has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

To request additional information, please contact Daniel L. Holcomb, Reports Clearance Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

This is a new collection of information. Respondents will be screened and selected from Individuals and Households, Businesses Organizations, and/or State, Local or Tribal Government. Below we provide CDC's projected average estimates for the next three years. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 18,667.

Type of collection	Average number of respondents per activity	Annual frequency per response	Average number of activities	Average hours per response
Online surveys, Surveys, Focus Groups	7,000	1	4	40/60

Dated: December 7, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–32027 Filed 12–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Financial Status Reporting Form for State Councils on Developmental Disabilities Program.

OMB No. 0980–0212.

Description

For the program of the State Councils on Developmental Disabilities, funds are awarded to State agencies contingent on fiscal requirements in subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–425, ordinarily mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. Consequently, the proposed streamlined from will substitute for the SF–425 and will allow compliance monitoring and proactive compliance maintenance and technical assistance.

Respondents

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Status Reporting Form for State Councils on Developmental Disabilities Program	55	3	5.10	841.5

Estimated Total Annual Burden Hours: 841.5.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *Email address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–32051 Filed 12–13–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0867]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study on the Public Display of Lists of Harmful and Potentially Harmful Tobacco Constituents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Experimental Study on the Public Display of the List of Harmful and Potentially Harmful Tobacco Constituents. This study is being conducted in support of the provision of the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) that requires FDA to publish in a format that is understandable and not misleading to a lay person and to place on public display the list of harmful and potentially harmful constituents (HPHCs) in tobacco products and tobacco smoke.

DATES: Submit either electronic or written comments on the collection of information by February 13, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–5156, *daniel.gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study on the Public Display of the List of Harmful and Potentially Harmful Tobacco Constituents (OMB Control Number—0910–New)

The Tobacco Control Act (Pub. L. 111–31) amends the Federal Food, Drug, and Cosmetic Act (FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco use by minors. Section 904(d)(1) of the FD&C Act states, ''Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list [of harmful or potentially harmful constituents] established under [section 904(e)]'' of the FD&C Act. Section 904(e) of the FD&C Act directs FDA to establish ''a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand, and by quantity in each brand and subbrand.'' On January 31, 2011, FDA announced the availability of a final guidance representing the Agency's current thinking on the meaning of the term ''harmful and potentially harmful constituent'' (see 76 FR 5387). On August 12, 2011, FDA published a notice in the **Federal Register** requesting comment issues related to the establishment of the HPHC list (see 76 FR 50226).

FDA intends to conduct research with consumers to help inform decisions about how to implement section 904(d)(1) of the FD&C Act and to provide information about how consumers understand information about HPHCs. The research goals are to evaluate the impact of different list formats on the public's ability to understand HPHC information, and to assess the potential for certain unintended consequences resulting from exposure to the lists. The impact of different list formats will be measured by evaluating respondents' understanding of the following concepts: (1) There are more than 4,000 chemicals in tobacco products and tobacco smoke; (2) the chemicals come from the tobacco leaf itself, how it is processed, and different parts of a tobacco product such as the tobacco smoke, glues, inks, paper, or additives; (3) for smokeless products, many of the chemicals come from the tobacco leaf itself; for smoked products, many of the chemicals come from burning the tobacco leaf; (4) Federal law requires tobacco companies to test their tobacco products and smoke for the chemicals on this list; (5) each tobacco product brand and subbrand has its own separate list of chemicals; (6) science has linked the chemicals on these lists to health problems or potential health problems; (7) these lists do not include necessarily all of the health problems that may be caused by the tobacco product; (8) these lists do not necessarily include all of the chemicals in the tobacco product that may be harmful; (9) the amount of a chemical listed for a specific tobacco product does not necessarily indicate the likelihood of experiencing a health problem; (10) the number of chemicals listed for a specific tobacco product does not necessarily indicate the likelihood of experiencing a health problem; (11) the number of possible health outcomes listed for a tobacco product does not necessarily indicate the likelihood of experiencing a health problem; (13) the number of chemicals listed for a specific health problem does

not necessarily indicate the likelihood of experiencing a health problem; (13) when a chemical is listed without a quantity it may mean that a manufacturer has not yet tested its products for that chemical; and/or that a test was conducted but it was not sensitive enough to measure the amount of chemical in the product; and/or that a way to test for that chemical is still being developed. Unintended consequences will be assessed by measuring respondents' susceptibility to initiation of tobacco use, motivation and confidence to quit tobacco use, risk perceptions about tobacco use, and emotional reactivity.

FDA proposes to conduct an experimental study with current smokers aged 15 years and older, former smokers aged 15 years and older, and nonsmokers aged between 13 and 25 years who may be susceptible to initiation of smoking. Data will be collected from members of an Internet panel. The study will include an oversampling of subjects with limited health literacy. Participation in the experimental study is voluntary. The information collected from the study is necessary to inform the Agency's efforts to implement the requirement of the FD&C Act to place on public display a list of HPHCs in tobacco products and tobacco smoke in a format that is understood and not misleading to a lay person, and is expected to provide information that may inform Agency communications about HPHCs. The data obtained from this study is one factor that will be used to inform FDA's decisionmaking regarding the public display of the list of HPHCs required under section 904(d)(1) of the FD&C Act. By evaluating respondents' understanding of the concepts listed previously in this document we do not intend to imply that consumer understanding of all concepts is needed to comply with these requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest	60	1	60	0.5	30
Screener	10,000	1	10,000	0.0167	167
Experimental Survey	3,000	1	3,000	0.5	1,500
Total	13,060				1,697

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with Internet panel experiments similar to the study proposed here. Sixty panel members will take part in a pretest of the study, estimated to last 30 minutes (0.5 hours), for a total of 30 hours. Approximately 10,000 respondents will complete a screener to determine eligibility for participation in the study, estimated to take 1 minute (0.0167 hours), for a total of 167 hours. Three thousand respondents will complete the full study, estimated to last 30 minutes (0.5 hours), for a total of 1,500 hours. The total estimated burden is 1,697 hours.

Dated: December 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32026 Filed 12–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0535]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

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 January 13, 2012.

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 emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0374. 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.

Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body—(OMB Control Number 0910–0374)—Extension

Section 403(r)(2)(G) and (r)(3)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(r)(2)(G) and (r)(3)(C)), as amended by the FDA Modernization Act of 1997, provides that any person may market a food product whose label bears a nutrient content claim or a health claim that is based on an authoritative statement of a scientific body of the U.S. Government or the National Academy of Sciences (NAS). Under this section of

the FD&C Act, a person that intends to use such a claim must submit a notification of its intention to use the claim 120 days before it begins marketing the product bearing the claim. In the *Federal Register* of June 11, 1998 (63 FR 32102), FDA announced the availability of a guidance entitled ''Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body.'' The guidance provides the Agency's interpretation of terms central to the submission of a notification and the Agency's views on the information that should be included in the notification. The Agency believes that the guidance will enable persons to meet the criteria for notifications that are established in section 403(r)(2)(G) and (r)(3)(C) of the FD&C Act. In addition to the information specifically required by the FD&C Act to be in such notifications, the guidance states that the notifications should also contain information on analytical methodology for the nutrient that is the subject of a claim based on an authoritative statement. FDA intends to review the notifications the Agency receives to ensure that they comply with the criteria established by the FD&C Act.

In the *Federal Register* of August 3, 2011 (76 FR 46819), 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]

Section of the FD&C Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
403(r)(2)(G) (nutrient content claims)	1	1	1	250	250
403(r)(2)(C) (health claims)	1	1	1	450	450
Guidance for notifications	2	1	2	1	2
Total					702

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with health claims, nutrient content claims, and other similar notification procedures that fall under our jurisdiction. To avoid estimating the number of respondents as zero, the Agency estimates that there will be one or fewer respondents annually for nutrient content claim and health claim notifications. FDA estimates that it will receive one nutrient content claim notification and one health claim notification per year over the next 3 years.

Section 403(r)(2)(G) and (r)(3)(C) of the FD&C Act requires that the notification include the exact words of the claim, a copy of the authoritative statement, a concise description of the basis upon which such person relied for determining that this is an authoritative statement as outlined in the FD&C Act, and a balanced representation of the scientific literature relating to the relationship between a nutrient and a disease or health-related condition to which a health claim refers or to the nutrient level to which the nutrient content claim refers. This balanced representation of the scientific literature is expected to include a bibliography of the scientific literature on the topic of the claim and a brief, balanced account or analysis of how this literature either supports or fails to support the authoritative statement.

Since the claims are based on authoritative statements of a scientific body of the U.S. Government or NAS, FDA believes that the information that is required by the FD&C Act to be submitted with a notification will be readily available to a respondent. However, the respondent will have to collect and assemble that information. Based on communications with firms that have submitted notifications, FDA estimates that 1 respondent will take 250 hours to collect and assemble the information required by the statute for a nutrient content claim notification. Further, FDA estimates that 1 respondent will take 450 hours to collect and assemble the information required by the statute for a health claim notification.

Under the guidance, notifications should also contain information on analytical methodology for the nutrient that is the subject of a claim based on an authoritative statement. The guidance applies to both nutrient content claim and health claim notifications. FDA has determined that this information should be readily available to a respondent and, thus, the Agency estimates that it will take a respondent 1 hour to incorporate the information into each notification. The Agency expects there will be 2 respondents for a total of 2 hours.

Dated: December 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32025 Filed 12–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Cultural and Linguistic Competency and Health Literacy Data Collection Checklist (OMB No. 0915–xxxx)—[New].

The Health Resources and Services Administration's (HRSA) vision is ''Healthy Communities, Healthy People.'' In addition, the HRSA mission statement is ''To improve health and achieve health equity through access to quality services, a skilled health workforce and innovative programs.'' This framework supports a health care system that assures access to

comprehensive, culturally competent, quality care.

Performance measures have been useful in helping HRSA to assess the progress of each grantee. The measure used will be informed by the degree to which HRSA-funded programs have incorporated cultural and linguistic competence and health literacy elements into their policies, guidelines, contracts and training. HRSA bureaus and offices will be encouraged to incorporate this performance measure (or a modified version of this measure) into their funding opportunity announcements, as either a stand-alone or integrated measure.

Using a scale of 0–3, the grantee may use the Cultural and Linguistic Competency and Health Literacy Data Collection Checklist to assess if specified cultural/linguistic competence and health literacy elements have been incorporated into their policies, guidelines, contracts and training. Each HRSA program may add data sources and year of data used for scoring to provide a rationale for determining a score, and/or applicability of elements to a specific program.

The goal of this checklist is to increase the number of HRSA-funded programs that have integrated cultural and linguistic competence and health literacy into their policies, guidelines, contracts and training. In addition, variations of the proposed tool have proven useful for grantees' self-assessment. This proposed tool can also offer insights into technical assistance challenges and opportunities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Data Collection Checklist	900	1	900	1	900
Total	900	1	900	1	900

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: December 8, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–32014 Filed 12–13–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 76 FR 64953–64954 dated October 19, 2011).

This notice reflects organizational changes to the Health Resources and Services Administration. Specifically, this notice updates the functional statement for the Office of Federal Assistance Management (RJ). The update to the functional statement will better align functional responsibility with improved management and administrative efficiencies and improved alignment of current liaison functions and grant policy processes within the Office of Federal Assistance Management.

Chapter RJ—Office of Federal Assistance Management

Section RJ–10, Organization

Delete in its entirety and replace with the following:

The Office of Federal Assistance Management (RJ) is headed by the Associate Administrator, who reports directly to the Administrator, Health Resources Services Administration. The Office of Federal Assistance Management includes the following components:

(1) Office of the Associate Administrator (RJ);

(2) Division of Financial Integrity (RJ1);

(3) Division of Grants Policy (RJ2);

(4) Division of Grants Management Operations (RJ3); and

(5) Division of Independent Review (RJ4).

Section RJ–20, Functions

(1) Delete the functional statement for the Office of Federal Assistance Management (RJ) and replace in its entirety.

Office of Associate Administrator (RJ)

Provides national leadership in the administration and assurance of the financial integrity of HRSA's programs and provides oversight over all HRSA activities to ensure that HRSA's resources are being properly used and protected. Provides leadership, direction and coordination to all phases of grants policy, administration, and independent review of competitive grant applications. Specifically: (1) Serves as the Administrator's principal source for grants policy and financial integrity of HRSA programs; (2) exercises oversight over the Agency's business processes related to assistance programs; (3) facilitates, plans, directs and coordinates the administration of HRSA grant policies and operations; (4) plans, directs and carries out the grants officer functions for all of HRSA's grant programs as well as awarding official functions for various scholarship, loan and loan repayment assistance programs; and (5) directs and carries out the independent review of grant applications for all of HRSA's programs.

Division of Financial Integrity (RJ1)

(1) Coordinates agency-wide efforts addressing HHS's Program Integrity Initiative; (2) serves as the Agency's focal point for coordinating financial audits of grantees; (3) coordinates the external financial assessment of HRSA grantees and the resolution of any audit findings; (4) conducts the pre-award and post-award review of grant applicants' and grantees' accounting systems; (5) conducts ad hoc studies and reviews related to the financial integrity of the HRSA business processes related to assistance programs; (6) serves as the Agency's liaison with the Office of Inspector General (OIG) for issues related to grants; (7) coordinates the Agency's response to HHS OIG Hotline complaints reporting fraudulent fiscal activities pertaining to HRSA grant funds; and (8) establishes an assessment model for grantee oversight.

Division of Grants Policy (RJ2)

(1) Advises on Federal assistance award policy and assists in the identification and resolution of policy issues and problems; (2) analyzes, develops and implements the Agency's Federal assistance award policy; (3) coordinates the review of departmental grants and cooperative agreements policies and ensures that Agency policies and procedures are revised to reflect appropriate changes; (4) provides assistance and technical consultation to OFAM and program offices in the interpretation of laws, regulations, and policies relative to the Agency's grant and cooperative agreement programs; (5) reviews the Agency's funding opportunity announcements for compliance with statutory and legislative authorities, regulations, departmental and Agency policy, and government-wide administrative requirements, and publishes the announcements to Grants.gov; (6) serves as the Agency's Catalogue of Federal Domestic Assistance (CFDA) coordinator and as the Agency's Grants.Gov liaison; (7) coordinates the development of standardized documents and processes for the Agency related to Federal assistance award policies; and (8) reviews Agency programs for proper interpretation and timely implementation and application of grants and cooperative agreements management policies.

Division of Grants Management Operations (RJ3)

(1) Exercises the sole responsibility within HRSA for all aspects of grant and cooperative agreement receipt and award and post-award processes, and provides oversight of the management and maintenance of, and enhancements, to the electronic grant management system that enables staff to perform their day-to-day work; (2) participates in the planning, development, and implementation of policies and procedures for grants and cooperative agreements; (3) provides assistance and technical consultation to program offices and grantees in the application of laws, regulations, policies and guidelines relative to the Agency's grant and cooperative agreement programs; (4) develops standard operating procedures, methods and materials for the administration of the Agency's grants programs; (5) establishes standards and guides for grants management operations; (6) reviews grantee financial status reports and prepares reports and analyses on the grantee's use of funds; (7) provides technical assistance to applicants and grantees on financial and administrative aspects of grants projects; (8) provides data and analyses as necessary for budget planning, hearings, operational planning and management decisions; (9) participates in the development of program guidance and instructions for grant competitions; (10) oversees contracts in support of receipt of applications, records management, and grant close-out operations; and (11) supports post-award monitoring and closeout by analyzing PMS data and working with grants and program office staff.

Division of Independent Review (RJ4)

(1) Plans, directs and carries out HRSA's independent review of applications for grants and cooperative agreement funding, and assures that the process is fair, open, and competitive; (2) develops, implements, and maintains policies and procedures necessary to carry out the Agency's independent review/peer review processes; (3) provides technical assistance to independent reviewers ensuring that reviewers are aware of and comply with appropriate administrative policies and regulations; (4) provides technical advice and guidance to the Agency regarding the independent review processes; (5) coordinates and assures the development of program policies and rules relating to HRSA's extramural grant activities; and (6) provides HRSA's Offices and Bureaus with the final disposition of all reviewed applications.

Section RJ–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: December 2, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–32015 Filed 12–13–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

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 meeting.

The meeting 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: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical, Treatment and Health Services Research Review Subcommittee.

Date: March 13, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, (301) 443–4032, *katrina@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: December 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32112 Filed 12–13–11; 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, Stem cell applications for Neurodegeneration.
Date: January 5, 2012.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, (301) 435–1259, *nadis@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiometabolic and Bone Health.
Date: January 6, 2012.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Mechanisms of Emotion, Stress and Health.
Date: January 9, 2012.
Time: 1 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@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: December 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32109 Filed 12–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–FA–04]

Announcement of Funding Awards; Indian Community Development Block Grant Program; Fiscal Year 2011

AGENCY: Office of Native American Programs, Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2011 (FY 2011) Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) program. This announcement contains the consolidated names and addresses of this year's award recipients under the ICDBG program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the ICDBG Program awards, contact the Area Office of Native American Programs (ONAP) serving your area or Deborah M. Lalancette, Office of Native Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 675–1600. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2011 awards announced in this Notice were selected for funding in a competition posted on www.grants.gov on April 20, 2011. Applications were scored and selected for funding based on the selection criteria in that notice and Area ONAP geographic jurisdictional competitions.

The amount available in FY 2011 to fund the ICDBG single purpose grants was $60,944,168. In addition, $3,276,832 was retained to fund Imminent Threat grants in FY 2011. The allocations for the Area ONAP geographic jurisdictions are as follows:

Eastern/Woodlands: $ 6,915,116
Southern Plains: $12,997,421
Northern Plains: $ 8,691,578
Southwest: $22,691,804
Northwest: $ 3,108,249
Alaska: *$ 6,540,000*
Total $60,944,168

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 84 awards made under the various regional competitions in Appendix A to this document.

Dated: December 7, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Name/address of applicant	Amount funded	Activity funded	Project description
Ak-Chin Indian Community, Honorable Louis Manuel Jr., Chairperson, 42507 West Peters & Nall Road, Maricopa, AZ 85239–3940, (520) 568–1013.	$605,000	Public Facility Community Center.	Cultural & Language Building.
All Mission Indian Housing Authority (LaJolla), Dave Shaffer, Executive Director, 27740 Jefferson Avenue, Temecula, CA 92590, (951) 760–7390.	605,000	Housing Construction	Construct 3 homes.
All Mission Indian Housing Authority (Santa Rosa) Dave Shaffer, Executive Director, 27740 Jefferson Avenue, Temecula, CA 92590, (951) 760–7390.	605,000	Housing Construction	Construct 3 homes.
All Mission Indian Housing Authority (Torres-Martinez), Dave Shaffer, Executive Director, 27740 Jefferson Ave, Temecula, CA 92590, (951) 760–7390.	605,000	Housing Construction	Construct 4 homes.
Bay Mills Indian Community, Jeffrey D. Parker, President, 3095 S. Towering Pines, Brimley, MI 49715, (906) 248–3241.	600,000	Public Facility Community Center.	Child Development Center.

Name/address of applicant	Amount funded	Activity funded	Project description
Big Pine Paiute Tribe of the Owens Valley, Honorable Virgil Moose, Chairperson, P.O. Box 700, Big Pine, CA 93513, (760) 938–2003.	605,000	Housing Rehabilitation	Rehabilitation of 15 homes.
Big Valley Tribe of Pomo Indians, Honorable Valentino Jack, Chairperson, 2726 Mission Rancheria Road, Lakeport, CA 95453, (707) 263–3924.	605,000	Housing Construction	Construct 6 rental units.
Bishop Paiute Tribe, Honorable William Vega, Chairperson, 50 Tu Su Lane, Bishop, CA 93514–8058, (760) 873–3584.	605,000	Public Facility Community Center.	Cultural Center Renovation.
Catawba Indian Nation, Honorable William Harris, Chief, 996 Avenue of the Nations, Rock Hill, SC 29730, (803) 366–0629.	600,000	Public Facility Community Center.	Project-Turtle Haven.
Chemehuevi Indian Tribe, Honorable Charles Wood, Chairperson, PO Box 1976, Havasu Lake, CA 92363, (760) 858–4219.	605,000	Public Facility Infrastructure ...	Underground Electrical Wiring to Sewer Lift Stations.
Chickasaw Nation, Honorable Bill Anoatubby, Governor, P.O. 1548, Ada, OK 74821, (580) 436–2603.	800,000	Public Facility Community Center.	Hospitality House.
Chippewa Cree Tribe of Montana, Jonathan Eagleman, Tribal Water Resources Director, 96 Clinic Road, Box Elder, MT 59521, (406) 395–4225.	900,000	Public Facility/Infrastructure ...	Upgrade water system to allow for, future housing and business, expansion.
Choctaw Nation of Oklahoma, Honorable Gregory E. Pyle, Chief, P.O. Drawer 1210, Durant, OK 74702, (580) 924–8280.	800,000	Public Facilities Infrastructure	Infrastructure—Water Tower and Water Distribution System.
Citizen Potawatomi Nation, Honorable John A. Barrett, Chairman, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801, (405) 275–3121.	800,000	Microenterprise	Microenterprise Project.
Comanche Nation Housing Authority, Norman Leveille, Executive Director, P.O. Box 1671, Lawton, OK 73502, (580) 357–4956.	800,000	Housing Rehabilitation	Housing Rehabilitation.
Coos, Lower Umpqua, Siuslaw Tribe, Stephanie Matthews, Tribal Administrator, 1245 Fulton Avenue, Coos Bay, OR 97420, (541) 888–9577.	500,000	Housing Rehabilitation	Rehabilitation of 38 low-income housing units.
Coquille Indian Housing Authority, Honorable Edward Metcalf, Tribal Chairman 2678 Mexeye Loop, Coos Bay, OR 97420, (541) 756–0904.	500,000	Housing Rehabilitation	Roof replacement on 71 housing units.
Crow Creek Housing Authority, Joseph Sazue, Jr. Executive Director, P.O. Box 19, Fort Thompson, SD 57339, (605) 245–2250.	900,000	Housing Rehabilitation	Rehabilitation of 31 single family dwellings.
Crow Tribe of Indians, Honorable Cedric Black Eagle, Tribal Chairman, P.O. Box 159, Crow Agency, MT 59022, (406) 638–3715.	750,000	Public Facility Infrastructure ...	Upgrade water system to allow for, improved water disinfection and, distribution.
Delaware Tribe of Oklahoma, Honorable Paula Pechonick Chief, 170 N.E. Barbara Avenue, Bartlesville, OK 74006, (918) 336–5272.	800,000	Public Facilities Infrastructure	Infrastructure/AOA Elder Nutrition Kitchen.
Dry Creek Rancheria Band of Pomo Indians, Honorable Harvey Hopkins, Chairperson, P.O. Box 607, Geyserville, CA 95448–0607, (707) 522–4290.	605,000	Homebuyer Assistance	Assist 10 homebuyers with down Payment Assistance.
Eastern Shawnee Tribe of Oklahoma, Honorable Glenna J. Wallace, Chief, P.O. Box 350, Seneca, MO 64865, (918) 666–2435.	800,000	Public Facility Community Center.	Elder Independent Living Community Center.
Elko Band of Te-Moak Tribe, Honorable Gerald Temoke, Chairperson, 1745 Silver Eagle Drive, Elko, NV 89801, (775) 738–8889.	605,000	Public Facility Community Center.	Construct Head Start Building.
Fond du Lac Band of the Minnesota Chippewa, Honorable Karen Diver, Chairperson, 1720 Big Lake Road, Cloquet, MN 55720, (218) 879–4593.	545,000	Public Facility Community Center.	Waterline Expansion: Phase one.
Fort McDermitt Paiute-Shoshone Tribe, Honorable Billy Bell, Chairperson, P.O. Box 457, McDermitt, NV 89421, (775) 532–8913.	605,000	Economic Development Project.	Construct Travel Plaza.
Gila River Health Corporation, Heather Chavez, Executive Director, P.O. Box 38,, Sacaton, AZ 85147–0038, (602) 528–1456.	2,750,000	Public Facility & Infrastructure	Rehabilitation of Medical Facility.
Greenville Rancheria of Maidu Indians, Honorable Kyle Self, Chairperson, P.O. Box 279, Greenville, CA 95947, (530) 284–7990.	590,000	Land Acquisition	Acquisition of existing Multi-family units for 8 Families.
Ho-Chunk Nation, Honorable Jon Greendeer, President, W9814 Airport Road, Black River Falls, WI 54615, (715) 284–9343.	600,000	Public Facility Community Center.	Law Enforcement Center.
Holy Cross Village, Honorable Eugene Paul, Chief, P.O. Box 89, Holy Cross, AK 99602, (907) 476–7124.	600,000	Public Facility, Community Center.	Community Center.
Houlton Band of Maliseet, Honorable Brenda Commander, Chief, P.O. Box 88, Houlton, ME 04730, (207) 532–4273.	600,000	Public Facility Community Center.	Multi Purpose Athletic field.

Name/address of applicant	Amount funded	Activity funded	Project description
Hualapai Indian Tribe, Honorable Wilfred Whatoname, Sr., Chairperson, P.O. Box 179, Peach Springs, AZ 86434, (928) 769–2216.	825,000	Public Facility & Improvements.	Youth Camp Infrastructure.
Iowa Tribe of Kansas and Nebraska, Honorable Timothy Rhodd, Chairman, 3345 B. Thrasher Road, White Cloud, KS 66094, (785) 595–3258.	737,500	Public Facility Community Center.	Construction of Community Center.
Jicarilla Apache Housing Authority, Lisa Manwell, Executive Director, PO Box 486, Dulce, NM 87528, (575) 759–3415.	500,000	Housing Rehabilitation	Rehabilitation of 25 homes.
Kickapoo Traditional Tribe of Texas, Honorable Juan Garza, Jr., Chairman, HC 1, Box 9700, Eagle Pass, TX 78852–2430, (830) 773–1209.	800,000	Public Facility Community Center.	Construction of a Community Center Elder/Wellness/Community.
Klamath Tribe, Honorable Gary Frost, Tribal Chairman P.O. Box 436, Chiloquin, OR 97624, (541) 783–2210.	500,000	Public Facility Community Center.	Childcare Center.
Knik Tribe, Gerald Pilot, Housing Director, P.O. Box 871565, Wasilla, AK 99687–1565, (907) 556–8165.	600,000	Housing Rehabilitation	Acquire and rehabilitate two duplexes.
Lac Courte Oreilles Band, Honorable Gordon Thayer, Chairman, 13394 W. Trepania Road, Hayward, WI 54843, (715) 634–8934.	600,000	Public Facility Community Center.	Solid Waste Management Facility.
Lac du Flambeau Band of Lake Superior, Dee Mayo, Tribal Vice-Chairperson, PO Box 67, Lac du Flambeau, WI 54538, (715) 588–3303.	600,000	Public Facility Community Center.	Boys dormitory rehabilitation.
Lower Brule Sioux Tribe, Stuart Langdeau, Grants Development Coordinator, 187 Oyate Circle, Lower Brule, SD 57548, (605) 473–5561.	900,000	Housing Rehabilitation	Rehabilitation of 18 single family dwellings.
Lummi Indian Housing Authority, Honorable Jacqueline Ballew, Chairman, 2828 Kwina Road, Bellingham, WA 98226, (360) 312–8407.	495,795	Public Facility Community Center.	Gymnasium in low-income housing area.
Mentasta Traditional Council, Nora David, First Chief, P.O. Box 6019, Mentasta Lake, AK 99780, (907) 291–2319.	560,000	Public Facility Community Center.	Multi-purpose Community Center.
Mescalero Apache Housing Authority, Alvin Benally, Executive Director, P.O. Box 227, Mescalero, NM 88340–0227, (575) 464–9235.	655,783	Housing Rehabilitation	Rehabilitation of 15 homes.
Metlakatla Indian Community, Ron Ryan, Executive Director, P.O. Box 59, Metlakatla, AK 99926, (907) 886–6500.	600,000	Housing Rehabilitation	Rehabilitate Senior Rental Complex.
Miami Tribe of Oklahoma, Honorable Tom Gamble, Chief, P.O. Box 1326, Miami, OK 74355–1326, (918) 542–1445.	800,000	Public Facility Community Center.	Northeastern Tribal Health System Education Center.
Muscogee (Creek) Nation, Honorable A.D. Ellis, Principal Chief, P.O. Box 580, Okmulgee, OK 74447, (918) 756–8700.	800,000	Public Facility Community Center.	Student Center Library.
Native Village of Kluti-Kaah, Teri Nutter, Executive Director, P.O. Box 68, Copper Center, AK 99573, (907) 822–3633.	600,000	Housing-New Construction	Construct three homes.
Native Village of Kwinhagak, Felipe Hernandez III, Tribal Administrator, P.O. Box 149, Quinhagak, AK, (907) 556–8165.	600,000	Land Acquisition	Acquire sites for new housing.
Native Village of Nanawalek, Wally Kvasnikoff, First Chief, P.O. Box 8028, Nanawalek, AK 99634, (907) 281–2274.	600,000	Public Facility Community Center.	Youth Activities Clinic.
Native Village of Napakiak, Gerald Pflugh, Grant Writer, P.O. Box 34069, Napakiak, AK 99634, (907) 495–1800.	600,000	Public Facility Community Center.	Construct Health Clinic.
Noorvik Native Community, Honorable Joshua Melton, President, P.O. Box 209, Noorvik, AK, (907) 636–2144.	600,000	Housing Rehabilitation	Housing Rehabilitation.
Navajo Nation, Honorable Ben Shelly, President, PO Box 7440, Window Rock, AZ 86515, (928) 871–6352.	4,506,720	Public Facility Infrastructure ..	Power Lines & Water Treatment Facility.
North Fork Rancheria of Mono Indians, Honorable Judy Fink, Chairperson, P.O. Box 929, North Fork, CA 93643–0929, (559) 877–2461.	605,000	Public Facility Community Center.	Construct TANF Building.
Northern Arapaho Housing Authority, Patrick Goggles, Executive Director, 501 Ethete Road, Ethete, WY 82520, (307) 332–5318.	1,100,000	Public Facility Special Needs	Remodel and expansion of the Arapahoe Health Clinic.
Northern Cheyenne Tribal Housing Authority, Lafe Haugen, Executive Director, P.O. Box 327, Lame Deer, MT 59043, (406) 477–6419.	900,000	Housing Rehabilitation	Rehabilitation of 30 single family dwellings.
Oglala Sioux (Lakota) Housing Authority, Doyle Pipe On Head, Assistant CEO, 400 East Main, Pine Ridge, SD 57770, (605) 867–5161.	1,100,000	Housing Rehabilitation	Rehabilitation of 190 single family dwellings.
Oneida Tribe of WI, Honorable Ed Delgado, Chairman, P.O. Box 365, Oneida, WI 54155, (920) 869–4000.	600,000	Public Facility Community Center.	Elder Village Infrastructure.
Ottawa Tribe, Honorable Ethel Cook, Chief, P.O. Box 110, Miami OK 74355, (918) 540–1536.	800,000	Housing Rehabilitation	Housing Rehabilitation.
Paiute Indian Tribe of Utah, Gayle Rollo, Tribal Administrator, 440 North Paiute Drive, Cedar City, UT 84721, (435) 586–1112.	900,000	Economic Development	Design and construction of the Koosharem RV Park and Campground.
Pawnee Nation of Oklahoma, Honorable George Howell, President, P.O. Box 765, Pawnee, OK 74058, (918) 762–3621.	800,000	Public Facility Community Center.	Ceremonial Round House Renovation and Water Well.

Name/address of applicant	Amount funded	Activity funded	Project description
Pit River Tribal Housing Board, Allen Lowry, Executive Director, P.O. Box 2350, Burney, CA 96013, (530) 335–4809.	559,000	Housing Construction	Construct 5 units.
Poarch Band of Creek Indians of AL, Honorable Buford L. Rolin, Chairperson, 5811 Jack Springs Road, Atmore, AL 36502, (251) 368–9136.	600,000	Public Facility Community Center.	Senior Services Center.
Pueblo of Zuni, Honorable Arlen Quetawki Sr., Governor, P.O. Box 339, Zuni, NM 87327–0339, (505) 782–7021.	2,200,000	Housing Rehabilitation	Rehabilitation of 35 units.
Puyallup Nation Housing Authority, Annette Bryan, Executive Director, P.O. Box 1844, Tacoma, WA 98404, (253) 680–5995.	500,000	Housing Rehabilitation	Rehabilitation of 27 housing units.
Quapaw Tribe of Oklahoma, Honorable John Berrey, Chairman, P.O. Box 765, Quapaw, OK 74363, (918) 542–1853.	799,894	Public Facility Community Center.	Quapaw Elder Center Expansion.
Quechan Tribally Designated Housing Entity, Tad Zavodsky, Executive Director, 1860 W Sapphire Lane, Winterhaven, CA 92283, (760) 572–0245.	425,301	Public Facility Infrastructure ..	Streets, Roads & Sidewalks for existing development.
Reno-Sparks Indian Colony, Honorable Arlan Melendez, Chairperson, 98 Colony Road, Reno, NV 89502, (775) 329–2936.	605,000	Housing Rehabilitation	Rehabilitation of 120 homes & Security Camera installation for 15 unit Apartment Complex.
Salish and Kootenai Housing Authority, Jason Adams, Executive Director, P.O. Box 38, Pablo, MT 59855, (406) 675–4491.	641,578	Housing Rehabilitation	Rehabilitation of 18 single family dwellings.
Seneca-Cayuga Tribe of Oklahoma, Honorable Leroy Howard, Chief, 23701 S. 655 Road, Grove, OK 74344, (918) 787–5452 ext. 12.	718,962	Public Facility Community Center.	Renovation of the Seneca-Cayuga Clinic.
Shageluk Native Village, Randy Workman, First Chief, P.O. Box 35, Shageluk, AK 99665, (907) 473–8239.	580,000	Public Facility Community Center.	Multi-purpose community center.
Shawnee Tribe, Honorable Ron Sparkman, Chairman, P.O. Box 189, Miami, OK 74355, (918) 542–2441.	341,065	Public Facility Community Center.	Continue Rehabilitation of the Shawnee Tribe Social Service Resources Center Phase 2.
Spokane Tribe, Honorable Gregory Abrahamson, Tribal Chairman P.O. Box 195, Spokane, WA 99040, (509) 458–6507.	62,454	Public Facility Community Center.	Youth and Sports Center in low-income housing area.
Spokane Tribe, Honorable Gregory Abrahamson, Tribal Chairman P.O. Box 195, Spokane, WA 99040, (509) 458–6507.	50,000	Public Facility/Infrastructure ...	Garbage transfer station improvements.
St. Croix Chippewa Indians of WI, Honorable Stuart Bear Heart, Chairman, 24663 Angeline Avenue, Webster, WI 54893, (715) 349–5768.	370,116	Housing Rehabilitation	St. Croix Rehab Project.
St. Regis Band of Mohawk Indians of NY, Honorable Mark Garrow, Chief, Akwesasne, NY 13655, (518) 358–2272.	600,000	Public Facility Community Center.	Sewer Expansion.
Swinomish Housing Authority, John Petrich, Executive Director, P.O. Box 677, LaConner, WA, (360) 466–4081.	246,155	Land Acquisition	Land acquisition for low income housing.
Swinomish Housing Authority, John Petrich, Executive Director, P.O. Box 677, LaConner, WA, (360) 466–4081.	253,845	Public Facility/Infrastructure ...	Infrastructure for low-income housing.
Tonkawa Tribe of Oklahoma, Honorable Donald L. Patterson, President, 1 Rush Buffalo Road, Tonkawa OK 74653, (580) 628–2561.	800,000	Public Facility Community Center.	Public Building Renovation.
Turtle Mountain Band of Chippewa Indians, Sharon Poitra, Block Grant Administrator, P.O. Box 900, Belcourt, ND 58316, (701) 477–6124.	600,000	Housing Rehabilitation	Rehabilitation of 15 single family, Dwellings.
United Keetoowah Band, Honorable George Wickliffe, Chief, P.O. Box 746, Tahlequah OK 74465, (918) 456–5126.	800,000	Public Facility Community Center.	Transit Facility.
Village of Atmautluak, Gerald Pflugh, Grant Writer, P.O. Box 6568, Atmautluak, AK 99559, (907) 459–1800.	600,000	Public Facility Community Center.	Renovate Health Clinic.
Washoe Housing Authority, Raymond Gonzales Jr., Executive Director, 1588 Watasheamu Drive, Gardnerville. NV 89410, (775) 265–2410.	605,000	Housing Infrastructure	Subdivision Infrastructure.
White Earth Band of Chippewa, Honorable Erma Vizenor, Chairperson, PO Box 418, White Earth, MN 56591, (218) 983–3285.	600,000	Public Facility Community Center.	Work Force Development Center.
Ysleta Del Sur, Honorable Frank Paiz, Governor, 119 S. Old Pueblo Road, El Paso, TX 79917, (915) 859–8053.	605,000	Public Facility Community Center.	Construct Employment Training Building.
Yurok Tribe, Honorable Thomas O'Rourke Sr., Chairperson, P.O. Box 1027, Klamath, CA 95548–1027, (707) 482–1350.	605,000	Public Facility & Improvements.	Cultural Knowledge Park.

[FR Doc. 2011–32083 Filed 12–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L19100000–BK0000–LCRMM0M04561]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. 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: The survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fourth Principal Meridian, Wisconsin

T. 51 N., R. 2 W.

The plat of survey represents the dependent resurvey of a portion of the South boundary, a portion of the subdivisional lines and the subdivision of Section 35, in Township 51 North, Range 2 West, in the State of Wisconsin, and was accepted November 4, 2011.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 21, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–32023 Filed 12–13–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 8, 2011, a proposed Consent Decree in *United States* v. *City of Boulder, Colorado, Honeywell International, Inc., and Tusco, Inc.,* Civil Action No. 11-cv-03178 WJM–MJW, was lodged with the United States District Court for the District of Colorado. The proposed Consent Decree, lodged on December 8, 2011, resolves the liability of defendants City of Boulder, Colorado, Honeywell International, Inc., and Tusco, Inc. (''Defendants''), for claims alleged in the Complaint filed on December 7, 2011, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a). In the Complaint, the United States sought recovery of response costs from the Defendants in connection with the Hendricks Mining and Milling Site (a/k/a Valmont Butte Site) North 63rd Street and Valmont Road in Boulder, Colorado (''the Site''). The proposed Consent Decree, lodged on December 8, 2011, requires the Defendants to pay $350,000 in response costs incurred in connection with the Site and resolves the Defendants' liability for such costs incurred through the date of lodging of the Consent Decree. The cleanup of the Site will be performed pursuant to plans approved under the Colorado Voluntary Cleanup Program and is not the subject of the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, by email to *pubcommentees.enrd@usdoj.gov* or regular mail to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States* v. *City of Boulder, Colorado, Honeywell International, Inc., and Tusco, Inc.,* D.J. Ref. 90–11–3–10118.

The Consent Decree may be examined at U.S. EPA Region VIII, 1595 Wynkoop Street, Denver, Colorado, 80202–1129. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) for the Consent Decree, payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–32052 Filed 12–13–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 004–2011]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice to amend system of records.

SUMMARY: The Federal Bureau of Investigation proposes to amend its Terrorist Screening Records System, JUSTICE/FBI–019, maintained by the Terrorist Screening Center, to add two new categories of individuals and their associated records, to add a new routine use and make modifications to existing routine uses, and to make several administrative modifications and updates throughout the notice. Public comment is invited.

DATES: In accordance with 5 USC 552a(e)(4) and (11), the public is given a 30-day period in which to comment Therefore, please submit any comments by January 13, 2012.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress are invited to submit any comments to the Department of Justice, *Attn:* Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, or by facsimile to (202) 307–0693.

FOR FURTHER INFORMATION CONTACT: Meghann Van Horne, TSC Privacy Officer, Federal Bureau of Investigation, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001.

SUPPLEMENTARY INFORMATION: JUSTICE/FBI–019, last published in full at 72 FR 47073 (Aug. 22, 2007), describes the Terrorist Screening Records System maintained by the Federal Bureau of Investigation (FBI) at the Terrorist Screening Center (TSC) and at facilities operated by other government entities. These records are used in screening operations to ensure the security of the United States. The FBI now proposes to add two new categories of individuals to the system whose records will be useful in screening operations: Relatives, associates, or others closely connected with known or suspected terrorists who are excludable from the United States based on these relationships by virtue of Section 212(a)(3)(B) of the Immigration and Nationality Act, as amended, and individuals who were officially detained during military operations, but not as enemy prisoners of war, and who have been identified as possibly posing a threat to national security. This latter category of individuals is commonly referred to as Military Detainees. Excludable individuals under the first category may be lawful permanent residents of the United States. Individuals in the second category are unlikely to be lawful permanent residents of the United States and even less likely to be U.S. citizens. Nevertheless, out of an abundance of caution and because potentially the status of a military detainee may change over time, the FBI is including military detainee records in its Terrorist Screening Records Systems. In addition to adding the two new categories of individuals, the FBI is also adding a routine use, which will enable the FBI to share information about individuals who are excludable from the United States by virtue of Section 212(a)(3)(B) of the Immigration and Nationality Act with the Department of State and the Department of Homeland Security for the purposes of carrying out the provisions of this Act. The FBI is making pertinent revisions in other parts of the system notice to reflect the addition of these categories of individuals. Additional modifications to Justice/FBI–019 include: Updates to the system location, record access procedures, and procedures for contesting records; clarifications to existing categories of records in the system; updates to the authorities section to reflect new authorities; and additions or changes to more accurately describe the system's purpose and routine uses. The FBI is republishing the entire system of records notice for ease of reference to these changes.

In accordance with 5 U.S.C. 552a(r), the Department of Justice has provided a report to OMB and the Congress on the modification of this system of records.

Dated: November 23, 2011.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/FBI–019

SYSTEM NAME:

Terrorist Screening Records System (TSRS).

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

Records described in this notice are maintained at the Terrorist Screening Center, Federal Bureau of Investigation, Washington, DC, and at facilities operated by other government entities for terrorism and national security threat screening, system back-up, and continuity of operations purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (''known or suspected terrorists'');

b. Individuals, who are lawful permanent resident aliens but who are excludable from the United States based on their familial relationship, association, or connection with a known or suspected terrorist and who do not meet any of the applicable exceptions as described in Section 212(a)(3)(B) of the Immigration and Nationality Act of 1952 (hereinafter INA exceptions);

c. Individuals who were officially detained during military operations, but as not Enemy Prisoners of War, and who have been identified to pose an actual or possible threat to national security (hereinafter military detainees);

d. Individuals who are the subject of queries against TSC information systems;

e. Individuals identified during a terrorism screening process as a possible identity match to a known or suspected terrorist and other individuals who accompany or travel with such individuals;

f. Individuals who are misidentified as a possible identity match to a known or suspected terrorist (''misidentified persons'');

g. Individuals about whom a terrorist watchlist-related redress inquiry has been made; and

h. Individuals whose information is collected and maintained for information system user auditing and security purposes, such as individuals who are authorized users of TSC information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Identifying biographical information, such as name, date of birth, place of birth, passport and/or drivers license information, biometric information, such as photographs and fingerprints, and other available identifying particulars used to compare the identity of an individual being screened, with a known or suspected terrorist, an INA exception, or a military detainee, including audit records containing this information;

b. Information about encounters with individuals covered by this system, such as date, location, screening entity, analysis, associated individuals, and results (positive or negative identity match), and, for encounters with a known or suspected terrorist, INA exceptions, and military detainees only, other entities notified and details of any law enforcement, intelligence, or other operational response;

c. For a known or suspected terrorist, military detainee, or an INA exception, in addition to the categories of records listed above, references to and/or information from other government law enforcement and intelligence databases, or other relevant databases that may contain terrorism information;

d. For an individual considered to pose an actual or possible threat to national security, in addition to the categories of records listed above, references to and/or information from other government law enforcement and intelligence databases, or other relevant databases that may contain information related to possible threats to national security;

e. For misidentified persons, in addition to the categories of records listed above, other identifying information that will be used during screening only for the purpose of distinguishing them from a known or suspected terrorist, an INA exception, or a military detainee, any of whom may have similar identifying characteristics (such as name and date of birth);

f. For redress matters, in addition to the categories of records listed above, information provided by individuals or their representatives, information provided by the screening agency, and internal work papers and other

documents related to researching and resolving the matter;

g. Information collected and compiled to maintain an audit trail of the activity of authorized users of TSC information systems, such as user name/ID, date/time, search query and results data, user activity information (*e.g.,* record retrieval, modification, or deletion data), and record numbers; and,

h. Archived records and record histories from the Terrorist Screening Database, Encounter Management Application, and other TSC data systems that are part of the TSRS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Homeland Security Presidential Directive-6, ''Integration and Use of Screening Information to Protect Against Terrorism'' (Sept. 16, 2003); Homeland Security Presidential Directive-11, ''Comprehensive Terrorist-Related Screening Procedures'' (Aug. 27, 2004); National Security Presidential Directive-59/Homeland Security Presidential Directive-24, ''Biometrics for Identification and Screening to Enhance National Security'' (June 5, 2008), (HSPD-24 gives the Attorney General authority to recommend categories of individuals in addition to known or suspected terrorists who may pose a threat to national security.); Executive Order 13388, ''Further Strengthening the Sharing of Terrorism Information to Protect Americans,'' (October 25, 2005); the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458; the National Security Act of 1947, as amended; 28 U.S.C. 533; and Section 212(a)(3)(B) of the Immigration and Nationality Act of 1952. In the event that the TSC's continuity-of-operations plans are invoked, the agency that assumes TSC operational functions will have the authority to administer the Terrorist Screening Records System as necessary to carry out those functions.

PURPOSE(S):

a. To implement the U.S. Government's National Strategy for Homeland Security and Homeland Security Presidential Directive-6, to identify potential terrorist threats, to uphold and enforce the law, and to ensure public safety.

b. To consolidate the government's approach to terrorism and national security screening and provide for the appropriate and lawful use of terrorist information and other lawfully acquired information in screening processes.

c. To implement the U.S. Government's Action Plan for National Security Presidential Directive-59/Homeland Security Presidential Directive-24, ''Biometrics for Identification and Screening to Enhance National Security,'' to identify individuals considered to pose an actual or possible threat to national security.

d. To maintain current, accurate and thorough terrorist information and other lawfully acquired information in a consolidated terrorist screening database and determine which screening processes will use each entry in the database.

e. To ensure that appropriate information possessed by state, local, territorial, and tribal governments, which is lawfully available to the Federal Government, is considered in determinations made by the TSC as to whether a person is a match to a known or suspected terrorist, or a match to an individual considered to pose an actual or possible threat to national security.

f. To host mechanisms and make terrorism information, and information related to individuals considered to pose an actual or possible threat to national security, available to support appropriate domestic and foreign terrorism and national security screening processes, and private-sector screening processes that have a substantial bearing on homeland security.

g. To provide operational support to assist in the identification of persons screened and to facilitate an appropriate and lawful response when a known or suspected terrorist, or individual considered to pose an actual or possible threat to national security, is identified in an authorized screening process.

h. To provide appropriate government officials, agencies, or organizations with information about encounters with known or suspected terrorists or military detainees, INA exceptions or other individuals considered to pose an actual or possible threat to national security.

i. To assist persons misidentified during a terrorism screening process, or possible national security threat screening process, and to assist screening agencies or entities in responding to individual complaints about the screening process (redress).

j. To oversee the proper use, maintenance, and security of TSC data systems and TSC personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERSAND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the records or information in this system may be disclosed as a routine use, under 5 U.S.C. 552a(b)(3), in accordance with blanket routine uses established for FBI record systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published at 66 FR 33558 (June 22, 2001) and amended at 70 FR 7513 (February 14, 2005). In addition, as routine uses specific to this system, the TSC may disclose relevant system records to the following persons or entities and under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected.

A. To those federal agencies that have agreed to provide support to TSC for purposes of ensuring the continuity of TSC operations.

B. To federal, state, local, tribal, territorial, foreign, multinational or other public agencies or entities, to entities regulated by any such agency or entity, and to owners/operators of critical infrastructure or private sector entities with a substantial bearing on national or homeland security and their agents, contractors or representatives, for the following purposes: (1) For use in and in support of terrorism screening, or possible national security threat screening, authorized by the U.S. Government, (2) to provide appropriate notifications of the results of terrorism screening, or possible national security threat screening, using information from the Terrorist Screening Database or a threat related to a positive encounter with an individual identified in the Terrorist Screening Database, (3) to facilitate any appropriate law enforcement or other response (*e.g.,* medical and containment response to a biological hazard) to a known or suspected terrorist, an individual considered to pose an actual or possible threat to national security, or a threat related to an encounter with such an individual, and (4) to assist persons misidentified during a screening process.

C. To any person, organization, or governmental entity in order to notify them of a terrorist threat, or possible national security threat, for the purpose of guarding against or responding to such a threat.

D. To federal, state, local, tribal, territorial, foreign, or multinational agencies or entities, or other organizations that are engaged in, or are planning to engage in terrorism screening, or possible national security threat screening, authorized by the U.S. Government, for the purpose of the development, testing, or modification of information technology systems used or intended to be used during or in support of the screening process; whenever

practicable, however, TSC, to the extent possible, will substitute anonymized or de-identified data, such that the identity of the individual cannot be derived from the data.

E. To federal, state, local, tribal, territorial, foreign, multinational agencies or entities, or private sector entities to assist in coordination of terrorist threat, or possible national security threat, awareness, assessment, analysis or response.

F. To any person or entity in either the public or private sector, domestic or foreign, where reasonably necessary to elicit information or cooperation from the recipient for use by the TSC in the performance of an authorized function, such as obtaining information from data sources as to the thoroughness, accuracy, currency, or reliability of the data provided so that the TSC may review the quality and integrity of its records for quality assurance or redress purposes, and may also assist persons misidentified during a screening process.

G. To any federal, state, local, tribal, territorial, foreign or multinational agency, task force, or other entity or person that receives information from the U.S. Government for terrorism screening purposes, or possible national security threat screening purposes, in order to facilitate TSC's or the recipient's review, maintenance, and correction of TSC data for quality assurance or redress purposes, and to assist persons misidentified during a screening process.

H. To any agency, organization or person for the purposes of (1) performing authorized security, audit, or oversight operations of the DOJ, FBI, TSC, or any agency, organization, or person engaged in or providing information used for terrorism screening, or possible national security threat screening, that is supported by the TSC, and (2) meeting related reporting requirements.

I. To a former employee of the TSC for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with any applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the TSC requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

J. To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, multinational or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

K. To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, national security information, homeland security information, national intelligence, possible national security threat information, or terrorism information for law enforcement, intelligence, national security, homeland security, or counterterrorism purposes.

L. To appropriate agencies, entities, and persons when (1) The Department of Justice suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department of Justice 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 Department 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 Department of Justice's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

M. To the United States Department of State and the United States Department of Homeland Security for the purpose of carrying out their responsibilities under Section 212(a)(3)(B) of the Immigration and Nationality Act of 1952.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and/or electronic format. Electronic storage is on servers, CD–ROMs, DVD–ROMs, and magnetic tapes.

RETRIEVABILITY:

Records in this system are typically retrieved by individual name, date of birth, passport number, and other identifying data, including unique identifying numbers assigned by the TSC or other government agencies.

SAFEGUARDS:

All records are maintained in a secure government facility with access limited to only authorized personnel or authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors and are protected by appropriate physical and technological safeguards to prevent unauthorized access. All Federal employees and contractors assigned to the TSC must hold an appropriate security clearance, sign a non-disclosure agreement, and undergo privacy and security training.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with the records schedule approved by the National Archives and Records Administration. In general, for records maintained in the Terrorist Screening Database, active records are maintained for 99 years and inactive (archived) records are maintained for 50 years. Records of possible encounters with individuals on the Terrorist Screening Database are maintained for 99 years. Records of redress inquiries and quality assurance matters are maintained for at least six years. Audit logs are maintained for 25 years and records of user audits are maintained for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Terrorist Screening Center, Federal Bureau of Investigation, FBI Headquarters, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURE:

Because this system contains classified intelligence and law enforcement information related to the government's counterterrorism, law enforcement, and intelligence programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act. Requests for notification should be addressed to the FBI at the address and according to the requirements set forth below under the heading ''Record Access Procedures.''

RECORD ACCESS PROCEDURES:

Because this system contains classified intelligence and law enforcement information related to the government's counterterrorism, law enforcement and intelligence programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act. A request for access to a non-exempt record shall be made in writing with the envelope and the letter clearly

marked ''Privacy Act Request.'' Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information must be addressed to the Record Information Dissemination Section, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, Virginia 22602 or faxed to (540) 868–4992.

CONTESTING RECORD PROCEDURES:

Because this system contains classified intelligence and law enforcement information related to the government's counterterrorism, law enforcement and intelligence programs, records in this system are exempt from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act (5 U.S.C. 552a). Requests for amendment should be addressed to the FBI at the address and according to the requirements set forth above under the heading ''Record Access Procedures.'' If, however, individuals are experiencing repeated delays or difficulties during a government screening process and believe that this might be related to terrorist watch list information, they may contact the Federal agency that is conducting the screening process in question (''screening agency''). The screening agency is in the best position to determine if a particular problem relates to a terrorist watch list entry or is due to some other cause, such as a criminal history, an immigration violation or random screening. Some individuals also experience repeated delays during screening because their names and/or other identifying data, such as dates of birth, are similar to those of known or suspected terrorists. These individuals, referred to as ''misidentified persons,'' often believe that they themselves are on a terrorist watch list, when in fact they only bear a similarity in name or other identifier to an individual on the list. Most screening agencies have or are developing procedures to expedite the clearance of misidentified persons during screening. By contacting the screening agency with a complaint, individuals will be able to take advantage of the procedures available to help misidentified persons and others experiencing screening problems. Check the agency's requirements for submitting complaints but, at a minimum, individuals should describe in as much detail as possible the problem they are having, including dates and locations of screening, and provide sufficient information to identify themselves, such as full name, citizenship status, and date and place of birth. The TSC assists the screening agency in resolving any screening complaints that may relate to terrorist watch list information, but does not receive or respond to individual complaints directly. However, if TSC receives any such complaints, TSC will forward them to the appropriate screening agency. Additional information about the redress process and how to file a complaint with a screening agency is available on TSC's Web site at *http://www.fbi.gov/about-us/nsb/tsc/tsc_redress.*

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals covered by the system, public sources, agencies and private sector entities conducting terrorism screening, law enforcement and intelligence agency record systems, government databases, and foreign governments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d)(1), (2), (3) and (4), (e)(1), (2), (3), (5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and are located at 28 CFR 16.96.

[FR Doc. 2011–32074 Filed 12–13–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 8, 2011, Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Dihydromorphine is an intermediate in the manufacture of Hydromorphone, and is not for commercial distribution. The company plans to manufacture Hydromorphone HCL for sale to other manufacturers, and to manufacture other controlled substances for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 13, 2012.

Dated: December 2, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–32045 Filed 12–13–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0858]

Permit-Required Confined Spaces; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Permit-Required Confined Spaces (29 CFR 1910.146). The purpose of the information is to ensure that employers systematically evaluate the dangers in permit spaces before entry is attempted, and to ensure that adequate measures are taken to make the spaces safe for entry.

DATES: Comments must be submitted (postmarked, sent, or received) by February 13, 2012.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0858, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0858) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Section 1910.146(c)(2) requires the employer to post danger signs to inform exposed employees of the existence and location of, and the danger posed by, permit spaces.

Section 1910.146(c)(4) requires the employer to develop and implement a written ''permit-space program'' when the employer decides that its employees will enter permit spaces. The written program is to be made available for inspection by employees and their authorized representatives. Section 1910.146(d) provides the employer with the requirements of a permit-required confined space program (''permit-space program'') required under this paragraph.

Section 1910.146(c)(5)(i)(E) requires that the determinations and supporting data specified by paragraphs (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(i)(C) of this section are documented by the employer and are made available to each employee who enters a permit space or to that employee's authorized representative.

Under paragraph (c)(5)(ii)(H) of § 1910.146, the employer is required to verify that the space is safe for entry and that the pre-entry measures required by paragraph (c)(5)(ii) of this section have been taken, using a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification is to be made before entry and is required to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(7)(iii) requires the employer to document the basis for determining that all hazards in a permit space have been eliminated using a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification is to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(8)(i) requires that when a host employer arranges for employees of another employer (contractor) to perform work that involves permit-space entry the host employer must inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only following compliance with a permit-space program meeting the requirements of this section.

Section 1910.146(c)(8)(ii) requires that the employer inform the contractor of the elements, including the hazards identified and the host employer's experience with the space, that make the space in question a permit space. Section 1910.146(c)(8)(iii) requires that the employer inform the contractor of any precautions or procedures that the host employer has implemented to protect employees in or near permit spaces where contractor personnel will be working. Section 1910.146(c)(8)(v) requires the employer to debrief the contractor at the conclusion of the entry operations regarding the permit-space program followed and regarding any hazards confronted or created in permit spaces during entry operations.

Section 1910.146(c)(9)(iii) requires that the contractor inform the host employer of the permit-space program that the contractor will follow and of any hazards confronted or created in permit spaces; the contractor will inform the host employer either through a debriefing or during the entry operation.

Section 1910.146(d)(5)(vi) requires the employer to immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accordance with paragraph (d) of this section.

Section 1910.146(e)(1) requires the employer to document the completion of measures required by paragraph (d)(3) by preparing an entry permit before employee entry is authorized. Paragraph (f) of § 1910.146 specifies the

information to be included on the entry permit. Paragraph (e)(3) requires that the employer make the completed permit available at the time of entry to all authorized entrants by posting the permit at the entry portal or by any other equally effective means, so that the entrants can know that pre-entry preparations have been completed. Paragraph (e)(6) requires the employer to retain each canceled entry permit for at least one year.

Section 1910.146(g)(4) requires that the employer certify that the training required by paragraphs (g)(1) through (g)(3) has been accomplished by preparing a written certification record.

Section 1910.146(k)(1)(iv) requires that the employer inform each rescue team or service of the hazards they may confront when called on to perform a rescue at the site. Section 1910.146(k)(2)(ii) requires that the employer train affected employees to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required to establish proficiency as an authorized entrant, as provided by paragraphs (g) and (h) of this section. Section 1910.146(k)(2)(iii) requires that the employer train affected employees in basic first aid and cardiopulmonary resuscitation (CPR). The employer shall ensure that at least one member of the rescue team or service who holds a current certification in first aid and CPR is available.

Section 1910.146(k)(4) requires that if an injured entrant is exposed to a substance for which a Material Safety Data Sheet (MSDS) or other similar written information is required to be kept at the worksite, that the employer make the MSDS or written information available to the medical facility treating the exposed entrant.

Section 1910.146(l)(2) requires that employers make all information required to be developed by this section available to affected employees and their authorized representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Permit-Required Confined Spaces (29 CFR 1910.146). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by the Standard from 1,475,091 hours to 1,433,443 hours, for a total decrease of 41,648 hours. This adjustment was due to updated data that indicated a slight decline in the number of establishments with permit spaces, permit-space programs, and permit-space entrants. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Permit-Required Confined Spaces (29 CFR 1910.146).

OMB Number: 1218–0203.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 209,045.

Frequency of Response: On occasion.

Average Time per Response: Varies from one minute (.02 hour) to maintain a certificate to 16 hours to develop a written permit-space entry program.

Estimated Total Burden Hours: 1,433,443.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0858). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2010 (72 FR 55355).

Signed at Washington, DC, on December 9, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–32050 Filed 12–13–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request establishment and clearance of this collection. In accordance with

the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by February 13, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Proposed Project

''National STEM Digital Library/Distributed Learning: Phase 3 Evaluation.''

The proposed project includes a survey of teachers' use of the National Science, Technology, Engineering, and Mathematics (STEM) Digital Library/Distributed Learning (NSDL) Program plus antecedents and consequences of NSDL use. NSDL is the NSF's online library of collections and other resources (*e.g.,* tools, services) for STEM education and research. The teacher survey is part of a Phase 3 evaluation that builds upon the findings of earlier phases of a multi-stage program evaluation that relied chiefly on existing data. The survey will be used to understand the frequency with which teachers use NSDL resources, the ways in which they use these resources for STEM teaching, and antecedents of or barriers to such use. Results will be used to identify important lessons learned about the NSDL program from teachers, who are the ultimate consumer of program resources. Currently, there is little or no systematic information about teachers' uses of NSDL despite the significant roles that teachers are expected to play in the program in terms of both stimulating demand for and contributing to the creation of digital STEM resources, tools, and services and also deploying these assets to improve understanding and delivery of STEM teaching and learning.

Method of Collection

Teachers who have registered to use NSDL resources through Teachers' Domain, an NSF-funded pathway, will be recruited to complete the survey. One hundred and eighty teachers will be recruited, with an estimated response rate of 70%. The survey will be administered online, although an option for a paper version with a self-addressed stamped envelope will be provided. The survey consists of 26 questions in the following categories: (1) Background questions regarding use of NSDL resources; (2) frequency of use; (3) types of use; (4) perceived benefits for teaching and learning; (5) ease of use; (6) facilitating conditions; (7) self-efficacy for STEM teaching and learning; (8) social influence; (9) personal innovativeness with technology; and (10) demographic characteristics. Response options for the vast majority of questions in all categories are close-ended (*e.g.,* 7-point scales ranging from strongly disagree to strongly agree). Participants will be given a thank-you gift consisting of a $20 gift certificate to Amazon.com.

Estimated Annual Respondent Burden

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Teacher Survey	180	1	.33	60
Total	180	1	.33	60

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Teacher Survey	180	60	$26.44	$1586.40
Total	180	60	26.44	1586.40

Based upon the mean national hourly wages across elementary, middle, and secondary school teachers, excluding special education and career/technical education, from Occupational Employment and Wages News Release, U.S. Department of Labor, Bureau of Labor Statistics, May 17, 2011. Available at *http://www.bls.gov/news.release/ocwage.htm.*

Estimated Annual Costs to the Federal Government

The estimated total cost for this effort is $109,000; this cost includes: research staff involved in survey design, piloting, implementation, analysis, and writing. Additional costs included in this amount involve staff time for project management and administration, one-year licenses for survey and analytical software, respondent payments (gift certificates), and a letter agreement with Teachers' Domain to pull the sample and contact potential participants.

Dated: December 8, 2011.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–31994 Filed 12–13–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The NSF will publish periodic summaries of the proposed projects.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by February 13, 2012, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Engineering Research Centers (ERCs).

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract

Proposed Project

The Engineering Research Centers (ERC) program supports an integrated, interdisciplinary research environment to advance fundamental engineering knowledge and engineered systems; educate a globally competitive and diverse engineering workforce from K–12 on; and join academe and industry in partnership to achieve these goals. ERCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

ERCs conduct world-class research with an engineered systems perspective that integrates materials, devices, processes, components, control algorithms and/or other enabling elements to perform a well-defined function. These systems provide a unique academic research and education experience that involves integrative complexity and technological realization. The complexity of the systems perspective includes the factors associated with its use in industry, society/environment, or the human body.

ERCs enable and foster excellent education, integrate research and education, speed knowledge/technology transfer through partnerships between academe and industry, and prepare a more competitive future workforce. ERCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, ERCs will also be required to submit management and performance indicators annually to NSF via a data collection Web site that is managed by a technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of cash and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the ERC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Vision and impact, (2) strategic plan, (3) research program, (4) innovation ecosystem and industrial collaboration, (5) education, (6) infrastructure (leadership, management, facilities, diversity) and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, progress toward center goals, problems the Center has encountered in making progress towards goals and how they were overcome, plans for the future and anticipated research and other barriers to overcome in the following year, and specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued ERC program maintenance and growth.

Estimate of Burden: 150 hours per center for 17 centers for a total of 2550 hours plus .

Respondents: Academic institutions.

Estimated Number of Responses per Report: One from each of the 17 ERCs.

Dated: December 9, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–32035 Filed 12–13–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0294]

Criteria for Identifying Material Licensees for the U. S. Nuclear Regulatory Commission's Agency Action Review Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the completion and availability of the new criteria for identifying nuclear material licensees for discussion at the Agency Action Review Meeting (AARM). The criteria may be found in SECY–11–0132 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number: ML112280111) or in the supplementary information below.

The AARM is an agency meeting that allows senior NRC managers (1) to review the appropriateness of agency actions that have been taken for those nuclear power plants with significant performance problems as determined by the reactor oversight process (ROP) action matrix, (2) to review the appropriateness of agency actions for those nuclear material licensees, including fuel cycle facilities, with significant safety or security issues, (3) to ensure that coordinated courses of action have been developed and implemented for licensees of concern, (4) to review results of the staff's assessment of ROP effectiveness, including a review of approved deviations from the action matrix, and (5) to ensure that trends in industry and licensee performance are recognized and appropriately addressed.

ADDRESSES: A copy of SECY–11–0132 is available for inspection and/or copying for a fee in the NRC's Public Document Room (PDR), 11555 Rockville Pike, Rockville, Maryland 20874. 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.* From this page, the public can gain entry into ADAMS, which provides text and image files of 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 email to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Duane White, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6272, email: *Duane.White@nrc.gov.*

SUPPLEMENTARY INFORMATION

Background

In 2002, the NRC developed a process for providing information to the Commission on significant nuclear materials issues and adverse licensee performance. This process was discussed in SECY–02–0216, ''Proposed Process for Providing Information on Significant Nuclear Materials Issues and Adverse Licensee Performance,'' dated December 11, 2002. As part of this process, the NRC developed criteria to determine nuclear material licensees with significant performance problems that would be discussed at the AARM. In 2008, the NRC revised the criteria to provide additional clarification regarding the criteria and to incorporate NRC's most recent policies and procedures.

The agency currently identifies nuclear material licensees, including fuel cycle and Agreement State licensees, for AARM discussion based on operating performance, inspection results, and the severity of problems related to safety performance. The agency will continue to identify material licensees based on these same principles; however, one additional element (i.e., criterion), has been added that focuses on those material licensees previously discussed at the AARM who did not address or were ineffective in correcting their underlying issues.

Discussion

Criteria for Identifying Nuclear Material Licensees for Discussion at the AARM

The new criteria for identifying nuclear material licensees for discussion at the AARM may be found in SECY–11–0132 (ADAMS Accession Number: ML112280111) and is provided below.

(1) *Strategic Plan*—Licensee has an event that results in the failure to meet a strategic outcome for safety and security in the NRC Strategic Plan (NUREG–1614);

(2) *Significant Issue or Event*—Licensee has an issue or event that results in an abnormal occurrence report to Congress (per NRC Management Directive 8.1), or a severity level I or II violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution), or a level 3 or higher International Nuclear Event Scale Report to the International Atomic Energy Agency (per NRC Management Directive 5.12), and there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (*e.g.,* a significant event, which requires an incident investigation team (IIT) or augmented inspection team (AIT)); or

(3) *Performance Trend*—Licensee has multiple and/or repetitive significant program issues identified over more than one inspection, or inspection period, and the issues are supported by severity level I, II, or III violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution). Also, there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (e.g., oversight panel formed for order implementation); or

(4) *Identified for Discussion at Previous AARM*—Licensee corrective actions did not address or were ineffective in correcting the underlying issues that were previously discussed at the AARM.

The NRC's strategic plan (NUREG–1614) and the referenced management directives and enforcement policy are available on NRC's public document collections Web page at *http://www.nrc.gov/reading-rm/doc-collections/.*

Public Comments on the Proposed Criteria

The proposed criteria for identifying nuclear material licensees with significant performance issues were published for comment on September 9, 2010 (75 FR 54917). The comment period ended on October 25, 2010. The NRC received no public comments on the proposed criteria.

Dated at Rockville, Maryland, this 5th day of December 2011.

Mark A. Satorius,

Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–32065 Filed 12–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–033; NRC–2008–0566]

Detroit Edison Company; Notice of Availability of Errata Sheet for the Draft Environmental Impact Statement for a Combined License for Unit 3 at the Enrico Fermi Atomic Power Plant Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers,

Detroit District, is providing an errata sheet for NUREG–2105, ''Draft Environmental Impact Statement (DEIS) for the Combined License (COL) for Enrico Fermi Unit 3.'' The site is located in Monroe County, Michigan. An NRC notice of availability (NOA) of the DEIS was published in the **Federal Register** on October 28, 2011 (76 FR 66998). The U.S. Environmental Protection Agency's NOA was also published on October 28, 2011 (76 FR 66925).

The purpose of this notice is to inform the public of the contents of the errata sheet for NUREG–2105, Volume 1. The content of the errata sheet is provided below:

In DEIS Chapter 8, Page 8–23, after the first full paragraph (*i.e.,* after line 15), insert the following table:

TABLE 8–8—SUMMARY OF MPSC PLAN 2025 NEED FOR POWER IN THE SOUTHEAST MICHIGAN AREA

	Component	2025 (MW)
A	Total Peak Summer Demand	16,253
B	Baseline Supply of Electricity (2005 data)	12,922
C	Loss in Generating Capacity Due to Projected Retirements	(2039)
D	Net Supply of Electricity in 2025 (B + C)	10,883
E	Surplus (Deficit) in 2025 Generating Capacity Needs (D − A)	(5370)
F	Fermi 3 Net Generating Capacity	1535
G	Surplus (Deficit) in 2025 Generating Capacity with Fermi 3 (E + F)	(3835)

Source: MPSC Plan Appendix—Volume II (MPSC 2007).

For Further Information Contact: Mr. Bruce Olson, Project manager, Environmental Projects Branch 2, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–3731; email: *Bruce.Olson@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of December, 2011.

For the Nuclear Regulatory Commission.

David Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–32070 Filed 12–13–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–3; Order No. 1033]

International Mail Price Change for Inbound Air Parcel Post

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to change rates for Inbound Air Parcel Post at Universal Postal Union (UPU) rates. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* December 16, 2011, 4:30 p.m. Eastern Time.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Persons who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Notice of Filing
IV. Ordering Paragraphs

I. Introduction

On December 6, 2011, the Postal Service filed a notice announcing changes in rates not of general applicability for Inbound Air Parcel Post at Universal Postal Union (UPU) rates with an intended effective date of January 1, 2012.[1] The Notice incorporates by reference the explanation of Inbound Air Parcel Post at UPU Rates and the mechanism for setting rates contained in its request and supporting documentation filed in Docket Nos. MC2010–11 and CP2010–11.[2] Notice at 2.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted rates and supporting documents under seal;
- Attachment 2—a redacted copy of Governors' Decision No. 09–15 which establishes prices and classifications for Inbound Air Parcel Post at UPU Rates, proposed Mail Classification Schedule language which includes a description of Inbound Air Parcel Post at UPU Rates, certification of prices in conformity with 39 U.S.C. 3633, an analysis of the procedures for setting rates, and certification of the Governors' vote;
- Attachment 3—a redacted version of the new rates; and
- Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2) for Inbound Air Parcel Post at UPU rates.

The Postal Service also provided a redacted version of the supporting financial documentation as a separate Excel file.

II. Background

The Notice states that Governors' Decision No. 09–15 established prices and classifications not of general applicability for Inbound Air Parcel Post at UPU Rates on November 16, 2009. *Id.* at 1. Air parcels comprise inbound parcels eligible to receive transportation by air rather than surface. *Id.,* Attachment 2 at 1. The rates authorized by Governors' Decision No. 09–15 when there is no contractual relationship with the tendering postal operator are the highest possible inward land rates that the United States is eligible for under the parcel post regulations. *Id.* at 2. In Order No. 362, the Commission approved the addition of Inbound Air

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability and Application for Non-Public Treatment of Materials Filed Under Seal, December 6, 2011 (Notice).

[2] *See* Docket Nos. MC2010–11 and CP2010–11, Request of the United States Postal Service to Add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Products List, Notice of Establishment of Prices and Classifications Not of General Applicability for Inbound Air Parcel Post at UPU Rates Established in Governors' Decision No. 09–15, and Application for Non-Public Treatment of Materials Filed Under Seal, November 17, 2009 (Request).

Parcel Post at UPU Rates to the competitive product list.[3]

The Postal Service states in its Notice that the rates in its filing comport with Governors' Decision No. 09–15 and are ''the highest possible inward land rates for which the Postal Service was eligible based on inflation increases and other factors.'' Notice at 2–3.

In the Postal Service's Request in Docket Nos. MC2010–11 and CP2010–11, it explains the process for determining Inbound Air Parcel Post at UPU Rates. In its Request, the Postal Service indicates that the United States receives both air and surface parcels from foreign postal administrations which compensate the Postal Service for delivery of these parcels in the United States. Request at 2. It maintains that it has negotiated separate agreements for parcel rates with certain foreign posts, but most compensate it at the United States default rates for inbound parcel delivery. *Id.* Payments between postal administrations for handling and delivering parcel post are referred to as inward land rates. The Postal Service notes that inward land rates are set according to formulas in the UPU Parcel Post Regulations which constitute international law. *Id.* More specifically, the UPU Postal Operations Council establishes inward land rates.[4] Such rates are based on a percentage of each member's inward land rate in 2004. *Id.* at 3. UPU members may qualify for percentage ''bonuses'' to their base rate based upon their provision of certain value-added services.[5] *Id.* The Postal Service states it is responsible for gathering information that the UPU Postal Operations Council uses to calculate the rates, including completion of a questionnaire on service bonus eligibility and submission of annual inflation information from the Consumer Price Index for All Urban Consumers. *Id.* Based on this and similar information from the member posts, the UPU International Bureau publishes an annual notice establishing the postal administration's parcel rates for the following year. *Id.*

The Postal Service states that because of the unique mechanism for setting inward land rates, it chose to establish rates for inbound air parcels by reference to the Universal Postal Convention. *Id.*

In its Notice the Postal Service maintains that certain portions of the Governors' Decision, the new rates, and related financial documentation should remain under seal. Notice at 3, Attachment 1. It also asserts that its filing demonstrates compliance with 39 U.S.C. 3633. *Id.* at 3.

III. Notice of Filing

The Commission establishes Docket No. CP2012–3 for consideration of matters raised by the Postal Service's Notice.

The Commission appoints James F. Callow as Public Representative in this proceeding.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632 or 3633, or 39 CFR part 3015. Comments are due no later than December 16, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–3 for consideration of the matters raised in this docket.

2. Comments by interested persons in this proceeding are due no later than December 16, 2011.

3. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interest of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–32046 Filed 12–13–11; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See* Docket Nos. MC2010–11 and CP2010–11, Order Adding Inbound Air Parcel Post at UPU Rates to Competitive Product List, December 15, 2009 (Order No. 362).

[4] The UPU Postal Operations Council is a designated body of the UPU which is responsible for rate setting.

[5] The Postal Service states that services such as ''track and trace, home delivery, published delivery standards, and use of a common inquiry system'' qualify UPU members for bonuses. *Id.* Members may also seek an inflation-related adjustment to the base rate which is capped at 5 percent per year.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29879; File No. 812–13952]

Seasons Series Trust, et al.; Notice of Application

December 8, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Seasons Series Trust (''Seasons''), SunAmerica Series Trust (''Series Trust''), VALIC Company II (''VALIC II''), SunAmerica Series, Inc. (''SunAmerica Series'' and collectively with Seasons, Series Trust and VALIC II, the ''Companies''), SunAmerica Asset Management Corp. (''SAAMCo''), The Variable Annuity Life Insurance Company (''VALIC''), SunAmerica Capital Services, Inc. (''SACS'') and American General Distributors, Inc. (''AGDI'' and collectively with the Companies, SAAMCo, VALIC and SACS, the ''Applicants'').

DATES: *Filing Date:* The application was filed on August 31, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 3, 2012 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Seasons and Series Trust, One SunAmerica Center, Los Angeles, CA 90067; VALIC II, VALIC, and AGDI, 2929 Allen Parkway, Houston, TX 77019; SunAmerica Series, SAAMCo, and SACS, Harborside Financial Center, 3200 Plaza 5, Jersey City, NJ 07311.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the

Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each of Seasons and Series Trust is organized as a Massachusetts business trust, VALIC II is organized as a Delaware statutory trust, and SunAmerica Series is organized as a Maryland corporation. Each of the Companies is registered under the Act as an open-end management investment company. SAAMCo, a Delaware corporation, is an indirect, wholly owned subsidiary of American International Group, Inc. (''AIG''). VALIC, a Texas corporation, is an indirect, wholly owned subsidiary of AIG. Each of SAAMCo and VALIC is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Either SAAMCo or VALIC currently serves as investment adviser to each existing Fund of Funds (as defined below). SACS, a Delaware corporation, is an indirect, wholly owned subsidiary of AIG. AGDI, a Delaware corporation, is also an indirect, wholly owned subsidiary of AIG. Each of SACS and AGDI is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''), and SACS, and in certain cases AGDI, serve as the distributors for certain of the Funds of Funds.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Companies or any other existing or future registered open-end management investment company or series thereof that: (i) Is advised by SAAMCo or VALIC or an entity controlling, controlled by, or under common control with SAAMCo or VALIC (any such adviser, SAAMCo or VALIC, an ''Adviser''); [1] (ii) invests in other registered open-end management investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each, a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments which may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt any entity controlling, controlled by or under common control with SACS or AGDI that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees/directors will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or 12(d)(1)(G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

[1] Any other Adviser also will be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an Applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the Application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32003 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65906; File No. SR–NYSEArca–2011–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

December 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 1, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on December 1, 2011.

Auctions

Opening and Market Order Auctions—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0005 per share is charged for orders executed in the Opening or Market Order Auction.[3] The order types that may execute in the Opening or Market Order Auction are Limit Orders, Market Orders and Auction-Only Orders, which are Limit and Market Orders that are only to be executed within an Auction.[4] The Exchange currently charges the $0.0005 fee for an Auction-Only Order but not a Limit or Market Order executed in the Opening or Market Order Auction. The Exchange proposes to amend the Fee Schedule to provide that during an Opening or Market Order Auction, the $0.0005 per share fee will apply to executions of Auction-Only Orders and Market Orders. Limit Order executions in the Opening or Market Order Auction will continue to be free.[5]

Trading Halt Auction—Securities $1.00 and Greater

The Exchange does not currently charge a fee for executions of orders in Trading Halt Auctions.[6] The Exchange proposes to amend the Fee Schedule to provide that during a Trading Halt Auction, a $0.0005 per share fee will apply to the execution of Auction-Only Orders and Market Orders. Limit Order executions in the Trading Halt Auction will continue to be free.

Closing Auction—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0010 per share is charged for Market-On-Close (''MOC'') and Limit-On-Close (''LOC'') [7] Orders executed in the Closing Auction.[8] The Exchange also currently charges this $0.0010 fee for Auction-Only Orders that are executed in the Closing Auction, which are effectively equivalent to a MOC Order or LOC Order, but does not charge for Market Orders or Limit Orders that are executed in the Closing Auction. The Exchange proposes to amend the Fee Schedule to provide that, in addition to MOC and LOC Orders, Auction-Only and Market Orders that are executed in the Closing Auction will be charged the $0.0010 fee. Limit Order executions in the Closing Auction will continue to be free.

All Auctions—Securities Less Than $1.00

The Fee Schedule does not currently provide for a fee for executions during auctions on the Exchange in securities priced below $1.00.[9] The Exchange proposes to amend the Fee Schedule to reflect that a fee of 0.1% of the total dollar value of the order will be charged for round lot and odd lot executions of securities priced below $1.00 that take place during an Opening, Market Order, Trading Halt or Closing Auction. The

[3] This fee is currently referenced within the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule and will be amended, as discussed herein, in each instance. Auctions are described under NYSE Arca Equities Rule 7.35.

[4] *See* NYSE Arca Equities Rule 7.31(t). An Auction-Only order is executable during the next auction following entry of the order. If the Auction-Only Order is not executed in the auction, the balance is cancelled. Auction-Only orders are only available for auctions that take place on the Exchange and are not routed to other exchanges.

[5] The Exchange also proposes to remove the text from Footnote 2 of the Fee Schedule that provides that transaction fees do not apply to orders executed in the Opening Auction and Market Order Auction. This text inadvertently was not removed in 2010 when the Exchange implemented the $0.0005 fee for orders executed in the Opening or Market Order Auction. *See* Securities Exchange Act Release No. 63056 (October 6, 2010), 75 FR 63233 (October 14, 2010) (SR–NYSEArca–2010–87).

[6] As noted above for Opening and Market Order Auctions, the order types that may execute in a Trading Halt Auction are Limit Orders, Market Orders and Auction-Only Orders.

[7] *See* NYSE Arca Equities Rule 7.31(dd) and (ee). MOC Orders are Market Orders and LOC Orders are Limit Orders that are to be executed only during the Closing Auction, except that the Exchange rejects MOC and LOC Orders in securities for which the Exchange is not the primary market or when the auction is suspended pursuant to NYSE Arca Equities Rule 7.35(g).

[8] The Closing Auction MOC and LOC fees are currently referenced within the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule and will be amended, as discussed herein, in each instance. However, the Exchange notes that when it implemented the Closing Auction MOC and LOC fee in October 2009, it stated that the fee would apply for all pricing levels, including tiered and basic rate pricing, but inadvertently did not reflect this particular fee for Tape A securities in the Basic Rates section of the Fee Schedule. *See* Securities Exchange Act Release No. 60834 (October 16, 2009), 74 FR 54612 (October 22, 2009) (SR–NYSEArca–2009–88). The Exchange notes that Closing Auctions in Tape A securities are rarely conducted on the Exchange, if at all, but instead are conducted on the primary market for the particular security. The proposed rule change will correct this inadvertent omission and ensure that the Fee Schedule will provide for the appropriate fee if a Closing Auction is conducted on the Exchange in a Tape A security.

[9] In limited circumstances the Exchange inadvertently has charged for executions during auctions on the Exchange in securities priced below $1.00, but has since rebated ETP Holders for any such charges.

proposed fee of 0.1% would be consistent with the fee that is currently charged for round lot and odd lot executions of securities priced below $1.00 that take place outside of an auction.

Additionally, the text of Footnote 3 of the Fee Schedule states that rebates will not be paid for executions in securities priced under $1.00. The Exchange believes that this text is more appropriate within Footnote 5 of the Fee Schedule because it would be located closer to the section of the Fee Schedule describing fees for securities priced below $1.00 per share. Accordingly, the Exchange proposes to re-locate this text from Footnote 3 to Footnote 5 and reflect Footnote 3 as ''Reserved'' for possible use at a later time.

Primary Sweep Orders

The Fee Schedule currently provides for a fee of $0.0021 per share for Primary Sweep Orders (''PSOs'') [10] in Tape A securities that are routed outside the Book to the New York Stock Exchange (''NYSE''). The Exchange proposes to amend the Fee Schedule to reflect that the $0.0021 per share fee will only be applicable to PSOs that remove liquidity from the NYSE and that a PSO that provides liquidity to the NYSE will not be charged a fee or provided a credit.[11]

The Exchange proposes to implement all of the changes discussed herein on December 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and Section 6(b)(4) of the Act,[13] in particular, because 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. Specifically, the Exchange believes that the proposed rule change will add greater specificity to the Fee Schedule for securities priced at $1.00 or more by identifying the particular types of orders that will be charged a fee during auctions and those that will not be charged a fee. This will include fees applicable to executions during Trading Halt Auctions, which are similar in process and function to Opening and Market Order Auctions. The Exchange believes that it is appropriate to exclude Limit Orders from such fees because Limit Orders that are available to execute at any time during the trading day contribute valuable price discovery information to the market for securities priced at $1.00 and above, which are more actively traded, and as such the Exchange wishes to encourage the submission of such Limit Orders, which will benefit all market participants.

The Exchange believes that it is equitable and reasonable to charge the same round and odd lot execution fees for securities priced below $1.00, whether inside or outside the auction. Because such securities are more thinly traded, the Exchange does not believe that differential pricing for Limit Orders would have a significant impact on the number of such orders submitted, and as such proposes to charge all orders the same fees.

The Exchange believes that it is equitable and reasonable to impose the $0.0021 per share fee for PSOs that remove liquidity from the NYSE and to not charge a fee or provide a credit to PSOs that provides liquidity because PSOs are designed to remove liquidity and are not designed to provide liquidity.[14] An ETP Holder that intends to provide liquidity in a Tape A security should instead utilize the PO+ order type, which receives a credit of $0.0015 per share when providing liquidity to the NYSE.[15]

The proposed rule change will also remove obsolete text that does not belong in the Fee Schedule and move certain text to a more appropriate location.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[10] *See* NYSE Arca Equities Rule 7.31(kk). A PSO is a Primary Only (''PO'') Order that initially sweeps the Exchange's Book before being routed to the security's primary market.

[11] In limited circumstances where a PSO in a Tape A security is routed to the NYSE and provides liquidity to the NYSE, the Exchange has provided the ETP Holder that submitted the PSO with a credit of $0.0015, which corresponds to the credit applicable on the NYSE.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Securities Exchange Act Release No. 55896 (June 11, 2007), 72 FR 33795 (June 19, 2007) (SR–NYSEArca–2007–50).

[15] *See* NYSE Arca Equities Rule 7.31(x)(3). A PO+ Order is a PO Order entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

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–NYSEArca–2011–92 and should be submitted on or before January 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31968 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65910; File No. SR–FICC–2011–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Expand the Applicability of the Fails Charge to Agency Debt Securities Transactions

December 8, 2011.

I. Introduction

On October 20, 2011, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FICC–2011–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

The purpose of this rule change is to expand the applicability of the fails charge to Agency debt securities transactions. The Treasury Markets Practices Group (the ''TMPG''), a group of market participants active in the Treasury securities market sponsored by the Federal Reserve Bank of New York (the ''FRBNY''), has been addressing the persistent settlement fails in Agency debt securities transactions that have arisen, in part, due to low interest rates.

To encourage market participants to resolve fails promptly, the TMPG recommended expanding the applicability of the fails charge (which currently applies to Treasury securities transactions) to Agency debt with the objective of reducing the incidence of delivery failures and supporting liquidity in this market.

The TMPG had previously recommended a charge for fails on Treasury securities, which the Government Securities Division (the ''GSD'') implemented after Commission approval.[3] At that time, the TMPG recommendation did not extend to Agency securities and, therefore, the GSD's 2009 rule filing did not cover Agency debt. However, the TMPG recently has expanded its recommendation to cover certain Agency securities and, therefore, the GSD is proposing to apply the existing fails charge regime to Agency debt transactions as recommended by the TMPG. Specifically, transactions in debentures issued by Fannie Mae, Freddie Mac, and the Federal Home Loan Banks now will be subject to this charge. The proposed fails charge for Agencies will be the same as that currently in place for Treasuries and is equal to the greater of: (a) 0 percent or (b) 3 percent per annum minus the federal funds target rate. The charge will accrue each calendar day a fail is outstanding.

The following examples illustrate the manner in which the proposed fails charge will apply:

Example 1: A settlement obligation fails and the next calendar date is a valid FICC business date. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. As the next valid business date is the next calendar date, the member's credit/debit resulting from the TMPG fail charge is assessed for one day.

Example 2: A settlement obligation fails and the next calendar date is a holiday occurring on a Tuesday, Wednesday or Thursday. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. The TMPG fail charge is assessed for two days; the day the fail occurs and the date of the holiday.

Example 3: A settlement obligation fails on Friday and the following Monday is not a holiday. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. The TMPG fail charge is assessed for three days; Friday, Saturday and Sunday.

FICC's Board of Directors (or appropriate Committee thereof) will retain the right to revoke application of the proposed charges if industry events or practices warrant such revocation.

The expansion of the fails charge trading practice to the Agency debt market requires that Rule 11 (Netting System), Section 14 (Fails Charge) of the GSD rulebook be amended to make such rule applicable to debentures issued by any of Fannie Mae, Freddie Mac or the Federal Home Loan Banks. The current GSD rule states that the fails charge shall be the product of the (i) funds associated with a failed position and (ii) 3 percent per annum minus the target fed funds rate that is effective at 5 p.m. EST on the business day prior to the originally scheduled settlement date, capped at 3 percent per annum. FICC is proposing to restate the formula to make it clearer by amending section (ii) of the formula to read ''the greater of (a) 0 percent or (b) 3 percent per annum minus the fed funds target rate . * * *'' This change is not meant to affect the result of the formula in any way but rather is a more precise way of stating the formula.

The proposed rule change makes clear that FICC will not guaranty fails charge proceeds in the event of a default (*i.e.,* if a defaulting member does not pay its fail charge, members due to receive fails charge proceeds will have those proceeds reduced pro-rata by the defaulting member's unpaid amount).

Timing of Implementation

The fails charges will apply to transactions in Agency debentures entered into on or after February 1, 2012, as well as to transactions that were entered into, but remain unsettled as of, February 1, 2012. For transactions entered into prior to, and unsettled as of, February 1, 2012, the fails charge will begin accruing on the later of February 1, 2012, or the contractual settlement date.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–65632 (October 26, 2011), 76 FR 67519 (November 1, 2011).

[3] *See* Securities Exchange Act Release No. 34–59802 (April 20, 2009), 74 FR 19248 (April 28, 2009).

III. Discussion

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions and to generally protect investors and the public interest. Because the proposed rule discourages persistent fails in the marketplace by expanding the application of the fails charge to Agency debt securities transactions, the proposed rule change promotes the prompt and accurate clearance and settlement of security transactions and generally protects investors and the public interest and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–FICC–2011–08) be, and hereby is, approved.[7]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31997 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65912; File No. SR–BX–2011–082]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for BX Members Using the NASDAQ OMX BX Equities System

December 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 November 29, 2011, NASDAQ OMX BX, Inc. (''BX'' or the ''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 modify pricing for BX Members using the NASDAQ OMX BX Equities System. The Exchange will implement the proposed rule on December 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to modify its fees for trades that execute at prices at or above $1. BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.,* quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity. Since BX introduced this pricing model in 2009, several other exchanges have emulated it, including the EDGA Exchange, the BATS–Y Exchange, and the CBOE Stock Exchange (''CBSX''). Currently, the credit provided for orders that access liquidity is $0.0014 per share executed if the order is entered through a BX Equities System Market Participant Identifier (''MPID'') through which the member accesses an average daily volume of 3.5 million or more shares of liquidity, or through which it provides an average daily volume of 25,000 or more shares of liquidity during the month. Members receive a credit of $0.0005 per share executed with respect to orders that access liquidity but that do not qualify for the requirements of this pricing tier. Effective December 1, 2011, BX will expand the criteria that enable an order to receive the higher credit to include orders entered through an MPID through which the member routes an average daily volume of 25,000 or more shares. The change reflects the fact that effective November 14, 2011, BX began offering an optional routing service to its members.[3] Accordingly, as a means to incentivize members to use the new routing functionality, BX believes that it is appropriate to provide a discount to members that route significant volumes of orders using BX.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] 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 BX operates or controls. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms.

The proposed change will increase the credit paid to members that access liquidity at BX in circumstances where such members also route a specified volume of orders using BX. Because members that use the BX router will pay a fee for routed orders, and because routed orders will generally check the BX book before routing and therefore may partially execute at BX, increased use of the BX router has the potential both to increase BX's revenue and to increase the volume of order flow that checks the BX book. Such an increase in order flow may, in turn, encourage members that seek to post liquidity to post non-marketable orders at BX, thereby increasing the depth of the BX book and encouraging still greater volumes of order flow to be directed to BX. Accordingly, BX believes that it is reasonable to offer a credit to members that make significant use of the BX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

router to encourage these potential benefits to its market quality. BX further believes that the proposed change is equitable because (i) members that receive the higher credit due to use of the BX router will also be paying fees associated with routing orders, (ii) other members may benefit from increased use of the BX router due to the potential for associated benefits to overall market quality, and (iii) existing means of receiving a credit of $0.0014 per share executed for liquidity-accessing orders remain unchanged. As a general matter, BX also believes that it is reasonable and equitable to use pricing incentives, such as a higher rebate for accessing liquidity, to encourage members to increase their participation in the market.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it will use pricing incentives to encourage greater use of BX's routing and execution facilities.

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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[6] 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 email to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–082 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–2011–082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 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–BX–2011–082 and should be submitted on or before January 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31998 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65915; File No. SR–NASDAQ–2011–166]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4613(a)(2)(D) To Clarify That the Designated Percentage for Rights and Warrants Is Thirty Percent

December 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 November 29, 2011, The NASDAQ Stock Market LLC (''NASDAQ''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend Rule 4613(a)(2)(D) to clarify that the Designated Percentage for rights and warrants, which are no longer subject to Rule 4120(a)(11), is 30 percent.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is below. Proposed new language is italicized.

4613. Market Maker Obligations

A member registered as a Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

(a) Quotation Requirements and Obligations

(1) No change.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A)–(C) No change.

(D) For purposes of this Rule, the ''Designated Percentage'' shall be 8% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C).

The Designated Percentage for rights and warrants shall be 30%.

(E)–(K) No change.

(b)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend Rule 4613(a)(2)(D) to clarify that the Designated Percentage for rights and warrants, which are not subject to Rule 4120(a)(11), is 30 percent.

On June 23, 2011, the Commission approved a proposed rule change of NASDAQ, together with the analogous rule changes of other equity exchanges and FINRA to amend their respective rules, to expand Rule 4120(a)(11) to include all remaining NMS stocks, which included rights and warrants.[3] In expanding the coverage of Rule 4120(a)(11), NASDAQ also amended Rule 4613(a)(2)(D) to state specific Designated Percentages for the securities covered under new Rules 4120(a)(11)(A)–(C). Prior to the expansion, all NMS stocks not covered by Rule 4120(a)(11), including rights and warrants, had a Designated Percentage of 30 percent. Given that rights and warrants are once again excluded from the Rule 4120(a)(11) trading pause,[4] NASDAQ is making a clarifying change to Rule 4613(a)(2)(D) to state that rights and warrants shall have a Designated Percentage of 30 percent.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. NASDAQ believes that the proposed rule meets these requirements because it makes a clarifying change to a rule that is currently silent on how it is applied to certain securities. NASDAQ is applying the same Designated Percentage to rights and warrants, which are no longer covered by the trading pause under Rule 4120(a)(11), as it had prior to recent changes to the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

[3] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–NASDAQ–2011–067, *et al.*).

[4] *See* Securities Exchange Act Release No. 65814 (November 23, 2011) (SR–NASDAQ–2011–154).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Specifying 30% as the Designated Percentage for rights and warrants in Rule 4613(a)(2)(D) would restore the Market Maker quoting obligations that existed prior to the recent inclusion and subsequent exclusion of rights and warrants from the single-stock circuit breaker pilot program. Allowing the change to be operative upon filing should minimize investor confusion on how Rule 4613(a)(2)(D) will operate for rights and warrants in light of the recent exclusion of rights and warrants from Rule 4120(a)(11). For this reason, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2011–166 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 No. SR–NASDAQ–2011–166. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–166 and should be submitted on or before January 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32000 Filed 12–13–11; 8:45 am]

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[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65899A; File No. SR–FICC–2008–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Allow the Mortgage-Backed Securities Division To Provide Guaranteed Settlement and Central Counterparty Services; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** of December 12, 2011, concerning a Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Allow the Mortgage-Backed Securities Division to Provide Guaranteed Settlement and Central Counterparty Services. The document contained improper timing requirements. Because this filing was received by the Securities and Exchange Commission prior to amendments to Section 19(b) of the Securities Exchange Act (through the Dodd-Frank Wall Street Reform and Consumer Protection Act), the operative timing requirements for the Securities and Exchange Commission's action with respect to the filing are different from the amended timing requirements. However, the release was sent to the **Federal Register** reflecting the amended and consequently improper timing requirements.

FOR FURTHER INFORMATION CONTACT: Joseph Horn, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5765.

Correction

In the **Federal Register** of December 12, 2010, in FR Doc. 2011–31762, on page 77296, in the thirty-second line of the third column, correct the paragraph to read ''Within 35 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 self-regulatory organization consents, the Commission shall: (a) By order approve such proposed rule change or (b) institute proceedings to determine whether the proposed rule change should be disapproved.''

Dated: December 12, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32164 Filed 12–12–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65918; File No. SR–MSRB–2011–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change, as Modified by Amendment No. 2, Consisting of Interpretive Notice Concerning the Application of MSRB Rule G–17 to Underwriters of Municipal Securities

December 8, 2011.

I. Introduction

On August 22, 2011, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities

and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal consisting of an interpretive notice concerning the application of MSRB Rule G–17 (Conduct of Municipal Securities and Municipal Advisory Activities) to underwriters of municipal securities (''Notice''). The proposed rule change was published for comment in the **Federal Register** on September 9, 2011.[3] The Commission received five comment letters on the proposed rule change.[4] On October 11, 2011, the MSRB extended the time period for Commission action to December 7, 2011. On November 3, 2011, the MSRB filed Amendment No. 1 to the proposed rule change. On November 10, 2011, the MSRB withdrew Amendment No. 1, responded to comments,[5] and filed Amendment No. 2 to the proposed rule change. The proposed rule change, as modified by Amendment No. 2, was published in the **Federal Register** on November 21, 2011.[6] The Commission received eight comment letters on the proposed rule change, as modified by Amendment No. 2, and a response from the MSRB.[7] On December 6, 2011, the MSRB extended the time period for Commission action to December 8, 2011.

This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

MSRB proposes to adopt an interpretive notice with respect to MSRB Rule G–17, which states that ''[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.''

The scope of the Notice would apply to underwriters and their duty to municipal entity [8] issuers of municipal securities in negotiated underwritings (except as set forth otherwise), but would not apply to selling group members or when a dealer is serving as an advisor to a municipal entity. The Notice includes the following sections: (1) Basic Fair Dealing Principle; (2) Role of the Underwriter/Conflicts of Interest; (3) Representations to Issuers; (4) Required Disclosures to Issuers; (5) Underwriter Duties in Connection with Issuer Disclosure Documents; (5) Underwriter Compensation and New Issue Pricing; (6) Conflicts of Interest; (7) Retail Order Periods; and (8) Dealer Payments to Issuer Personnel.

A. Basic Fair Dealing Principle

The Notice would specify that an underwriter must not misrepresent or omit the facts, risks, potential benefits, or other material information about municipal securities activities undertaken with a municipal entity issuer. The Notice would also state that MSRB Rule G–17 establishes a general duty of a dealer to deal fairly with all persons (including, but not limited to, issuers of municipal securities), even in the absence of fraud.

B. Role of the Underwriter/Conflicts of Interest

Under the Notice, MSRB Rule G–17's duty to deal fairly with all persons would require the underwriter to make certain disclosures to the issuer of municipal securities to clarify the underwriter's role in an issuance of municipal securities and the actual or potential material conflicts of interest with respect to such issuance.

1. Disclosures Concerning the Underwriter's Role

The Notice would require an underwriter to disclose the following information to an issuer: (A) MSRB Rule G–17 requires an underwriter to deal fairly at all times with both municipal issuers and investors; (B) the underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer; (C) unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is not required by federal law to act in the best interest of the issuer without regard to the underwriter's own financial or other interests; (D) the underwriter has a duty to purchase securities from the issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; and (E) the underwriter will review the official statement for the issuer's securities in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction. Moreover, the Notice would state that the underwriter must not recommend that the issuer not retain a municipal advisor.

2. Disclosure Concerning the Underwriter's Compensation

The Notice would require an underwriter to disclose to an issuer whether its underwriting compensation will be contingent on the closing of a transaction. The underwriter must also disclose that compensation that is contingent on the closing of a transaction or the size of a transaction presents a conflict of interest, because it may cause the underwriter to recommend a transaction that it is unnecessary or to recommend that the size of the transaction be larger than is necessary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65263 (September 6, 2011), 76 FR 55989.

[4] *See* Letters from Joy A. Howard, Principal, WM Financial Strategies, dated September 30, 2011 (''WM Letter''); Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 30, 2010 (''BDA Letter''); Colette J. Irwin-Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated September 30, 2011 (''NAIPFA Letter''); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated September 30, 2011 (''SIFMA Letter''); and Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, dated October 3, 2011 (''GFOA Letter'').

[5] *See* Letter from Margaret C. Henry, General Counsel, Market Regulation, MSRB, to Elizabeth M. Murphy, Secretary, Commission, dated November 10, 2011 (''Response Letter I'').

[6] *See* Securities Exchange Act Release No. 65749 (November 15, 2011), 76 FR 72013.

[7] *See* Letters from Colette J. Irwin-Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated November 30, 2011 (''NAIPFA Letter II''); E. John White, Chief Executive Officer, Public Financial Management, Inc., dated November 30, 2011 (''PFM Letter''); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 30, 2011 (''SIFMA Letter II''); Joy A. Howard, Principal, WM Financial Strategies, dated November 30, 2011 (''WM Letter II''); Michael Nicholas, CEO, Bond Dealers of America, dated December 1, 2011 (''BDA Letter II''); Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, dated December 1, 2011 (''GFOA Letter II''); Robert Doty, AGFS, dated December 1, 2011 (''AGFS Letter''); and Peter C. Orr, CFA, President, Intuitive Analytics LLC, dated December 7, 2011 (''IA Letter''). *See* Letter from Margaret C. Henry, General Counsel, Market Regulation, MSRB, to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2011 (''Response Letter II'').

[8] The Notice defines the term ''municipal entity'' as that term is defined by Section 15B(e)(8) of the Exchange Act: ''any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.'' *See* proposed Notice endnote 1.

3. Other Conflicts Disclosures

The Notice would require an underwriter to disclose other potential or actual material conflicts of interest, including, but not limited to, the following: (A) Any payments described below in Section II (G)(1) ''Conflicts of Interest—Payments to or from Third Parties''; (B) any arrangements described below in Section II (G)(2) ''Conflicts of Interest—Profit-Sharing with Investors''; (C) the credit default swap disclosures described below in Section II (G)(3) ''Conflicts of Interest—Credit Default Swaps''; and (D) any incentives for the underwriter to recommend a complex municipal securities financing and other associated conflicts of interest described below in Section II (D) ''Required Disclosures to Issuers''.

The Notice would permit disclosures concerning the role of the underwriter and the underwriter's compensation to be made by a syndicate manager on behalf of other syndicate members. The Notice would require other conflicts disclosures to be made by the particular underwriters subject to such conflicts.

4. Timing and Manner of Disclosures

The Notice would require that all of the disclosures be made in writing to an official of the issuer that the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter and that, to the knowledge of the underwriter, is not a party to a disclosed conflict. The Notice would specify that the disclosures must be made in a manner designed to make clear to such official the subject matter of the disclosures and their implications for the issuer.

The Notice would specify when the disclosures must be made. First, disclosure concerning the arm's-length nature of the underwriter-issuer relationship must be made in the earliest stages of the underwriter's relationship with the issuer, for example, in a response to a request for proposals or in promotional materials provided to an issuer. Other disclosures concerning the role of the underwriter and the underwriter's compensation generally must be made when the underwriter is engaged to perform underwriting services, for example, in an engagement letter, not solely in a bond purchase agreement. Moreover, conflicts disclosures must be made at the same time, except with regard to conflicts discovered or arising after the underwriter has been engaged. For example, a conflict may not be present until an underwriter has recommended a particular financing. In that case, the disclosure must be provided in sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation, as described below in Section II (D) ''Required Disclosures to Issuers''.

5. Acknowledgement of Disclosures

The Notice would require an underwriter to attempt to receive written acknowledgement (other than by automatic email receipt) by the official of the issuer of receipt of the foregoing disclosures. If the official of the issuer agrees to proceed with the underwriting engagement after receipt of the disclosures but will not provide written acknowledgement of receipt, the underwriter may proceed with the engagement after documenting with specificity why it was unable to obtain such written acknowledgement.

C. Representations to Issuers

The Notice would require all representations made by underwriters to issuers of municipal securities in connection with municipal securities undertakings, whether written or oral, to be truthful and accurate and not misrepresent or omit material facts. Underwriters must have a reasonable basis for the representations and other material information contained in documents they prepare and must refrain from including representations or other information they know or should know is inaccurate or misleading. For example, in connection with a certificate signed by the underwriter that will be relied upon by the issuer or other relevant parties to an underwriting, for example, an issue price certificate, the dealer must have a reasonable basis for the representations and other material information contained therein.

In addition, an underwriter's response to an issuer's request for proposals or qualifications must fairly and accurately describe the underwriter's capacity, resources, and knowledge to perform the proposed underwriting as of the time the proposal is submitted and must not contain any representations or other material information about such capacity, resources, or knowledge that the underwriter knows or should know to be inaccurate or misleading. Matters not within the personal knowledge of those preparing the response, for example, pending litigation, must be confirmed by those with knowledge of the subject matter. An underwriter must not represent that it has the requisite knowledge or expertise with respect to a particular financing if the personnel that it intends to work on the financing do not have the requisite knowledge or expertise.

D. Required Disclosures to Issuers

The Notice would require that disclosures be tailored to the personnel of the issuer if knowledge or experience is lacking with a particular type of structure. While many municipal securities are issued using financing structures that are routine and well understood by the typical municipal market professional, including most issuer personnel that have the lead responsibilities in connection with the issuance of municipal securities, the underwriter must provide disclosures on the material aspects of structures when the underwriter reasonably believes issuer personnel lacks knowledge or experience with such structures that it recommends.

In cases where the issuer personnel responsible for the issuance of municipal securities would not be well positioned to fully understand or assess the implications of a financing in its totality, because the financing is structured in an unique, atypical, or otherwise complex manner, the underwriter in a negotiated offering that recommends such complex financing has an obligation to make more particularized disclosures than otherwise required in a routine financing.[9] Examples of complex financings include variable rate demand obligations and financings involving derivatives such as swaps. The underwriter must disclose the material financial characteristics of the complex financing, as well as the material financial risks of the financing that are known to the underwriter and reasonably foreseeable at the time of the disclosure.[10] The underwriter must also

[9] The Notice would state that if a complex municipal securities financing consists of an otherwise routine financing structure that incorporates a unique, atypical or complex element and the issuer personnel have knowledge or experience with respect to the routine elements of the financing, the disclosure of material risks and characteristics may be limited to those relating to such specific element and any material impact such element may have on other features that would normally be viewed as routine. *See* proposed Notice endnote 6.

[10] The Notice would provide an example that an underwriter that recommends variable rate demand obligations should inform the issuer of the risk of interest rate fluctuations and material risks of any associated credit or liquidity facilities (for example, the risk that the issuer might not be able to replace the facility upon its expiration and might be required to repay the facility provider over a short period of time). As an additional example, if the underwriter recommends that the issuer swap the floating rate interest payments on the variable rate demand obligations to fixed rate payments under a swap, the underwriter must disclose the material financial risks (including market, credit,

Continued

disclose any incentives to recommend the financing and other associated conflicts of interest.[11] These disclosures must be made in a fair and balanced manner based on principles of fair dealing and good faith.

The Notice would dictate that the level of required disclosure may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing, in each case based on the reasonable belief of the underwriter.[12] In all events, the underwriter must disclose any incentives for the underwriter to recommend the complex municipal securities financing and other associated conflicts of interest.

The Notice would require that this disclosure be made in writing to an official of the issuer whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter in (A) sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation and (B) a manner designed to make clear to such official the subject matter of such disclosures and their implications for the issuer. The complex financing disclosures must address the specific elements of the financing and cannot be general in nature. Finally, the Notice would require the underwriter to make additional efforts reasonably designed to inform the official of the issuer if the underwriter does not reasonably believe that the official is capable of independently evaluating the disclosures.

E. Underwriter Duties in Connection With Issuer Disclosure Documents

The Notice would note that underwriters often play an important role in assisting issuers in the preparation of disclosure documents, such as preliminary official statements and official statements.[13] These documents are critical to the municipal securities transaction, in that investors rely on the representations contained in the documents in making their investment decisions. Investment professionals, such as municipal securities analysts and ratings services, rely on the representations in forming an opinion regarding the credit.

The Notice would provide that a dealer's duty to have a reasonable basis for the representations it makes, and other material information it provides, to an issuer and to ensure that such representations and information are accurate and not misleading extends to representations and information provided by the underwriter in connection with the preparation by the issuer of its disclosure documents, for example, cash flows.

F. Underwriter Compensation and New Issue Pricing

1. Excessive Compensation

The Notice states that an underwriter's compensation for a new issue (including both direct compensation paid by the issuer and other separate payments, values, or credits received by the underwriter from the issuer or any other party in connection with the underwriting), in certain cases and depending upon the specific facts and circumstances of the offering, may be so disproportionate to the nature of the underwriting and related services performed as to constitute an unfair practice with regard to the issuer that it is a violation of MSRB Rule G–17. The Notice would look at factors such as the credit quality of the issue, the size of the issue, market conditions, the length of time spent structuring the issue, and whether the underwriter is paying the fee of the underwriter's counsel or any other relevant costs related to the financing.

2. Fair Pricing

The Notice states that the duty of fair dealing under MSRB Rule G–17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the underwriter as to the fair market value of the issue at the time it is priced.[14] In general, a dealer purchasing bonds in a competitive underwriting for which the issuer may reject any and all bids will be deemed to have satisfied its duty of fairness to the issuer with respect to the purchase price of the issue as long as the dealer's bid is a bona fide bid as defined in MSRB Rule G–13 [15] that is based on the dealer's best judgment of

operational, and liquidity risks) and material financial characteristics of the recommended swap (for example, the material economic terms of the swap, the material terms relating to the operation of the swap, and the material rights and obligations of the parties during the term of the swap), as well as the material financial risks associated with the variable rate demand obligation.

Such disclosure should be sufficient to allow the issuer to assess the magnitude of its potential exposure as a result of the complex municipal securities financing. The underwriter must also inform the issuer that there may be accounting, legal, and other risks associated with the swap and that the issuer should consult with other professionals concerning such risks. If the underwriter's affiliated swap dealer is proposed to be the executing swap dealer, the underwriter may satisfy its disclosure obligation with respect to the swap if such disclosure has been provided to the issuer by the affiliated swap dealer or the issuer's swap or other financial advisor that is independent of the underwriter and the swap dealer, as long as the underwriter has a reasonable basis for belief in the truthfulness and completeness of such disclosure. If the issuer decides to enter into a swap with another dealer, the underwriter is not required to make disclosures with regard to that swap. Dealers that recommend swaps or security-based swaps to municipal entities may also be subject to rules of the Commodity Futures Trading Commission or those of the Commission. *See* proposed Notice endnote 7.

[11] The Notice would provide an example that a conflict of interest may exist when the underwriter is also the provider of a swap used by an issuer to hedge a municipal securities offering or when the underwriter receives compensation from a swap provider for recommending the swap provider to the issuer. *See* proposed Notice endnote 8.

[12] The Notice would state that even a financing in which the interest rate is benchmarked to an index that is commonly used in the municipal marketplace, such as LIBOR or SIFMA, may be complex to an issuer that does not understand the components of that index or its possible interaction with other indexes. *See* proposed Notice endnote 9.

[13] The Notice would state that underwriters that assist issuers in preparing official statements must remain cognizant of the underwriters' duties under federal securities laws. With respect to primary offerings of municipal securities, the SEC has noted, ''By participating in an offering, an underwriter makes an implied recommendation about the securities.'' *See* Securities Exchange Act Release No. 34–26100 (September 22, 1988), 53 FR 37778 (September 28, 1998) (proposing Exchange Act Rule 15c2–12) at text following note 70. The SEC has stated that ''this recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.'' Furthermore, pursuant to SEC Rule 15c2–12(b)(5), an underwriter may not purchase or sell municipal securities in most primary offerings unless the underwriter has reasonably determined that the issuer or an obligated person has entered into a written undertaking to provide certain types of secondary market disclosure and has a reasonable basis for relying on the accuracy of the issuer's ongoing disclosure representations. Securities Exchange Act Release No. 34–34961 (November 17, 1994), 59 FR 59590 (November 10, 1994) (adopting continuing disclosure provisions of Exchange Act Rule 15c2–12) at text following note 52. *See* proposed Notice endnote 10.

[14] The Notice would state that the MSRB has previously observed that whether an underwriter has dealt fairly with an issuer for purposes of MSRB Rule G–17 is dependent upon all of the facts and circumstances of an underwriting and is not dependent solely on the price of the issue. The Notice refers to MSRB Notice 2009–54 and Rule G–17 Interpretive Letter—Purchase of new issue from issuer, MSRB interpretation of December 1, 1997. *See* proposed Notice endnote 11.

[15] The Notice would refer to MSRB Rule G–13(b)(iii), which provides: ''For purposes of subparagraph (i), a quotation shall be deemed to represent a ''bona fide bid for, or offer of, municipal securities'' if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.'' *See* proposed Notice endnote 12.

the fair market value of the securities that are the subject of the bid.

In a negotiated underwriting, the underwriter has a duty under MSRB Rule G–17 to negotiate in good faith with the issuer. This duty would include the obligation of the dealer to ensure the accuracy of representations made during the course of such negotiations, including representations regarding the price negotiated and the nature of investor demand for the securities, for example, the status of the order period and the order book. If, for example, the dealer represents to the issuer that it is providing the ''best'' market price available on the new issue, or that it will exert its best efforts to obtain the ''most favorable'' pricing, the dealer may violate MSRB Rule G–17 if its actions are inconsistent with such representations.[16]

G. Conflicts of Interest

1. Payments To or From Third Parties

The Notice would state that in certain cases, compensation received by the underwriter from third parties, such as the providers of derivatives and investments (including affiliates of the underwriters), may color the underwriter's judgment and cause it to recommend products, structures, and pricing levels to an issuer when it would not have done so absent such payments. The MSRB would view the failure of an underwriter to disclose to the issuer the existence of payments, values, or credits received by the underwriter in connection with its underwriting of the new issue from parties other than the issuer, and payments made by the underwriter in connection with such new issue to parties other than the issuer (in either case including payments, values, or credits that relate directly or indirectly to collateral transactions integrally related to the issue being underwritten), to be a violation of the underwriter's obligation to the issuer under MSRB Rule G–17.

For example, the MSRB would consider it to be a violation of MSRB Rule G–17 for an underwriter to compensate an undisclosed third party in order to secure municipal securities business. Similarly, the MSRB would consider it to be a violation of MSRB Rule G–17 for an underwriter to receive undisclosed compensation from a third party in exchange for recommending that third party's services or products to an issuer, including business related to municipal securities derivative transactions. The Notice does not require that the amount of such third party payments be disclosed.

In addition, the underwriter must disclose to the issuer whether the underwriter has entered into any third-party arrangements for the marketing of the issuer's securities.

2. Profit-Sharing With Investors

The Notice would state that arrangements between the underwriter and an investor purchasing new issue securities from the underwriter (including purchases that are contingent upon the delivery by the issuer to the underwriter of the securities) according to which profits realized from the resale by such investor of the securities are directly or indirectly split or otherwise shared with the underwriter would, depending on the facts and circumstances (including, in particular, if such resale occurs reasonably close in time to the original sale by the underwriter to the investor), constitute a violation of the underwriter's fair dealing obligation under MSRB Rule G–17. Such arrangements could also constitute a violation of MSRB Rule G–25(c), which precludes a dealer from sharing, directly or indirectly, in the profits or losses of a transaction in municipal securities with or for a customer.[17]

3. Credit Default Swaps

The issuance or purchase by a dealer of credit default swaps for which the reference is the issuer for which the dealer is serving as underwriter, or an obligation of that issuer, may pose a conflict of interest, because trading in such municipal credit default swaps has the potential to affect the pricing of the underlying reference obligations, as well as the pricing of other obligations brought to market by that issuer. The Notice would require a dealer to disclose the fact that it engages in such activities to the issuers for which the dealer serves as underwriter.

The Notice would not require disclosures for activities with regard to credit default swaps based on baskets or indexes of municipal issuers that include the issuer or its obligations, unless the issuer or its obligations represents more than 2% of the total notional amount of the credit default swap or the underwriter otherwise caused the issuer or its obligations to be included in the basket or index.

H. Retail Order Periods

The Notice would require an underwriter that has agreed to underwrite a transaction with a retail order period to honor such agreement.[18] The Notice would require a dealer that wishes to allocate securities in a manner that is inconsistent with an issuer's requirements to obtain the issuer's consent.

The Notice would require an underwriter that has agreed to underwrite a transaction with a retail order period to take reasonable measures to ensure that retail clients are bona fide. An underwriter that knowingly accepts an order that has been framed as a retail order when it is not, for example, a number of small orders placed by an institutional investor that would otherwise not qualify as a retail customer, would violate MSRB Rule G–17 if its actions are inconsistent with the issuer's expectations regarding retail orders. Moreover, a dealer that places an order that is framed as a qualifying retail order but in fact represents an order that does not meet the qualification requirements to be treated as a retail order, for example, an order by a retail dealer without ''going away'' orders [19] from retail customers when such orders are not within the issuer's definition of ''retail,'' would violate its MSRB Rule G–17 duty of fair dealing.

The Notice specifies that the MSRB will continue to review activities relating to retail order periods to ensure that they are conducted in a fair and orderly manner consistent with the intent of the issuer and the MSRB's investor protection mandate.

I. Dealer Payments to Issuer Personnel

The Notice would state that dealers are reminded of the application of MSRB Rule G–20 on gifts, gratuities, and non-cash compensation, and MSRB Rule G–17, in connection with certain

[16] The Notice would refer to Rule G–17 Interpretive Letter—Purchase of new issue from issuer, MSRB interpretation of December 1, 1997. *See* proposed Notice endnote 13.

[17] MSRB Rule D–9 defines the term ''customer'' as: ''Except as otherwise specifically provided by rule of the Board, the term ''Customer'' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.''

[18] The Notice refers to MSRB Interpretation on Priority of Orders for Securities in a Primary Offering under Rule G–17, MSRB interpretation of October 12, 2010, reprinted in the MSRB Rule Book. The Notice would remind underwriters of previous MSRB guidance on the pricing of securities sold to retail investors and refer to Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities, MSRB Notice 2009–42 (July 14, 2009). *See* proposed Notice endnote 15.

[19] The Notice would state that a ''going away'' order is an order for new issue securities for which a customer is already conditionally committed and cites Securities Exchange Act Release No. 62715 (August 13, 2010), 75 FR 51128 (August 18, 2010) (File No. SR–MSRB–2009–17). *See* proposed Notice endnote 16.

payments made to, and expenses reimbursed for, issuer personnel during the municipal bond issuance process.[20] The Notice would further state that the rules are designed to avoid conflicts of interest and to promote fair practices in the municipal securities market.

The Notice would alert dealers to consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular, but not limited to, payments for which dealers seek reimbursement from bond proceeds or issuers, comport with the requirements of MSRB Rule G–20. For example, the Notice provides that a dealer acting as a financial advisor or underwriter may violate MSRB Rule G–20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering such as may be incurred for rating agency trips, bond closing dinners, and other functions, that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.[21]

III. Comment Letters and the MSRB's Responses

As noted earlier, the Commission received five comments [22] on the proposed rule change as originally proposed and eight comments [23] on the proposed rule change, as modified by Amendment No. 2.[24] The MSRB filed two letters responding to the comments.[25] A summary of the comments and the MSRB's responses are set forth below.

A. Basic Fair Dealing Principle

Commenters generally supported the principle of fair dealing in MSRB Rule G–17,[26] but some commenters believed that the principle of fair dealing should not be interpreted to impose a fiduciary duty on underwriters to issuers,[27] while other commenters believed that underwriters have such a duty if they engage in certain activities.[28] In Response Letter I, the MSRB responded that the Notice does not impose a fiduciary duty on underwriters and that the duties imposed by the Notice on underwriters are no different in many cases from the duties already imposed on them by MSRB rules with respect to customers. Further, the MSRB stated that an underwriter is not required to act in the best interest of an issuer without regard to the underwriter's own financial and other interests and is not required to consider all reasonably feasible alternatives to the proposed financings. Rather, the MSRB stated that one purpose of the Notice is to eliminate issuer confusion about the role of the underwriter.

B. Role of the Underwriter/Conflicts of Interest

1. Disclosures Concerning the Underwriter's Role

Some commenters suggested additional disclosures with respect to the role of underwriters.[29] For example, commenters suggested that the MSRB require an underwriter to state: (1) That the underwriter does not have a fiduciary duty to the issuer and is a counterparty at arm's length; [30] (2) that the issuer may choose to engage a financial advisor to represent its interests; [31] (3) that the underwriter is not acting as an advisor; [32] (4) that the underwriter has conflicts with issuers because the underwriter represents the interests of investors and other parties; [33] (5) that the underwriter seeks to maximize profitability; [34] and (6) that the underwriter has no continuing obligation to the issuer after the transaction.[35]

In Response Letter I, the MSRB noted that the Notice, as modified by Amendment No. 2, incorporates many of the recommendations suggested by the commenters, such as requiring underwriters to provide issuers with disclosure that underwriters do not have a fiduciary duty to issuers. In addition, the MSRB noted that the Notice, as modified by Amendment No. 2, requires disclosure regarding the underwriter's role compared to a municipal advisor,[36] and prohibits an underwriter from recommending that the issuer not retain a municipal advisor.[37] The MSRB also

[20] The Notice would cite to MSRB Rule G–20 Interpretation—Dealer Payments in Connection With the Municipal Securities Issuance Process, MSRB interpretation of January 29, 2007, reprinted in the MSRB Rule Book. *See* proposed Notice endnote 17.

[21] The Notice cites to *In the Matter of RBC Capital Markets Corporation,* SEC Rel. No. 34–59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G–20 and G–17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); *In the Matter of Merchant Capital,* L.L.C., SEC Rel. No. 34–60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings). *See* proposed Notice endnote 18.

[22] *See supra* note 4.

[23] *See supra* note 7.

[24] One commenter stated that the amended Notice is a significant improvement over the original Notice. *See* PFM Letter. Another commenter stated that it supports the changes made in the Notice, as modified by Amendment No. 2, such as the limits on negotiated offerings, disclosures based on reasonable beliefs, and nondisclosure of third-party payment amounts. *See* GFOA Letter II.

[25] *See supra* notes 5 and 7.

[26] *See* SIFMA Letter I.

[27] *See* SIFMA Letter I; NAIPFA Letter I; BDA Letter I. Both NAIPFA Letter I and BDA Letter I noted that the imposition of a fiduciary duty would confuse municipal issuers on the role of underwriters. One commenter disagreed with the imposition of a fiduciary duty and noted that municipal issuers often do not understand the disclosures that they are provided and municipal issuers do not benefit from complex disclosures from firms that are not acting in a fiduciary capacity. *See* WM Letter I (stating its belief that the proposal will not improve transparency in the municipal market).

[28] *See, e.g.,* PFM Letter. The commenter stated that advice given by brokers in their promotion of themselves to become underwriters makes them municipal advisors.

[29] One commenter stated that it supports the proposal but believes that additional changes would be required to protect infrequent and/or small and unsophisticated issuers. *See* NAIPFA Letter I.

[30] *See* GFOA Letter I and NAIPFA Letter I. One commenter stated its belief that a simple disclosure from an underwriter to the issuer that the underwriter is not acting as financial advisor and that the issuer should consult with a financial advisor would be sufficient. *See* WM Letter I.

[31] *See* GFOA Letter I and NAIPFA Letter I (requesting a disclosure that an underwriter is no replacement for a municipal advisor and stating that when an issuer engages a municipal advisor, the underwriter disclosures should not overlap with areas covered by the role of municipal advisor). Other commenters stated their belief that in a negotiated sale, when the issuer of municipal securities engages a registered municipal advisor, disclosures should be reduced. *See* NAIPFA Letter II; SIFMA Letter II; and WM Letter II (stating that the exemption from some of the disclosures required by the rule for underwriters engaged in a competitive sale should be extended to all transactions in which a financial advisor has been retained). In Response Letter II, the MSRB noted its disagreement because it believes that more disclosure would empower, rather than confuse, issuers.

[32] *See* NAIPFA Letter I.

[33] *See* NAIPFA Letter I. One commenter objected to the required disclosure that an underwriter must balance a fair and reasonable price for issuers with a fair and reasonable price for investors. *See* BDA Letter II. The commenter stated its belief that there exists a reasonable price for both issuers and investors, and recommended that the disclosure be modified to reflect that statement. In Response Letter II, the MSRB stated its belief that it is appropriate to characterize the underwriter's duties of fair pricing as a balance between the interests of the issuer and investors.

[34] *See* NAIPFA Letter I.

[35] *See* NAIPFA Letter I.

[36] One commenter stated that the requirement for an underwriter to compare its obligations with others, such as a municipal advisor, should be eliminated. *See* BDA Letter II. In Response Letter II, the MSRB noted that it has determined to take the approach suggested by another commenter (GFOA) and, therefore, has not changed this provision of the proposal but will monitor disclosure practices under the proposal and will engage in a dialogue with industry participants and the Commission to determine whether sufficient improvements have occurred in the flow of disclosures to decision-making personnel of issuers or whether additional steps should be taken.

[37] One commenter agreed with the MSRB that an underwriter should not recommend that an issuer not retain a municipal advisor. *See* BDA Letter II.

stated that it does not believe that it is necessary for underwriters to disclose that they seek to maximize profitability and have no continuing obligation to the issuer after the transaction.

One commenter suggested that the MSRB require underwriters to disclose pending litigation that may affect the underwriter's municipal securities business, departure of experts that the issuer relied upon, and transactional risk including a comparison of different forms of financings.[38] In Response Letter I, the MSRB disagreed that underwriters should disclose different types of financings that may be applicable to an issuer's particular situation because that is under the domain of the municipal advisor, and noted that pending litigation and expert departures do not rise to the level of conflicts, but could be required by issuers as the issuers deem appropriate.

One commenter stated its belief that the Notice should require underwriters to educate issuers to better understand underwriting pricing and fees.[39] In Response Letter I, the MSRB noted it is in the process of developing education materials for issuers as suggested by the commenter.

Another commenter stated that underwriters should not be required to provide generalized role and compensation disclosures or written risk disclosures to large and frequent issuers unless requested by such issuers.[40] In Response Letter II, the MSRB noted its disagreement and stated its belief that additional disclosure would empower, rather than confuse, issuers and, therefore, no further modifications to these provisions are warranted.

2. Disclosure Concerning the Underwriter's Compensation

One commenter requested additional conflicts of interest disclosures regarding underwriter compensation, such as how the underwriter is compensated.[41] In Response Letter I, the MSRB stated that it believes that the Notice, as modified by Amendment No. 2, would incorporate the commenter's recommendation, such as disclosure regarding contingent fee compensation as a conflict of interest.

Another commenter stated its belief that the underwriter should be required to disclose to an issuer, and obtain its informed consent in writing, that the form of the underwriter's compensation creates a conflict of interest, because underwriter compensation is based primarily on the size and type of issuance.[42] The commenter later stated that contingent fees should be disclosed.[43] Another commenter objected to the characterization of contingent fee arrangements as resulting in a conflict of interest with issuers.[44] The commenter stated that such arrangements do not necessarily result in a conflict, and recommended that disclosure should state that such disclosure ''may'' present a conflict or ''may have'' the potential for a conflict.[45]

In Response Letter II, the MSRB stated that it believes that it has accurately characterized compensation arrangements contingent on closing or on the size of the transactions as creating a conflict of interest—it may be that other factors on which an underwriter and the issuer have a coincidence of interests may outweigh the conflicting interests resulting from the contingent arrangement, but that does not change the fact that such arrangement itself represents a conflict. Further, given the transaction-based nature of the typical relationship between underwriters and issuers, the MSRB stated that it believes that the proposal's requirements regarding disclosure of compensation conflicts, together with the other conflicts disclosures included in the proposal, adequately address concerns that may arise in cases where potential conflicts may arise under less typical compensation scenarios.

One commenter stated that it would be more beneficial to issuers to require underwriters to disclose the amount of compensation at the outset and conclusion of the transaction.[46] In Response Letter II, the MSRB stated that the provisions relating to these disclosures are appropriate given the transaction-based nature of the typical relationship between underwriters and issuers. The MSRB stated its belief that the proposal's requirements regarding disclosure of compensation conflicts, together with the other conflicts disclosures included in the proposal, adequately address concerns that may arise in cases where potential conflicts may arise under less typical compensation scenarios.

3. Other Conflicts Disclosures

One commenter requested additional conflicts of interest disclosures such as the duty the underwriter has to investors.[47] In Response Letter I, the MSRB stated that it believes that the Notice, as modified by Amendment No. 2, would incorporate the commenter's recommendation, such as by requiring disclosure of an underwriter's other actual or potential material conflicts of interest.

One commenter stated that when there is a syndicate of underwriters, an underwriter whose participation level is below 10% should be exempted from the disclosure requirements.[48] Another commenter stated that, with respect to underwriter syndicates, underwriters who do not have a role in the development or implementation of the financing structure or other aspects of the issue should not be subject to the disclosures.[49] In Response Letter II, the MSRB declined to create any such exemption since not all conflicts or other concerns that arise in the context of an underwriting are necessarily proportionate to the size of participation of an underwriter. The MSRB noted, however, that with respect to disclosures about the material financial characteristics and risks of an underwriting transaction recommended by underwriters, where such recommendation is made by the syndicate manager on behalf of the underwriting syndicate, the Notice does not prohibit syndicate members from delegating to the syndicate manager (through, for example, the agreement among underwriters) the task of delivering such disclosure in a full and timely manner on behalf of the syndicate members, although each syndicate member would remain responsible for providing disclosures with respect to conflicts specific to such member.

4. Timing and Manner of Disclosures

With respect to the disclosure process, one commenter stated its belief that underwriters should be subject to a process similar to the proposed municipal advisors' more rigorous process under the municipal advisor portion of proposed MSRB Rules G–17 and G–36.[50] The commenter stated its

However, the commenter stated that it is concerned that municipal advisors are not subject to professional standards, continuing education, licensing or other requirements, or a prohibition against making political contributions.

[38] *See* GFOA Letter I. *See also* GFOA Letter II.

[39] *See* GFOA Letter I.

[40] *See* SIFMA Letter II.

[41] *See* GFOA Letter I.

[42] *See* NAIPFA Letter I.

[43] *See* NAIPFA Letter II.

[44] *See* BDA Letter II.

[45] *See id.*

[46] *See* NAIPFA Letter II.

[47] *See* GFOA Letter I.

[48] *See* SIFMA Letter II.

[49] *See* BDA Letter II.

[50] *See* NAIPFA Letter I. The Commission notes that these proposals were subsequently withdrawn by the MSRB. *See* Securities Exchange Act Release

Continued

belief that providing disclosures is inadequate; rather, underwriters should be required to obtain informed consent from issuers. Moreover, the commenter stated its belief that disclosures should be made to officials of the municipal entity with the power to bind the issuer.[51] The commenter also stated that the Notice should be amended to prohibit the giving of disclosures based on a reasonable belief standard and instead require underwriters to have actual knowledge whether an official has the power to bind the issuer by contract.

In Response Letter I, the MSRB stated that it believes that it is not necessary for underwriters to obtain consent from the issuer's governing body when the issuer finance officials have been delegated the ability to contract with the underwriter. The MSRB stated that it is not necessary for a contract to have been executed in order for an underwriter to have a reasonable belief that an issuer official has the requisite power to bind the issuer.

Another commenter stated its belief that disclosure should be made to an official that the underwriter reasonably believes ''has or will have'' the requisite authority, instead of the standard that the underwriter believes ''has'' the authority to bind the issuer by contract.[52] The commenter stated that due to the nature of these transactions, at the time of disclosures, there may not be an official with such authority as the authority may not be granted until later. In Response Letter II, the MSRB noted that an official, such as a finance director, who is expected to receive the delegation of authority from the governing body to bind the issuer could reasonably be viewed as an acceptable recipient of disclosures for purposes of the proposal so long as such expectation remains reasonable.

Another commenter stated that the Notice should state that the disclosure must be made in a response to a request for proposals or in promotional materials provided to an issuer, rather than the proposed ''at the earliest stages'' standard, because the commenter believes that the proposed standard is vague and ambiguous.[53] Another commenter requested clarification regarding the meaning of ''execution of a contract'' with respect to the timing of the required risk disclosures.[54] The commenter stated that execution of the purchase agreement should be the appropriate measurement. In Response Letter II, the MSRB clarified that, other than the disclosure with regard to the arm's-length nature of the relationship, the remaining disclosures regarding the underwriter's role, underwriter's compensation and other conflicts of interest all must be provided when the underwriter is engaged to perform underwriting services (such as in an engagement letter), not solely in the bond purchase agreement.

One commenter suggested that the underwriter make its disclosures to the issuer, in plain English, to ensure that the issuer understands such disclosures.[55] In Response Letter II, the MSRB stated that it agrees that reasonable efforts must be made to make the disclosures understandable, that disclosures must be made in a fair and balanced manner and, if the underwriter does not reasonably believe that the official to whom the disclosures are addressed is capable of independently evaluating the disclosures, the underwriter must make additional efforts reasonably designed to inform the issuer or its employees or agent.

One commenter stated that it remains concerned that to provide disclosure to an official of the issuer that the underwriter reasonably believes has authority to bind the issuer would not provide the issuer with sufficient knowledge of any existing conflicts.[56] The commenter recommended that underwriters make disclosure to the issuer's governing body and require underwriters to have actual knowledge, instead of a reasonable belief knowledge standard, as to whether the official being presented with disclosures has the power to bind the issuer by contract. In Response Letter II, the MSRB responded that underwriters must document the failure to receive acknowledgement, as well as what actions were taken to attempt to obtain the acknowledgement, in order for the underwriter to fulfill its obligation to document why it was unable to obtain the acknowledgement.

5. Acknowledgement of Disclosures

One commenter stated its belief that the provision of the Notice requiring issuer written acknowledgement of disclosures would be helpful, but in situations where written acknowledgement is not received from the issuer, the commenter urged the MSRB to require underwriters to put forth some level of effort to obtain the written acknowledgement of the issuer.[57] Another commenter stated that it believes that an underwriter should not be required to document why an official of the issuer does not acknowledge in writing that disclosures were received.[58] Instead, the commenter recommended that the Notice require the underwriter to document that disclosures were made and whether acknowledgement was received.

In Response Letter II, the MSRB clarified that if an issuer does not provide the underwriter with a written acknowledgement of receipt of disclosures, the failure to receive such acknowledgement must be documented, as well as what actions were taken to attempt to obtain the acknowledgement, in order for the underwriter to fulfill its obligation to document why it was unable to obtain the acknowledgement.

C. Representations to Issuers

Under the Notice, an underwriter would be required to have a reasonable basis for providing representations and material information in a certificate that will be relied upon by the municipal entity issuer or other relevant parties to an underwriting. One commenter stated that one example of such a certificate used by the MSRB in the Notice is already regulated by tax laws and does not need additional regulation by the MSRB.[59] In Response Letter I, the MSRB stated that it does not believe the disclosure requirement imposes an additional regulatory burden on underwriters.

D. Required Disclosures to Issuers

One commenter stated that the disclosure requirements, especially for routine transactions, should only be imposed when the underwriter has reason to believe that the issuer does not have the knowledge or experience available to understand the transaction.[60] Moreover, the commenter

Nos. 65397 (September 26, 2011), 76 FR 60955 (September 30, 2011) (withdrawing proposed MSRB Rule G–36 and interpretive guidance concerning MSRB Rule G–36); and 65398 (September 26, 2011), 76 FR 60958 (September 30, 2011) (withdrawing proposed interpretive notice concerning MSRB Rule G–17).

[51] *See* NAIPFA Letter I and NAIPFA Letter II.

[52] *See* BDA Letter II.

[53] *See id.*

[54] *See* SIFMA Letter II. The same commenter also requested clarification in situations where the financing terms are determined in a short period of time, such as within a 24-hour window, and how underwriters would satisfy the disclosure requirements. In Response Letter II, the MSRB stated that the timeframe set out in the proposal, which matches the timeframe for this same disclosure under guidance provided in connection with recent amendments to MSRB Rule G–23, on activities of financial advisors, is appropriate and should not be changed.

[55] *See* GFOA Letter II.

[56] *See* NAIPFA Letter II.

[57] *See* NAIPFA Letter I.

[58] *See* BDA Letter II.

[59] *See* SIFMA Letter I.

[60] *See* BDA Letter I. One commenter suggested factors to determine routine financings when disclosures would not be necessary. *See* NAIPFA

stated that the proposal should be clarified as to when the underwriter is required to provide disclosures on the material aspects of the financing structures. The commenter also noted that ''issuer personnel responsible for the issuance of municipal securities'' and ''an official of the issuer whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter'' are not the same.[61] Thus, the commenter stated its belief that clarification should be provided that these regulatory requirements are imposed on the underwriter only if the underwriter has reason to believe that issuer personnel do not have the requisite knowledge or experience, regardless of whether the particular official that the underwriter reasonably believes to have the legal authority to contractually bind the issuer can be reasonably thought to have the requisite knowledge and experience. Another commenter stated that the Notice should be amended to take into consideration the needs of unsophisticated municipal issuers, and underwriters should be required to assess the knowledge and understanding of municipal issuers on a case-by-case basis.[62] In Response Letter I, the MSRB stated that it does not consider it unreasonable to require that an underwriter evaluate the level of knowledge and sophistication of the issuer, particularly considering that under the Notice, as amended by Amendment No. 2, the underwriter need only have a reasonable basis for its evaluation.

One commenter stated its belief that the written risk disclosures imposed on underwriters related to the financings (including complex financings) are too broad and vague and do not take into account the role of the issuer's municipal advisor, if any.[63] Other commenters stated that the underwriter should not have disclosure requirements when the issuer has engaged a financial advisor.[64] Another commenter stated that the underwriter should not be required to evaluate issuer personnel when the issuer has retained a municipal advisor.[65] In Response Letter I, the MSRB stated that underwriters are in the best position to understand the material terms and risks associated with recommended financings, and the burden should not be solely on municipal advisors to ascertain such terms and risks.

One commenter noted that if written risk disclosures are to be required, then additional guidance and clarity is needed on the following: (1) References to ''atypical or complex'' financings;[66] (2) references to ''all material risks and characteristics of the complex municipal securities financing'';[67] (3) which issuer personnel must have the requisite level of knowledge and sophistication;[68] (4) if the issuer does not have a financial advisor or internal personnel acting in a similar role, then the issuer's finance staff's knowledge and experience should be assessed by underwriters; and (5) only material risks that are known to the underwriter and reasonably foreseeable at the time of the disclosure should be required.[69]

In Response Letter I, the MSRB stated that it does not consider it appropriate to provide a more precise definition of ''complex municipal securities financing'' since the Notice already provides examples of complex financings, such as those involving variable rate demand obligations and swaps. The MSRB stated that it does not consider it appropriate to require an issuer to inform the underwriter that the issuer lacks knowledge or experience with a financing. The MSRB stated its belief that it is reasonable to require the underwriter to evaluate the level of knowledge and sophistication of the issuer. The Notice, as modified by Amendment No. 2, would only require the underwriter to have a reasonable basis for its evaluation. Further, the MSRB stated that it agrees with the commenter that disclosure on complex financings should be limited to material financial risks that are known to the underwriter and reasonably foreseeable. The MSRB stated that the Notice, as modified by Amendment No. 2, shows such change. The Notice, as modified by Amendment No. 2, would also require disclosures of the characteristics of a financing that are limited to the material financial characteristics and would provide examples in the case of swaps.

One commenter disagreed with the MSRB that the level of disclosure should vary based on the issuer's financial ability to bear the risks of the recommended financing.[70] The commenter stated its belief that a municipal entity with taxing power, who would be able to bear more risks of a financing, should not be ineligible for advice that is competent and unimpaired by the broker's own interests simply because the government can tax the citizens to restore any loss. In Response Letter II, the MSRB conceded that the financial ability to bear the risks of a recommended financing would not normally be a sufficient basis, by itself, for determining the level of disclosure to provide. The MSRB noted, however, the proposal states three distinct factors that should be considered together in coming to this determination.

Other commenters noted that disclosure regarding derivatives is premature since there are pending rulemakings with the Commodity Futures Trading Commission (''CFTC'') and the Commission that will apply to dealers recommending swaps or security-based swaps to municipal entities.[71] One commenter urged the MSRB to work together with SEC and CFTC to ensure that one set of

Letter I. In Response Letter I, the MSRB stated that while the factors are helpful, they do not address the particular issuer personnel's experience and knowledge, which are more relevant to the Notice. The MSRB stated that it would take the comment under advisement. Another commenter stated that in a routine financing, the Notice should require an underwriter to disclose, in writing, information regarding the transaction, should the issuer make such a request. *See* GFOA Letter II. The commenter stated that additional information on routine financings would be helpful. In Response Letter II, the MSRB stated its belief that the provisions relating to this disclosure are appropriate for the reasons described in Response Letter I and, therefore, no further modification is warranted.

[61] Another commenter noted that to require an underwriter to determine who should be considered ''issuer personnel'' is an issue worth more consideration and discussion. *See* GFOA Letter II. In Response Letter II, the MSRB noted that it would monitor disclosure practices and would engage in a dialogue with industry participants and the Commission to determine whether sufficient improvements have occurred in the flow of disclosures to decision-making personnel of issuers or whether additional steps should be taken.

[62] *See* NAIPFA Letter I and NAIPFA Letter II. The commenter reiterated that the proposal requires additional changes in order to protect over 50,000 infrequent and/or small, unsophisticated issuers of municipal bonds. *See* NAIPFA Letter II. Another commenter stated that there are many unsophisticated issuers who will benefit from the disclosures. *See* AGFS Letter. The commenter stated that issuers should rely upon advice from advisors who owe the issuers a fiduciary duty, instead of underwriters who may be in an adversarial position.

[63] *See* SIFMA Letter I.

[64] *See* BDA Letter I and WM Letter I.

[65] *See* SIFMA Letter I.

[66] The commenter stated that these additional written disclosures may require detailed review by counsel, which would be costly. The commenter urged the Commission to carefully consider the costs relative to the potential benefits.

[67] The commenter stated that this reference should be limited to financial risks and characteristics since the underwriter should not have to provide disclosures on legal issues.

[68] The commenter stated that if the issuer has a financial advisor or internal personnel serving the same role then no underwriter written disclosures should be required. The commenter further stated that underwriters may satisfy their disclosure requirements by communicating the disclosures to the financial advisor or issuer internal personnel.

[69] *See* SIFMA Letter I.

[70] *See* PFM Letter.

[71] *See* SIFMA Letter I; BDA Letter I; GFOA, Letter I.

definitions and rules apply to the municipal securities market.[72]

In Response Letter I, the MSRB noted that it is aware of the ongoing rulemaking by the Commission and CFTC and has taken care to ensure that any requirements of the Notice are consistent with such rulemaking. In Response Letter II, the MSRB disagreed with the commenter that the proposal is premature for the reasons described in Response Letter I.

E. Underwriter Duties in Connection With Issuer Disclosure Documents

Under the Notice, the underwriter must have a reasonable basis for its representations and information provided to issuers in connection with the preparation by the issuer of its disclosure documents. One commenter stated its belief that the reasonable basis requirement is unreasonably broad.[73] The commenter stated that the Notice should be revised to clarify that an underwriter may limit its responsibility for information provided by disclosing to the issuer any limitations on the scope of the underwriter's analysis and factual verification it performed. The commenter further stated that such duty should extend only to material information. In Response Letter I, the MSRB stated that it disagrees with the commenter and believes that an underwriter should have a reasonable basis for its own representations set forth in the official statement, as well as a reasonable basis for the material information it provides to the issuer in connection with the preparation of the official statement.

One commenter also stated its belief that when an underwriter intends to assist in the preparation of an official statement, that a disclosure should be made to the issuer stating that the underwriter can only be held liable where it can be shown that it did not act with a reasonable belief that the information presented was truthful and complete.[74] In Response Letter I, the MSRB noted that the Notice would provide that an underwriter must have ''a reasonable basis for the representations it makes, and other material information it provides, to an issuer and to ensure that such representations and information are accurate and not misleading.''

F. Underwriter Compensation and New Issue Pricing

1. Excessive Compensation

One commenter requested that, in the absence of disclosure and informed consent, underwriters be prohibited from seeking reimbursements from bond proceeds for expenditures made on behalf of the issuer for any expenses incurred by the underwriter.[75] In Response Letter I, the MSRB noted that it disagrees with the commenter and that MSRB Rule G–20 already precludes underwriters from seeking reimbursement for lavish expenditures, especially from bond proceeds. Further, in Response Letter I, the MSRB noted that state law would govern whether such reimbursements are permissible.

2. Fair Pricing

With respect to the representation that the price an underwriter pays in a negotiated sale be fair and reasonable, one commenter stated its belief that such representation should be altered so that the price the underwriter pays is ''not unreasonable.'' [76] In Response Letter I, the MSRB stated that the fair and reasonable pricing standard is no different in many cases than the duties already imposed on underwriters by MSRB rules with respect to underwriters' customers and that it believes the approach in the Notice would require more robust disclosures by underwriters to issuers. In the alternative, the commenter recommended that the disclosure should be changed to state that the pricing is not necessarily the best pricing.[77] In Response Letter II, the MSRB stated that it believes that the provisions relating to these disclosures are appropriate for the reasons described in Response Letter I and, therefore, no further modifications to these provisions are warranted.

One commenter urged the Commission to require underwriters to expressly represent in writing to the issuer that the price paid for the issuer's debt is fair, and specify the facts that support the representation.[78] In Response Letter II, the MSRB stated that its view is that, even if an underwriter provides a fair price to an issuer for its new issue offering, its fair practice duties under Rule G–17 are not thereby discharged because, among other things, the many principles laid out in the proposal also must be addressed. Conversely, an underwriter cannot justify under Rule G–17 an unfair price to an issuer by balancing that unfair price with the fact that it may otherwise have been fair to the issuer under the other fairness principles enunciated in the proposal.

G. Conflicts of Interest

1. Payments To or From Third Parties

One commenter stated that disclosures with respect to third-party arrangements for the marketing of the issuer's securities should be clarified as to the level of details.[79] Further, the commenter stated its belief that payments to and from affiliates of the underwriters are not third-party payments since those payments would not cloud a party's judgment when the parties are related to each other, unlike third parties. In Response Letter I, the MSRB noted that the Notice, as modified by Amendment No. 2, would require only the disclosure of third-party marketing arrangements, not the particular terms. Moreover, while the MSRB disagreed with the commenter that payments from affiliates do not raise risks, the MSRB noted that the Notice, as modified by Amendment No. 2, would not require the disclosure of the amounts of such payments.

Another commenter stated that the payment amount is an important variable for the issuer to consider and would encourage its members to further question the underwriter about any relevant third-party relationships and payments, which provides better transparency for the transaction.[80] In Response Letter II, the MSRB stated its agreement that such further inquiries can be made. In addition, the MSRB clarified that the third-party payments to which the disclosure requirement under the Notice would apply are those that give rise to actual or potential conflicts of interest and typically would not apply to third-party arrangements for products and services of the type that are routinely entered into in the normal course of business, so long as any specific routine arrangement does not give rise to an actual or potential conflict of interest.

2. Profit-Sharing With Investors

One commenter sought clarification that legitimate trading, such as when an

[72] *See* GFOA Letter I.

[73] *See id.*

[74] *See* NAIPFA Letter I.

[75] *See id.*

[76] *See* NAIPFA Letter I and NAIPFA Letter II.

[77] *See* NAIPFA Letter II.

[78] *See* PFM Letter.

[79] *See* SIFMA Letter I. *See also* IA Letter. The commenter cited examples where an underwriter would outsource certain routine tasks related to the financing transactions, and sought clarification whether the Notice would encompass such payments for services rendered. The Commission received the IA Letter after the MSRB filed Response Letter II, and thus, the MSRB has not specifically responded to the commenter.

[80] *See* GFOA Letter II.

underwriter sells a bond and later repurchases the bond from a purchaser, is not included in the disclosure for profit sharing arrangements.[81] In Response Letter II, the MSRB stated its belief that the language of the proposal appropriately reflects that the disclosure applies in cases where there exists an arrangement to split or share profits realized by an investor upon resale.

3. Credit Default Swaps

One commenter stated that it believes that underwriters should not be required to disclose hedging and risk management strategies and activities when the underwriter, in its role as a dealer, issues or purchases credit default swaps that reference the obligations of the municipal issuer.[82] The commenter noted that should these disclosures be required, a general disclosure to the issuers that the underwriters may engage in such activities should be sufficient. The commenter objected to any provisions that would require underwriters to provide specific disclosures that may reveal identities of counterparties and the underwriters' hedging and risk management strategies. In Response Letter I, the MSRB stated that it does not believe that the disclosure requirement would compromise counterparty relationships or deter the use of credit default swaps for legitimate risk management purposes. In addition, the MSRB noted that the Notice would only require that a dealer that engages in the issuance or purchase of a credit default swap for which the underlying reference is an issuer for which the dealer is serving as underwriter, or an obligation of that issuer, must disclose the fact that it does so to the issuer, not the terms of the particular trades.[83]

H. Retail Order Periods

One commenter recommended that the Notice use a single standard of requiring that the underwriter not knowingly accept orders that do not meet the requirements of the retail order period.[84] In Response Letter II, the MSRB stated that it believes that the commenter has misunderstood these provisions. The MSRB stated that the Notice provides that an underwriter that knowingly accepts an order that has been framed as a retail order when it is not, would violate MSRB Rule G–17 if its actions are inconsistent with the issuer's expectations regarding retail orders, but also provides that a dealer that places an order that is framed as a qualifying retail order but in fact represents an order that does not meet the qualification requirements to be treated as a retail order, violates its duty of fair dealing. The MSRB stated that these two provisions are entirely consistent and appropriate, since in the first provision an underwriter is receiving an order framed by a third party, whereas in the second provision, a dealer (not limited to an underwriter) is itself placing and framing the order. Therefore, the MSRB noted that it has not modified these provisions.

I. Timing and Consistency

One commenter noted that underwriters that may also be municipal advisors will not be able to properly evaluate the Notice until rules with respect to municipal advisors have been approved and adopted by the Commission and MSRB.[85] The commenter noted that many underwriters may be classified as municipal advisors under these yet-to-be-adopted rules and questioned how the underwriters' obligations under the Notice may relate to these rules. The commenter stated that many interested parties are abstaining from commenting on the proposal due to this uncertainty. The commenter stated its belief that, at a minimum, the portion of the proposal addressing an underwriter's obligation to provide written risk disclosures should be withdrawn and refiled at a later time.

One commenter stated that a 90-day implementation period is too short and requested a period no less than six months.[86] In Response Letter I, the MSRB stated that it believes that 90 days is an adequate time period for underwriters to develop the required disclosures.

J. Miscellaneous Comments

Some commenters raised issues that are outside the scope of the proposal. For example, commenters asked the MSRB to provide clarity on the definition of ''flipping''[87] and the application of the suitability standard to transactions proposed by an underwriter to an issuer.[88]

With respect to ''flipping,'' the MSRB stated in Response Letter II that it would reach out to other regulators and the Commission in an attempt to develop a shared understanding of what such ''flipping'' activities entail and potential concerns regarding the implications of these activities. The MSRB noted that, to the extent these activities could be characterized as arrangements between the underwriter and an investor purchasing new issue securities from the underwriter according to which profits realized from the resale by such investor of the securities are directly or indirectly split or otherwise shared with the underwriter, these activities may already be subject to the proposal's disclosure obligation with respect to profit-sharing with investors.

In Response Letter II, the MSRB noted that although the suitability comment is outside the scope of the proposal, the MSRB will keep this suggestion under advisement.

Another commenter urged further consideration of the costs of disclosures and weighing the costs against the potential benefits.[89] In Response Letter II, the MSRB noted its disagreement that it did not weigh the costs and benefits, and that the proposal in fact recognizes that many of the disclosures required under the proposal can be tailored, and in some cases are not required at all, based on a number of relevant factors set out in the proposal and described in greater detail in Response Letter I. Most across-the-board disclosure provisions in the proposal either require transaction-specific or underwriter-specific disclosures of relevant conflicts of interest or consist of standardized educational disclosures with respect to which, underwriters most likely would realize greater cost-effectiveness and reduced regulatory risk by making such disclosures globally rather than on a case-by-case basis. The MSRB stated that providing more information to issuers would empower and provide considerable benefits to issuers. Further, the MSRB stated that it concedes that some underwriters may bear up-front costs in creating basic frameworks for the required disclosures for the various types of products they may offer their issuer clients, but the on-going burden should thereafter be considerably

[81] *See* BDA Letter II.

[82] *See* SIFMA Letter I.

[83] One commenter noted that the Notice provides that if a dealer issues or purchases credit default swaps for which the reference obligor is the issuer to which the dealer is serving as an underwriter, the underwriter must disclose that fact to the issuer. *See* SIFMA Letter II. The commenter requested clarification that, in the case of a conduit issuer that issues bonds for multiple obligors or on a specific project, whether disclosures need to be made to the obligor(s) to satisfy the disclosure requirements. *See* SIFMA Letter II. In Response Letter II, the MSRB stated that the proposal only requires that credit default swap disclosures be made to the issuers of the municipal securities and not to any conduit borrowers or other obligors. However, the MSRB stated that it would take under advisement the question of whether such disclosure should be extended to any applicable obligors other than the issuer.

[84] *See* BDA Letter II.

[85] *See* SIFMA Letter I and SIFMA Letter II.

[86] *See* SIFMA Letter I.

[87] *See* GFOA Letter I; GFOA Letter II and NAIPFA Letter II.

[88] *See* GFOA Letter I and GFOA Letter II.

[89] *See* SIFMA Letter II.

reduced and the preparation of written disclosures would become an inter-related component of the necessary documentation of the transaction.

One commenter sought clarification that the proposal would not apply to private placement agents.[90] In Response Letter II, the MSRB responded that while the Notice would not apply to private placement agents, parties relying on this exception should be cautious in its application because the term ''private placement'' is often used to describe transactions that are not recognized as private placements for purposes of MSRB rules and other applicable law.

IV. Proceedings To Determine Whether To Disapprove SR–MSRB–2011–09 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[91] to determine whether the proposed rule change should be disapproved. Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposed rule change to inform the Commission's analysis whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15B(b)(2)(C) of the Act[92] requires, among other things, that the rules of the MSRB shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB's proposal would interpret the application of MSRB Rule G–17 applicable to dealers acting in the capacity of underwriters in negotiated underwritings of municipal securities transactions (except as specified in the Notice). The Notice would impose disclosures on underwriters regarding, among other things, their role, compensation arrangements, conflicts of interest, and representations made to issuers of municipal securities. Commenters that represent issuers and financial advisors generally support the proposal and urge additional disclosures, while commenters that represent dealers and underwriters believe the proposal should be disapproved or required disclosures be modified to ease the requirements for dealers. Based on the comments, the Commission believes that the proposal raises concerns, among other things, as to whether the disclosures are appropriate and, if so, whether the disclosures are sufficiently balanced to protect investors and municipal entities by assisting issuers and their advisors in evaluating underwriters and the transactions proposed by the underwriters without being overly burdensome for underwriters.

The Commission believes these concerns raise questions as to whether the MSRB's proposal is consistent with the requirements of Section 15B(b)(2)(C) of the Act, including whether the disclosures outlined in the notice would prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons facilitating transactions in municipal securities and municipal financial products, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, protect investors, municipal entities, obligated persons, and the public interest. The Commission believes the issues raised by the proposed rule change can benefit from additional consideration and evaluation in light of the requirements of Section 15B(c)(2)(C) of the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 15B(b)(2)(C) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[93]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be disapproved by January 30, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 13, 2012. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2011–09 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–MSRB–2011–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing

[90] *See* SIFMA Letter II.

[91] 15 U.S.C. 78s(b)(2)(B).

[92] 15 U.S.C. 78o–4(b)(2)(C).

[93] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–MSRB–2011–09 and should be submitted on or before January 30, 2012. Rebuttal comments should be submitted by February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[94]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32087 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65917; File No. SR–Phlx–2011–143]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Withdrawal of Proposed Rule Change To Modify Commentary .01 to Rule 1009 Regarding Criteria for Listing an Option on an Underlying Covered Security

December 8, 2011.

On October 24, 2011, NASDAQ OMX PHLX LLC (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder [2] to amend Commentary .01 to Rule 1009 to modify the criteria for listing options on an underlying covered security. Notice of the proposed rule change was published in the **Federal Register** on November 14, 2011.[3] The Commission received two comment letters on the proposed rule change.[4] On December 2, 2011, Phlx withdrew the proposed rule change (SR–Phlx–2011–143).

[94] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65706 (November 8, 2011), 76 FR 70520.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Jenny L. Klebes, Senior Attorney, Legal Division, Chicago Board Options Exchange, dated November 25, 2011; and Janet McGinness, Senior Vice President—Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated December 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32067 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65911; File No. SR–EDGA–2011–40]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend EDGA Rule 11.9

December 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 December 2, 2011, the EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain existing routing options contained in Rule 11.9 to provide Users [3] with more flexible routing options. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 1.5(cc).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend several routing options contained in Rule 11.9(b)(3) to allow Users more discretion if shares remain unexecuted after routing. In particular, Rule 11.9(b)(3) is proposed to be amended to provide that Users may elect that any remainder of an order be posted to the EDGX Exchange, Inc. (''EDGX'') for any of the routing options listed in the rule, except those in paragraphs (a) and (n)–(q) [4].

Currently, Rule 11.9(b)(3)(d) provides that the INET routing strategy checks the System for available shares and then is sent to Nasdaq. If shares remain unexecuted after routing, they are posted on the Nasdaq book. The Exchange proposes to modify this language to subject this posting to Nasdaq to a User instruction as proposed in the introductory paragraph of Rule 11.9(b)(3). This User instruction would thus enable the remainder to post to EDGX instead of Nasdaq.

Currently, Rule 11.9(b)(3)(j) provides that the ROLF routing strategy checks the System for available shares and then is sent to LavaFlow ECN. The Exchange proposes to modify this strategy to state that any remainder will be posted to LavaFlow ECN, unless otherwise instructed by the User. This User instruction would thus enable the User to direct the remainder to post to EDGX instead of LavaFlow ECN.

Rule 11.9(b)(3)(m) provides that the IOCT routing option checks the System for available shares and then is sent sequentially to destinations on the System routing table. If shares remain unexecuted after routing, they are sent as an immediate or cancel (IOC) [5] order to EDGX. If shares further remain unexecuted, they are posted on the EDGA Book, unless otherwise instructed by the User. The Exchange proposes to modify this strategy to delete the phrase ''sent as an IOC order'' since a Day Order [6] or an IOC order could be sent to EDGX. This change would thus enable

[4] Routing options listed in Rules 11.9(b)(3)(a) and (n)–(q) are not altered as a result of this amendment. The routing option in Rule 11.9(b)(3)(a) already posts to EDGX and no amendment to the rule is needed as no discretion is provided to the User. The routing options in Rules 11.9(b)(3)(n)–(q) do not have the option to post the remainder of an order to EDGX.

[5] As defined in Rule 11.5(b)(1).

[6] As defined in Rule 11.5(b)(2).

the User to direct the remainder to post to EDGX instead of EDGA.

The Exchange also proposes to amend Rule 11.9(b)(3)(a), which currently states that any shares that remain unexecuted after routing are posted to ''the EDGX Exchange book'', to eliminate the word ''Exchange''. In light of the routing options modifications proposed herein, paragraph 11.9(b)(3) would also be modified to define EDGX at the outset and state that except for the routing options provided in paragraphs (a) and (n)–(q), Users can post any remainder of an order to EDGX. Accordingly, the reference to the word ''Exchange'' in Rule 11.9(b)(3)(a) would be redundant.

The Exchange believes the proposed modification of the routing options described above will provide market participants with greater flexibility in routing orders without having to develop their own complicated routing strategies. In addition, the varied routing options allow Users to take primary advantage of EDGA's low cost fee structure to remove liquidity on EDGA and if applicable, other destinations. Yet, the User retains the option of posting the remainder of the order to EDGX.

Assuming the Commission approves the proposed rule change, the Exchange will notify its Members in an information circular of the exact implementation date(s) of this rule change, which will be no later than March 31, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without having to develop their own order routing strategies. In addition, it will provide additional clarity and specificity to the Exchange's rulebook regarding routing strategies and will further enhance transparency with respect to Exchange routing offerings. Finally, the varied routing options allow Users to take primary advantage of EDGA's low cost fee structure to remove liquidity on EDGA and if applicable, other destinations. Yet, the User retains the option of posting the remainder of the order to EDGX.

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

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 self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove the 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 email to *rule-comments@sec.gov.* Please include File No. SR–EDGA–2011–40 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–EDGA–2011–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between 10 a.m. and 3 p.m. Copies of the 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 Number SR–EDGA–2011–40 and should be submitted on or before January 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32066 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65914; File No. SR–CBOE–2011–114]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Related to Complex Order Processing in Hybrid 3.0 Classes

December 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 November 29, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing to amend its electronic complex order rules. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, complex orders that are submitted to the electronic complex order book (''COB'') or the complex order RFR auction process (''COA'') automatically execute against individual orders and quotes residing in the electronic book (''EBook'') provided the complex order can be executed in full or in a permissible ratio, and against other complex orders represented in COB or COA (as applicable).

The Exchange is proposing to revise the operation of COB and COA as it relates to options classes trading on the Hybrid 3.0 Platform, which currently only includes options on the S&P 500 Index (option symbol SPX). The ''Hybrid 3.0 Platform'' is an electronic trading platform on the Hybrid Trading System [3] that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in a series for the trading crowd. The quotes are represented, along with other orders, in the EBook. The function of generating the aggregate trading crowd quote is currently performed by certain designated Lead Market-Makers.

Under the proposed rule change, for each class trading on the Hybrid 3.0 Platform, the Exchange may determine to not allow marketable complex orders entered into COB and/or COA to automatically execute with the individual quotes residing in the EBook.[4] In such classes, the allocation of such marketable complex orders against orders residing in the EBook and other complex orders shall be based on the best net price(s), as is currently the case under the existing rule. At the same net price, multiple orders will be allocated subject to the existing applicable COB or COA allocation algorithm,[5] subject to the following:

First, a complex order submitted to COB or COA, as applicable, that is marketable against the individual orders residing in the EBook will automatically execute against those individual orders residing in the EBook provided the complex order can be executed in full (or in a permissible ratio) by the orders in the EBook and provided the orders in the EBook are priced equal to or better than the individual quotes residing in the EBook.

Second, complex orders that are marketable against each other will automatically execute provided the execution is at a net price that has priority over the individual orders and quotes residing in the EBook. As noted above, the allocation of a complex order will otherwise be consistent with the existing rules of trading priority otherwise applicable to COB or COA.[6]

Third, to the extent that a marketable complex order cannot automatically execute when it is routed to COB or after being subject to COA because there are individual quotes residing in the EBook that have priority, any part of the order that may be executed will be executed automatically and the part of the order that cannot automatically execute will be routed on a class-by-class basis to PAR or, at the order entry firm's discretion, to the order entry firm's booth. If an order is not eligible to route to PAR, then the remaining balance will be cancelled.

Finally, fourth, to the extent that a complex order resting in COB becomes marketable and cannot automatically execute in full (or in a permissible ratio), the full order will be subject to COA (and the process for COA described above). Having the system automatically initiate a COA once such a complex order resting in COB becomes marketable provides an opportunity for other market participants to match or improve the net price and allows for an opportunity for an automatic execution before a marketable complex order is routed for manual handling to PAR or a booth.[7] As noted above, after being

[3] The ''Hybrid Trading System'' refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. *See* Rule 1.1(aaa).

[4] Pursuant to Rule 6.53C.01, any determination by the Exchange to designate a class for complex order execution in this manner will be announced to the membership via Regulatory Circular.

[5] For COB, at the same net price, (i) individual orders and quotes in the EBook have first priority, provided the complex order can be executed in full (or in a permissible ratio), with multiple orders and quotes at the same price allocated based on the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs; and (ii) complex orders in COB have second priority, with multiple complex orders at the same price allocated based on the rules of trading priority otherwise applicable to incoming electronic orders in the individual series legs or such other algorithm as the Exchange may designate. For COA, at the same net price, (i) individual orders and quotes residing in the EBook have first priority, provided the complex order can be executed in full (or in a permissible ratio), with multiple orders allocated pursuant to the Ultimate Match Algorithm (''UMA'') allocation described in Rule 6.45A or 6.45B, as applicable; (ii) public customer complex orders resting in COB before, or that are received during the COA auction, and public customer COA responses collectively have second priority, with multiple orders/responses allocated based on time priority; (iii) non-public customer orders resting in COB before the COA auction have third priority, with multiple orders allocated pursuant to the UMA allocation described in Rule 6.54A or 6.45B, as applicable; and (iv) non-public customer orders resting in COB that are received during the COA auction and non-public customer COA responses collectively have fourth priority, with multiple orders/responses allocated based on the capped UMA (''CUMA'') allocation described in Rule 6.45A or 6.45B, as applicable. *See* Rule 6.53C(c)(ii) and (d) and Interpretation and Policy .09. The Exchange notes that the aforementioned electronic allocation algorithms for COB and COA are consistent with Rule 6.45A(b)(ii) and 6.45B(b)(ii) (which relate to the allocation of orders represented in open outcry and generally allow a Trading Permit Holder holding a complex order to trade at the same price as the trading crowd and public customer limit order book, provided at least one leg of the complex order betters the corresponding bid (offer) in the public customer limit order book by at least one minimum trading increment (*i.e.,* $0.10, $0.05 or $0.01, as applicable) or a $0.01 increment, which increment will be determined by the Exchange on a class-by-class basis).

[6] *See* note 5, *supra.*

[7] The Exchange notes that, in these circumstances when a resting complex order becomes marketable, COA will automatically initiate regardless of whether a Trading Permit Holder has requested that the complex order be COA'd pursuant to Rule 6.53C.04. In this regard, the Exchange notes that, currently, all of its Trading Permit Holders have elected to have their COA-eligible orders COA'd. In addition, the Exchange notes that other markets have programs in place that provide for the automatic auctioning of complex orders. *See, e.g.,* NASDAQ OMX PHLX LLC (''Phlx'') Rule 1080(e)(i)(A) which, among other things, provides that a complex order live auction (''COLA'') will initiate if the Phlx system receives a complex order that improves the Phlx complex order best debit or credit price respecting the specific complex order strategy that is the subject of the complex order. During a COLA, Phlx market participants may bid and offer against the COLA-eligible order pursuant to the Phlx Rule.

subject to COA, any part of the order that may be executed will be executed automatically and the part of the order that cannot automatically execute will be routed on a class-by-class basis to PAR or, at the order entry firm's discretion, to the order entry firm's booth. If an order is not eligible to route to PAR, then the remaining balance will be cancelled.

The following examples illustrate the operation of the proposed system functionality:

Example 1: Assume an incoming market complex order for 75 units is submitted to COA, where the strategy involves the purchase of SPX Dec 1250 calls and sale of SPX Dec 1255 calls. At the conclusion of COA, assume the best offer in the individual SPX Dec 1250 call series is $27.90 for a size of 50 contracts made up only of orders resting in the EBook, and the next best offer is $28.20 for 100 contracts made up only of Lead Market-Maker quotes. Also assume the best bid in the individual SPX Dec 1255 call series is $22.90 with a size of 50 contracts made up only of orders resting in the EBook, and the next best bid is $22.50 made up only of Lead Market-Maker quotes. The best derived net leg market price would therefore be $5.00 ($27.90 – $22.90). Also assume that there is a COA response for 10 units at a net price of $4.90. The incoming market order to purchase 75 units of the call/put strategy would receive a partial execution of 60 units: 10 units would execute at a net debit price of $4.90 against the COA response (which has priority over the individual orders net priced at $5.00), and 50 units at a net debit price of $5.00 against the orders resting in each of the individual series legs (the execution is in a permissible ratio and the orders in the EBook are priced equal to or better than the individual quotes residing in the EBook). Because the remaining 15 units are only marketable against the quotes in the individual series legs at a net price of $5.70 ($28.20 – $22.50), the 15 units would be routed to PAR or, at the order entry firm's discretion, to the order entry firm's booth, for manual handling. If the order would otherwise route to PAR but is not eligible to route to PAR, then the remaining 15 units will be cancelled.

Example 2: Assume a complex order for 75 units with a net debit price of $5.00 is resting in COB, where the strategy involves the purchase of SPX Dec 1250 calls and sale of SPX Dec 1255 calls. By virtue of the fact that it is resting the COB, the complex order is not marketable—meaning there are no orders or quotes within the derived net leg market price or other complex orders within COB against which the resting complex order may trade. Assume there are no other complex orders representing in the COB for the strategy and also assume the best offer in the individual SPX Dec 1250 call series is $27.90, with a size of 100 contracts (50 contracts are orders and 50 contracts represent the Lead Market-Maker quote) and the best bid in the individual SPX Dec 1255 call series is $22.75, with a size of 100 contracts (50 contracts are orders and 50 contracts represent the Lead Market-Maker quote). The best derived net leg market price would therefore be $5.15 ($27.90 – $22.75). If the Lead Market-Maker bid in the SPX Dec 1255 call series is thereafter updated to $22.90 (with a size of 100 contracts), the derived net leg market price would become $5.00 ($27.90 – $22.90) and the full size of the resting complex order will become marketable but cannot automatically execute. As a result, the full size (75 units) of the resting complex order would be subject to COA. At the conclusion of COA, any part of the complex order that may be executed against orders in the EBook and other complex orders will be automatically executed. Any part of the order that is marketable and cannot automatically execute (because of Lead Market-Maker quotes in an individual series leg(s)) will be routed on a class-by-class basis to PAR or, at the order entry firm's discretion, to the order entry firm's booth. If an order is not eligible to route to PAR, then the remaining balance will be cancelled. To the extent any part of the complex order is not marketable, it will continue resting in COB.

Over time, the Exchange has introduced various enhancements to the operation of COB and COA, which enhancements the Exchange believes are generally designed to make the processes operate more efficiently and effectively, as well as to avoid executions at extreme and potentially erroneous prices. The Exchange believes the instant proposed rule change is another example of such an enhancement. The Exchange believes the proposed system functionality will permit more efficient and effective execution of complex orders in our electronic trading environment. In addition, the Exchange believes the change will assist in preventing complex orders from automatically executing against the individual quotes residing in the individual series legs at potentially erroneous prices, particularly when there are momentary or inadvertent discrepancies that occur between the pricing of an individual series leg that is a component of a complex order strategy. The Exchange recognizes that Market-Makers could encounter difficulties maintaining quotations in the individual series legs if the quotes are allowed to execute against complex orders in COB or COA. In particular, Market-Maker pricing systems automatically update the price of a Market-Maker's quotations when there is a move in the price of the underlying stock, index, component securities or related futures. When such a change occurs, a Market-Maker will need to send updates for its quotes all [sic] the individual series legs it is quoting in each of the Market-Maker's appointed classes. In the SPX options class alone this can include thousands of series, and when considering all series across a Market-Makers [sic] various appointed classes, this can include millions of series. Accordingly, it is possible that the Market-Maker could unintentionally trade with another Market-Maker or market participant via COB or COA before a quote update(s) in the individual series leg is processed.[8] The result is executions at price(s) that were not intended and, at times, that may also be at extreme or potentially erroneous prices.

The proposed rule change is designed to protect the Lead Market-Maker that generate [sic] quotes in SPX, as well as other Market-Makers and other market participants that may trade against these quotes with complex orders at extreme or potentially erroneous prices. The Exchange believes the proposed system functionality is fair and reasonable with respect to classes trading on the Hybrid 3.0 Platform in particular, where the quotes represent the aggregate Market-Maker quoting interest in a series for the trading crowd but the responsibility for generating the quotes and satisfying trades against those quotes in relation to executions occurring through COB or COA rests with the designated Lead Market-Maker(s) that generates the quote. The functionality will mitigate the risk borne only by the Lead Market-Makers that a complex order may execute against a quote in an individual series leg at an extreme or potentially erroneous price. The Exchange believes that the proposed system functionality is a reasonable limitation on Hybrid 3.0 Market-Maker quotations that will appropriately address an operational issue that would discourage Market-Makers, particularly Lead Market-Makers, from offering additional liquidity in the individual series legs. It also will prevent other Market-Makers and other market participants from receiving executions at extreme or potentially erroneous prices.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of

[8] Indeed, the Exchange has long recognized the need to ameliorate small timing differences in processing Market-Maker quotations updates by delaying Market-Maker quotations from executing against each other for up to one second. *See, e.g.,* Exchange Rule 6.45B(d).

[9] The Exchange has determined to limit the application of this proposed rule change to Hybrid 3.0 classes. In the future, the Exchange may determine to expand the alternate process of not permitting complex orders to trade against Market-Maker quotes to other option classes. Any such expansion would be the subject of a separate rule change filing.

[10] 15 U.S.C. 78f(b).

Section 6(b)(5) of the Act [11] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the orderly execution of complex orders in our Hybrid 3.0 electronic trading environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither solicited nor received comments on the proposal.

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 up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(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 email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–114 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–CBOE–2011–114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 also will be available for inspection and copying at the principal office of CBOE. 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–CBOE–2011–114 and should be submitted on or before January 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

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[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65916; File No. SR–ISE–2011–80]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to API Fees

December 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 November 25, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. ISE currently charges its Members a fee for each login that a Member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of ''listening'' to broadcast messages.[3] The Exchange currently has the following categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes); (2)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR–ISE–2006–09).

order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters and pulling quotes (but not quoting)); and (3) listening (allowing the user only to query the system and to respond to broadcast messages).[4] The Exchange notes that quoting, order entry and listening are functionalities available only to Exchange Market Makers, *i.e.,* Primary Market Makers and Competitive Market Makers, while order entry and listening are functionalities available only to non-Market Makers, *i.e.,* Electronic Access Members.

ISE Market Makers currently receive an allocation of 1.8 million quotes per day per user.[5] If a Market Maker submits more quotes than those allocated, *i.e.,* 1.8 million quotes per day per user as measured on average in a single month, the Market Maker is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a Market Maker is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1.8 million and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Market Makers are charged on a monthly basis for the greater of (a) the greatest number of users that logged into the system, or (b) the number of implied users based on quotes.

ISE currently charges Market Makers $1,200 per month for each quoting session for up to 1.8 million quotes per day, on average for a month. Market Makers are charged an additional user fee of $950 for each incremental usage of up to 1.8 million quotes per day per user. The Exchange now proposes to standardize this fee by charging a flat fee of $1,000 for each login session. Each login session will continue to permit a Market Maker to enter up to 1.8 million quotes per day. Market Makers who exceed their monthly quoting allowance will also be charged $1,000 per month for each subsequent usage of 1.8 million quotes per day in a month.

Earlier this year, the Exchange launched an enhanced trading system called Optimise. Under its old trading system, prior to Optimise, the Exchange had an additional category of login known as a ''High Throughput User.''[6] A High Throughput User was a Market Maker who was allocated up to 3.6 million quotes per day in a month.[7] A High Throughput User was able to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes.[8] High Throughput Users were charged a fee of $2,400 per month and an additional user fee of $1,900 for each incremental usage of up to 3.6 million quotes per day per user. Now that ISE has fully migrated to Optimise, the Exchange no longer has a need for the ''High Throughput User'' and proposes to remove it from its Schedule of Fees.

Additionally, now that the Exchange has transitioned to Optimise, Members no longer have a need to use their quote allocation across two trading platforms. As such, the Exchange proposes to delete text from its Schedule of Fees that permitted Members to use their quote allocation to access either the old trading system or Optimise.

The Exchange has designated this proposal to be operative on December 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated Members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. In other words, the proposed rule change will treat similarly situated Members in the same manner by assessing the same fees to all Members based on their quoting needs. The Exchange further believes that its proposal is both equitable and reasonable as it will standardize the fees charged by the Exchange. With this proposed rule change, all Members will be assessed the same access fee.

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)(A)(ii) of the Act.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–80 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–ISE–2011–80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[4] *Id.*

[5] *See* Exchange Act Release No. 64269 (April 8, 2011), 76 FR 20752 (April 13, 2011) (SR–ISE–2011–21).

[6] *See* Securities Exchange Act Release No. 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR–ISE–2007–36).

[7] *See supra* note 5.

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

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–ISE–2011–80 and should be submitted on or before January 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32001 Filed 12–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65913; File No. SR–NASDAQ–2011–163]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

December 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 November 28, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' 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 institute a new transaction-based ''Options Regulatory Fee'' and eliminate registered representative fees for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is set forth below. Proposed new text is italicized and deleted text is in brackets.

* * * * *

7003. Registration and Processing Fees

(a) The following fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Nasdaq members that are not also FINRA members:

(1) $85 for each initial Form U4 filed for the registration of a representative or principal;

(2) $95 for the additional processing of each initial or amended Form U4 or Form U5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

(3) $30 annually for each of the member's registered representatives and principals for system processing;

(4) $13 for processing and posting to the CRD system each set of fingerprints submitted by the member, plus a pass-through of any other charge imposed by the United States Department of Justice for processing each set of fingerprints;

(5) $13 for processing and posting to the CRD system each set of fingerprint results and identifying information that has been processed through a self-regulatory organization other than NASD; and

(6) a $75 session fee for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq Rule 1120.

(b) The following fees will be collected via the Web CRD registration system for the registration of associated persons of Nasdaq members:*

(1) $55 for each initial Form U4 filed for the registration of a representative or principal.

(2) $55 for each registration U4 transfer or re-licensing of a representative or principal.

** NOM Participants that do not transact an equities business on the NASDAQ Stock Market LLC are not subject to the fees in Rule 7003(b).*

* * * * *

7059. NASDAQ Options Regulatory Fee

*NOM Participants will be assessed an Options Regulatory Fee of $0.0015 per contract. **

** Effective January 2, 2012, the Options Regulatory Fee will be assessed by NOM to each NOM Participant for all options transactions executed or cleared by NOM Participant that are cleared by The Options Clearing Corporation (OCC) in the customer range regardless of the exchange on which the transaction occurs. The Options Regulatory Fee is collected indirectly from NOM Participants through their clearing firms by OCC on behalf of NOM. NOM Participants who do not transact an equities business on the NASDAQ Stock Market LLC in a calendar year will receive a refund of the fees specified in Rule 7003(b) upon written notification to the Exchange along with documentation evidencing that no equities business was conducted on the NASDAQ Stock Market for that calendar year. The Exchange will accept refund requests up until sixty (60) days after the end of the calendar year.*

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Rule 7003 entitled ''Registration and Processing Fees'' to eliminate its registered representative fees for NOM Participants and also create a new Rule 7059 entitled ''NASDAQ Options Regulatory Fee'' to institute a new transaction-based Options Regulatory Fee.

Each Options Participant that registers an options principal and/or representative who is conducting business on NOM is assessed a registered representative fee (''RR Fee'') based on the action associated with the registration. There are annual fees as well as initial, transfer and termination fees. RR Fees as well as other regulatory fees collected by the Exchange were

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

intended to cover only a portion of the cost of the Exchange's regulatory programs. Prior to recent rule changes by other options exchanges such as the Chicago Board Options Exchange, Incorporated (''CBOE''), NASDAQ OMX PHLX, LLC (''Phlx''), the International Securities Exchange, LLC (''ISE''), NYSE Arca, Inc. (''NYSEArca'') and NYSE AMEX LLC (''NYSEAmex'') and NASDAQ OMX BX, Inc. (''BX''), all options exchanges, regardless of size, charged registered representative fees.

The Exchange believes that the current RR Fee is no longer equitable given changes among option market participants. The options industry has evolved to a structure with many more Internet-based and discount brokerage firms. These firms have few registered representatives and thus pay very little in RR Fees compared to full service brokerage firms that have many registered representatives. Further, due to the manner in which RR Fees are charged, it is possible for a NOM Participant to restructure its business to avoid paying these fees altogether. A firm can avoid RR Fees by terminating its options participant status and sending its business to NOM through another separate NOM Participant, even an affiliated firm that has many fewer registered representatives. If firms terminated their options participant status to avoid RR Fees, the Exchange would suffer the loss of a source of funding for its regulatory programs. More importantly, the regulatory effort the Exchange expends to review the transactions of each type of firm is not commensurate with the number of registered representatives that each firm employs.

In order to address the inequity of the current regulatory fee structure and to offset more fully the cost of the Exchange's regulatory programs pertaining to NOM, the Exchange proposes to eliminate the current RR Fee for NOM Participants and adopt an Options Regulatory Fee (''ORF'') of $0.0015 per contract. All participants will continue to be assessed the RR Fee in Exchange Rule 7003(b),[3] however, NOM Participants that do not transact an equity business on the NASDAQ Stock Market during the applicable year, will receive a refund of the RR fees collected through CRD, specifically the fees specified in Rule 7003(b). The NOM Participant would solely conducted an options business would be refunded the RR Fees at the end of the first quarter of the following year. For example, a NOM Participant that does not transact an equity business on NASDAQ Stock Market during the calendar year would be entitled to a refund of its RR Fees.[4] The Exchange would refund these fees upon written notification to the Exchange and documentation evidencing that no equity business was conducted on the NASDAQ Stock Market for that calendar year. The Exchange will accept refund requests up until sixty (60) days after the end of the calendar year.

The ORF would be assessed by the Exchange to each NOM Participant for all options transactions executed or cleared by the NOM Participant that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, *i.e.,* transactions that clear in the customer account of the NOM Participant's clearing firm at OCC, regardless of the marketplace of execution. In other words, the Exchange would impose the ORF on all options transactions executed by a NOM Participant, even if the transactions do not take place on NOM.[5] The ORF would also be charged for transactions that are not executed by a NOM Participants but are ultimately cleared by a NOM Participant. In the case where a NOM Participant executes a transaction and a NOM Participant clears the transaction, the ORF would be assessed to the NOM Participant who executed the transaction. In the case where a non-NOM Participant executes a transaction and a NOM Participant clears the transaction, the ORF would be assessed to the NOM Participant who clears the transaction. As noted, the ORF would replace RR Fees, which relate to a NOM Participant's options customer business. Further, RR Fees constituted the single-largest fee assessed that is related to NOM customer trading activity (in that NOM generally does not charge customer transaction fees), and the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to NOM Participants' activities supports applying the ORF to transactions cleared but not executed by a NOM Participant. The Exchange's regulatory responsibilities are the same regardless of whether a NOM Participant executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, frontrunning, contrary exercise advice violations and insider trading.[6] These activities span across multiple exchanges.

The Exchange believes the initial level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating NOM Participants. The Exchange believes the amount of the ORF is fair and reasonably allocated because it is a closer approximation to the Exchange's actual costs in administering its regulatory program. The ORF would be collected indirectly from NOM Participants through their clearing firms by OCC on behalf of the Exchange. The Exchange expects that NOM Participants will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by Self Regulatory Organizations (''SROs'') to help the SROs meet their obligations under Section 31 of the Exchange Act.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of NOM Participants, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities.[7] The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. At

[3] The RR fee would still apply to those NOM Participants that also conduct business on the NASDAQ Stock Market equities trading platform. *See* Exchange Rule 7003.

[4] This would include the $55 fee for initial Form U4s filed for the registration of a representative or principal and the $55 fee for each registration U4 transfer or re-licensing of a representative or principal.

[5] The ORF would apply to all customer orders executed by a NOM Participant on NOM. Exchange rules require each NOM Participant to submit trade information in order to allow the Exchange to properly prioritize and match orders and quotations and report resulting transactions to the OCC. *See* Exchange Rules Chapter V, Section 7. The Exchange represents that it has surveillances in place to verify that NOM Participants comply with the Rule.

[6] The Exchange also participates in The Options Regulatory Surveillance Authority (''ORSA'') national market system plan and in doing so shares information and coordinates with other exchanges designed to detect the unlawful use of undisclosed material information in the trading of securities options. ORSA is a national market system comprised of several self-regulatory organizations whose functions and objectives include the joint development, administration, operation and maintenance of systems and facilities utilized in the regulation, surveillance, investigation and detection of the unlawful use of undisclosed material information in the trading of securities options. The Exchange compensates ORSA for the Exchange's portion of the cost to perform insider trading surveillance on behalf of the Exchange. The ORF will cover the costs associated with the Exchange's arrangement with ORSA.

[7] As stated above, the RR Fees collected by the Exchange were originally intended to cover only a portion of the cost of the Exchange's regulatory programs.

present, RR Fees make up the largest part of the Exchange's total options regulatory fee revenue, however, the total amount of NOM specific regulatory fees collected by the Exchange is significantly less than the regulatory costs incurred by NOM on an annual basis. The Exchange notes that its regulatory responsibilities with respect to NOM Participant compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other NOM regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor NOM regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines NOM regulatory revenues exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange would notify NOM Participants of adjustments to the ORF via a Regulatory Information Circular.

The Exchange believes the proposed ORF is equitably allocated because it would be charged to all NOM Participants on all their customer options business. This is because of the amount of resources required by the Exchange to regulate non-customer trading activity, which is significantly less than the amount of resources the Exchange must dedicate to regulate customer trading activity. The ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes the proposed ORF is reasonable because it will raise revenue related to the amount of customer options business conducted by NOM Participants, and thus the amount of Exchange regulatory services those NOM Participants will require, instead of how many registered representative a particular NOM Participant employs.[8]

As a fully-electronic exchange without a trading floor, the amount of resources required by the Exchange to regulate non-customer trading activity is significantly less than the amount of resources the Exchange must dedicate to regulate customer trading activity. This is because regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., market maker) of its regulatory program.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by NOM Participants and their associated persons with the Exchange Act and the Rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-NOM Participants) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, frontrunning and contrary exercise advice violations/expiring exercise declarations.[9] Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail (''COATS'') system in order to surveil NOM Participant activities across markets.[10]

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG''),[11] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the Exchange Act requirement that it have coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.[12]

The Exchange believes that charging the ORF across markets will avoid having NOM Participants direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation. If the ORF did not apply to activity across markets then NOM Participants would send their orders to the least cost, least regulated exchange. Other exchanges could impose a similar fee on their member's activity, including the activity of those members on NOM. In addition to the ORF that is currently in place at other exchanges,[13] the Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee.[14] While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like the other exchanges that assess an ORF, its broad regulatory responsibilities with respect to NOM Participants' activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a NOM Participant's customer options transactions.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(4) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among

[8] The Exchange expects that implementation of the proposed ORF will result generally in many traditional brokerage firms paying less regulatory fees while Internet and discount brokerage firms will pay more.

[9] The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See* Securities Exchange Act Release No. 63430 (December 3, 2010), 75 FR 76758 (December 9, 2010).

[10] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

[11] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[12] *See* Exchange Act Section 6(h)(3)(I).

[13] *See* other options exchanges such as the Chicago Board Options Exchange, Incorporated (''CBOE''), NASDAQ OMX PHLX, LLC (''Phlx''), the International Securities Exchange, LLC (''ISE''), NYSE Arca, Inc. (''NYSEArca'') and NYSE AMEX LLC (''NYSEAmex'') and NASDAQ OMX BX, Inc. (''BX''), all options exchanges, regardless of size, charged registered representative fees.

[14] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 3402 (June 6, 2003).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

members and issuers and other persons using any facility or system which NASDAQ operates or controls.

In particular, the Exchange believes the ORF is objectively allocated to NOM Participants because it would be charged to all NOM Participants on all their transactions that clear as customer at the OCC. RR Fees constituted the single-largest fee assessed that is related to NOM customer trading activity (in that NOM generally does not charge customer transaction fees), and the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. In addition, the Exchange is assessing higher fees to those Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. As a fully-electronic exchange without a trading floor, the amount of resources required by the Exchange to regulate non-customer trading activity is significantly less than the amount of resources the Exchange must dedicate to regulate customer trading activity. This is because regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive.

Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those NOM Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. The ORF seeks to recover the costs of supervising and regulating Participants including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange's regulatory responsibilities are the same regardless of whether a NOM Participant executes a transaction or clears a transaction executed on its behalf. The Exchange believes that this proposal is reasonable, equitable and not unfairly [sic] for the foregoing reasons and also because this proposal would remove the inequity of the current regulatory fee structure [17] and offset more fully the cost of the Exchange's regulatory programs.

The Commission has addressed the funding of an SRO's regulatory operations in the Concept Release Concerning Self-Regulation [18] and the release on the Fair Administration and Governance of Self-Regulatory Organizations.[19] In the Concept Release, the Commission states that: ''Given the inherent tension between an SRO's role as a business and a regulator, there undoubtedly is a temptation for an SRO to fund the business side of its operations at the expense of regulation.'' [20] In order to address this potential conflict, the Commission proposed in the Governance Release rules that would require an SRO to direct monies collected from regulatory fees, fines, or penalties exclusively to fund the regulatory operations and other programs of the SRO related to its regulatory responsibilities.[21] The Exchange has designed the ORF to generate revenues that would recover a material portion of NOM's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [22] and paragraph (f)(2) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–163 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–163. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2011–163 and should be submitted on or before January 4, 2012.

[17] As discussed herein, the options industry has evolved to a structure with many more Internet-based and discount brokerage firms. These firms have few registered representatives and thus pay very little in RR Fees compared to full service brokerage firms that have many registered representatives. Further, due to the manner in which RR Fees are charged, it is possible for a NOM Participant to restructure its business to avoid paying these fees altogether. A firm can avoid RR Fees by terminating its options participant status and sending its business to NOM through another separate NOM Participant, even an affiliated firm that has many fewer registered representatives.

[18] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (''Concept Release'').

[19] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (''Concept Release''). [sic]

[20] Concept Release at 71268.

[21] Governance Release at 71142.

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31999 Filed 12–13–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 2011, there were five applications approved. This notice also includes information on one application, approved in October 2011, inadvertently left off the October 2011 notice. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Clinton, Plattsburgh, New York.

Application Number: 12–07–C–00–PBG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $56,170,454.

Earliest Charge Effective Date: December 1, 2012.

Estimated Charge Expiration Date: February 1, 2043.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Plattsburgh International Airport.

Brief Description of Projects Approved for Collection and Use:

Passenger terminal building expansion PFC administrative costs

Decision Date: October 27, 2011.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: City of Lynchburg, Virginia.

Application Number: 12–06–C–00–LYH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,046,338.

Earliest Charge Effective Date: December 1, 2012.

Estimated Charge Expiration Date: September 1, 2022.

Class of Air Carriers Not Required to Collect PEG's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lynchburg Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Reimbursement of PFC development and administrative costs
Rehabilitate runway 3/21
General aviation terminal building, auto parking
Rehabilitate taxiway B and corporate taxilane
Rehabilitate runway 4/22 drainage—phase 2
Runway 4/22 extension, environmental assessment
Runway 4/22 design—phase 3
Extend runway 4/22, construction
Runway 4/22 extension, phase 5
Master plan update

Decision Date: November 1, 2011.

For Further Information Contact: Jeffery Breeden, Washington Airports District Office, (703) 661–1363.

Public Agency: Cities of Pullman, Washington and Moscow, Idaho.

Application Number: 12–08–C–00–PUW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $170,350.

Earliest Charge Effective Date: November 1, 2012.

Estimated Charge Expiration Date: February 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled air taxi/commercial operators filing FAA Form 1800–31 and utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pullman-Moscow Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Americans with Disabilities Act ramp/terminal access
Environmental assessment for new runway
Wildlife hazard assessment and management plan
Interactive computer training system
Service road rehabilitation
General aviation west ramp rehabilitation
PFC administration

Decision Date: November 9, 2011.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: County of Natrona Board of Trustees, Casper, Wyoming.

Application Number: 12–07–C–00–CPR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $443,082.

Earliest Charge Effective Date: August 1, 2014.

Estimated Charge Expiration Date: June 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate taxiway A—phase I
Rehabilitate taxiway A—phase II
Master plan update and snow removal requirements analysis
Acquire snow plow and spreader

Decision Date: November 17, 2011.

For Further Information Contact: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

Public Agency: City of Cody, Wyoming.

Application Number: 11–07–C–00–COD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $284,100.

Earliest Charge Effective Date: January 1, 2013.

Estimated Charge Expiration Date: June 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: On demand, non-scheduled air taxi/commercial operators.

Determination: Approved. Based on information contained in the public

[24] 17 CFR 200.30–3(a)(12).

agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yellowstone Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Security enhancement 1
Security enhancement 2
Pickup mounted snow plow blade
Service road rehabilitation
Acquire aircraft rescue and firefighting fire suits
Replace aircraft rescue and firefighting equipment
Airport layout plan update and narrative boundary survey
PFC consulting fees
Expand aircraft rescue and firefighting building
Acquire snow removal equipment
Acquire interactive training system
Acquire snow removal equipment vehicle attachment

Brief Description of Withdrawn Project: Two-inch overlay, taxiway A.

Date of Withdrawal: September 7, 2011.

Decision Date: November 17, 2011.

For Further Information Contact: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

Public Agency: County of Knox, Rockland, Maine.

Application Number: 12–01–C–00–RKD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $167,250.

Earliest Charge Effective Date: January 1, 2012.

Estimated Charge Expiration Date: July 1, 2016.

Classes of Air Carriers Not Required to Collect PFC's: (1) Non-scheduled/on-demand air carriers; (2) Passengers enplaned on a flight to an airport in a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Know County Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment acquisition
Airport pavement rehabilitation
Master plan update

Brief Description of Projects Approved For Collection:

Design and permitting for runway 13/31
Easement acquisition
Obstruction removal
Perimeter fencing
Runway 13/31 reconstruction
Rehabilitate terminal aircraft apron

Decision Date: November 22, 2011.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

AMENDMENT TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date.	Amended estimated charge exp. date
07–01–C–01–SIT, Sitka, AK	10/28/11	$1,100,000	$1,375,000	06/01/12	7/01/14
08–05–C–01–RAP Rapid Sity, SD	10/31/11	729,192	1,048,782	06/01/09	10/01/09
99–01–C–04–ANC, Anchorage, AK	11/04/11	22,000,000	21,043,173	01/01/06	01/01/06
06–17–C–01–ORD, Chicago, IL	11/08/11	73,198,000	78,404,650	08/01/16	07/01/16
10–08–C–01–GCC, Gillette, WY	11/10/11	426,381	813,164	05/01/15	11/01/14
07–06–C–01–GCC, Gillette, WY	11/14/11	167,238	91,395	02/01/11	11/01/10
09–04–C–01–ROW, Roswell, NM	11/15/11	510,594	627,519	12/01/13	11/01/13
10–03–C–01–DAL, Dallas, TX	11/15/11	345,323,728	383,636,108	03/01/22	04/01/26
08–01–C–01–IFP, Bullhead City, AZ	11/16/11	744,600	904,132	07/01/12	10/01/12
08–17–C–03–BDL, Windsor Locks, CT	11/16/11	11,707,591	12,135,277	07/01/21	07/01/21
09–06–C–01–HTS, Huntington, WV	11/17/11	1,122,712	1,208,420	09/01/13	06/01/12
08–05–C–01–SAN, San Diego, CA	11/23/11	26,301,763	19,031,690	12/01/09	12/01/09

Issued in Washington, DC, on December 5, 2011.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2011–31986 Filed 12–13–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MC–F 21042]

Student Transportation of America, Inc.—Control—Dairyland Buses, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: Student Transportation of America, Inc., a motor carrier of passengers (Student Transportation), has filed an application under 49 U.S.C. 14303 for its acquisition of control of Dairyland Buses, Inc., also a motor carrier of passengers (Dairyland). The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by January 27, 2012. Student Transportation may file a reply by February 10, 2012. If no comments are filed by January 27, 2012, this notice shall be effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MC–F 21042 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Student Transportation's representative: Mark J. Andrews, Strasburger & Price, LLP, Suite 640, 1700 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. Federal Information Relay Service (FIRS) for the hearing impaired: 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: Student Transportation is a publicly held corporation established under the laws of New Jersey. It holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing interstate charter

passenger services to the public (MC–31422). Dairyland, a corporation established under Wisconsin law, also holds a FMCSA license (MC–170747) and is owned by Coach USA, Inc., a Delaware corporation and noncarrier. The core business of both Student Transportation and Dairyland is transporting students to and from school, a type of transportation not subject to Board jurisdiction. *See* 49 U.S.C. 13506(a)(1). According to the application, approximately 97 percent of Student Transportation's revenue is derived from school bus services exempt from FMCSA licensing jurisdiction; the remaining 3 percent is derived from incidental charter operations that do require FMCSA authority if they are interstate in nature. Similarly, the application indicates that Dairyland derives the vast majority of its revenue from exempt school bus transportation, with the remainder involving incidental charter operations. The application states that FMCSA-regulated charter and special operations have accounted for an insignificant percentage of Student Transportation's and Dairyland's total revenues.

Under the proposed transaction, Student Transportation seeks permission to acquire all of the shares of Dairyland. According to the application, the shares of Dairyland were anticipated to be transferred on or about November 14, 2011, from their current owner, Coach USA, Inc., into an independent voting trust established under 49 CFR pt 1013—*Guidelines for the Proper Use of Voting Trusts,* where they would remain until the proposed transaction is dismissed by Student Transportation or disapproved by the Board, or until Board approval is final and effective.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction it finds consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Student Transportation has submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that the 12-month aggregate gross operating revenues of Student Transportation and Dairyland exceeded $2 million.

Student Transportation states that the proposed transaction will have no significant impact on the adequacy of transportation services available to the public because Student Transportation has no intention of substantially changing the physical operations historically conducted by Dairyland. With respect to fixed charges, Student Transportation states that the proposed transaction will reduce not only interest costs but also a variety of other overhead and variable costs that Dairyland might otherwise bear. According to Student Transportation, the transaction will have a positive impact on employee interests, as the economies and efficiencies resulting from the proposed transaction, will directly benefit Dairyland's employees by maintaining job security and retaining or expanding the volume of available work. Additional information, including a copy of the application, may be obtained from Student Transportation's representative.

On the basis of the application, the Board finds that the proposed acquisition of control is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

The party's application and Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective January 27, 2012, unless opposing comments are timely filed.

4. A copy of this decision will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: December 8, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–32057 Filed 12–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35575]

Watco Holdings, Inc.—Continuance in Control Exemption—Swan Ranch Railroad, L.L.C.

Watco Holdings, Inc. (Watco) has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Swan Ranch Railroad, L.L.C. (SRR), upon SRR's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35574, *Swan Ranch Railroad, L.L.C.—Operation Exemption–Swan Industrial Park,* wherein SRR seeks Board approval to operate 17,192 feet of track located within the Swan Industrial Park, in Cheyenne, Wyo., including Track Numbers 101, 105, and 109.

Watco intends to consummate the transaction on or shortly after December 28, 2011 (the effective date of this notice).

Watco currently controls 23 Class III rail carriers: Southern Kansas and Oklahoma Railroad, Inc.; Palouse River & Coulee City Railroad, L.L.C.; Timber Rock Railroad, L.L.C.; Stillwater Central Railroad, L.L.C.; Eastern Idaho Railroad, L.L.C.; Kansas & Oklahoma Railroad, L.L.C.; Pennsylvania Southwestern Railroad, L.L.C.; Great Northwest Railroad, L.L.C.; Kaw River Railroad, L.L.C.; Mission Mountain Railroad, L.L.C.; Mississippi Southern Railroad, L.L.C.; Yellowstone Valley Railroad, L.L.C.; Louisiana Southern Railroad, L.L.C.; Arkansas Southern Railroad, L.L.C.; Alabama Southern Railroad, L.L.C.; Vicksburg Southern Railroad, L.L.C.; Austin Western Railroad, L.L.C.; Baton Rouge Southern Railroad, L.L.C.; Pacific Sun Railroad, L.L.C.; Grand Elk Railroad, Inc.; Alabama Warrior Railway, L.L.C.; Boise Valley Railroad, L.L.C.; and Autauga Northern Railroad, L.L.C. The 23 Class III rail carriers operate rail lines in 18 States.

Watco represents that: (1) The rail lines to be operated by SRR do not connect with any other railroads in the

[1] Watco owns 100% of the outstanding membership interests of SRR.

Watco corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines to be operated by SRR with any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than December 21, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35575, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, Fifteenth Street NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 9, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Raina S. White.

Clearance Clerk,

[FR Doc. 2011–32068 Filed 12–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35574]

Swan Ranch Railroad, L.L.C.—Operation Exemption—Swan Industrial Park

Swan Ranch Railroad, L.L.C. (SRR),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement with Cheyenne Logistics Hub, LLC (CLH), all the track located within the Swan Industrial Park, in Cheyenne, Wyo. The track over which SRR will operate is approximately 17,192 feet long and includes Track Numbers 101, 105, and 109.[2]

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35575, *Watco Holdings, Inc.—Continuance in Control Exemption—Swan Ranch Railroad, L.L.C.,* wherein Watco seeks Board approval to continue in control of SRR, upon SRR's becoming a Class III rail carrier.

Applicant states that the agreement between SRR and CLH does not contain any provision that prohibits SRR from interchanging traffic with a third party or limits SRR's ability to interchange with a third party.

The transaction may be consummated on or after December 28, 2011 (30 days after the notice of exemption was filed).

SRR certifies that its projected annual revenues as a result of the transaction will not result in SRR's becoming a Class II or Class I rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by December 21, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35574, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 655 Fifteenth Street, NW., Washington, DC 20005.

[1] SRR is a wholly owned, indirect subsidiary of Watco Holdings, Inc. (Watco).

[2] According to SRR, there are no mileposts associated with the tracks.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 9, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Raina White,

Clearance Clerk.

[FR Doc. 2011–32093 Filed 12–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35504]

Union Pacific Railroad Company—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by Union Pacific Railroad Company (UP) on April 27, 2011, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). UP requests that the Board issue a declaratory order to resolve a controversy regarding the reasonableness of the indemnification provisions in UP's tariff relating to transportation of toxic by inhalation hazardous commodities (TIH). The Board seeks public comment on the issues raised in this case.

DATES: Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 27, 2011, a notice of intent to participate. Opening evidence and argument from all PORs is due on January 25, 2012. Reply evidence and argument from all PORs is due on March 12, 2012. Rebuttal evidence and argument from all PORs is due on March 26, 2012.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies (and also an electronic version), referring to Docket No. FD 35504, to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, 1 copy of each filing in this proceeding must be sent (and may be sent by email if service by email is

acceptable to the recipient) to each of the following (1) Michael L. Rosenthal, Covington & Burling LLP, 1201 Pennsylvania Avenue NW., Washington, DC 20004–2401, *mrosenthal@cov.com* (representing UP); (2) David L. Coleman, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–9241, *david.coleman@nscorp.com* (representing Norfolk Southern Railway Company); (3) David F. Rifkind, Leonard, Street, and Deinard, 1350 I Street NW., Suite 800, Washington, DC 20005, *david.rifkind@leonard.com* (representing Canadian Pacific Railway Company); (4) Gregory M. Leitner, Husch Blackwell LLP, 736 Georgia Avenue, Chattanooga, TN 37402, *gregory.leitner@huschblackwell.com* (representing Olin Corporation and SunBelt Chlor Alkali Partnership); (5) Peter A. Pfohl, Slover & Loftus LLP, 1224 17th Street NW., Washington, DC 20036–3003, *pap@sloverandloftus.com* (representing Dyno Nobel Inc.); (6) Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street NW., Washington, DC 20036, *jeff.moreno@thompsonhine.com* (representing The Fertilizer Institute and the American Chemistry Council); (7) Paul M. Donovan, LaRoe, Winn, Moerman & Donovan, 1250 Connecticut Avenue NW., Suite 200, Washington, DC 20036, *paul.donovan@laroelaw.com* (representing The Chlorine Institute); and (8) any other person designated as a POR on the service-list notice (as explained in the Board's decision served on December 12, 2011 [1]).

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–(800) 877–8339.] Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

SUPPLEMENTARY INFORMATION: UP's petition requests a declaratory order regarding Items 50 and 60 of UP Tariff 6607, ''General Rules for Movement of Toxic or Poison Inhalation Commodity Shipments over the Lines of the Union Pacific Railroad,'' which are attached as an exhibit to the petition. These tariff provisions require TIH shippers to indemnify UP against all liabilities except those caused by the sole, contributory, or concurring negligence or fault of UP. UP's petition raises questions about what constitutes a reasonable request for service involving transportation of TIH under 49 U.S.C. 1101(a) and what rules and practices a rail carrier can reasonably establish in its response to a request to transport TIH under 49 U.S.C. 10702.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The issues raised by UP merit further consideration, and a declaratory order proceeding is thus instituted here. Due to the significance of this matter to TIH shippers, railroads, and other interested parties, we are opening this declaratory order proceeding for public participation. Any person seeking to comment on the issues raised in UP's petition may submit written comments to the Board pursuant to the schedule and procedures set forth in this notice. For further information, please see the Board's decision served on December 12, 2011, in Docket No. FD 35504.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 8, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–32094 Filed 12–13–11; 8:45 am]

BILLING CODE 4915–01–P

[1] The service-list notice will be issued as soon after December 27, 2011, as practicable.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–(888) 912–1227 or (206) 220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be held Tuesday, January 10, 2012, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–(888) 912–1227 or (206) 220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: December 8, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32032 Filed 12–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be held Tuesday, January 03, 2012, at 9:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1 (888) 912–1227 or (206) 220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 8, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32010 Filed 12–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 11, 2012.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–(888) 912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, January 11, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–(888) 912–1227 or (718) 488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 7, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32008 Filed 12–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January, 3, 2012.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–(888) 912–1227 or (954) 423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be held Tuesday, January 03, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–(888) 912–1227 or (954) 423–7978, or write TAP Office, 1000 South Pine Island Road Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 7, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32033 Filed 12–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 18, 2012.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–(888) 912–1227 or (718) 488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be held Wednesday, January 18, 2012, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–(888) 912–1227 or (718) 488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 7, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32036 Filed 12–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 03, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–(888) 912–1227 or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be held Tuesday, January 03, 2012 at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–(888) 912–1227 or (414) 231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 8, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32038 Filed 12–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 17, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–(888) 912–1227 or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Tuesday, January 17, 2012 at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–(888) 912–1227 or (414) 231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 8, 2011.

Marian Adams,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32042 Filed 12–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Agency Information Collection (Request for Supplies (Chapter 31–Vocational Rehabilitation)): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 13, 2012.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0061'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0061.''

SUPPLEMENTARY INFORMATION:

Title: Request for Supplies (Chapter 31—Vocational Rehabilitation), VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905m is used to request supplies for veterans in rehabilitation programs. The official at the facility providing rehabilitation services to veterans completes the form and certifies that the veteran needs the supplies for his or her program, and do not have the requested item in his or her possession.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2011, at pages 60133–60134.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 16,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16,000.

Dated: December 9, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–32029 Filed 12–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection (Monthly Statement of Wages Paid to Trainee): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 13, 2012.

ADDRESSES: Submit written comments on the collection of information through

http://www.Regulations.gov or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0368'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0368.''

SUPPLEMENTARY INFORMATION:

Title: Monthly Statement of Wages Paid to Trainee (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: Employers providing on-job or apprenticeship training to veterans complete VA Form 28–1917 to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and correct rate of subsistence allowance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2011, at page 60134.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: December 9, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–32030 Filed 12–13–11; 8:45 am]

BILLING CODE 8320–01–P

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Federal Register

Vol. 76, No. 240

Wednesday, December 14, 2011

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
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Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

74625–75426 1
75427–75770 2
75771–76020 5
76021–76292 6
76293–76600 7
76601–76872 8
76873–77106 9
77107–77362 12
77363–77668 13
77669–77894 14

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

421 76609

3 CFR

Proclamations:
8760 76021
8761 76023
8762 76025
8763 76601
8764 76871
8765 77363
8766 77365

Executive Orders:
13592 76603

Administrative Orders:
Memorandums:
Memorandum of July 19, 2011 76869
Memorandum of November 28, 2011 75423

4 CFR

28 76873

5 CFR

Proposed Rules:
Ch. XXIII 75798

7 CFR

761 75427
763 75427
764 75427
3021 76609

Proposed Rules:
400 75799
457 75805
1700 76905

8 CFR

280 74625
1280 74625

9 CFR

201 76874
317 76890
381 76890

Proposed Rules:
316 75809
317 75809
320 75809
331 75809
354 75809
355 75809
381 75809
412 75809
424 75809

10 CFR

50 ..... 74630, 75771
52 ..... 74630, 75771

Proposed Rules:
20 77431
30 77431
32 76625
40 77431
50 ..... 76322, 77431
70 77431
72 77431
73 76327
Ch. II 75798
429 76328
430 76328
Ch. III 75798
900 77432
Ch. X 75798

12 CFR

225 74631
912 74648
997 74648
1780 74648
1781 74648
1782 74648
1783 74648
1784 74648
1785 74648
1786 74648
1787 74648
1788 74648
1789 74648
1790 74648
1791 74648
1792 74648
1793 74648
1794 74648
1795 74648
1796 74648
1797 74648
1798 74648
1799 74648

Proposed Rules:
5 76905
380 77442
Ch. X 75825, 76628

13 CFR

Proposed Rules:
107 76907
121 74749
125 74749
300 76492
301 76492
302 76492
303 76492
304 76492
305 76492
306 76492
307 76492
308 76492
310 76492
311 76492
314 76492

14 CFR

23 75736
25 74649
27 74655
29 ..... 74655, 75435
39 ..... 74665, 74667, 75442, 75772, 76027, 76293, 77107, 77108, 77367, 77369, 77371, 77375, 77376, 77378, 77380, 77382
71 ..... 75445, 75446, 75447, 75448, 75449, 76891, 77383, 77669
73 77386
91 76611
97 ..... 77111, 77113

Proposed Rules:

35 74749
39 ..... 76066, 76068, 76330, 77157, 77159, 77446
71 ..... 76070, 77448, 77449, 77450, 77451, 77727
77 76333
121 77452
135 77452
142 77452
183 77453

15 CFR

730 76892
732 77115
734 76892
736 ..... 76892, 77115
738 77115
740 77115
742 ..... 76892, 77115
744 76892
745 76892
746 77115
774 77115
801 76029
902 74670
922 77670

Proposed Rules:

740 76072
742 ..... 76072, 76085
770 76085
774 ..... 76072, 76085

16 CFR

437 76816

Proposed Rules:

Ch. II 75504

17 CFR

1 77670

Proposed Rules:

37 77728
38 77728

19 CFR

12 ..... 74690, 74691

21 CFR

558 76894
1308 77330
1314 74696

Proposed Rules:

1140 76096

22 CFR

22 76032
126 76035

Proposed Rules:

121 ..... 76097, 76100
171 76103

24 CFR

91 ..... 75954, 75994
576 75954
582 75994
583 75994

Proposed Rules:

50 77162
55 77162
58 77162
91 76917
576 76917
580 76917
583 76917

26 CFR

1 ..... 75774, 75781, 76895
31 77672
301 76037

Proposed Rules:

1 ..... 75829, 76633, 77454

27 CFR

9 ..... 77677, 77684, 77696

Proposed Rules:

9 75830
19 75836

28 CFR

50 76037

29 CFR

102 77699
1910 75782
4044 74699

Proposed Rules:

1910 75840
2520 76222
2560 76235
2571 76235

30 CFR

1206 76612
1210 76612
1218 76612
1220 76612
1227 76612
1228 76612
1243 76612

Proposed Rules:

904 76104
906 76109
926 76111
Ch. XII 76634

31 CFR

538 76617

33 CFR

100 77119
110 76295
117 ..... 76297, 76298, 76299
155 76299
165 ..... 75450, 76044, 77121, 77125
334 75453

Proposed Rules:

117 ..... 75505, 76634, 76637
165 ..... 76640, 77175
167 76927
334 75508

34 CFR

99 75604

36 CFR

7 77131

Proposed Rules:

1190 75844
1193 ..... 76640, 77738
1194 ..... 76640, 77738

37 CFR

1 74700
381 74703
386 74703

38 CFR

9 75458

Proposed Rules:

9 77455
17 75509

39 CFR

20 ..... 75786, 76619
111 ..... 74704, 75461, 77133
501 77149

Proposed Rules:

501 74753

40 CFR

9 ..... 75794, 76300
52 ..... 75464, 75467, 75795, 76046, 76048, 76302, 76620, 77150, 77701
63 74708
70 77701
81 ..... 76048, 76302
93 75797
180 ..... 76304, 76309, 77703, 77709
261 74709
300 ..... 76048, 76314, 77388
721 ..... 75794, 76300

Proposed Rules:

52 ..... 75845, 75849, 75857, 76112, 76115, 76646, 76673, 76929, 77178, 77182, 77739, 77742
63 76260
70 ..... 74755, 77742
85 ..... 74854, 76932
86 ..... 74854, 76932
136 77742
152 76335
180 76674
261 76677
281 76684
300 ..... 76118, 76336, 77457
600 ..... 74854, 76932

41 CFR

102-34 76622

Proposed Rules:

60-741 77056

42 CFR

401 76542

44 CFR

64 74717
65 ..... 76052, 77155
67 ..... 76055, 76060

45 CFR

156 77392
158 ..... 76574, 76596

46 CFR

2 77712
8 76896
24 77712
30 77712
70 77712
90 77712
91 77712
126 77128
188 77712
506 74720

47 CFR

0 74721
8 74721
20 ..... 74721, 77415
61 76623
69 76623
101 74722

Proposed Rules:

20 77747
73 76337

48 CFR

52 76899
202 76318
204 76318
205 76318
206 76318
207 76318
209 76318
211 76318
212 76318
213 76318
214 76318
215 76318
216 76318
217 76318
219 76318
225 76318
227 76318
234 76318
237 76318
243 76318
252 76318
Ch. II 76318
422 74722

Proposed Rules:

215 75512
252 75512
422 74755

49 CFR

177 75470
269 77716
383 75470
384 75470
390 75470
391 75470
392 75470
575 74723

Proposed Rules:

386 77458
523 ..... 74854, 76932
531 ..... 74854, 76932
533 ..... 74854, 76932
536 ..... 74854, 76932
537 ..... 74854, 76932
571 77183
830 76686

50 CFR

622 75488
635 ..... 75492, 76900
640 75488
648 74724
660 ..... 74725, 77415
665 74747

679 .....74670, 76902, 76903
680.....74670

Proposed Rules:

17.....75858, 76337
223 .....77465, 77466, 77467
224.....77467
622.....74757
648.....77200
679.....77757

LIST OF PUBLIC LAWS

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H.R. 394/P.L. 112–63
Federal Courts Jurisdiction and Venue Clarification Act of 2011 (Dec. 7, 2011; 125 Stat. 758)

Last List December 5, 2011

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