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Federal Register

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Tuesday, January 3, 2012

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1062; Directorate Identifier 2011–NM–038–AD; Amendment 39–16907; AD 2011–27–05]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes. That AD currently requires an inspection of the main landing gear (MLG) separation bolt harness for broken wires and corroded connectors, and corrective actions if necessary; and for certain airplanes, a modification of the MLG separation bolt's electrical harness. This new AD requires replacement of the separation bolt harness. This AD was prompted by reports of broken wires and corroded connectors in the SAAB 340 MLG emergency release system. We are issuing this AD to prevent improper release of the MLG during an emergency situation, possibly resulting in damage to the airplane during landing and injury to the occupants.

DATES: This AD becomes effective February 7, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of July 29, 2004 (69 FR 35235, June 24, 2004).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 11, 2011 (76 FR 62656), and proposed to supersede AD 2004–12–03, Amendment 39–13662 (69 FR 35235, June 24, 2004). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> In 2003, a number of reports had been received concerning broken wires and corroded connectors in the SAAB 340 main landing gear (MLG) emergency release system. The investigation results showed that these were due to improper repairs and installations, not conforming to the approved type design.
>
> This condition, if not corrected, could inhibit the functioning of the separation bolt, preventing proper release of the MLG during an emergency situation, possibly resulting in damage to aeroplane during landing and injury to the occupants.
>
> To address that unsafe condition, Swedish AD (SAD) 1–186 was issued to require an inspection and, depending on findings, corrective action, in accordance with SAAB Service Bulletin (SB) 340–32–127.
>
> Subsequently, Saab introduced a modification to ensure correct functioning of the MLG emergency release system. Accomplishment of that modification (SAAB SB 340–32–128) was made mandatory by SAD 1–189 [which corresponds to FAA AD 2004–12–03 Amendment 39–13662 (69 FR 35235, June 24, 2004)].
>
> Since that [SAD] AD was issued, service experience has shown that this modification does not fully meet the expected results.
>
> Prompted by these findings, SAAB has developed an improved separation bolt harness with a new routing.
>
> For the reasons described above, this [EASA] AD requires replacement of the current separation bolt harness Part Number (P/N) 7292520–678 with the improved unit, P/N 7292520–691.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 62656, October 11, 2011) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 62656, October 11, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 62656, October 11, 2011).

Differences Between This AD and the Mandatory Continuing Airworthiness Information (MCAI) or Service Information

This AD differs from the MCAI and/or service information as follows: Although the MCAI states not to install a separation bolt having P/N 7292520–678 on any airplane after modification of the airplane, this AD states not to install a separation bolt having P/N 7292520–678 on any airplane as of the effective date of this AD.

Costs of Compliance

We estimate that this AD will affect about 111 products of U.S. registry.

The actions that are required by AD 2004–12–03, Amendment 39–13662 (69 FR 35235, June 24, 2004), and retained in this AD take about 6 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,475 per product. Based on these figures, the estimated cost of the currently required actions is 1,985 per product.

We estimate that it will take about 10 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,790 per product. Where the service information lists required parts costs

that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $96,140, or $2,640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 62656, October 11, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13662 (69 FR 35235, June 24, 2004) and adding the following new AD:

2011–27–05 Saab AB, Saab Aerosystems: Amendment 39–16907. Docket No. FAA–2011–1062; Directorate Identifier 2011–NM–038–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 7, 2012.

(b) Affected ADs

This AD supersedes AD 2004–12–03, Amendment 39–13662 (69 FR 35235, June 24, 2004).

(c) Applicability

This AD applies to Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by reports of broken wires and corroded connectors in the SAAB 340 MLG emergency release system. We are issuing this AD to prevent improper release of the MLG during an emergency situation, possibly resulting in damage to the airplane during landing and injury to the occupants.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2004–12–03, Amendment 39–13662 (69 FR 35235, JUNE 24, 2004), With Changes

(g) Inspection

Within 3 months after July 29, 2004 (the effective date of AD 2004–12–03, Amendment 39–13662 (69 FR 35235, June 24, 2004)), perform an inspection of the MLG's separation bolt harness for broken wires and corroded connectors, and any applicable corrective actions by doing all of the actions, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–127, dated December 18, 2002; or Revision 01, dated January 23, 2003. Perform the inspection/corrective actions in accordance with Saab Service Bulletin 340–32–127, dated December 18, 2002; or Revision 01, dated January 23, 2003. Perform any applicable corrective actions before further flight.

(h) Concurrent Service Bulletins

For Model SAAB SF340A series airplanes: Within 12 months after July 29, 2004, do the actions specified in table 1 of this AD, as applicable.

TABLE 1—PRIOR/CONCURRENT ACTIONS

For airplanes with serial numbers—	Accomplish all actions associated with—	According to the accomplishment instructions of—
004 through 108 inclusive	Modifying the MLG separation bolt's electrical harness	Saab Service Bulletin 340-32-041, Revision 01, dated October 9, 1987.
004 through 078 inclusive	Modifying the MLG separation bolt's electrical harness	Saab Service Bulletin 340-32-028, Revision 01, dated November 25, 1986.

(i) New Requirements of This AD

Within 12 months after the effective date of this AD: Replace the separation bolt harnesses having part number (P/N) 7292520–678 with separation bolt harnesses having P/N 7292520–691, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–139, Revision 01, dated November 1, 2010.

(j) Parts Installation

As of the effective date of this AD, no person may install a separation bolt harness having P/N 7292520–678, on any airplane.

(k) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions done before the effective date of this AD in accordance with Saab Service Bulletin 340–32–139, dated January 12, 2010, are acceptable for compliance with the requirements of paragraph (i) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0003, dated January 17, 2011, and the service information specified in paragraphs (m)(1) through (m)(5) of this AD, as applicable, for related information.

(1) Saab Service Bulletin 340–32–139, Revision 01, dated November 1, 2010.

(2) Saab Service Bulletin 340–32–127, dated December 18, 2002.

(3) Saab Service Bulletin 340–32–127, Revision 01, dated January 23, 2003.

(4) Saab Service Bulletin 340–32–041, Revision 01, dated October 9, 1987.

(5) Saab Service Bulletin 340–32–028, Revision 01, dated November 25, 1986.

(n) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on the date specified:

(i) Saab Service Bulletin 340–32–028, Revision 01, dated November 25, 1986, approved for IBR July 29, 2004 (69 FR 35235, June 24, 2004).

(ii) Saab Service Bulletin 340–32–041, Revision 01, dated October 9, 1987, approved for IBR July 29, 2004 (69 FR 35235, June 24, 2004).

(iii) Saab Service Bulletin 340–32–127, dated December 18, 2002, approved for IBR July 29, 2004 (69 FR 35235, June 24, 2004).

(iv) Saab Service Bulletin 340–32–127, Revision 01, dated January 23, 2003, approved for IBR July 29, 2004 (69 FR 35235, June 24, 2004).

(v) Saab Service Bulletin 340–32–139, Revision 01, dated November 1, 2010, approved for IBR February 7, 2012.

(2) For service information identified in this AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 23, 2011.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33565 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1061; Directorate Identifier 2011–NM–053–AD; Amendment 39–16908; AD 2011–27–06]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes equipped with certain ram air turbine (RAT) transformer rectifier units (TRUs). This AD was prompted by a report of incorrect design of the TRU part of the RAT system. This AD requires replacing any affected RAT TRU with a modified RAT TRU. We are issuing this AD to prevent loose internal wiring in the RAT generator, which could result in degraded direct current power to essential airplane systems while the RAT is deployed, which could adversely affect continued safe flight and landing of the airplane.

DATES: This AD becomes effective February 7, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 11, 2011 (76 FR 62671). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The manufacturer of the Transformer Rectifier Unit (TRU) part of the Ram Air Turbine (RAT) system has identified an incorrect design of the part.
>
> The internal wiring that conducts the high voltage alternative current from the RAT generator may become loose due to insufficient crimping of the wire and contacts.
>
> This condition, if not corrected, and if occurring while the RAT is deployed, could result in a degraded direct current power which is distributed to essential aeroplane systems and therefore aeroplane operations might be impaired.
>
> To address this unsafe condition, the manufacturer of the RAT TRU has developed an improved RAT TRU with a new Part Number (P/N).
>
> This [European Aviation Safety Agency (EASA)] AD requires replacement of the affected RAT TRU by a modified RAT TRU.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 62671, October 11, 2011) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 62671, October 11, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 62671, October 11, 2011).

Costs of Compliance

We estimate that this AD will affect about 27 products of U.S. registry. We also estimate that it will take about 13 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $16,310 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $470,205, or $17,415 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 62671, October 11, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–27–06 Dassault Aviation: Amendment 39–16908. Docket No. FAA–2011–1061; Directorate Identifier 2011–NM–053–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 7, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, all serial numbers, certificated in any category; equipped with any ram air turbine (RAT) transformer rectifier unit (TRU) having part number (P/N) 5913703.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by a report of incorrect design of the transformer rectifier unit (TRU) part of the ram air turbine (RAT) system. The Federal Aviation Administration is issuing this AD to prevent loose internal wiring in the RAT generator, which could result in degraded direct current power to essential airplane systems while the RAT is deployed, which could adversely affect continued safe flight and landing of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 28 months after the effective date of this AD, replace any RAT TRU having P/N 5913703 with a RAT TRU having P/N 5915825, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–163, dated December 1, 2010.

(h) Parts Installation

As of the effective date of this AD, no person may install any RAT TRU having P/N 5913703, on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0008, dated January 18, 2011; and Dassault Mandatory Service Bulletin 7X–163, dated December 1, 2010; for related information.

(k) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Dassault Mandatory Service Bulletin 7X–163, dated December 1, 2010.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone (201) 440–6700; Internet *http://www.dassaultfalcon.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 23, 2011.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33569 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0866; Airspace Docket No. 11–AAL–15]

Amendment of Class E Airspace; Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Kipnuk, AK. The revision of two standard instrument approach procedures at the Kipnuk Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Effective date, 0901 UTC, April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeanette Roller, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4541.

SUPPLEMENTARY INFORMATION:

History

On August 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Kipnuk, AK (76 FR 54149). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. Except for editorial changes, this rule is the same as published in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Kipnuk Airport, to accommodate IFR aircraft executing the two revised standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. The portion of the airspace that lies further than 12 miles offshore and overlaps Norton Sound Low and Control 1234L is being amended under a separate rulemaking.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kipnuk, AK [Modified]

Kipnuk Airport, AK
(Lat. 59°55′59″ N., long. 164°01′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile

radius of the Kipnuk Airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kipnuk Airport, excluding that area outside 12 miles from the shoreline within Norton Sound Low and Control 1234L.

Issued in Seattle, Washington, on December 21, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–33570 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0865; Airspace Docket No. 11–AAL–14]

Amendment of Class E Airspace; Galbraith Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Galbraith Lake, AK. The creation of two standard instrument approach procedures at the Galbraith Lake Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Effective date, 0901 UTC, April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeanette Roller, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4541.

SUPPLEMENTARY INFORMATION:

History

On August 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Galbraith Lake, AK (76 FR 54152). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. Except for editorial changes, this rule is the same as published in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Galbraith Lake Airport, Galbraith, AK, to accommodate IFR aircraft executing the two new standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Galbraith Lake, AK [Modified]

Galbraith Lake Airport, AK
(Lat. 68°28′47″ N., long. 149°29′24″ W.)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Galbraith Lake Airport, and that airspace extending upward from 1,200 feet above the surface within a 62-mile radius of Galbraith Lake Airport.

Issued in Seattle, Washington, on December 21, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–33567 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0881; Airspace Docket No. 11–AAL–18]

Amendment of Class E Airspace; Kwigillingok, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Kwigillingok, AK. The revision of two standard instrument approach procedures at the Kwigillingok Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Effective date, 0901 UTC, April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51,

subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeanette Roller, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4541.

SUPPLEMENTARY INFORMATION:

History

On August 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Kwigillingok, AK (76 FR 54151). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. Except for editorial changes, this rule is the same as published in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Kwigillingok Airport, Kwigillingok, AK, to accommodate IFR aircraft executing the two revised standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. The portion of the airspace that lies further than 12 miles offshore and overlaps Norton Sound Low will be amended in a future rulemaking.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kwigillingok, AK [Modified]

Kwigillingok Airport, AK
(Lat. 59°32′35″ N., long. 163°10′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kwigillingok Airport, and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of Kwigillingok Airport, excluding that area outside 12 miles from the shoreline that overlies Norton Sound Low.

Issued in Seattle, Washington, on December 21, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–33566 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. FDA–2003–N–0097] (Formerly 2003N–0211)

Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the labeling requirements for blood and blood components intended for use in transfusion or for further manufacture by combining, simplifying, and updating specific regulations applicable to labeling and circulars of information. These requirements will facilitate the use of a labeling system using machine-readable information that would be acceptable as a replacement for the ''ABC Codabar'' system for the labeling of blood and blood components. FDA is taking this action as a part of its efforts to comprehensively review and, as necessary, revise its regulations, policies, guidances, and procedures related to the regulation of blood and blood components. This final rule is intended to help ensure the continued safety of the blood supply and facilitate consistency in labeling.

DATES: This rule is effective July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Benjamin Chacko, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, (301) 827–6210.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

This rule represents FDA's efforts to revise the regulations for blood and blood components. The rule consolidates most labeling requirements for blood and blood components, including Source Plasma, into one section of the Code of Federal

Regulations (CFR). The rule also updates the regulations applicable to circulars of information.

In the **Federal Register** of July 30, 2003 (68 FR 44678), FDA published a proposed rule that proposed revisions to update requirements for storage and shipment of blood and blood components. FDA received numerous comments in response to these proposals, many of which opposed the changes primarily due to economic concerns. FDA has reviewed these comments and appreciates the concerns raised, and is currently reevaluating these proposals. (See discussion in section II.B of this document.)

B. Development of the International Society of Blood Transfusion Code (ISBT) 128

In the **Federal Register** of August 30, 1985 (50 FR 35472), we published a notice of availability entitled ''Guideline for the Uniform Labeling of Blood and Blood Components,'' which described the uniform container label for blood and blood components and recommended labels that incorporated barcode symbology known as ''ABC Codabar.''

Because the ''ABC Codabar'' system was becoming outdated, we asked the Blood Products Advisory Committee (BPAC), on March 23, 1995, whether there was persuasive evidence for us to allow conversion from ''ABC Codabar'' to International Society of Blood Transfusion Code 128 (ISBT 128), according to the International Council for Commonality in Blood Banking Automation (ICCBBA) proposed timetable. The BPAC voted in favor of accepting the proposed timetable by ICCBBA. The BPAC meeting transcript also indicates the Department of Defense's and the blood industry's, including America's Blood Centers' and AABB's (formerly known as American Association of Blood Banks), support of the move to ISBT 128 for blood and blood components for transfusion.

After the BPAC meeting, ICCBBA developed and submitted to FDA a draft standard entitled ''United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128,'' Version 1.2.0 (draft standard), recommending that ISBT 128 replace ''ABC Codabar.'' In the **Federal Register** of November 27, 1998 (63 FR 65600), we announced the availability of the draft standard and requested public comment on both the use of ISBT 128 and timeframes for implementation.

The ICCBBA revised the draft standard in response to public comment and submitted to FDA a revised draft standard entitled ''United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128,'' Version 1.2.0, dated November 1999 (the Version 1.2.0 Standard). We reviewed the new draft standard, the comments received in response to the **Federal Register** notice of November 27, 1998, and the Version 1.2.0 Standard, and concluded that conformance to the Version 1.2.0 Standard, prepared and reviewed by ICCBBA, would help facilitate the use of a uniform container label for blood and blood components. Thus, in the **Federal Register** of June 6, 2000 (65 FR 35944), we announced the availability of a final guidance entitled ''Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components'' dated June 2000, which recognized as acceptable, except where inconsistent with the regulations, use of the Version 1.2.0 Standard and the implementation of the ISBT 128 uniform labeling system. This guidance identified two inconsistencies between the Version 1.2.0 Standard and the requirements in part 606 (21 CFR part 606) at § 606.121; the first inconsistency concerned the requirement that on container labels for Whole Blood the name of the applicable anticoagulant must immediately precede the proper name of the product (§ 606.121(e)(1)(ii)); and the second inconsistency concerned the requirement that the proper name of the product and any appropriate modifiers must be printed in solid red (§ 606.121(d)(2)).

In the **Federal Register** of August 19, 1999 (64 FR 45366), we published a direct final rule entitled ''Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma,'' which amended § 606.121(d)(2) by adding ''or in solid black,'' thereby eliminating the inconsistency between the Version 1.2.0 Standard and § 606.121(d)(2), which had previously required that any modifier be printed in solid red.

In the ''Guidance for Industry: Recognition and Use of a Standard for Uniform Blood and Blood Component Container Labels'' dated September 2006 (*http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/ucm079004.pdf*), we recognized as acceptable, except where inconsistent with the regulations, use of the ''United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128'' version 2.0.0, dated November 2005 (the Version 2.0.0 Standard). In the guidance, we noted that the Version 2.0.0 Standard revised the Version 1.2.0 Standard and that there remained an inconsistency between the Version 1.2.0 Standard, the Version 2.0.0 Standard and the requirements at § 606.121(e)(1)(ii). Since that guidance was issued, we have identified another inconsistency between the requirements under § 606.121(c)(2) and the Version 2.0.0 Standard regarding the requirement to include the FDA assigned registration number on blood and blood component labels. This final rulemaking addresses these inconsistencies by eliminating the existing inconsistencies between the Version 2.0.0 Standard and the requirements at § 606.121(c)(2) and (e)(1)(ii).

(FDA has verified the Web site addresses in this document, but FDA is not responsible for subsequent changes after this document publishes in the **Federal Register**.)

C. The Proposed Rule

In the **Federal Register** of July 30, 2003 (68 FR 44678), we published a proposed rule entitled ''Revisions to Labeling and Storage Requirements for Blood and Blood Components, Including Source Plasma'' (the proposed rule), to combine, simplify and update specific regulations applicable to container labeling and instruction circulars for all human blood and blood components, including Source Plasma. We also proposed to revise the shipping and storage requirements for certain human blood and blood components. Furthermore, we proposed the use of a labeling system using machine-readable information that would be acceptable as a replacement for the ''ABC Codabar'' system for labeling blood and blood components, and stated that we would also address the existing inconsistencies between the Version 1.2.0 Standard, and the existing regulations as described in section I.B of this document. We also intended to provide more flexibility for inventory management, and to update current requirements designed to ensure potency of the blood components over time by revising the current storage and shipping temperature requirements for frozen noncellular blood components, both for transfusion and for further manufacture (*e.g.,* Cryoprecipitated Antihemophilic Factor, Fresh Frozen Plasma, and Source Plasma).

We note that the proposed rulemaking inadvertently included proposed changes to § 606.121(c)(13) (68 FR 44678 at 44686), which were inconsistent with a previously proposed amendment to § 606.121(c)(13) in an earlier, related proposed rule entitled ''Bar Code Label Requirement for

Human Drug Products and Blood'' that published in the **Federal Register** of March 14, 2003 (68 FR 12499). To eliminate any confusion, we published a correction to the proposed rule in the **Federal Register** of October 27, 2003 (68 FR 61172), and published the related, final rule entitled ''Bar Code Label Requirements for Human Drug Products and Blood'' in the **Federal Register** of February 26, 2004 (69 FR 9120). We also note that the proposed rulemaking inadvertently omitted the requirement in current 21 CFR 640.70(a)(7) that requires that for Source Plasma, in the case of immunized donors, the label must state the immunizing antigen. In this final rule, we have corrected this omission and have placed this requirement in redesignated § 606.121(e)(5)(vi).

Regarding the term ''communicable disease testing,'' used in this final rule, we noted in the proposed rule (68 FR 44678 at 44684) that the terms ''infectious agent testing'' and ''communicable disease testing'' (used interchangeably in the proposed rule and in guidance documents) refer to the same testing performed in accordance with § 610.40 (21 CFR 610.40). We also noted that the term ''infectious agent'' is used rather than ''communicable disease agent'' for consistency with labeling approved by the Director, Center for Biologics and Evaluation Research (CBER), for the Version 1.2.0 Standard and the ''ABC Codabar'' System. In this final rule, as well as in the Version 2.0.0 Standard, the terms ''infectious agent testing'' and ''communicable disease testing'' continue to be used interchangeably and refer to the same testing performed in accordance with § 610.40.

II. Revisions to the Proposed Rule

A. Requirements Finalized in This Rule

This rule:

- Finalizes, in part, the proposed requirements for labeling for blood and blood components intended for use in transfusion or further manufacture by all blood establishments, and specific regulations applicable to container labeling and circulars of information;
- Eliminates the two remaining inconsistencies between the Version 2.0.0 Standard and the regulations, described in section I.B of this document;
- Facilitates the use of a labeling system using machine-readable information that would be acceptable as a system for labeling blood and blood components, and the use of new labeling systems that may be developed in the future;
- Consolidates regulations applicable to labeling standards so that most labeling requirements for all blood and blood components, including Source Plasma, found previously in §§ 606.121 and 640.70, can now be found in § 606.121;
- Updates some of the consolidated regulations;
- Replaces ''shall'' with ''must'' in all places wherever it appears in the regulations;
- Retitles part 606, subpart G; and
- Makes other, necessary conforming changes, and technical amendments.

B. Requirements Not Finalized in This Rule

At this time, we are not finalizing the proposed requirements for storage and shipping temperatures of certain human blood and blood components, including Source Plasma, because we are continuing to reevaluate these proposals, taking into account the adverse comments received. Under the proposed rule, we proposed revisions to the labeling requirements regarding storage and shipping temperatures for frozen noncellular blood components in current part 640 (21 CFR part 640) at § 640.70(a)(3) and (b). We also proposed revisions to storage and shipping temperatures in current §§ 600.15 (21 CFR 600.15), 610.53, 640.34, 640.54, 640.69, and 640.76 to help ensure the potency of the frozen noncellular blood components and for consistency between the labeling regulations and the regulations concerning shipping and storage temperatures of frozen noncellular blood components. By updating the storage and shipping temperature requirements and addressing as many labeling changes as possible at one time, we had believed that the proposed rule would limit the number of times establishments would have to revise container labels.

However, we have concluded, based on comments received, that we should reevaluate the proposed revisions to the requirements for storage and shipping temperatures. For example, we received comments from the plasma fractionation industry stating that the proposed freezing/storage temperature of -30 °C was below the temperature that would be acceptable to preserve product activity, would be very costly to implement, and would pose a safety hazard to employees working in that environment. In the **Federal Register** of August 9, 2004 (69 FR 48250), we announced a public workshop entitled ''Development of Plasma Standards'' that was held August 31 and September 1, 2004. The objective of the workshop was to gather information on current industry practices that are in place for the manufacture of plasma. We also discussed this issue at a March 17, 2005, BPAC meeting and at an April 2, 2009, BPAC meeting.

FDA intends to consider revising storage requirements in the future, based on our review of scientific literature, data from other regulatory authorities and the plasma fractionation industry, and input from BPAC. Based on the information received, we intend to develop standards for the preparation, labeling, storage, and shipping of frozen noncellular blood components for transfusion and for further manufacture.

C. Conforming and Clarifying Changes

This final rule removes § 640.70 from the CFR, and accordingly, we have made conforming changes to § 610.40(h)(2)(ii)(B) and § 640.74(b)(4) both of which currently reference § 640.70. In § 610.40(h)(2)(ii)(B), we have deleted the reference to § 640.70. In § 640.74(b)(4), we have deleted the reference to § 640.70(a) and replaced it with § 606.121 and have deleted the reference to § 640.70(a)(3) and replaced it with § 606.121(e)(5)(ii).

We also made a conforming change to § 610.40(i) to cross-reference another existing requirement for a serological test for syphilis under § 640.65(b)(1).

We also made a conforming change to § 606.121(c)(13)(iii)(D) to cross-reference other existing requirements under § 606.121(c)(9) and § 606.121(i)(5).

We are clarifying proposed § 606.121(i)(4) by removing the phrase ''unless exempt under'' to ''except as provided in.'' This clarifying change will not affect the substantive requirements in this regulation.

Further, we made two clarifying changes to § 606.122(f) by changing ''statements'' to ''statement'' and replacing the period after ''Warning'' with a colon, so that the provision now reads in its entirety, ''The statement: 'Warning: The risk of transmitting infectious agents is present. Careful donor selection and available laboratory test do not eliminate the hazard.''

D. Technical Amendment

We have made a technical amendment to § 606.170 to clarify that reports of the investigation of a fatality must be submitted to CBER either by mail, facsimile, or electronically transmitted mail; and to provide mailing address information for the Director, Office of Compliance and Biologics Quality, CBER.

Further, we have made a technical amendment to § 606.121(e)(2)(i) to require that with the exception of those

products listed in § 606.121(e)(2), red blood cell product labels must include the type of additive solution with which the product was prepared.

III. Comments on the Proposed Rule and FDA's Responses

We received approximately 24 comments on the proposed rule. These comments were received from blood establishments, private and public interest groups, and the general public. All of the comments expressed opinions on the proposed revisions to the storage and shipping temperature requirements; about 12 of the comments commented on the proposed labeling requirements. Because we are not finalizing the proposed storage and shipping temperature requirements at this time, this document does not discuss those issues. This document discusses information relevant to and comments concerning the proposed revisions to the labeling requirements. To make it easier to identify comments and our responses, the word ''Comment,'' in parentheses, will appear before the description of comments, and the word ''Response,'' in parentheses, will appear before our responses.

A. General

(Comment 1) Numerous comments supported the proposed revisions to consolidate, simplify and update the regulations applicable to container labeling and the instruction circular; one comment stated that the changes were ''long overdue.'' Several comments applauded our efforts to develop a proposed rule that will facilitate the implementation of ''machine-readable'' bar code standards and strongly endorsed the use of ISBT 128 as a unifying bar code standard for blood and blood components, which will improve patient safety. In addition, one of these comments noted that one bar code standard would lower the implementation costs related to the standard and would allow for the exchange of inventories so that the needs of patients everywhere could be more easily met.

(Response) We appreciate these supportive comments. We agree that this rule facilitates the use of the ISBT 128 machine readable labeling system for blood components by eliminating FDA requirements that are inconsistent with the use of the ISBT system. We note that once this rule is in effect, licensed establishments will no longer need to request a variance from the regulations to fully implement the ISBT system—thus we anticipate that the new rule will save both industry and FDA resources. In addition, the rule updates current labeling requirements to ensure appropriate and complete labeling of all blood and blood components for infectious disease test results, including recovered plasma for further manufacturing. In these ways, the rule will support the safety of the nation's blood supply.

At the same time, we are preserving for industry the option of using the older labeling system, ''ABC Codabar.''

(Comment 2) One comment expressed concern that consolidating the labeling requirements for Source Plasma and other blood components into the same CFR section may make it more difficult to identify the applicable labeling requirements, and suggested as an alternative that we consolidate requirements into a single section with a subsection dedicated to requirements specific to Source Plasma. Another comment noted that consolidating requirements into one section has both advantages and disadvantages. This comment noted that the manufacture of Source Plasma is significantly different from the manufacture of blood components for transfusion. The comment also noted that other blood products, which are markedly different from blood components for transfusion, have separate labeling requirements in the CFR (*e.g.,* Albumin (part 640, subpart H), Plasma Protein Fraction (part 640, subpart I), and Immune Globulin (part 640, subpart J)). The comment noted that for consistency, we should maintain separate labeling requirements for Source Plasma in part 640, subpart G, and instead revise § 640.70 to require labeling statements based on communicable disease testing.

Two comments noted that a requirement for all test results to be recorded on the product label is not consistent with current industry practice for recovered plasma. See response to comment 8 for further information.

(Response) One purpose of the proposed rule was to consolidate the labeling regulations that apply to blood and blood components in one place in the CFR, including blood components that are used for further manufacture. Not all blood components that are used for further manufacture currently have additional standards in part 640, *e.g.,* recovered plasma. In § 606.121, we have consolidated the labeling requirements for blood and blood components intended for use in transfusion or further manufacture. To clarify this point, in § 606.121(a), we have deleted the phrase ''including Source Plasma'' from the proposed language and added instead ''intended for use in transfusion or further manufacture.'' We have also revised § 606.121(c)(11) to require that if the product is intended for further manufacturing use, a statement listing the results of all the tests for communicable disease agents required under § 610.40 for which the donation has been tested and found negative must be on the container label; except that the container label for Source Plasma is not required to list the negative results of serological syphilis testing under § 610.40(i) and § 640.65(b).

In response to comments regarding current industry practice for negative labeling of recovered plasma for further manufacture, we believe that it is current industry practice to include the communicable disease test results for recovered plasma on the container label. See the response to comment 8 for full details.

(Comment 3) One comment requested that in addition to the revisions in this final rule, we make changes to further streamline the labeling submission process for on-demand ISBT 128 labels.

(Response) The comment is beyond the scope of this final rule. However, we will consider the comments on this issue at a later date.

(Comment 4) One comment requested more flexibility on tie-tags used for autologous donations, suggesting that a computer system-generated ABO blood group and Rh type (ABO/Rh) label be applied to the tie-tag as opposed to the current practice of hand writing the ABO/Rh result on the tag and on the ''For Autologous Use'' label. The comment stated that this change would eliminate the need for handwritten information, thus reducing the likelihood of human error, thereby improving patient safety.

(Response) The comment regarding the use of a computer system-generated ABO/Rh label is beyond the scope of this final rule. However, we note that in the final rule published in the **Federal Register** of February 26, 2004 (69 FR 9120), entitled ''Bar Code Label Requirements for Human Drug Products and Biological Products,'' we revised § 606.121(c)(13) to require that the ABO blood group and Rh type of the donor be present in machine-readable format on the container label of all blood and blood components, including autologous units. This requirement is consistent with ISBT 128 standards but requires those manufacturers using ''ABC Codabar'' to affix an ABO/Rh bar code label to the ''For Autologous Use Only'' label on blood and blood components bearing the autologous label. In this final rule, we have amended § 606.121(i)(5) to permit each container label of blood and blood components intended for autologous use

and obtained from an unsuitable donor or one who is reactive for evidence of infection due to communicable disease agents under § 610.40 to include the ABO and Rh blood group and type. However, such labeling is not required.

B. 21 CFR 606.121(b)

The proposed rule amended § 606.121(b) by adding the phrase ''with any appropriate modifiers and attributes'' to clarify that the label provided by the collecting facility may be altered under certain circumstances and may be altered multiple times to adequately identify the contents of a container. Examples of appropriate modifiers include ''washed,'' ''frozen,'' and ''liquid.'' Examples of appropriate attributes include ''irradiated'' and ''divided,'' which would indicate a process change. We have finalized these requirements as proposed, including the conforming amendments to §§ 606.121(c)(1) and 606.121(d)(2). In addition, we have added the clarifying phrases ''of the product'' and ''considered finished products'' to § 606.121(b). In this section III.B, we describe two examples of circumstances where it is acceptable to alter the label of blood components as finished products after they have been prepared. We note that it is appropriate to revise the label each time, after the finished product has been prepared.

In the preamble of the final rule entitled ''Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling'' published in the **Federal Register** of August 30, 1985 (50 FR 35458), we responded to a comment (comment number 2) that suggested that the only instance in which labels are permitted to be altered pursuant to § 606.121(b) is when blood components are removed from the product. In the response, we noted, that there are certain cases when no blood components are removed from a unit, but the unit may nonetheless require relabeling. Id. at 35459. For example, such relabeling would be appropriate when the product is further processed by freezing, pooling, washing, or irradiating, provided that the establishments have a validated process for this additional processing. The original label would need to be modified to include the additional information and then reprinted and the product relabeled, *i.e.,* a new label placed over the original label, to accurately identify the product.

Another specific circumstance in which the label of a blood product may be altered under § 606.121(b) is when the original label may need to be recreated because the original bag is destroyed while the product is further processed by, for example, freezing, pooling, washing, or irradiation. The recreated label may be placed on the new bag under applicable regulations and the establishment's standard operating procedures.

C. 21 CFR 606.121(c)(2)

In the proposed rule, we proposed amending § 606.121(c)(2) by replacing ''registration number'' with ''unique facility identifier.'' Although, as we discussed in the preamble to the proposed rule (68 FR 44678 at 44683), the FDA-assigned registration number is acceptable as a ''unique facility identifier,'' we wanted to be able to provide for the use of other recognized donation facility identification numbers, such as the ISBT facility code (which includes machine-readable information). In addition, we proposed removing the requirements of current § 640.70(a)(10) for ''name, address, and license number'' on the Source Plasma label because they are included in proposed § 606.121(c)(2).

(Comment 5) One comment suggested that this change imposes an additional requirement on collectors of Source Plasma operating multiple sites under a single license.

(Response) FDA believes that the final rule addresses this concern. In consideration of this comment, we are not requiring the container label for blood components for further manufacture to contain a unique facility identifier at this time, because we believe that the blood establishment's FDA approved product label contains sufficient information to permit identification of the collection facility. Regarding Source Plasma, we have learned that most collection facilities include a unique facility identifier on the container label. We agree that this is useful information for identifying the location where the Source Plasma was collected.

The final rule requires a unique facility identifier for the container label of blood and blood components intended for transfusion, to aid in identifying the location where the blood or blood component was collected or processed. We note that the final rule provides flexibility by using the term ''unique facility identifier,'' which may be satisfied by using an establishment's registration number, the FDA establishment identifier, an ISBT facility code, or other designation that will allow identification of the specific location where the blood or blood component was collected or processed. For example, a blood establishment may incorporate its unique facility identifier into the blood component donor, lot, or pool number and use a validated computer or other recordkeeping system that will enable identification of the facility that collected that blood or blood component.

(Comment 6) One comment expressed concern that their current approved labels do not contain a unique site specific identifier that was assigned by FDA, other than the license number, and that the effective date for the final rule should provide adequate time for implementation to allow for label design, acquisition, procedural changes, and depletion of available stock to minimize transition costs.

(Response) Anticipating the need to deplete existing label stock, the effective date for the final rule (refer to section VIII of the proposed rule) (68 FR 44678 at 44685) provides reasonable time for use of the existing label stock. The final rule becomes effective 180 days after the date of publication in the **Federal Register.**

D. 21 CFR 606.121(c)(10)

The proposed rule combined current § 606.121(c)(11) and part of current § 640.70(a)(2) and redesignated the combined regulations as proposed § 606.121(c)(10). In addition, FDA proposed to revise § 606.121(c)(10) by adding a phrase to the first sentence to clarify that blood and blood components intended for further manufacture are subject to these requirements. Furthermore, FDA proposed to revise § 606.121(c)(10) by adding an alternative warning statement and provided for the use of ''other cautionary statements as approved by CBER.'' FDA now is finalizing the above amendments as proposed (including deleting current § 606.121(e)(5)(ii)), because it is now redundant in light of new § 606.121(c)(10)).

(Comment 7) Two comments suggested that it is difficult to select the proper cautionary statement to use because information regarding cautionary statements can be found in other sections of the CFR, as well as in certain FDA guidance documents.

(Response) We acknowledge that the circumstances surrounding which cautionary statement to use may vary. We believe that the consolidation of the labeling requirements in this rulemaking for blood and blood components for further manufacture, including Source Plasma, should enhance industry's ability to select the appropriate cautionary language. We also note that reference 1 and reference 2 to this rulemaking provide general guidelines about the uniform labeling of blood and blood components. Further,

we suggest that the commenters may want to pose any specific questions to CBER to obtain further guidance.

E. 21 CFR 606.121(c)(11)

We had proposed to redesignate and combine current §§ 640.70(a)(8) and (a)(11) as § 606.121(c)(11) and to revise redesignated § 606.121(c)(11) to require labeling statements indicating the results of communicable disease tests performed. The proposed change provided that the labeling requirements apply to all blood and blood components for further manufacture, including Source Plasma, and would require establishments to label products for further manufacture with the results of communicable disease testing for which the donation has been tested and found negative.

(Comment 8) Some comments expressed concern regarding the resulting burdens from consolidating previously referenced requirements into § 606.121. One comment requested that § 606.121(c)(11) be re-worded to indicate that communicable disease tests performed on a sample from the donor of the unit are listed in the current circular of information, thus providing a much simpler and more flexible method of meeting labeling requirements without the expense of constantly changing labels. Additionally, the comment stated that use of the circular of information would also address concerns regarding the shipment of positive units for further manufacture, by labeling only the positive units or alternatively recommended continuing the current method of noting ''positives'' on the shipping form.

In addition, as discussed previously, regarding recovered plasma, two comments stated that a requirement for all test results to be recorded on the product label is not consistent with current industry practice. The comments indicated that to require constant updating of labels to report all negative test results is counterproductive to the positive labeling aspects of the proposed rule, and requested that this requirement be deleted from the final rule.

(Response) FDA disagrees with the comments related to the use of the circular of information to list communicable disease test results. We believe that it is not appropriate to re-word proposed § 606.121(c)(11) to require that information on communicable disease testing performed on components intended for further manufacture be included in the circular of information because the circular of information applies only to transfusable products and not to products intended for further manufacture.

We note that we have periodically addressed the uniformity of labeling. For example, we announced the availability of the final guideline entitled ''Guideline for Uniform Labeling of Blood and Blood Components'' dated August 1985, which described acceptable criteria for labels consistent with current good manufacturing practice regulations for blood and blood components (part 606) (*http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM080974.pdf*). The guideline included illustrated labels for certain blood components used for further manufacture (*e.g.,* Source Plasma, recovered plasma, and Source Leukocytes), that had been reviewed and approved by FDA. We also issued ''Guidance for Industry: Recognition and Use of a Standard for Uniform Blood and Blood Component Container Labels'' dated September 2006, which recognizes the ''United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128,'' dated November 2005, as an acceptable standard for blood and blood component container labels, except where inconsistent with the regulations. (*http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM079159.pdf*). As discussed in section I.B of this document, we further note that this final rulemaking addresses the inconsistencies that existed.

FDA also disagrees with the comments concerning the labeling of recovered plasma because we believe they are incorrect. We believe it is the usual and customary practice of the blood industry to label the container label of blood and blood components for further manufacture with the negative communicable disease test results of all the tests for communicable disease agents required under § 610.40, except for Source Plasma with respect to serological syphilis testing. We are therefore finalizing the requirement in this rulemaking that the label of blood and blood components for further manufacture must include a statement listing the results of all the tests for communicable disease agents required under § 610.40 for which the donation has been tested and found negative except that the label for Source Plasma is not required to list the negative results of serological syphilis testing under §§ 610.40(i) and 640.65(b).

(Comment 9) One comment noted that consistent with §§ 610.40(i) and 640.65(b)(1), Source Plasma is unique because a serological test for syphilis is performed at intervals of no more than 4 months, rather than at each individual donation. The comment requested clarification on whether syphilis is considered a ''communicable disease agent'' and if the labeling of serological syphilis testing results is required on units of Source Plasma. This comment also expressed the concern that requiring syphilis test results on each Source Plasma unit would be burdensome for industry because it is current industry practice to pre-label Source Plasma with required communicable disease testing results.

(Response) As noted previously in the response to comment 8, we are not finalizing § 606.121(c)(11) as proposed. We will therefore answer this comment in light of the revised provisions of § 606.121(c)(11). Syphilis is deemed to be a communicable disease agent; the testing requirements for which are included in part 610, subpart E (Testing Requirements for Communicable Disease Agents), specifically § 610.40(i). Section 610.40(i) incorporates the requirement in § 640.65(b) to test a Source Plasma donor using a serological test for syphilis at the donor's initial examination and at least once every four months thereafter. (More limited testing for Source Plasma reflects the reduced risk presented by syphilis infected collections of Source Plasma. In an FDA Compliance Policy Guide revised in 1995, FDA observed that ''the disease-causing spirochetes are destroyed during the storage and/or fractionation of the [source] plasma.'') [1]

Under § 606.121(c)(11) as finalized, the label for blood and blood components intended for further manufacture must list the results of all the tests for communicable disease agents required under § 610.40 for which the donation has been tested and found negative; except that the container label for Source Plasma is not required to list the negative results of serological syphilis testing under § 610.40(i) and § 640.65(b). This is because the regulations do not require that each Source Plasma donation be tested for syphilis. In the absence of test results for each donation (*e.g.,* in connection with donations made in month three) or where testing for syphilis was performed and the test was negative, the label is silent. When testing is performed and is reactive for

[1] *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm073876.htm.*

syphilis, the label for the unit associated with the positive test and the label for the unit of any donation(s) made after obtaining the test results must appropriately disclose that the Source Plasma tested reactive by a serologic test for syphilis as described in § 606.121(e)(5)(iv).

More generally, concerning the pre-labeling of Source Plasma, it is FDA's expectation that tests for required infectious disease tests are completed prior to shipment of the Source Plasma for further manufacture to the fractionator or for distribution. However, we also recognize that in certain circumstances, nucleic acid test (NAT) testing of Source Plasma may take an extended period to resolve positive NAT pools to identify an individual positive unit. Additionally, we recognize the difficulty of placing a ''label'' on a frozen product. We note that Source Plasma may be labeled and then may be shipped for pre-release storage at another facility while still under the manufacturer's control due to the manufacturer's storage limitations. This raises the question of whether it is acceptable for a manufacturer to pre-label (at the time of collection) Source Plasma as ''tested and found negative'' while performing NAT testing and shipping such products under quarantine (*i.e.,* while still under the manufacturer's control) and delaying release and distribution until all the test results are obtained.

Under the revised regulation, if the product is intended for further manufacturing use, a statement listing the results of all the tests for communicable disease agents required under § 610.40 for which the donation has been tested and found negative must be listed on the container label; except that the container label for Source Plasma is not required to list the negative results of serological syphilis testing under § 610.40(i) and § 640.65(b). In addition, blood and blood components intended for further manufacture must be labeled in accordance with § 610.40, when the donation has been tested and demonstrates evidence of infection due to a communicable disease agent(s).

Under § 606.121(c)(11) as finalized, it is acceptable for Source Plasma manufacturers to place the label indicating negative communicable disease test results on the product prior to completion of communicable disease testing (pre-label) as long as either (1) The unit is shipped to a storage facility and remains under quarantine control by the collection establishment until all testing is completed and accurately reflected on the label or (2) the unit is not released and distributed into interstate commerce until the results from all communicable disease tests are obtained and accurately reflected on the label. Thus, the requirements under §§ 606.121(c)(11) and 610.40 are not fulfilled until the container label accurately lists the results obtained from all communicable disease testing required under § 610.40. At that time, the product is ready for distribution and release into interstate commerce.

In the event that a shipped unit is pre-labeled with a negative test result but is later found positive upon completed testing, that unit must be relabeled in accordance with § 610.40, including obliteration of the negative result.

F. 21 CFR 606.121(e)(2)(i) and 21 CFR 606.121(e)(5)(vi)

In finalizing this rulemaking, we have amended § 606.121(e)(2)(i) to require that with the exception of those products listed in § 606.121(e)(2), red blood cell product labels must include the type of additive solution with which the product was prepared as this information is useful when making determinations in connection with the shelf life of the product. For example, red cell additive solutions (*e.g.,* AS–1, AS–3, AS–5) provide nutrients to the blood components which in turn allows for an extended shelf life. We note that the labeling of the container with the additive solution is also industry practice.

We proposed to redesignate current § 640.70(a)(7) as § 606.121(e)(5)(vi). We also proposed to update redesignated § 640.70(a)(7) to broaden the labeling requirements to include collections from donors who are not immunized but are in specific collection programs. The proposal replaced the term ''normal donor'' with the term ''nonimmunized donor.'' After consideration, we have determined that ''nonimmunized donor'' is not a recognized term, and we will continue to use the term ''normal donor.''

G. 21 CFR 606.122

We proposed to amend § 606.122 by revising the introductory paragraph and paragraphs (e), (f), and (m). We received comments only on the heading of this regulation, ''Instruction circular,'' which we did not propose to change, and paragraphs (e) and (m).

1. Title for § 606.122

(Comment 10) A few comments desired consistency between § 606.121(c)(8)(ii), which refers to the ''Circular of Information,'' and § 606.122, which refers to the ''Instruction circular.'' One comment suggested revising § 606.121(c)(8)(ii) to use the same language in the AABB ''Standards for Blood Banks and Transfusion Services'': ''See Circular of Information for the Use of Human Blood and Blood Components.''

(Response) We agree that there should be consistency between §§ 606.121(c)(8)(ii) and 606.122. We are therefore revising the title of § 606.122 and the corresponding language in §§ 606.122(k), (l), (m), and (n) by replacing ''Instruction circular'' with ''Circular of Information'' to be consistent with the wording required on labels of blood and blood components for transfusion, as illustrated in the ''Guideline for the Uniform Labeling of Blood and Blood Components'' and the ''United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128,'' dated November 2005, (*http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM079159.pdf*). However, although it is a common industry practice for blood establishments to refer to the ''Circular of Information for the Use of Human Blood and Blood Components,'' we decline to change § 606.121(c)(8)(ii) as suggested because existing regulations do not preclude blood establishments from creating their own circulars of information to address the labeling standards required in § 606.122. Moreover, § 606.121(c)(8)(ii) is consistent with labeling approved by the Director, CBER, *i.e.,* ISBT 128 and ''ABC Codabar.''

2. 21 CFR 606.122(e) and 21 CFR 606.122(f)

We proposed that the instruction circular contain statements regarding the results of each infectious agent for which the blood was tested, including all FDA required tests, and found negative. We have decided to clarify that under § 606.122(e), a product intended for transfusion must include a statement that the product was prepared from blood that was found negative when tested for communicable disease agents as required under § 610.40 (include each test that was performed). We also proposed to amend § 606.122(f) by updating the warning statement to reflect the risk associated with the communicable disease agents for which testing is currently performed. We have decided to keep the currently required statement but note that we have made two clarifying changes to this statement by changing ''statements'' to ''statement'' and replacing the period after ''Warning'' with a colon, so that

the provision now reads in its entirety, ''The statement: 'Warning: The risk of transmitting infectious agents is present. Careful donor selection and available laboratory tests do not eliminate the hazard.''' to be consistent with the warning statements reflected in the current Circular of Information.

(Comment 11) One comment supported the change if they correctly interpreted ''name each infectious agent'' as requiring a list of infectious agents, and opined that it is not necessary to ''name'' each type of test that is performed for each infectious agent. For example, according to the comment, it is not necessary to list both antibody tests and nucleic acid tests. Another comment recommended that either § 606.121(c)(11) or § 606.121(c)(8)(ii) should be revised to require the label to bear a statement ''See Circular of Information * * * results of infectious agent testing.''

(Response) We do not agree that the infectious agent need only be listed once on the labeling for both transfusable products and products for further manufacturing if the blood or blood component was tested by different tests for the same infectious agent. We have revised § 606.122(e) to clarify that the circular of information must list the results of all donor screening tests for communicable disease agents required under § 610.40 for which the blood or blood component was tested and found negative (*e.g.,* negative for antibodies to HIV and Non-reactive for HIV–1 RNA). We interpret ''negative'' to include ''Non-reactive.'' In response to the suggestion to revise § 606.121(c)(11), we refer to our response to comment 8. As noted in that response, we are not finalizing § 606.121(c)(11) as proposed. We also believe that it is not practical to revise § 606.121(c)(8)(ii) to require a statement of all negative test results on the container label of blood and blood components for transfusion, due to space limitations on the container label. We believe that the circular of information is the best place to list this type of information.

3. 21 CFR 606.122(m)(3)

The proposed rule proposed to clarify that the instruction circular must contain, when applicable, instructions to begin administration of plasma within ''a specified time'' after thawing.

(Comment 12) One comment requested clarification of § 606.122(m)(3) and suggested that the current statement in the *Circular of Information for the Use of Human Blood and Blood Components,* ''Transfusion should be completed within four hours and prior to component expiration,'' could be used.

(Response) We do not want to establish in regulation a specified time to begin or complete the transfusion of a plasma component. Instead, we believe that it is appropriate to provide industry with increased flexibility for developing and specifying timeframes for which thawed plasma components can still be used for transfusions if stored at appropriate temperatures per industry standards. We are therefore finalizing the amendment to § 606.122(m)(3) as proposed.

H. Concerns About Labeling for Transfusable Products

(Comment 13) One comment asked if manufacturers of licensed products will have to resubmit labels for approval, citing that such a requirement would add to the cost of compliance and impact the ability of some centers to support out-of-state regions in need of blood during FDA label review/approval process time.

(Response) This rulemaking, in part, updates existing regulations to be consistent with current practice. Under the final rule, licensed manufacturers who have FDA approved container labels that meet the requirements of the final rule do not have to resubmit their labels for approval. If a manufacturer wishes to make labeling changes, a supplement submission must be submitted to FDA consistent with the requirements under § 601.12(f)(1) (21 CFR 601.12(f)(1)).

(Comment 14) One comment expressed concern that the proposed revision to § 606.121(c)(2) will change the commenter's current FDA approved labels and will cost blood establishments approximately $40,000 annually in registration and licensing fees if ISBT or a similar system is utilized. A substantial additional cost will be involved in the purchase of printers, scanners, bar code readers, validation, and training.

(Response) We are not requiring blood establishments to utilize the ISBT labeling system. Blood establishments may continue to use the ''ABC Codabar'' system. Both of these systems are acceptable labeling under the bar code requirements.

IV. Legal Authority

FDA is issuing this rulemaking under the biological products provisions and the communicable diseases provisions of the Public Health Service Act (PHS Act) (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25), and the drugs, devices, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act) (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360j, 371, 372, 374 and 381). Under these provisions of the PHS Act and the Federal Food, Drug, and Cosmetic Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled, and to prevent the introduction, transmission, and spread of communicable disease.

V. Analysis of Economic Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the requirements of the final rule are either consistent with industry practice or would be industry practice absent existing prohibitions, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

A purpose of the final rule is to simplify and unify the existing labeling standards. Labeling standards are currently found in multiple sections of the regulations and these amendments would move these standards to one section of the regulations. Through our

revising, consolidating, and redesignating these regulations, parties wishing to understand the labeling requirements will be able to refer to a single source. This final rule also includes provisions that add flexibility to the regulations that should lower the cost of compliance.

In the proposed rule, we asserted that the new labeling requirements were consistent with current industry practice and did not impose an additional burden. We received comments stating that the proposed labeling requirements for including all communicable disease test results and a unique facility identifier on the product label did not conform to current industry practice for certain blood and blood components intended for further manufacture. In the final rule, as a result of these comments, we revised these requirements. We have also amended § 606.121(e)(2)(i) to require that certain red blood cell product labels must include the type of additive solution with which the product was prepared. We believe that the labeling requirements of the final rule conform to current industry practice.

The final rule requires a change in the circular of information to reflect current testing practices. Existing labeling regulations do not allow the circular to reflect current required testing or to adjust to future changes in required testing or plasma thawing procedures. We believe the circular of information would already be in compliance with the final rule amendments and reflect current requirements and practices if compliance were permitted by existing regulations. As the circular is updated regularly, we believe any required changes can be made in the ordinary revision cycle at a cost too small to reliably quantify.

Overall, because the requirements of this final rule are either industry practice or would be industry practice absent existing prohibitions, estimated costs are negligible. We believe this action to be beneficial as it increases flexibility and lowers compliance costs. Because we believe costs to any entity will be too small to reliably quantify, we certify that this final rule will not have a significant impact on a substantial number of small entities.

VI. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the final rule does not contain policies that have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA has concluded that the final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. The Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in this section VIII with a discussion of the information collection burden.

Title: Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma.

Description: FDA is consolidating the regulations related to labeling blood and blood components. Regulations for labeling of all blood and blood components would be consolidated in §§ 606.121 (Container label) and 606.122 (Circular of information).

Description of Respondents: Manufacturers of blood and blood components, and blood derivatives.

Burden Estimate: Section 606.121(c)(11) requires that if the product is intended for further manufacturing use, a statement listing the results of all the tests for communicable disease agents required under § 610.40 for which the donation has been tested and found negative must be on the container label; except that the label for Source Plasma is not required to list the negative results of serological syphilis testing under §§ 610.40(i) and 640.65(b). The Agency believes that as a part of industry's usual and customary labeling business practices, industry currently labels blood and blood components for further manufacture with the results of required testing found in § 610.40. In addition, § 606.121(e)(2)(i) requires that certain red blood cell product labels must include the type of additive solution with which the product was prepared. The Agency believes that this labeling requirement of the final rule also is part of usual and customary industry practice.

Because the Agency believes the rule amendments and the information collection provisions under § 606.121(c)(11) and (e)(2)(i) in the final rule are part of usual and customary business practice and do not create any new burden for respondents, FDA is not estimating the burden associated with the information collection provisions in this final rule.

The collection of information requirements under §§ 606.121 and 606.122 are approved under OMB control number 0910–0116; in § 640.70 have been approved under OMB control number 0910–0338.

To comply with section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)), elsewhere in this **Federal Register**, FDA is publishing a notice of the proposed collection of information set forth in this document. The collection of information provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the new collection of information provisions in this final rule. 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.

IX. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses in this document, but FDA is not responsible for subsequent changes after this document publishes in the **Federal Register**.

1. ''Guideline for the Uniform Labeling of Blood and Blood Components,'' August 1985, *http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM080974.pdf.*
2. ''United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128,'' November 2005, *http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM079159.pdf.*
3. ''Guidance for Industry: Recognition and Use of a Standard for Uniform Blood and

Blood Component Container Labels,'' September 2006, *http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/ucm079004.pdf.*

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 606, 610, and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

■ 1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 2. Revise the heading for subpart G to read as follows:

Subpart G—Additional Labeling Standards for Blood and Blood Components

■ 3. Section 606.121 is revised to read as follows:

§ 606.121 Container label.

(a) The container label requirements are designed to facilitate the use of a uniform container label for blood and blood components intended for use in transfusion or further manufacture by all blood establishments.

(b) The label provided by the collecting facility and the initial processing facility must not be removed, altered, or obscured, except that the label may be altered to indicate the proper name of the product, with any appropriate modifiers and attributes, and other information required to identify accurately the contents of a container after blood components considered finished products have been prepared.

(c) The container label must include the following information, as well as other specialized information as required in this section for specific products:

(1) The proper name of the product in a prominent position, with any appropriate modifiers and attributes.

(2) The name, address, unique facility identifier, and, if a licensed product, the license number of each manufacturer; except the container label for blood and blood components for further manufacture is not required to include a unique facility identifier.

(3) The donor or lot number relating the unit to the donor. If pooled, all donor numbers, all donation numbers, or a pool number that is traceable to each individual unit comprising the pool.

(4)(i) The expiration date, including the day, month, and year, and, if the dating period for the product is 72 hours or less, including any product prepared in a system that might compromise sterility, the hour of expiration.

(ii) If Source Plasma intended for manufacturing into noninjectable products is pooled, the expiration date for the pool is determined from the collection date of the oldest unit in the pool, and the pooling records must show the collection date for each unit in the pool.

(5) For Whole Blood, Plasma, Platelets, and partial units of Red Blood Cells, the volume of the product, accurate to within ±10 percent; or optionally for Platelets, the volume or volume range within reasonable limits.

(6) Where applicable, the name and volume of source material.

(7) The recommended storage temperature (in degrees Celsius).

(8) If the product is intended for transfusion, the statements:

(i) ''Rx only.''

(ii) ''See circular of information for indications, contraindications, cautions, and methods of infusion.''

(iii) ''Properly identify intended recipient.''

(iv) ''This product may transmit infectious agents.''

(v) The appropriate donor classification statement, *i.e.,* ''paid donor'' or ''volunteer donor,'' in no less prominence than the proper name of the product.

(A) A paid donor is a person who receives monetary payment for a blood donation.

(B) A volunteer donor is a person who does not receive monetary payment for a blood donation.

(C) Benefits, such as time off from work, membership in blood assurance programs, and cancellation of nonreplacement fees that are not readily convertible to cash, do not constitute monetary payment within the meaning of this paragraph.

(9) If the product is intended for transfusion or as is otherwise appropriate, the ABO group and Rh type of the donor must be designated conspicuously. For Cryoprecipitated Antihemophiliac Factor (AHF), the Rh type may be omitted. The Rh type must be designated as follows:

(i) If the test using Anti-D Blood Grouping Reagent is positive, the product must be labeled: ''Rh positive.''

(ii) If the test using Anti-D Blood Grouping Reagent is negative, but the test for weak D (formerly D_u) is positive, the product must be labeled: ''Rh positive.''

(iii) If the test using Anti-D Blood Grouping Reagent is negative and the test for weak D (formerly D_u) is negative, the product must be labeled: ''Rh negative.''

(10) If the product is not intended for transfusion, a statement as applicable: ''Caution: For Manufacturing Use Only,'' or ''Caution: For Use in Manufacturing Noninjectable Products Only,'' or other cautionary statement as approved by the Director, Center for Biologics Evaluation and Research (CBER).

(11) If the product is intended for further manufacturing use, a statement listing the results of all the tests for communicable disease agents required under § 610.40 of this chapter for which the donation has been tested and found negative; except that the container label for Source Plasma is not required to list the negative results of serological syphilis testing under §§ 610.40(i) and 640.65(b) of this chapter.

(12) The blood and blood components must be labeled in accordance with § 610.40 of this chapter, when the donation is tested and demonstrates evidence of infection due to a communicable disease agent(s).

(13) The container label of blood or blood components intended for transfusion must bear encoded information in a format that is machine-readable and approved for use by the Director, CBER.

(i) *Who is subject to this machine-readable requirement?* All blood establishments that manufacture, process, repack, or relabel blood or blood components intended for transfusion and regulated under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act.

(ii) *What blood products are subject to this machine-readable requirement?* All blood and blood components intended for transfusion are subject to the machine-readable information label requirement in this section.

(iii) *What information must be machine-readable?* Each label must have machine-readable information that contains, at a minimum:

(A) A unique facility identifier;
(B) Lot number relating to the donor;
(C) Product code; and
(D) ABO and Rh of the donor, except as described in paragraphs (c)(9) and (i)(5) of this section.

(iv) *How must the machine-readable information appear?* The machine-readable information must:
(A) Be unique to the blood or blood component;
(B) Be surrounded by sufficient blank space so that the machine-readable information can be scanned correctly; and
(C) Remain intact under normal conditions of use.

(v) *Where does the machine-readable information go?* The machine-readable information must appear on the label of any blood or blood component which is or can be transfused to a patient or from which the blood or blood component can be taken and transfused to a patient.

(d) Unless otherwise approved by the Director, CBER, the container label for blood and blood components intended for transfusion must be white and print must be solid black, with the following additional exceptions:

(1) The ABO and Rh blood groups must be printed as follows:

(i) Rh positive: Use black print on white background and use solid black or other solid color for ABO.

(ii) Rh negative: Use white print on black background for Rh and use black outline on a white background for ABO.

(2) The proper name of the product, with any appropriate modifiers and attributes, the donor classification statement, and the statement ''properly identify intended recipient'' may be printed in solid red or in solid black.

(3) The following color scheme may be used for differentiating ABO Blood groups:

Blood group	Color of label
O	Blue
A	Yellow
B	Pink
AB	White

(4) Special labels, such as those described in paragraphs (h) and (i) of this section, may be color-coded.

(e) Container label requirements for particular products or groups of products.

(1) Whole Blood labels must include:

(i) The name of the applicable anticoagulant approved for use by the Director, CBER.

(ii) The volume of anticoagulant.

(iii) If tests for unexpected antibodies are positive, blood intended for transfusion must be labeled: ''Contains (name of antibody).''

(2) Except for frozen, deglycerolized, or washed Red Blood Cell products, Red Blood Cell labels must include:

(i) The type of anticoagulant, and if applicable, the volume of Whole Blood and type of additive solution, with which the product was prepared.

(ii) If tests for unexpected antibodies are positive and the product is intended for transfusion, the statement: ''Contains (name of antibody).''

(3) If tests for unexpected antibodies are positive, Plasma intended for transfusion must be labeled: ''Contains (name of antibody).''

(4) Recovered plasma labels must include:

(i) In lieu of an expiration date, the date of collection of the oldest material in the container.

(ii) For recovered plasma not meeting the requirements for manufacture into licensable products, the statement: ''Not for Use in Products Subject to License Under Section 351 of the Public Health Service Act.''

(iii) The type of anticoagulant with which the product was prepared.

(5) Source Plasma labels must include the following information:

(i) The cautionary statement, as specified in paragraph (c)(10) of this section, must follow the proper name with any appropriate modifiers and attributes and be of similar prominence as the proper name.

(ii) The statement ''Store at −20 °C or colder,'' provided, that where plasma is intended for manufacturing into noninjectable products, this statement may be replaced by a statement of the temperature appropriate for manufacture of the final product to be prepared from the plasma.

(iii) The total volume or weight of plasma and total quantity and type of anticoagulant used.

(iv) When plasma collected from a donor is reactive for a serologic test for syphilis, a statement that the plasma is reactive and must be used only for the manufacturing of positive control reagents for the serologic test for syphilis.

(v) Source Plasma diverted for Source Plasma Salvaged must be relabeled ''Source Plasma Salvaged'' as prescribed in § 640.76 of this chapter. Immediately following the proper name of the product, with any appropriate modifiers and attributes, the labeling must prominently state as applicable, ''STORAGE TEMPERATURE EXCEEDED −20 °C'' or ''SHIPPING TEMPERATURE EXCEEDED −5 °C.''

(vi) A statement as to whether the plasma was collected from normal donors, or from donors in specific collection programs approved by the Director, CBER. In the case of specific collection programs, the label must state the defining characteristics of the plasma. In the case of immunized donors, the label must state the immunizing antigen.

(f) Blood and blood components determined to be unsuitable for transfusion must be prominently labeled ''NOT FOR TRANSFUSION,'' and the label must state the reason the unit is considered unsuitable. The provision does not apply to blood and blood components intended solely for further manufacture.

(g) [Reserved]

(h) The following additional information must appear on the label for blood and blood components shipped in an emergency prior to completion of required tests, in accordance with § 610.40(g) of this chapter:

(1) The statement: ''FOR EMERGENCY USE ONLY BY ____ .''

(2) Results of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter completed before shipment.

(3) Indication of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter not completed before shipment.

(i) The following additional information must appear on the label for blood and blood components intended for autologous transfusion:

(1) Information adequately identifying the patient, *e.g.,* name, date of birth, hospital, and identification number.

(2) Date of donation.

(3) The statement: ''AUTOLOGOUS DONOR.''

(4) The ABO and Rh blood group and type, except as provided in paragraph (c)(9) of this section.

(5) Each container of blood and blood component intended for autologous use and obtained from a donor who fails to meet any of the donor suitability requirements under § 640.3 of this chapter or who is reactive to or positive for one or more tests for evidence of infection due to communicable disease agents under § 610.40 of this chapter must be prominently and permanently labeled ''FOR AUTOLOGOUS USE ONLY'' and as otherwise required under § 610.40 of this chapter. Such units also may have the ABO and Rh blood group and type on the label.

(6) Units of blood and blood components originally intended for autologous use, except those labeled as prescribed under paragraph (i)(5) of this section, may be issued for allogeneic transfusion provided the container label complies with all applicable provisions of paragraphs (b) through (e) of this section. In such case, the special label

required under paragraphs (i)(1), (i)(2), and (i)(3) of this section must be removed or otherwise obscured.

(j) A tie-tag attached to the container may be used for providing the information required by paragraphs (e)(1)(iii), (e)(2)(ii), and (e)(3), (h), or (i)(1), (i)(2), and (i)(3) of this section.

■ 4. Section 606.122 is amended by:
■ a. Revising the section heading;
■ b. Revising the introductory text;
■ c. Revising paragraphs (e), (f), (m)(2), (m)(3), and (m)(5); and
■ d. Revising the introductory text in paragraphs (k), (l), (m), and (n).

The revisions read as follows:

§ 606.122 Circular of information.

A circular of information must be available for distribution if the product is intended for transfusion. The circular of information must provide adequate directions for use, including the following information:

* * * * *

(e) A statement that the product was prepared from blood that was found negative when tested for communicable disease agents, as required under § 610.40 of this chapter (include each test that was performed).

(f) The statement: ''Warning: The risk of transmitting infectious agents is present. Careful donor selection and available laboratory tests do not eliminate the hazard.''

* * * * *

(k) For Red Blood Cells, the circular of information must contain:

* * * * *

(l) For Platelets, the circular of information must contain:

* * * * *

(m) For Plasma, the circular of information must contain:

(1) * * *

(2) Instructions to thaw the frozen product at a temperature appropriate for the product.

(3) When applicable, instructions to begin administration of the product within a specified time after thawing.

* * * * *

(5) A statement that this product has the same risk of transmitting infectious agents as Whole Blood; other plasma volume expanders without this risk are available for treating hypovolemia.

(n) For Cryoprecipitated AHF, the circular of information must contain:

* * * * *

■ 6. Section 606.170 is amended by revising paragraph (b) to read as follows:

§ 606.170 Adverse reaction file.

* * * * *

(b) When a complication of blood collection or transfusion is confirmed to be fatal, the Director, Office of Compliance and Biologics Quality, CBER, must be notified by telephone, facsimile, express mail, or electronically transmitted mail as soon as possible. A written report of the investigation must be submitted to the Director, Office of Compliance and Biologics Quality, CBER, by mail, facsimile, or electronically transmitted mail (for mailing addresses, see § 600.2 of this chapter), within 7 days after the fatality by the collecting facility in the event of a donor reaction, or by the facility that performed the compatibility tests in the event of a transfusion reaction.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 7. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 8. Section 610.40 is amended by revising paragraphs (h)(2)(ii)(B) and (i) to read as follows:

§ 610.40 Test requirements.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

(B) You must appropriately label such blood or blood components as required under § 606.121 of this chapter, and with the ''BIOHAZARD'' legend;

* * * * *

(i) *Syphilis testing.* In addition to the testing otherwise required under this section, you must test by a serological test for syphilis under §§ 640.5(a), 640.14, 640.23(a), 640.33(a), 640.53(a), and 640.65(b)(1) and (b)(2) of this chapter.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

■ 9. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.70 [Removed]

■ 10. Section 640.70 is removed.
■ 11. Section 640.74 is amended by revising paragraph (b)(4) to read as follows:

§ 640.74 Modification of Source Plasma.

* * * * *

(b) * * *

(4) The label affixed to each container of Source Plasma Liquid shall contain, in addition to the information required by § 606.121 of this chapter, but excluding § 606.121(e)(5)(ii) of this chapter, the name of the manufacturer of the final blood derivative product for whom it was prepared.

* * * * *

Dated: December 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33554 Filed 12–30–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

RIN 1218–AB50

General Working Conditions in Shipyard Employment; Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; notice of Office of Management and Budget (OMB) approval of collection of information requirements.

SUMMARY: OSHA is announcing that OMB approved the collection of information requirements contained in the General Working Conditions Standard under the Paperwork Reduction Act of 1995. The OMB approval number is 1218–0259.

DATES: The rule is effective January 3, 2012. The final rule, published May 2, 2011 (76 FR 24576), became effective and enforceable on August 1, 2011, except for the provisions in § 1915.89, which became effective and enforceable on October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, OSHA, Directorate of Standards and Guidance, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: OSHA published a final rule for General Working Conditions in Shipyard Employment on May 2, 2011 (76 FR 24576), updating existing requirements to reflect advances in industry practices and technology, consolidating some general safety and health requirements into one subpart, and providing hazardous energy protection not addressed in the existing standard.

As required by the Paperwork Reduction Act of 1995, the **Federal**

Register notice for the General Working Conditions in Shipyard Employment final rule stated that compliance with the collection of information requirements was not required until OMB approved these requirements, and that the Department of Labor would publish a notice in the **Federal Register** announcing that OMB approved and assigned a control number to the requirements. See 76 FR 24695. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) The collection of information displays a currently valid OMB control number, and (2) the agency informs those members of the public who must respond to the collection of information that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

On May 2, 2011, OSHA submitted the General Working Conditions in Shipyard Employment (29 CFR part 1915, subpart F) Information Collection Request for the final rule to OMB for approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). On October 31, 2011, OMB approved the collections of information contained in the final rule and assigned this collection OMB Control Number 1218–0259.

List of Subjects in 29 CFR Part 1915

Occupational safety and health, reporting, Recordkeeping requirements, Hazards in general working condition in shipyard employment.

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. 4–2010 (75 FR 55355).

Signed at Washington, DC, on December 22, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standard

For the reasons stated in the preamble to the final rule, the Occupational Safety and Health Administration amends 29 CFR part 1915 to read as follows:

PART 1915—[AMENDED]

Subpart F—[Amended]

■ Amend § 1915.8, by adding to the table the entries ''1915.83, 1915.87, 1915.88, and 1915.89'' in the proper numerical sequence as follows:

§ 1915.8 OMB control numbers under the Paperwork Reduction Act.

* * * * *

29 CFR citation	OMB control No.
1915.83	1218–0259
1915.87	1218–0259
1915.88	1218–0259
1915.89	1218–0259

* * * * *

[FR Doc. 2011–33260 Filed 12–30–11; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0607; FRL–9611–2]

Approval and Promulgation of Air Quality Implementation Plans; State of New Jersey; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the revision to the New Jersey State Implementation Plan, submitted by the State of New Jersey. The revision addresses Clean Air Act requirements and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA's approval includes but is not limited to New Jersey's plans to implement Reasonable Progress Goals, Best Available Retrofit Technologies on eligible sources, as well as New Jersey's Subchapter 9, Sulfur in Fuels rule and source-specific SIP revisions.

DATES: *Effective Date:* This rule is effective on February 2, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2011–0607. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (212) 637–4249.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, State Implementation Planning Section, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007–1866. The telephone number is (212) 637–4249. Mr. Kelly can also be reached via electronic mail at *kelly.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking?

EPA is approving a revision to New Jersey's State Implementation Plan (SIP) submitted on July 28, 2009, that addressed progress toward reducing regional haze for the first implementation period ending in 2018. The initial submittal was supplemented by a December 9, 2010 submittal transmitting New Jersey's adopted regulation Subchapter 9 Sulfur in Fuel, lowering the sulfur content in fuel oil, a March 2, 2011 submittal which included Best Available Retrofit Technologies (BART) determinations and controls, and a December 7, 2011 submittal including Air Pollution Control Operating Permits for sources that require BART reductions, as listed in the regulatory section of this action.

EPA determined that New Jersey's Regional Haze Plan contains the emission reductions needed to achieve New Jersey's share of emission reductions that were determined to be reasonable through the regional planning process. Furthermore, New Jersey's Regional Haze Plan ensures that emissions from the State will not interfere with the Reasonable Progress Goals (RPGs) for neighboring States' Class I areas. Thus, EPA is approving into the SIP the Regional Haze Plan submitted by New Jersey on July 28, 2009 and supplemented on December 9, 2010, March 2, 2011, and December 7, 2011 as satisfying the requirements of the Clean Air Act. EPA is taking this action pursuant to Section 110 of the Act.

For additional details on EPA's analysis and findings the reader is referred to the proposal published in the August 11, 2011 **Federal Register** (76 FR 49711) and a more detailed discussion as contained in the Technical Support Document which is available on line at *http://www.regulations.gov,* Docket number EPA–R02–OAR–2011–0607.

II. Did NJ adopt BART requirements consistent with EPA's proposal?

On December 7, 2011, New Jersey submitted to EPA the adopted supplement, of the March 3, 2011 draft which EPA parallel processed in the August 11, 2011 **Federal Register**. The December 7, 2011 supplement consists of an addendum to New Jersey's BART Technical Support Document, final permit modifications to satisfy BART, public notice affidavits and other administrative documents. This supplement to the SIP is included in the Docket and may be viewed by the reader at *www.regulations.gov.*

New Jersey did not make any substantive changes to the source specific operating permits to incorporate BART other than those discussed in EPA's August 11, 2011 proposal. Since no substantial changes were made from the proposal, and the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP, EPA is approving New Jersey's Regional Haze Plan, including BART.

III. What comments did EPA receive in response to its proposal?

Two comments were received on EPA's August 11, 2011 proposal. The first requested that EPA review more closely New Jersey's prescribed burning program. New Jersey allows, by permit only, prescribed burning in order to reduce the likelihood of larger fires that would reduce visibility at Class I areas in New Jersey and other states. EPA acknowledges this comment.

The second comment was from the Pillsbury LLP law firm on behalf of B.L. England's Cape May power plant. Pillsbury commented that the plant was ready to operate before August 7, 1962 [1] and was delayed due to forces outside the control of facility. Pillsbury submitted extensive comments based on its review of the legislative history of this portion of the Clean Air Act.

New Jersey has determined that the Cape May facility is eligible for BART controls whether or not Unit 1 is determined to be BART-eligible, and EPA supports New Jersey's determination. In addition, the Clean Air Act requires states to adopt reasonable controls as necessary to make reasonable progress towards improving visibility.

Based on New Jersey's analysis, the controls New Jersey has required for this facility under an existing Administrative Consent Order are reasonable and would be enforced on the Cape May facility, even if it were not eligible for BART emission controls. EPA agrees with New Jersey's determination of emission control requirements for this facility.

IV. What are EPA's conclusions?

EPA has evaluated the proposed revision to the SIP submitted by the State of New Jersey that addresses regional haze for the first planning period from 2008 through 2018. EPA is approving the revision to the SIP, which addresses the Regional Haze requirements of the Clean Air Act. This approval includes but is not limited to the Reasonable Progress portion of the plan, New Jersey's implementation of Best Available Retrofit Technologies on eligible sources, and New Jersey's Subchapter 9, Sulfur in Fuels rule.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 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. This action may

[1] One of the criteria to be classified as BART eligible is that the emission unit was in existence on August 7, 1977 and begun operation after August 7, 1962 (see section 169A(b)(2)(A) of the Act and 40 CFR part 51, appendix Y).

not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 13, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, 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 FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(91) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(91) A revision submitted on July 28, 2009, as supplemented on December 9, 2010, March 2, 2011 and December 7, 2011, by the New Jersey Department of Environmental Protection (NJDEP) that addresses the regional haze requirements of Clean Air Act section 169A. The December 9, 2010 submittal also addresses an element of the $PM_{2.5}$ SIP revision.

(i) Incorporation by reference:

(A) Amendments to New Jersey Administrative Code, Title 7, Chapter 27 (NJAC 7:27) Subchapter 9, ''Sulfur In Fuels,'' Section 9.2 Sulfur content standards, with effective date of September 20, 2010 and operative date of October 25, 2010.

(B) The following Air Pollution Control Operating Permit, Significant Modifications and Preconstruction Approvals:

(*1*) PSEG Fossil LLC Hudson Generating Station dated March 8, 2011, Permit BOP110001, Program Interest 12202 for units: U1–OS Summary, U1–OS1, U1–OS2, U2–OS Summary, U15–OS Summary and U16–OS Summary.

(*2*) Chevron Products Company dated March 4, 2011, Permit BOP100001, Program Interest 18058 for unit 15, process heaters: OS Summary (E1501 and E1502).

(*3*) ConocoPhillips (Linden City) dated September 21, 2011, Permit BOP110001, Program Interest 41805 for unit 3, process heaters: OS Summary, OS1–E241, OS2–E243, OS3–E245, OS4–E246, OS5–E247, OS6–E248, OS7–E249, OS8–E250, OS11–E242, OS13–E253, and OS15–E258.

(*4*) Vineland Municipal Electric Utility—Howard M. Down dated September 26, 2011, Permit BOP110001, Program Interest 75507 for units: U10–OS Summary, U10–OS2, U10–OS3, and U22–OS Summary.

(*5*) BL England Generating Station dated December 16, 2010, Permit BOP100003, Program Interest 73242 for units: GR2 U2, U1–OS Summary, U1–OS1, U2–OS Summary, U2–OS1, U3–OS Summary, U3–OS1, U6–OS Summary, U6–OS1, U7–OS1, U7–OS2, U7–OS4, U7–OS5, U7–OS6, U7–OS7, U7–OS10, U7–OS11, U7–OS12, U8–OS Summary, and U8–OS1.

(ii) Additional information.

(A) Letter dated December 9, 2010 from Commissioner Bob Martin, NJDEP, to Regional Administrator Judith A. Enck, EPA Region 2, submitting the SIP revision containing Subchapter 9.

(B) December 7, 2011, letter from Director William O'Sullivan, NJDEP, to Acting Director John Filippelli, Division of Environmental Planning and Protection, EPA Region 2, submitting a supplement to the 2009 Regional Haze SIP which contains the Best Available Retrofit Technology (BART) determinations and enforceable BART emission limits for five facilities.

■ 3. Section 52.1573 is amended by designating the existing paragraph as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 52.1573 Approval status.

* * * * *

(b) *Visibility protection.* EPA approves the Regional Haze SIP revision submitted by the New Jersey Department of Environmental Protection on July 28, 2009, as supplemented on December 9, 2010, March 2, 2011 and December 7, 2011 as meeting the requirements of Clean Air Act section 169A and 40 CFR 51.308. In particular, EPA approves the New Jersey Regional Haze SIP as meeting the requirements of 40 CFR 51.308(e) regarding Best Available Retrofit Technology and 40 CFR 51.308(d)(2) and (d)(4)(v) regarding the calculation of baseline and natural conditions for the Brigantine Wilderness Area of the Edwin B. Forsythe National Wildlife Refuge, and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.

■ 4. In § 52.1605 the table is amended by revising the entry for ''Title 7, Chapter 27: Subchapter 9'' to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
*	*	*	* * * *
Title 7, Chapter 27			
*	*	*	* * * *
Subchapter 9, ''Sulfur in Fuels''.	Sept. 9, 2010	1/3/12 [Insert **Federal Register** page citation].	Sulfur dioxide ''bubble'' permits issued by the State pursuant to § 9.2 and not waived under the provisions of § 9.4 become applicable parts of the SIP only after receiving EPA approval as a SIP revision.
*	*	*	* * * *

■ 5. Section 52.1606 is revised to read as follows:

§ 52.1606 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirement of 40 CFR 51.307, New source review, for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for new source review. The provisions of § 52.28 are hereby

incorporated and made part of the applicable plan for the State of New Jersey.

[FR Doc. 2011–33666 Filed 12–30–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 1
Tuesday, January 3, 2012

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 44

[Docket No. OCC–2011–0014]

RIN 1557–AD44

FEDERAL RESERVE SYSTEM

12 CFR Part 248

[Docket No. 2011–1432]

RIN 7100–AD 82

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

RIN 3064–AD85

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 255

[Release No. 34–66057; File No. S7–41–11]

RIN 3235–AL07

Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and U.S. Securities and Exchange Commission (SEC).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 7, 2011, the OCC, Board, FDIC, and SEC (collectively, the ''Agencies'') published in the **Federal Register** a joint notice of proposed rulemaking for public comment to implement section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund (''proposed rule'').

Due to the complexity of the issues involved and to facilitate coordination of the rulemaking among the responsible agencies as provided in section 619 of the Dodd-Frank Act, the Agencies have determined that an extension of the comment period until February 13, 2012 is appropriate. This action will allow interested persons additional time to analyze the proposed rules and prepare their comments.

DATES: Comments on the proposed rule must be received on or before February 13, 2012.

ADDRESSES: You may submit comments by any of the methods identified in the proposed rule.[1] Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

OCC: Deborah Katz, Assistant Director, or Ursula Pfeil, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Roman Goldstein, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210; Kurt Wilhelm, Director for Financial Markets Group, (202) 874–4660; Stephanie Boccio, Technical Expert for Asset Management Group, or Joel Miller, Group Leader for Asset Management Group, (202) 874–4660, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Christopher M. Paridon, Counsel, Legal Division, (202) 452–3274; Sean D. Campbell, Deputy Associate Director, Division of Research and Statistics, (202) 452–3761; David Lynch, Manager, (202) 452–2081, or Jeremy R. Newell, Division of Bank Supervision and Regulation, (202) 452–3239, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, Capital Markets (202) 898–6705, or Karl R. Reitz, Senior Capital Markets Specialist, (202) 898–6775, Division of Risk Management Supervision; Michael B. Phillips, Counsel, (202) 898–3581, or Gregory S. Feder, Counsel, (202) 898–8724, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429–0002.

SEC: Josephine Tao, Assistant Director, Elizabeth Sandoe, Senior Special Counsel, David Bloom, Branch Chief, or Angela Moudy, Attorney Advisor, Office of Trading Practices, Division of Trading and Markets, (202) 551–5720; Daniel S. Kahl, Assistant Director, Tram N. Nguyen, Branch Chief, Michael J. Spratt, Senior Counsel, Paul Schlichting, Senior Counsel, or Parisa Haghshenas, Law Clerk, Office of Investment Adviser Regulation, Division of Investment Management, (202) 551–6787, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On November 7, 2011, the proposed rule was published in the **Federal Register**.[2] The proposed rule implements section 619 of the Dodd-Frank Act which added a new section 13 to the Bank Holding Company Act of 1956 (''BHC Act'') and contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

In recognition of the complexities of the issues involved and the variety of considerations involved in its impact and implementation, the Agencies requested that commenters respond to numerous questions. The proposed rule stated that the public comment period would close on January 13, 2012.[3]

The Agencies have received requests from the public for an extension of the comment period to allow for additional time for comments related to the provisions of the proposed rule.[4] The Agencies believe that the additional period for comment will facilitate public comment on the provisions of the proposed rule and the questions posed by the Agencies, and coordination of the

[1] *See* 76 FR 68846.

[2] *See id.*

[3] *See id.*

[4] *See, e.g.,* comment letters to the Agencies from Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce (November 17, 2011); American Bankers Association *et al.* (November 30, 2011); and Representative Neugebauer *et al.* (December 20, 2011).

rulemaking among the responsible agencies as provided in section 619 of the Dodd-Frank Act. Therefore, the Agencies are extending the comment period for the proposed rule from January 13, 2012 to February 13, 2012.

Dated: December 22, 2011.

John Walsh,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary under delegated authority, December 23, 2011.

Jennifer J. Johnson,

Secretary of the Board.

By delegated authority from the Board of Directors of the Federal Deposit Insurance Corporation.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the Securities and Exchange Commission.

Dated: December 23, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33623 Filed 12–30–11; 8:45 am]

BILLING CODE 4810–33–P; 6714–10–P; 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 34–66058; File No. S7–38–11]

RIN 3235–AL04

Prohibition Against Conflicts of Interest in Certain Securitizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release proposing a new rule to implement Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') on material conflicts of interest in connection with certain securitizations (the ''ABS Conflicts Proposal''). The original comment period for the ABS Conflicts Proposal was scheduled to end on December 19, 2011. On December 13, 2011, the comment period was extended until January 13, 2012. Today, the Commission is again extending the time period in which to provide the Commission with comments on the ABS Conflicts Proposal until February 13, 2012. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Comments should be received on or before February 13, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);

- Send an email to *rule-comments@sec.gov.* Please include File Number S7–38–11 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–38–11. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sandoe, Senior Special Counsel, Anthony Kelly, Special Counsel, or Barry O'Connell, Attorney Advisor, Office of Trading Practices, Division of Trading and Markets, at (202) 551–5720, and David Beaning, Special Counsel and Katherine Hsu, Chief, Office of Structured Finance, Division of Corporation Finance, at (202) 551–3850.

SUPPLEMENTARY INFORMATION: The Commission has requested comment on Proposed Rule 127B under the Securities Act of 1933 (''Securities Act'') in the ABS Conflicts Proposal to implement Section 621 of the Dodd-Frank Act.[1] Proposed Rule 127B under the Securities Act would prohibit certain persons who create and distribute an asset-backed security, including a synthetic asset-backed security, from engaging in transactions, within one year after the date of the first closing of the sale of the asset-backed security, that would involve or result in a material conflict of interest with respect to any investor in the asset-backed security. The proposed rule also would provide exceptions from this prohibition for certain risk-mitigating hedging activities, liquidity commitments, and bona fide market-making. The ABS Conflicts Proposal was published in the **Federal Register** on September 28, 2011.

The Commission originally requested that comments on the ABS Conflicts Proposal be received by December 19, 2011, including comment about any potential interplay[2] between Proposed Rule 127B and the ''Volcker Rule Proposal.''[3] The Volcker Rule Proposal would implement Section 619 of the Dodd-Frank Act concerning prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds. The original comment period for the Volcker Rule Proposal was scheduled to end on January 13, 2012.

On December 13, 2011, the Commission extended the ABS Conflicts Proposal comment period from December 19, 2011 to January 13, 2012 to coincide with the end of the comment period for the Volcker Rule Proposal. The Commission extended the Volcker Rule Proposal comment period until February 13, 2012.[4] In an effort to provide the public with a better opportunity to consider any potential interplay between the ABS Conflicts and Volcker Rule Proposals, the Commission is also extending the ABS Conflicts Proposal comment period until February 13, 2012.

The Commission has determined to provide the public additional time to consider simultaneously the ABS Conflicts and the Volcker Rule Proposals. This extended opportunity to submit comprehensive comments regarding the ABS Conflicts Proposal and any potential interplay with the Volcker Rule Proposal would benefit the Commission in its consideration of any final rules. Therefore, the Commission is again extending the comment period for the ABS Conflicts Proposal until February 13, 2012 to coincide with the

[1] Exchange Act Release No. 34–65355 (September 19, 2011), 76 FR 60320 (September 28, 2011).

[2] *See, e.g.,* 76 FR 60320, 60341.

[3] Exchange Act Release No. 34–65545 (October 12, 2011), 76 FR 68846 (November 7, 2011).

[4] Exchange Act Release No. 34–66057.

end of the Volcker Rule Proposal comment period.

By the Commission.

Dated: December 23, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33614 Filed 12–30–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. FDA–2011–N–0697]

Amendments to Regulations on Citizen Petitions, Petitions for Stay of Action, and Submission of Documents to Dockets

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain regulations relating to citizen petitions, petitions for stay of action, and the submission of documents to the Agency. In particular, the proposed rule would establish new regulations to implement certain provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which concern certain citizen petitions and petitions for stay of action (PSAs) that involve a request for FDA to take any form of action relating to a pending abbreviated new drug application (ANDA) or 505(b)(2) application. We are making these changes to implement provisions of the Food and Drug Administration Amendments Act of 2007 (FDAAA).

DATES: Submit either electronic or written comments by April 2, 2012. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by February 2, 2012, (see section ''VI. Paperwork Reduction Act of 1995'' of this document). See section II.E of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0697, by any of the following methods; except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* (301) 827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0697 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Nicole Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6312, Silver Spring, MD 20993–0002, (301) 796–3601.

SUPPLEMENTARY INFORMATION:

I. Background

A. Enactment of Section 505(q)

On September 27, 2007, Congress enacted FDAAA (Pub. L. 110–85). Section 914 of title IX of FDAAA added new section 505(q) to the FD&C Act (21 U.S.C. 355(q)). Section 505(q) applies to certain citizen petitions and PSAs (collectively referred to as petitions) that request FDA to take any form of action related to a pending application submitted under section 505(b)(2) or (j) of the FD&C Act (21 U.S.C. 355(b)(2) or (j)). An application submitted under section 505(b)(2) of the FD&C Act is a type of new drug application (NDA) described in that subsection and is referred to in this document as a ''505(b)(2) application.'' An application submitted under section 505(j) is an ANDA for a generic drug product.

Section 505(q) governs the manner in which FDA handles certain citizen petitions and PSAs that ask the Agency to take any form of action related to pending 505(b)(2) applications or ANDAs. Over the years, FDA has received numerous petitions asking the Agency not to approve a particular ANDA or 505(b)(2) application (or classes of these applications concerning a particular drug product or active ingredient) unless certain criteria set forth in the petition are met. In many cases, the petitions have raised scientific and/or legal issues relating to the standards for approval of an application. Examples include: Petitions suggesting a particular method for determining the bioequivalence of a proposed generic product to the reference listed drug (RLD) and petitions maintaining that a proposed generic product does not contain the same active ingredient as the RLD. When submitted early, such as when we are making decisions about the bioequivalence requirements for a generic drug product or before we have received the first ANDA or 505(b)(2) application for a drug product, a petition containing material information can assist us in establishing standards for these applications. However, when petitions are submitted late in the review process for challenged applications and do not raise valid scientific and/or legal issues, they may have the effect of improperly delaying the approval of an application. By enacting section 505(q), Congress indicated a desire to ensure that petitions not be used to improperly delay approval of ANDAs and 505(b)(2) applications.

B. Provisions of Section 505(q) of the FD&C Act

Section 505(q)(1)(A) of the FD&C Act specifies that FDA must not delay approval of a pending ANDA or 505(b)(2) application because of any request to take any form of action relating to the application, unless the request is in writing and in a citizen petition submitted under § 10.30 (21 CFR 10.30) or a PSA submitted under § 10.35 (21 CFR 10.35), and the Agency determines, upon reviewing the petition, that a delay is necessary to protect the public health.

Section 505(q)(1)(F) of the FD&C Act governs the timeframe for final Agency action on a petition. Under this provision, FDA must take final Agency action on a petition not later than 180 days after the date on which the petition

is submitted. The 180-day period is not to be extended for any reason including any determination made under section 505(q)(1)(A) regarding delay of approval of an application (i.e., that delay is necessary to protect the public health), the submission of comments or supplemental information, or the consent of the petitioner. In addition, FDA may deny a petition at any point if it determines that a petition or a supplement to the petition was submitted with the primary purpose of delaying the approval of an application and the petition does not on its face raise valid scientific or regulatory issues (section 505(q)(1)(E) of the FD&C Act). FDA may issue guidance to describe the factors that will be used to determine whether a petition is submitted with the primary purpose of delaying the approval of an application (section 505(q)(1)(E) of the FD&C Act).

Section 505(q) of the FD&C Act also includes certification and verification requirements for certain documents. Under section 505(q)(1)(H) of the FD&C Act, FDA may not consider a petition for review unless the petition is in writing and signed and contains a certification that is specified in that section. In addition, we may not accept for review any supplemental information or comments on a petition unless the submission is in writing and signed and contains a specific verification (section 505(q)(1)(I) of the FD&C Act).

II. Description of the Proposed Rule

FDA is proposing to amend our regulations on general administrative procedures in part 10 (21 CFR part 10) to implement section 505(q) of the FD&C Act. We are proposing to add new § 10.31, which includes the following provisions:

- Proposed § 10.31(a) states that § 10.31 would encompass all citizen petitions and PSAs that request that the Agency take any action that could, if taken, delay approval of an ANDA or 505(b)(2) application (i.e., petitions and PSAs that are or may be subject to section 505(q) of the FD&C Act).
- Proposed § 10.31(b) would clarify the date of submission for petitions submitted under § 10.31.
- Proposed § 10.31(c) and (d) would codify the certification and verification requirements of section 505(q)(1)(H) and (I). Although the certification and verification requirements of section 505(q)(1)(H) and (I) include that the document be signed, we have not proposed a regulation that explicitly states that submissions under § 10.31 or § 10.35 must be signed because current § 10.20 requires that all submissions made to the Division of Dockets Management be signed.

We are also proposing minor revisions to §§ 10.20 and 10.30 to conform with the addition of proposed § 10.31.

With respect to § 10.35, administrative stay of action, we are proposing a revision to conform with the implementation of section 505(q). We are also proposing to add new § 10.35(i) to clarify that a petitioner for a stay of action may supplement, amend, or withdraw a PSA, similar to the provision for citizen petitions in current § 10.30(g).

In addition to implementing the provisions in section 505(q) of the FD&C Act, we are proposing minor technical changes to revise §§ 10.30(e)(3) and 10.35(e) to allow the Commissioner of Food and Drugs (the Commissioner) to dismiss petitions as moot.

A. Submission Date for a Citizen Petition Submitted Under Section 505(q) of the FD&C Act

Proposed § 10.31(b) would make clear that for a petition that could be subject to section 505(q) of the FD&C Act and submitted under proposed § 10.31, the date of submission is the date on which the petition is received by the Division of Dockets Management. Proposed § 10.31(b) also states that the petition must be submitted in accordance with §§ 10.20, 10.30, 10.31, and 10.35, the other relevant regulations regarding citizen petitions and PSAs.

1. Current Regulations Regarding Submission Dates

We are proposing § 10.31(b) because under current § 10.20(e), the submission date for documents submitted to the Division of Dockets Management depends on how the document is submitted to FDA. Current § 10.20(e) states that all submissions to the Division of Dockets Management will be considered as submitted on the date they are postmarked or, if delivered in person during regular business hours, on the date on which they are delivered. The date considerations in current § 10.20(e) apply unless a provision in part 10, an applicable **Federal Register** notice, or an order issued by an administrative law judge specifically states that the documents must be received by a specified date. Section 10.20(e) provides as an example § 10.33(g), which states that a petition for reconsideration will be considered submitted on the date received.

Under current § 10.20(e), which applies to all citizen petitions submitted to the Agency, the computation of time to respond to a citizen petition would depend on the type of delivery service by which a document is sent to the Division of Dockets Management regardless of the date on which it is actually received by the Division of Dockets Management. Therefore, it is possible for two petitions to have different submission dates even if they are received by the Division of Dockets Management on the same day. For example, if Petition A is sent by U.S. mail, postmarked May 1, 2010, and received by the Division of Dockets Management on May 5, 2010, the submission date for Petition A would be considered to be May 1, 2010 (the date of postmark). If Petition B is sent by courier and hand delivered to the Division of Dockets Management on May 5, 2010, the submission date for Petition B would be considered to be May 5, 2010.

Other part 10 regulations also relate to submission dates:

- Under § 10.35(g), a PSA is considered submitted on the day it is received by the Division of Dockets Management. Therefore, under the current regulations, a document's submission date could be different depending on whether the document is a citizen petition or a PSA.
- Under § 10.30(e), FDA is required to respond to a citizen petition within 180 days of receipt of the petition by approving the petition, denying the petition, or providing a tentative response indicating why the Agency has been unable to reach a decision; this 180-day deadline is based on the date of receipt by the Division of Dockets Management.

2. Submission Date for Petitions Submitted Under Proposed § 10.31

We believe that it is important to be clear regarding what date a petition submitted under § 10.31 will be considered to be submitted because section 505(q)(1)(F) of the FD&C Act imposes a strict deadline for FDA to respond to a petition. Under section 505(q)(1)(F) of the FD&C Act, FDA must take final Agency action on a petition subject to section 505(q) no later than 180 days after the date on which the petition is submitted. The 180-day period is not to be extended for any reason, including any determination made under section 505(q)(1)(A) of the FD&C Act regarding delay of approval of an application, the submission of comments or supplemental information, or the consent of the petitioner.

Accordingly, proposed § 10.31(b) would make clear that the date of submission for all petitions subject to § 10.31 and submitted in accordance with §§ 10.20, 10.30, 10.31, and 10.35 is the date on which a petition is received

by the Division of Dockets Management. We are proposing a conforming change to § 10.20 to clarify that the method of calculating submission dates described in § 10.20 does not apply to petitions subject to § 10.31.

B. Certification and Verification

1. Current Regulation on Certification for Citizen Petitions

Current § 10.30 regulating citizen petitions requires that a citizen petition contain, among other things, a certification stating that the citizen petition includes all information and views on which the citizen petition relies and that it includes data and information known to the petitioner which are unfavorable to the citizen petition. Current regulations do not include a certification or verification requirement for supplements or comments to a citizen petition or comments to a PSA, and the current requirements are different than those contained in section 505(q) of the FD&C Act.

2. Certification and Verification Required by Section 505(q) of the FD&C Act

Section 505(q)(1)(H) of the FD&C Act requires that any petition subject to section 505(q) include a specified certification. Section 505(q)(1)(I) of the FD&C Act requires that any comments or supplemental information submitted to a petition subject to section 505(q) include a specified verification. We propose to add § 10.31(c) and (d) to our regulation to include the statutory requirement for the submission of a certification and/or a verification under section 505(q) and the precise language of the certification and verification.

3. Proposed Certification Requirement

Consistent with the specific language provided in section 505(q) of the FD&C Act, proposed § 10.31(c) provides that FDA will not consider a petition subject to § 10.31 for review unless the petition is in writing and contains the following certification: ''I certify that, to my best knowledge and belief: (a) This petition includes all information and views upon which the petition relies; (b) this petition includes representative data and/or information known to the petitioner which are unfavorable to the petition; and (c) I have taken reasonable steps to ensure that any representative data and/or information which are unfavorable to the petition were disclosed to me. I further certify that the information upon which I have based the action requested herein first became known to the party on whose behalf this petition is submitted on or about the following date: _____. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive those payments from the following persons or organizations: _____. I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this petition.''

Proposed § 10.31(c) would require that all petitions that request that FDA take any form of action that could, if taken, delay approval of an ANDA or 505(b)(2) application (i.e., petitions that are subject to § 10.31) contain the complete certification required by § 10.31(c) to be considered for review by FDA. If the petition does not contain the complete certification, we will not review the petition.

4. Proposed Verification Requirement

Consistent with the specific language in section 505(q) of the FD&C Act, proposed § 10.31(d) provides that FDA will not accept for review any supplemental information or comments on a petition subject to § 10.31 unless the supplemental information or comments are in writing and contain the following verification: ''I certify that, to my best knowledge and belief: (a) I have not intentionally delayed submission of this document or its contents; and (b) the information upon which I have based the action requested herein first became known to me on or about _____. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive those payments from the following persons or organizations: _____. I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this document.''

We are proposing one minor editorial change to the language of the verification set out in the statute. We propose to change ''I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this *petition''* to ''I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this *document''* (emphasis added). We are proposing this change because we believe that the statute contained a technical error when referring to a ''petition'' and that the obvious congressional intent is that this reference be to the ''document'' in which the verification would be contained (i.e., supplemental information or comments on a petition rather than a petition itself).

Under proposed § 10.31(d), if any supplemental information or comments that are submitted to a petition subject to § 10.31 do not include the required verification, FDA would not review the submission.

5. Proposed Requirement That the Certification and Verification Use the Exact Language in the Regulation

With the addition of proposed § 10.31(c) and (d), our regulation would include the precise language of the required certification and verification. We have found that petitioners occasionally alter the statutory language of the certification and verification, thereby potentially changing the meaning intended by Congress when it enacted section 505(q) of the FD&C Act. To avoid any alteration of the meaning of the certification and verification, we are proposing to require that petitioners submit the exact statutory language of the certification and verification, with the exception discussed previously in section II.B.4 of this document. Because section 505(q) of the FD&C Act and proposed § 10.31(c) set forth the exact words to be used in the certification, we will consider a certification to be deficient if every word in the petitioner's certification does not match every word of the certification provided in proposed § 10.31(c). In other words, the petitioner's certification must correspond verbatim to the certification in proposed § 10.31(c). For example, if a certification states ''first became known to me'' instead of ''first became known to the party on whose behalf this petition is submitted,'' the certification would be deficient. We believe this interpretation is required by the statutory language because section 505(q) of the FD&C Act specifies the exact text of the certification.

As with our proposed approach to the certification, we would consider a verification to be deficient if it does not exactly mirror the words of the verification under proposed § 10.31(d).

6. Date Includes Month, Day, and Year

Section 505(q) of the FD&C Act and proposed § 10.31(c) also require that the petitioner provide in the certification the date on or about which the information first became known to the party. The certification in proposed § 10.31(c) includes a blank space for that information. We interpret the FD&C Act's reference to ''date'' to mean a month, day, and year. Therefore, we propose to consider a certification to be deficient if the petitioner has not provided the month, day, and year on or

about which the information first became known to the party on whose behalf the petition is submitted. For example, if the petitioner provides ''May 2010'' as the date in the certification, we would consider the certification to be deficient. The text of the certification provided in proposed § 10.31(c) includes a qualification that the petitioner learned of the information on or about the following date; therefore, we believe the certification would accommodate instances in which a petitioner may not know the exact date on which it became aware of the information.

Similarly, under proposed § 10.31(d), we are proposing that if the petitioner or commenter does not provide a month, day, and year in the verification, FDA will consider the verification to be deficient and will not review the submission.

7. Multiple Dates and Types of Information

FDA recognizes that a petition, supplement, or comment could be based on more than one type of information. Proposed § 10.31(c)(2) would require a petitioner to provide in the certification an estimated relevant date for each type of information if different types of information became known over a period of time. The petitioner must identify the information associated with the particular date. To the extent that a petitioner believes that additional clarification is appropriate, the blank space in the certification that proposed § 10.31(c) designates for the date could accommodate additional information that the petitioner believes is appropriate to explain the date that it has identified. This would be done by providing, in each case in which more than one type of information is relied on, the date followed by an identification of the information associated with that date in parentheses. Thus, for example, a petition might include the following in the space for the date:

September 21, 1995 (information about bioavailability issues with the innovator drug);

November 12, 2009 (publication of a draft bioequivalence guidance for the drug);

March 30, 2010 (information that an ANDA had been submitted).

When adding additional information, the petitioner should ensure that the words of the certification (except for information added in the blank space provided) continue to exactly match the words of the certification as provided by proposed § 10.31(c).

Similarly, proposed § 10.31(d) would require that the petitioner or commenter include in the verification each type of information and supply the date each type of information became known. The verification in proposed § 10.31(d) includes a blank space that can accommodate this information.

Under proposed § 10.31(c) and (d), it is the responsibility of the person submitting the petition, supplemental information, or comment to identify each type of information upon which it relies and to supply a date with respect to each such type of information. The failure to provide any information relied upon (and the date) in the certification or verification may result in the failure of FDA to consider that information in its analysis of the petition and would, FDA believes, foreclose the petitioner or the person submitting the supplemental information or comment from relying upon such information in judicial review of FDA's final decision.

8. Petitions That Would Be Required To Include the 505(q) Certification

Proposed § 10.31 would apply to all petitions that request an action that could delay the approval of a possible ANDA or 505(b)(2) application (proposed § 10.31(a)); therefore, all such petitions would be required to include the certification proposed in § 10.31(c).

Because section 505(q)(1)(A) of the FD&C Act specifically references pending ANDA or 505(b)(2) applications, we interpret section 505(q) to apply only to petitions for which, at the time the petition is submitted, at least one ANDA or 505(b)(2) application related to the subject matter of the petition is pending. If there is no related ANDA or 505(b)(2) application pending at the time that the petition is submitted, then we will not consider the provisions of section 505(q) of the FD&C Act to apply to the petition. We believe this interpretation of section 505(q) of the FD&C Act is appropriate because if no related ANDA or 505(b)(2) application is pending at the time that a petition is submitted, the references in section 505(q)(1)(A) to a pending application and delay of approval by a petition would be inapplicable. With respect to the actual submission of the certification and/or verification with a petition, we recognize that petitioners may not be aware of the existence of a pending ANDA or 505(b)(2) application and, therefore, may not know whether to submit the appropriate certification and/or verification under section 505(q) of the FD&C Act. Generally, the existence of an ANDA or a 505(b)(2) application would not be public information.[1] Therefore, FDA has recommended that any petitioner challenging the approvability of an ANDA or a 505(b)(2) application include the statutory certification to avoid a situation in which a petition that is subject to section 505(q) of the FD&C Act is missing the certification and therefore cannot be reviewed by FDA under the statute. We have stated that in situations where a petitioner submits such a petition, we recommend that the petitioner withdraw the original petition and resubmit a petition that includes the required certification under section 505(q) of the FD&C Act.

We have also stated that although we may contact a petitioner to notify him or her of a missing or deficient certification, it is the responsibility of the petitioner to ensure that his or her petition complies with the applicable requirements of section 505(q) of the FD&C Act as well as all other applicable statutory and regulatory requirements. Contacting petitioners who have submitted deficient petitions represents an administrative burden for the Agency. In addition, we are concerned that our contacting such petitioners could notify the petitioner and the public that an ANDA or 505(b)(2) application for a particular drug product is pending.

By including in proposed § 10.31(a) all petitions that challenge the approvability of a possible ANDA or 505(b)(2) application, all such petitions would be required to include the certification in proposed § 10.31(c). Proposed § 10.31(a) would eliminate the need for FDA to contact a petitioner to advise him or her that the petition must include the 505(q) certification or avoid a delay in dealing with the specific issues contained in a petition because the petitioner must withdraw and resubmit the petition. In addition, we propose that any supplement or comments to a petition that is subject to proposed § 10.31 and that includes the certification in § 10.31(c) must include the verification in § 10.31(d).

[1] Although the existence of a pending application generally is not made public by FDA, a potential petitioner may be aware of the existence of a pending ANDA or 505(b)(2) application because of: (1) A paragraph IV patent notification, from the applicant to the NDA holder and the patent owner, stating that the application has been submitted and explaining the factual and legal bases for the applicant's opinion that the patent is invalid or will not be infringed (see section 505(b)(2)(B) and (j)(2)(B) of the FD&C Act), (2) a public announcement by the applicant disclosing the submission of the application, or (3) the tentative approval of an ANDA or 505(b)(2) application made public by FDA or the applicant. In addition, FDA's Web site identifies drug products for which the Agency has received an ANDA with a paragraph IV certification.

C. Dismiss Petition as Moot

Although the primary purpose of this rule is to implement section 505(q) of the FD&C Act, we are proposing to add language to § 10.30(e) to allow the Commissioner to dismiss a petition as moot. Because we are making changes to § 10.30 to implement section 505(q) of the FD&C Act, we believe it would be useful to make this minor clarifying change to the regulations. This change is technical in nature and would be applicable to citizen petitions in general, including those subject to section 505(q) of the FD&C Act. Current § 10.30(e) could be read to require that the Commissioner respond to a citizen petition by either granting or denying the requests in the citizen petition, even when circumstances have rendered the requests in the petition moot. Current § 10.30(e) does not by its terms contemplate a situation in which a petition can be dismissed as moot.

Because changes in law, facts, or circumstances occurring after a citizen petition is submitted to the Agency can render the requests contained in a petition moot, we propose to allow the Commissioner to dismiss a petition as moot in these situations. An example of a moot petition would be a petition that requests that the Agency remove a particular drug from the market for safety reasons when, at the time of the response, the drug has already been removed from the market. Another example would be where a petitioner requests a change to a regulation that has been rescinded or withdrawn since the petition was submitted. In such circumstances, it would be appropriate for the Commissioner to dismiss the petition as moot rather than to grant or deny the requests in the petition. This proposed change to our regulations is intended to clarify that, in addition to our authority to grant or deny a petition under our current regulations, the Agency can dismiss citizen petitions as moot in certain circumstances.

When a citizen petition is dismissed as moot, FDA would respond to the petitioner in writing just as we would when granting or denying a petition. We believe, however, that the Agency's justification for dismissing a petition as moot could be brief in comparison to a response granting or denying a petition, and thus would require dedication of fewer Agency resources. FDA's response dismissing a citizen petition as moot, similar to a response granting or denying a petition, would constitute final Agency action as to that citizen petition.

D. Petitions for Stay of Action

We are proposing a conforming change to § 10.35(b) to clarify the applicable regulations for PSAs that are subject to section 505(q) of the FD&C Act. Section 10.35(b) currently states that ''a request for stay must be submitted in accordance with § 10.20 and in the following form no later than 30 days after the date of the decision involved.'' We propose to add language to § 10.35(b) to provide that petitions for stay subject to § 10.31 must include the certification provided in § 10.31(c). This proposed revision would alert petitioners for stays of action that may be subject to section to 505(q) of the FD&C Act that they must also submit the certification in § 10.31(c).

Section 505(q)(1)(A) of the FD&C Act states that FDA must not delay approval of a pending ANDA or 505(b)(2) application because of any request to take any form of action relating to the application unless the request is in writing, is a citizen petition submitted under § 10.30 or a PSA submitted under § 10.35, and FDA determines, upon reviewing the petition, that a delay is necessary to protect the public health. Section 10.35(d) provides that filing a PSA, citizen petition, or other type of petition, or taking another type of action as described in § 10.35(d) will not stay or otherwise delay any administrative action by the Commissioner unless: (1) The Commissioner determines that a stay or delay is in the public interest and stays the action, (2) a statute requires that the matter be stayed, or (3) a court orders that the matter be stayed. In other words, the mere filing of any petition, including a petition under section 505(q) of the FD&C Act, would not stay or otherwise delay administrative action by FDA. See *TMJ Implants, Inc.* v. *United States HHS,* 584 F.3d 1290, 1300 (10th Cir. 2009). A delay of an administrative action could only occur if FDA chose to take action in response to a particular submission. We are not proposing any changes to § 10.35(d) to implement section 505(q)(1)(A) of the FD&C Act because we believe that the provisions of section 505(q)(1)(A) of the FD&C Act regarding the circumstances in which FDA would stay or delay an administrative action (e.g., approval of an ANDA or 505(b)(2)) would be covered by the current language of § 10.35(d).

As explained previously in this document with respect to citizen petitions under § 10.30(e)(3), we are proposing to add a sentence to § 10.35(e) to allow the Commissioner to dismiss a petition for stay of action as moot.

In addition, we are proposing to add § 10.35(i), which would mirror § 10.30(g) governing citizen petitions and allow a petitioner who has submitted a PSA to supplement, amend, or withdraw a PSA without Agency approval and without prejudice, unless the PSA has been referred for a hearing under 21 CFR parts 12, 13, 14, or 15. Proposed § 10.35(i) would apply to all PSAs, not just PSAs subject to section 505(q) of the FD&C Act. We believe that adding this provision to allow PSAs to be amended, withdrawn, or supplemented is permitted under the FD&C Act and is appropriate to allow petitioners submitting PSAs the same procedural rights as petitioners submitting citizen petitions. By amending this regulation, we are clarifying that it is permissible to amend, withdraw, or supplement a PSA because the current regulations are not specific on this point and our current practice allows a PSA to be amended, withdrawn, or supplemented. Furthermore, under section 505(q)(1)(I) of the FD&C Act, the verification statement that applies to citizen petitions and PSAs refers to supplemental information. Therefore, in drafting this provision, Congress assumed it was possible to provide a supplement to a PSA.

E. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 60 days after its publication in the **Federal Register**. FDA seeks public comment on its proposed 60-day effective date for any final rule that may issue based on this proposed rule.

III. Legal Authority

This rule, if finalized, would amend §§ 10.20, 10.30, and 10.35 and add new § 10.31 in a manner consistent with the Agency's current understanding and application of these provisions. FDA is implementing certain provisions of FDAAA that govern petitions subject to section 505(q) of the FD&C Act. FDA has authority to issue regulations for the efficient administration of these provisions under section 701(a) of the FD&C Act (21 U.S.C. 371(a)).

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the annualized compliance costs to individual industry members who submit a petition is estimated to be about $100, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect any final rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Purpose of the Proposed Rule

Section 505(q) of the FD&C Act concerns the manner in which FDA handles certain citizen petitions and PSAs that request that the Agency take some action related to a pending 505(b)(2) application or 505(j) application (ANDA). Congress was concerned that some petitions may improperly delay the approval of an application if they are submitted late in the review process and do not contain valid scientific, legal, or public health issues. The provisions contained in section 505(q) of the FD&C Act are self-implementing, and FDA has operated under these requirements since FDAAA became law in September 2007. This proposed rule would codify the certification and verification requirements included in section 505(q) of the FD&C Act extend these requirements to all petitions challenging the approvability of possible ANDAs and 505(b)(2) applications, as well as those submitting supplements and comments to these petitions, clarify how FDA determines the date of submissions for citizen petitions and PSAs subject to section 505(q), and clarify that a petitioner for a PSA may supplement, amend, or withdraw a PSA in a manner similar to that provided in the provisions for citizen petitions. In addition, the proposed rule would allow the Commissioner to dismiss a citizen petition or PSA as moot in certain circumstances.

B. Benefits of the Proposed Rule

Section 505(q) of the FD&C Act was enacted in light of concerns that some citizen petitions were submitted to delay the approval of ANDAs or 505(b)(2) applications. With the enactment of FDAAA, FDA is required to take final action on a 505(q) petition within 180 days of its receipt. Further, the law requires that an expanded certification statement be included with petitions, and a verification statement be included with supplements and comments to petitions. While these requirements do not specifically preclude anyone from submitting a petition that may delay approval of an ANDA or 505(b)(2) application, the requirement that the person submitting the document reveal the date on which he or she became aware of the information contained in the petition is presumably intended to reduce this type of behavior.

The requirements contained in section 505(q) of the FD&C Act have been in effect for 3 years. FDA received 21 505(q) petitions in fiscal year (FY) 2008, 31 505(q) petitions in FY 2009, and 20 505(q) petitions in FY 2010. Over the same period, however, the number of ANDAs and 505(b)(2) applications whose approvals were delayed decreased slightly, from 2 in FY 2008 to 1 in FY 2009 and 1 in FY 2010. The sample size of only 3 years is too small to conclusively determine whether the statute has caused a reduction in the number of petitions that did not include valid scientific or legal issues whose primary purpose was to delay approval of an application. The existence of the statutory requirement that FDA take final action within 180 days of receipt of a 505(q) petition, consequently reducing delays of approval, may have had this effect by itself.

By codifying the certification and verification statements (with a minor technical change to the verification language), the proposed rule would reinforce the need for exact wording of both the certification and verification statements. Further, the proposed rule makes clear that each of these two statements requires the identification of a month, day, and year in the place of the date, as opposed to just a year or a month and year. In addition, the proposed rule would clarify that each individual type of information requires its own separate date. By providing additional clarity on the statutory requirements, this proposed rule would likely reduce the number of deficient 505(q) petitions. FDA does not have enough information to estimate this reduction in deficient 505(q) petitions, but believes it will result in lower administrative costs for both industry and FDA.

C. Costs of the Proposed Rule

1. Industry Labor Costs

Companies involved in pharmaceutical research and manufacturing would incur labor costs due to the rule through their administrative review of the final rule and determination of their compliance responsibilities. All companies involved in this would incur some labor costs, regardless of the frequency of their submission of ANDAs or 505(b)(2) applications or citizen petitions to FDA. Census data from 2007 list 763 companies in its pharmaceutical preparation manufacturing category. FDA estimates that each company will expend about 4 hours to review the final rule and determine any changes it needs to make to its internal administrative policies due to this rule. The pharmaceutical and medicine manufacturing category of the North American Industrial Classification System (NAICS) lists the hourly wage for a manager in this category at about $54. A 35-percent adjustment to this figure for employee benefits results in total hourly compensation costs of about $73. A one-time 4-hour review for each company would result in compliance costs of almost $300 per company, and a total of about $224,000 for the industry. This equates to an annualized cost (over 5 years at a 7-percent discount rate) of about $55,000 for the entire industry. These estimates may overstate true compliance costs for review of the rule because companies that are unlikely to submit citizen petitions on even an occasional basis

may not expend as much labor as those that submit petitions more often. FDA invites comment on the estimate of 4 hours of labor to review the final rule and make any adjustment to company policies.

Additional labor costs of the rule would be incurred due to the new requirement that all petitioners challenging the approvability of a possible ANDA or 505(b)(2) application for which an application is not currently pending at FDA submit the appropriate certification, as well as the requirement that any supplements or comments to these petitions include the verification. The implementation of the requirements that 505(q) petitions (concerning the approvability of a pending ANDA or 505(b)(2) application) use the new certification language and that supplements and comments to these petitions use the verification language began with the enactment of FDAAA in September 2007 and are not the subject of the proposed rule. FDA has previously estimated that the statute would result in about 28 additional certifications with petitions and 25 additional verifications with supplements or comments to petitions.

FDA received a yearly average of 32 petitions that challenged the approvability of a possible ANDA or 505(b)(2) application since the end of 2007. This number represents a very small increase over the average for the previous 4-year period. Of these 32 petitions, on average only 25 were 505(q) petitions. FDA uses the difference between these two numbers, or about seven petitions per year, as its estimate of the number of additional petitions that this proposed rule would require to comply with the 505(q) requirements for certification. FDA estimates that the additional time needed to prepare the certification language in the proposed rule at 30 minutes. The majority of this time represents the additional effort of determining the date on which the information or data included in the petition became known to the person submitting the petition. FDA uses the same pharmaceutical and medicine manufacturing category of the NAICS hourly wage for a manager (adjusted for benefits) of $73 to calculate this cost. At 30 minutes per petition, the marginal cost to prepare the additional certification language for 1 petition is estimated at $37. For the average of seven additional petitions that would need the additional language, the total cost to industry is estimated at about $250 annually.

Additional labor costs would also be incurred for the preparation of certifications for supplements and comments to petitions that challenge the approvability of ANDA applications and 505(b)(2) applications for which there is no pending application at the time of the supplement or comment submission. FDA previously estimated that it would receive about 9 verifications for every 10 certifications in the implementation of the 505(q) provision. Using this ratio, FDA estimates that this proposed rule would result in the submission of verifications amounting to 90 percent of the additional certifications that it received due to this rule. Since FDA estimated that 7 additional certifications would be submitted due to this rule, FDA estimates that 90 percent of this number, or about 6 verifications, would also be submitted as a result of this rule. At 30 minutes per petition and the same adjusted wage rate of $73/hour, the additional cost per verification is estimated at $37. The additional labor costs for the 6 verifications would total to about $220 per year.

The provision of the proposed rule that would allow a petitioner who has submitted a PSA to supplement, amend, or withdraw a PSA without Agency approval would not impose any marginal costs on industry members. These practices reflect FDA's current policy. Similarly, the provision of this proposed rule that clarifies how FDA determines the submission date for documents received by FDA's Division of Docket Management is also not expected to impose any costs on industry members.

The total one-time costs plus annual costs of this proposed rule are estimated at about $224,000, with annualized costs (one-time costs annualized over 5 years at a 7-percent discount rate plus annual costs) at about $55,000 for the entire industry (see table 1 of this document). This estimate reflects a one-time $300 per company review cost for each industry member (annualized over 5 years at a 7-percent discount rate at about $70), plus an additional $37 labor cost per certification or verification submitted.

TABLE 1—INDUSTRY COMPLIANCE COSTS

Labor cost factors	One-time costs	Annual costs	Annualized costs [1]
Final Rule Review	$223,600	.....	$55,000
Certification Preparation	.....	$250	250
Verification Preparation	.....	200	200
Total Costs	.....	.....	55,450

[1] Annualized costs represent one-time costs amortized over 5 years at a 7-percent discount rate plus annual costs. At a 3-percent discount rate, annualized costs are reduced by about $5,400.

2. Costs to the Government

The costs to government for oversight of this proposed rule would be low as a review of the language in an additional seven certifications included with petitions and six verifications included with supplements or comments to petitions would only require 15 minutes for each. FDA believes this cost would not be significant, and emphasizes that the FDA personnel reviewing and responding to citizen petitions spend the vast majority of the time on the substantive issues included in the documents.

D. Small Business Impact

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the very low costs that would be incurred by an individual company submitting a petition or supplement or comment to a petition, FDA believes that the proposed rule would not have a significant economic impact on a substantial number of small manufacturing entities.

The companies that would be affected by this proposed rule are classified in two NAICS categories by the Census Bureau. The affected industries are NAICS 325412—Pharmaceutical Preparation, and NAICS 325414—Biological Products (except diagnostic). The Small Business Administration

(SBA) defines small entities in the pharmaceutical preparation category as those with less than 750 employees and defines small entities in the biological product (except diagnostic) category as those with less than 500 employees. The most recent Census of Manufactures data that offer the level of detail for establishments at or near the employee size limits as defined by SBA is from 2002. In both of these establishment size categories, large majorities of the establishments meet the criteria as small entities. Even taking into account that many of these establishments are parts of multi-establishment corporations, significant numbers of companies would still qualify as small entities. Preliminary Census data from 2007, though less detailed, show that significant numbers of establishments continue to have fewer than 100 employees across all of these categories. While FDA expects that most companies submitting petitions that challenge the approvability of an ANDA or 505(b)(2) application would be larger than the average-sized company in their industry, FDA concludes that a substantial number of companies would still qualify as small entities.

The cost analysis concluded that the annualized compliance cost of the proposed rule for a company that submitted one additional certification as a result of the rule would be just over $100. Because FDA estimates that only about seven additional certifications will be submitted due to this rule, it is doubtful that many firms will submit more than one additional certification or verification annually to those already required by section 505(q) of the FD&C Act. Using 2002 Census data, the average value of shipments for establishments in these industries with 1 to 4 employees ranged from $478,000 to $824,000 according the Census of Manufactures. Assuming that such small operations had to prepare even one additional certification or verification each year, the costs of the proposed rule would represent, at most, 0.02 percent of the annual value of shipments. For establishments with 10 or more employees, the compliance costs would represent 0.01 percent or less of the value of shipments. As stated previously, FDA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

This proposed rule contains collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). ''Collection of information'' includes any request or requirement that persons obtain, maintain, retain, or report information to the Agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown under this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FDA invites comments on these topics: (1) Whether the collection of information is necessary for 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.

Title: Amendments to Regulations on Citizen Petitions, Petitions for Stay of Action, and Submission of Documents to Dockets.

Description of Respondents: Respondents to this collection of information as it is related to citizen petitions are individuals or households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions or groups. Respondents to this collection of information as it is related to PSAs are persons who choose to file a petition for an administrative stay of action.

Description: FDA is requesting public comment on estimates of annual submissions from these respondents, as required by section 505(q) of the FD&C Act and described in this proposed rule under § 10.31(c) and (d). Section 10.31(c) of this proposed rule requires that citizen petitions and PSAs that are subject to section 505(q) include a certification to be considered for review by FDA. Section 10.31(d) requires that supplemental information or comments to such citizen petitions and PSAs include a verification to be accepted for review by FDA. This proposed rule sets forth the statutory language under section 505(q) requiring the submission of a certification and/or a verification and the precise language of the certification and verification. One of the criteria for a citizen petition or PSA to be subject to section 505(q) is that a related ANDA or 505(b)(2) application is pending at the time the citizen petition or petition for stay is submitted. Because petitioners or commenters may not be aware of the existence of a pending ANDA or 505(b)(2) application, this proposed rule requires that all petitioners challenging the approvability of a possible ANDA or 505(b)(2) application include the certification required in § 10.31(c) of this proposed rule and that petitioners and commenters submitting supplements or comments, respectively, to a citizen petition or PSA challenging the approvability of a possible ANDA or 505(b)(2) application include the verification required in section § 10.31(d) of this proposed rule.

FDA currently has OMB approval for the collection of information entitled ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' (OMB control number 0910–0183). This collection of information includes, among other things: (1) The format and procedures by which an interested person may submit to FDA, in accordance with § 10.20, a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action (§ 10.30(b)); (2) the submission of written comments on a filed citizen petition (§ 10.30(d)); (3) the submission of a supplement or amendment to or a letter to withdraw a filed citizen petition (§ 10.30(g)); (4) the format and procedures by which an interested person may request, in accordance with § 10.20, the Commissioner to stay the effective date of any administrative action (§ 10.35(b)); and (5) the submission of written comments on a filed petition for administrative stay of action (§ 10.35(c)). This information collection includes citizen petitions, PSAs, comments to petitions, supplements to citizen petitions, and letters to withdraw a citizen petition, as described previously, that are subject to section 505(q) of the FD&C Act and described in this proposed regulation.

OMB recently approved (OMB control number 0910–0679) the information collection in the guidance for industry entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act'' (see the information collection analysis at 75 FR 78249 (December 15, 2010), and the document announcing the availability of the guidance at 76 FR 33309 (June 8, 2011)).

The guidance describes FDA's interpretation of section 505(q) of the FD&C Act regarding how the Agency will determine if: (1) The provisions of section 505(q) addressing the treatment of citizen petitions and petitions for stay of Agency action (collectively, petitions) apply to a particular petition and (2) a petition would delay approval of a pending ANDA or a 505(b)(2) application. The guidance also describes how FDA will interpret the provisions of section 505(q) requiring that: (1) A petition include a certification and (2) supplemental information or comments to a petition include a verification.

Finally, the guidance addresses the relationship between the review of petitions and pending ANDAs and 505(b)(2) applications for which the Agency has not yet made a decision on approvability.

Thus, FDA has OMB approval under the PRA for the information collection required under section 505(q) of the FD&C Act and described in the guidance. This information collection is also described in proposed § 10.31(c) and (d).

There is, however, one proposed provision that would require the collection of information that is not already approved by OMB. Under proposed § 10.35(i), a petitioner may, under certain conditions, supplement, amend, or withdraw a PSA in writing without Agency approval and without prejudice to resubmission at any time until the Commissioner rules on the petition. This proposed provision is explained in section II of this document. FDA estimates that it will receive approximately one supplement, amendment, or withdrawal under proposed § 10.35(i) from approximately one applicant, and that it will take approximately 0.5 hour to make this submission.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Proposed § 10.35(i)	1	1	1	0.5	0.5
Total Hours					0.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by (see **DATES** section of this document) to the Office of Information and Regulatory Affairs, OMB. 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 reference the title of this proposed rule and include the FDA docket number found in brackets in the heading of this document.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 10 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 10.20 is amended by revising paragraph (e) to read as follows:

§ 10.20 Submission of documents to Division of Dockets Management; computation of time; availability for public disclosure.

* * * * *

(e) Except as provided in § 10.31(b), all submissions to the Division of Dockets Management will be considered as submitted on the date they are postmarked or, if delivered in person during regular business hours, on the date on which they are delivered, unless a provision in this part, an applicable **Federal Register** notice, or an order issued by an administrative law judge specifically states that the documents must be received by a specified date, e.g., § 10.33(g) relating to a petition for reconsideration, in which case they will be submitted on the date received.

* * * * *

3. Section 10.30 is amended as follows:

a. Revise paragraph (b) introductory text;

b. Revise the first sentence of paragraph (c);

c. Revise the second sentence of paragraph (d);

d. Remove from paragraph (e)(2)(ii) the word ''or'';

e. Redesignate paragraph (e)(2)(iii) as paragraph (e)(2)(iv);

f. Add new paragraph (e)(2)(iii); and

g. Add to paragraph (e)(3) a new sentence after the first sentence.

The additions and revisions read as follows:

§ 10.30 Citizen petition.

* * * * *

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and, if applicable, § 10.31. The certification requirement in this section does not apply to petitions subject to the

certification requirement of § 10.31. The petition must be in the following form:

* * * * *

(c) A petition that appears to meet the requirements of paragraph (b) of this section, § 10.20, and, if applicable, § 10.31, will be filed by the Division of Dockets Management, stamped with the date of filing, and assigned a docket number. * * *

(d) * * * The comments are to specify the docket number of the petition, include, if applicable, the verification under § 10.31, and may support or oppose the petition in whole or in part.* * *

(e) * * *

(2) * * *

(iii) Dismiss the petition as moot if at any time the Commissioner determines that changes in law, facts, or circumstances since the date on which the petition was submitted have rendered the petition moot; or

* * * * *

(3) * * * If, at any time, the Commissioner determines that changes in law, facts, or circumstances since the date on which the petition was submitted have rendered the petition moot, the Commissioner may dismiss the petition as moot. * * *

* * * * *

4. Section 10.31 is added to read as follows:

§ 10.31 Citizen petitions and petitions for stay of action related to an abbreviated new drug application or a new drug application.

(a) *Applicability.* This section applies to a citizen petition or petition for stay of action that meets all of the following criteria:

(1) The petition requests that the Commissioner take any form of action that could, if taken, delay approval of an abbreviated new drug application (ANDA) submitted under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) or a new drug application submitted under section 505(b)(2) (a 505(b)(2) application).

(2) The petition is submitted on or after September 27, 2007.

(3) The petition is submitted in writing and under § 10.30 (for citizen petitions) or § 10.35 (for petitions for stay of action).

(b) *Date of submission.* A petition subject to this section and submitted in accordance with §§ 10.20, 10.30, 10.31, and 10.35 is regarded as submitted on the date on which the petition is received by the Division of Dockets Management.

(c) *Certification.* (1) FDA will not consider for review a petition that is subject to this section unless the petition is in writing and contains the following certification: ''I certify that, to my best knowledge and belief: (i) This petition includes all information and views upon which the petition relies; (ii) this petition includes representative data and/or information known to the petitioner that are unfavorable to the petition; and (iii) I have taken reasonable steps to ensure that any representative data and/or information that are unfavorable to the petition were disclosed to me. I further certify that the information upon which I have based the action requested herein first became known to the party on whose behalf this petition is submitted on or about the following date: _____ [in the blank space, provide the date on which such information first became known to the person submitting the petition]. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive those payments from the following persons or organizations: _____ [in the blank space, provide the names of such persons or organizations]. I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this petition.''

(2) The certification in paragraph (c)(1) of this section must contain one or more specific dates (month, day, and year) in the blank space provided. If different categories of information became known at different times, the certification must contain each estimated relevant date. The information associated with a particular date must be identified.

(d) *Verification.* (1) FDA will not accept for review any supplemental information or comments on a petition that is subject to this section unless the supplemental information or comments are in writing and contain the following verification: ''I certify that, to my best knowledge and belief: (i) I have not intentionally delayed submission of this document or its contents; and (ii) the information upon which I have based the action requested herein first became known to me on or about _____ [in the blank space, provide the date on which such information first became known to the person submitting the document]. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive those payments from the following persons or organizations: _____[in the blank space, provide the names of such persons or organizations]. I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this document.''

(2) The verification in paragraph (d)(1) of this section must contain one or more specific dates (month, day, and year) in the blank space provided. If different categories of information became known at different times, the certification must contain each estimated relevant date. The information associated with a particular date must be identified.

5. Section 10.35 is amended by revising the third sentence of paragraph (b); by adding to paragraph (e) a new sentence after the second sentence; and by adding paragraph (i) to read as follows:

§ 10.35 Administrative stay of action.

* * * * *

(b) * * * A request for stay must be submitted in accordance with § 10.20 and in the following form (except that stays subject to § 10.31 must include the certification provided in § 10.31(c)) no later than 30 days after the date of the decision involved. * * *

* * * * *

(e) * * * If, at any time, the Commissioner determines that changes in law, facts, or circumstances since the date on which the petition was submitted have rendered the petition moot, the Commissioner may dismiss the petition as moot. * * *

* * * * *

(i) A petitioner may supplement, amend, or withdraw a petition for stay of action in writing without Agency approval and without prejudice to resubmission at any time until the Commissioner rules on the petition, provided the resubmission is made in accordance with paragraph (b) of this section, unless the petition for stay of action has been referred for a hearing under parts 12, 13, 14, or 15 of this chapter. After a ruling or referral, a petition for stay of action may be supplemented, amended, or withdrawn only with the approval of the Commissioner. The Commissioner may approve withdrawal, with or without prejudice against resubmission of the petition for stay of action.

Dated: December 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33622 Filed 12–30–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 150

RIN 1505—AC42

Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board To Cover the Expenses of the Financial Research Fund

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury is issuing a proposed rule to implement Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203 or ''Dodd-Frank Act''), which directs the Department to establish by regulation an assessment schedule for bank holding companies with total consolidated assets of $50 billion or greater and nonbank financial companies supervised by the Board of Governors of the Federal Reserve (''the Board'') to collect assessments equal to the total expenses of the Office of Financial Research (''OFR'' or ''the Office''). Included in the Office's expenses are expenses of the Financial Stability Oversight Council (''FSOC'' or ''the Council''), as provided under Section 118 of the Dodd-Frank Act, and certain expenses of the Federal Deposit Insurance Corporation (''FDIC''), as provided under Section 210 of the Dodd-Frank Act. The proposed rule outlines the key elements of Treasury's assessment program, which will collect semiannual assessment fees from these companies beginning on July 20, 2012.

DATES: *Comment due date:* March 5, 2012.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to: The Treasury Department, Attn: Financial Research Fund Assessment Comments, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. Please include your name, affiliation, address, email address, and telephone number in your comment. Comments will be available for public inspection on *www.regulations.gov.* In general comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jonathan Sokobin: (202) 927–8172.

SUPPLEMENTARY INFORMATION:

I. Background

Section 155 of the Dodd-Frank Act directs the Secretary of the Treasury to establish by regulation, and with the approval of the Council, an assessment schedule to collect assessments from certain companies equal to the total expenses of the Office beginning on July 20, 2012. Section 155 describes these companies as:

(A) Bank holding companies having total consolidated assets of $50 billion or more; and

(B) nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act.

Under Section 118 of the Dodd-Frank Act, the expenses of the Council are considered expenses of, and are paid by, the OFR. In addition, under Section 210 implementation expenses associated with the FDIC's orderly liquidation authorities are treated as expenses of the Council,[1] and the FDIC is directed to periodically submit requests for reimbursement to the Council Chair. The total expenses for the OFR thereby include the combined expenses of the OFR, the Council, and certain expenses of the FDIC. All of these expenses are paid out of the Financial Research Fund (FRF), a fund managed by the Department of the Treasury.

The Council was established by the Dodd-Frank Act to coordinate across agencies in monitoring risks and emerging threats to U.S. financial stability. The Council is chaired by the Secretary of the Treasury and brings together all federal financial regulators, an independent member with insurance expertise appointed by the President, and state regulators. Under the Dodd-Frank Act, the Council is tasked with identifying and monitoring risks to U.S. financial stability, promoting market discipline, and responding to emerging threats to the U.S. financial system.[2]

The OFR was established within the Treasury Department by the Dodd-Frank Act to serve the Council, its member agencies, and the public by improving the quality, transparency, and accessibility of financial data and information, by conducting and sponsoring research related to financial stability, and by promoting best practices in risk management. Among the OFR's key tasks are:

- Measuring and analyzing factors affecting financial stability and helping FSOC member agencies to develop policies to promote it;
- Collecting needed financial data, and promoting their integrity, accuracy, and transparency for the benefit of market participants, regulators, and research communities;
- Reporting to the Congress and the public on the OFR's assessment of significant financial market developments and potential threats to financial stability; and
- Collaborating with foreign policymakers and regulators, multilateral organizations, and industry to establish global standards for data and analysis of policies that promote financial stability.

II. This Proposed Rule

Under this proposed rule, Treasury has developed procedures to estimate, bill and collect, on an ongoing basis beginning on July 20, 2012, the total budgeted expenses of the OFR, including those estimated separately by the Council and expenses submitted by the FDIC. The aggregate of these estimated expenses would provide the basis for an assessment that the Treasury would allocate to individual companies by means of a semiannual assessment fee calculated from a schedule based on each company's total consolidated assets. For a foreign company, the assessment fee would be based on the total consolidated assets of the foreign company's combined U.S. operations.

This proposed rule outlines how the Treasury's assessment fee program would be administered, including (a) how the Treasury would determine which companies will be subject to an assessment fee, (b) how the Treasury would estimate the total expenses that

[1] Under Section 210(n)(10)(C) of the Dodd-Frank Act the term implementation expenses ''(i) means costs incurred by [the FDIC] beginning on the date of enactment of this Act, as part of its efforts to implement [Title II] that do not relate to a particular covered financial company; and (ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the [FDIC] consistent with carrying out [Title II].''

[2] As outlined in Section 112 of the Dodd-Frank Act, the Council is tasked with the following:

1. To identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace.

2. To promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the U.S. government will shield them from losses in the event of failure.

3. To respond to emerging threats to the stability of the U.S. financial system.

are necessary to carry out the activities to be covered by the assessment, (c) how the Treasury would determine the assessment fee for each of these companies, and (d) how the Treasury would bill and collect the assessment fee from these companies. Treasury is seeking comments on all aspects of this proposed rulemaking.

Determination of Assessed Companies

The assessment of fees for the companies described in Section 155 of the Dodd-Frank Act requires that the Treasury determine those companies that would be subject to the assessment, referred to for the purpose of this rule as the assessed companies. As described in more detail below, Treasury will work closely with the Board, to determine the population of assessed companies and the basis for fee assessments.

The determination date is the date at which assessed companies are identified. Prior to each assessment period, on the determination date, the Treasury would determine the pool of assessed companies. The determination date for the initial assessment period is anticipated to be December 31, 2011, and the initial assessment period would include part of fiscal year 2012 (July 20, 2012 to September 30, 2012) and the first half of fiscal year 2013 (October 1, 2012 to March 31, 2013). The determination date for the second assessment period, which would include the second half of fiscal year 2013 (April 1, 2013 to September 30, 2013), is anticipated to be December 31, 2012. Thereafter, the determination dates are anticipated to be the June 30 immediately preceding the first assessment period (October 1 to March 31) and the December 31 immediately preceding the second assessment period (April 1 to September 30). A company will be defined as an assessed company for an assessment period if, on the respective determination date, the company is:

- A bank holding company (other than a foreign banking organization), as defined in section 2 of the Bank Holding Company Act of 1956, that has $50 billion or more in total consolidated assets, as determined based on the average total consolidated assets (Schedule HC—Consolidated Balance Sheet) as reported on the bank holding company's four most recent Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) submissions;
- A foreign banking organization that has $50 billion or more in total consolidated assets, as determined based on the average of total assets at end of period (Part 1—Capital and Asset Information for the Top-tier consolidated Foreign Banking Organization) as reported on the foreign banking organization's four most recent Capital and Asset Information for the Top-tier Consolidated Foreign Banking Organization (FR Y–7Q; OMB No. 7100–0125) submissions; [3] or
- A nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act, as determined by the Council.

The Treasury, in consultation with the Board, considered using only the most recent financial report filed by each bank holding company or foreign banking organization to determine whether the company has total consolidated assets of $50 billion or more. However, the Treasury was concerned that relying solely on the financial report of the most recent quarter would not always allow sufficient lead time for the company and the Treasury to prepare for a company's inclusion as an assessed company for an upcoming assessment period. For example, as a company grows and approaches the $50 billion threshold, financial reports of previous quarters may reflect total consolidated assets of slightly less than $50 billion. As the determination date approaches, the Treasury—and to some extent the company—may not be able to determine whether the financial report for the quarter immediately preceding the determination date, when filed, would report total consolidated assets of $50 billion or more. By using an average of total consolidated assets of the four most recent quarters, the Treasury and the company should have ample time to prepare for the company's inclusion in the pool.[4]

The Treasury would also apply the following provisions in determining which companies would be assessed companies, based upon the most recent data and information filed with or furnished to the relevant regulator.

- For tiered bank holding companies for which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company would be the top-tier, regulated holding company.
- In situations where more than one top-tier, regulated bank holding company has a legal authority for control of a U.S. bank, each of the top-tier regulated holding companies would be designated as an assessed company.[5]
- In situations where a company has not filed four consecutive quarters of the financial reports referenced above for the most recent quarters (or two consecutive years for annual filers of the FR Y–7Q), such as may be true for companies that recently converted to a bank holding company, the Treasury would use, at its discretion, other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings, to determine a company's total consolidated assets.
- In situations where a company does not report total consolidated assets in its public reports or where a company uses a financial reporting methodology other than U.S. GAAP to report on its U.S. operations, the Treasury would use comparable financial information that the Treasury may require from the company for this determination.
- Any company that the Treasury determines is an assessed company on the determination date would be an assessed company for the entire assessment period and would be subject to the full assessment fee for that assessment period, regardless of any changes (e.g., structural or financial) that occur during the assessment period that would otherwise affect the financial company's status as an assessed company.
- All organizational information regarding the company that would be used by the Treasury for the purpose of determining whether a company is an assessed company, including information with respect to whether a company has control over a U.S. bank, must have been filed with or furnished to the relevant regulator on or before the determination date, and the effective date of the information must have been on or before the determination date.

[3] For those foreign banking organizations that file the FR Y–7Q annually instead of quarterly, the company's total consolidated assets would be determined based on the average of total assets at end of period as reported on the foreign banking organization's two most recent FR Y–7Q.

[4] For the December 31 determination date, the most recent four quarters would be reported as of September 30, June 30, and March 31 of the current year, and December 31 of the prior year. For the June 30 determination date, the most recent four quarters would be reported as of March 31 of the current year, and December 31, September 30, and June 30 of the prior year.

[5] A company has control over a bank or company if the company has (a) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or company, directly or indirectly or acting through one or more other persons; (b) control in any manner over the election of a majority of the directors or trustees of the bank or company; or (c) the Treasury determines the company exercises, directly or indirectly, a controlling influence over the management or policies of the bank or company. See 12 U.S.C. 1841(a)(2).

Determination of the Assessment Basis

For each assessment period, the OFR would calculate an assessment basis reflecting an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the OFR and the Council as defined in the Dodd-Frank Act.

The assessment basis would be determined so as to replenish the FRF at the start of each assessment period to a level equivalent to six months of budgeted operating expenses and twelve months of capital expenses [6] for the OFR and FSOC, as well as covered FDIC expenses. The OFR and Council each produce an annual budget, and would independently estimate the budgetary needs appropriate to carry out their responsibilities under the Dodd-Frank Act.[7] The assessment basis would be the combined total of these budgets, with adjustments made as necessary to the second semiannual assessment to meet necessary expenses.[8]

SAMPLE ASSESSMENT BASIS CALCULATION

6 Months of budgeted operating expenses (OFR & FSOC)	+	12 Months capital expenses (OFR & FSOC)	+	FDIC Payment	−	Projected unused resources at end of last assessment period	=	Assessment basis
Column A		Column B		Column C		Column D		Column E
$A	+	$B	+	$C	−	$D	=	$E

For the initial assessment, the assessment basis will cover operating expenses and capital expenses for the period from July 21, 2012 to September 30, 2012, covered FDIC expenses for the period from July 21, 2012 to September 30, 2013, and the first six months of operating expenses for the OFR and the FSOC for FY 2013. To smooth the transition in funding the Financial Research Fund, this assessment will be set to cover budgeted capital expenditures for only the first seven months of FY 2013 (in addition to the period from July 21, 2012 to September 30, 2012). Replenishment to the full 12-month level for capital expenditures will begin with the second assessment.

SAMPLE INITIAL ASSESSMENT BASIS CALCULATION

Budgeted operating expenses for 7/21/2012–3/31/2013 (OFR & FSOC)	+	Capital expenses for 7/21/2012–4/30/2013 (OFR & FSOC)	+	FDIC Payment in FY 2013	=	Initial assessment basis
Column A		Column B		Column C		Column D
$A	+	$B	+	$C	=	$D

Allocating the Assessment Basis to Assessed Companies

The following principles inform the Treasury's proposed implementation of Section 155:

- The assessment structure should be simple and transparent; and
- Allocation among companies should take into account differences among such companies, based on the considerations for establishing the prudential standards under section 115 of the Dodd-Frank Act as required by the Act.[9]

In evaluating how best to implement the Dodd-Frank Act, the Treasury believes that there is significant benefit to adopting a standard that is transparent, well-understood by market participants, and reasonably estimable. A number of different assessment schedules for assessing companies were considered, taking into account the considerations described in Section 115 of the Dodd-Frank Act. Ultimately, the Treasury concluded, in balancing the principles above, that it would be reasonable to allocate the assessment basis among assessed companies by means of an assessment fee that is based on the asset size of each assessed company.

Under the proposed rule, the Treasury would allocate the assessment basis to each assessed company in the following manner:

- An assessment fee rate would determine the semiannual assessment fee collected from each assessed company, based on the company's total assessable assets.
- Total assessable assets of each assessed company would be determined by the Treasury on the determination date, as described below.

○ For a bank holding company (other than a foreign banking organization), total assessable assets would be equal to total consolidated assets, as reported on the bank holding company's most recent FR Y–9C;

For a foreign banking organization, total assessable assets would be equal to the company's total assets of combined U.S. operations, as determined by the Treasury, based on the combined total assets of the foreign banking organization's U.S. subsidiaries as reported on the foreign banking organization's most recent financial reports.[10] The applicable financial

[6] Capital expenses follow the OMB Circular A–11 definition of capital assets which include occupancy and information technology costs. Operating expenses exclude capital expenses.

[7] These budgets are published annually as part of the President's budget submission. The OFR budget is determined by the Director in consultation with the Chair of the Council. The Council budget is determined and approved by the Council.

[8] Any change from the previously approved budget for the OFR must be approved by the Director in consultation with the Chair of the FSOC; any change in the budget for the FSOC must be approved by the FSOC.

[9] Section 115(a)(2)(A) describes the factors that the Council should consider in making recommendations regarding enhanced prudential standards, it reads: ''differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate.''

[10] Total assets of combined U.S. operations would be comprised of the foreign banking organization's

Continued

reports of foreign banking organizations used to determine the company's total assets of combined U.S. operations would include the following reports, as applicable:

- FR Y–9C, Parent Company Only Financial Statements for Large Bank Holding Companies (FR Y–9LP), or Parent Company Only Financial Statements for Small Bank Holding Companies (FR Y–9SP) for assets of bank holding companies,
- Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) for assets of U.S branches and agencies of foreign banks,
- Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031) for assets of commercial banks and trust companies not reported in the consolidated assets of a bank holding company,
- Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) for assets of commercial banks and trust companies not reported in the consolidated assets of a bank holding company,
- Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b) for assets of Edge and agreement corporations not reported in the consolidated assets of a bank holding company,
- Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7N/FR Y–7NS) for nonbank assets not held under a U.S. bank holding company,
- FOCUS Report, Part II (SEC1695) and FOCUS Report Part IIa (SEC1696) for Broker/Dealer assets not reported in the consolidated assets of a bank holding company;

○ For a nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act, assessable assets would be calculated on the basis of reported total consolidated assets, if the nonbank financial company is a U.S. company, or on the basis of the company's total assets of combined U.S. operations, if the nonbank financial company is a foreign company; [11]

○ In situations where a company does not file, or has not filed, the applicable reports referenced above or in situations where a company uses a financial reporting methodology other than U.S. GAAP to report on its U.S. operations, the Treasury would use other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings or any comparable financial information, that the Treasury may require from the company to determine the company's total assessable assets.

- Assessed companies would include:

○ U.S. bank holding companies having total consolidated assets of $50 billion or more;

○ Foreign banking organizations having total consolidated U.S. assets of $50 billion or more; and

○ Nonbank financial companies supervised by the Board pursuant to Section 113 of the Dodd-Frank Act.

- Eligible foreign banking organizations with $50 billion in total consolidated world-wide assets, but less than $50 billion in total assessable assets, would not be charged.

Confirmation Statement and Notice of FRF Fees

A Notice of FRF Fees (''Notice of Fees'') would be published prior to each assessment period. The Notice of Fees would incorporate an assessment fee schedule providing the rate that would be used to calculate the semiannual assessment fee for each assessed company.

Under the approach outlined in this proposed rule, the semiannual fee that an individual company would be assessed would likely vary, at least somewhat, from one assessment period to the next. A company's assessment fee would depend on the assessment basis for each period, the number of assessed companies that the Treasury determines for the period, and the relative asset size of each company within that pool of assessed companies. To determine the rate for calculating each company's semiannual assessment fee, the Treasury would first need to determine the pool of assessed companies and those companies' total assessable assets. The rate would be modified each assessment period to produce assessment fees that, when aggregated for all assessed companies, would equal the assessment basis for the respective assessment period.

Because of the role of the pool of assessed companies in determining the rate used for the assessment fee schedule, companies identified as assessed companies will have an opportunity to contest Treasury's determination. Each company that the Treasury determines is an assessed company for the assessment period would be sent a confirmation statement about two weeks after the determination date, but no later than 30 calendar days prior to the first day of an assessment period. The confirmation statement would confirm that the company had been determined by the Treasury to be an assessed company and would state the total assessable assets that the Treasury determined would be used for calculating the company's semiannual assessment. Companies may contest Treasury's determination of the company as an assessed company or the Treasury's determination of the company's total assessable assets by providing an appeal to the Treasury. Treasury must receive such notice within 14 calendar days of the date of the confirmation statement to be considered.

To contest any aspect of the confirmation statement, the company would be required to submit to the Treasury a written request for redetermination that would need to include all the pertinent facts that would be necessary for the Treasury to consider in a redetermination. If the Treasury does not receive a written request for redetermination from a company within 14 calendar days of the date of the confirmation statement, the company would be invoiced, and subsequently charged, for the semiannual assessment fee calculated from the company's total assessable assets reflected in the confirmation statement. If the Treasury receives a written request for redetermination from a company within the 14 calendar day period, the Treasury would consider the company's request and respond with the results of a redetermination no later than 14 calendar days, if the Treasury concludes that a redetermination is warranted.

After the determination date, should a company restate its submission of any financial report described in this rule in a manner that either materially increases or decreases the company's total consolidated assets or total assessable assets, the Treasury would not adjust its determination of a company as an assessed company, its determination of the company's total assessable assets, or the resulting semiannual assessment fee for the assessment period. Since this proposed rule is designed to allocate the transfers to the Treasury necessary to support the duties of the FSOC and the OFR during

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U.S. entities, including any bank holding companies on a consolidated basis, as well as any U.S. entities held outside of a bank holding company, including branches and agencies, broker/dealers, commercial banks or savings associations, Edge or agreement corporations, and any nonbank entities, but excluding any offshore branches.

[11] To date, the Council has not made a determination regarding the applicability of Board supervision under section 113 for a nonbank financial company. As the Council begins to make determinations regarding nonbank financial companies under section 113, Treasury will review the methodology for determining the assessment fee for these companies to determine if any changes in approach are needed.

each period, changes to one company's assessment for a particular period would necessitate a change in all the other companies' assessments so that the aggregate of all assessment fees equaled the assessment basis for the period. The Treasury believes that the burden and uncertainty that such changes would bring are too high to warrant attempting to delineate a process to allow changes to the information used by the Treasury to make its determinations, or adjust the company's semiannual fee determined by the published assessment fee schedule. The Treasury does reserve the right to correct an assessment to a company if the original assessment is found to have been made based upon materially misrepresented or misstated information.

Treasury would publish the Notice of Fees about one month prior to the payment date for the assessment period, once the Treasury has assured its determination of the pool of assessed companies for the assessment period.

For the initial assessment period including the end of fiscal year 2012 (July 20, 2012 to September 30, 2012) and first half of fiscal year 2013 (October 1, 2012 to March 31, 2013), the corresponding confirmation statement would be sent to the assessed companies on the day the final rule is published and Treasury will work with the companies to verify the total assessable assets to be used for calculating the company's assessment. The corresponding Notice of Fees would be published about one month prior to the first payment, which would be due on the date the rule becomes in effect.

Assessment Fee Rate

An assessment fee rate published prior to each assessment period would determine the semiannual assessment fee that the Treasury would collect from each assessed company based on their total assessable assets as of the determination date.

- The Treasury would publish the assessment fee rate for each assessment period as part of the Notice of Fees.
- To determine the assessment fee, a company's total assessable assets would be multiplied by the assessment fee rate. The resulting product would be the amount of the semiannual assessment fee for that company.

For example, if the assessment basis was $10, and total assessable assets were $1,000, the assessment fee rate would be one percent. Because of the anticipated year-to-year variability in the budget need of OFR and FSOC, the assessment fee rate may change over time.

SAMPLE ASSESSMENT FEE SCHEDULE

Total assessable assets	x	Rate	=	Semiannual assessment fee
Column A		Column B		Column C
$A	x	B	=	$C

Billing & Collection of Assessment Fees

Prior to each assessment period, after determining the pool of assessed companies and publishing an assessment fee rate, the Treasury would calculate the assessment fee for each assessed company, send an electronic billing notification to each assessed company, and, on the payment date, initiate a direct debit to each company's account through *www.pay.gov* to collect the assessment fee.

The table below shows proposed dates of the assessment billing and collection process:

Assessment period	Determination date	Confirmation statement date *	Publication of notice of fees **	Billing date	Payment date
Initial Assessment (July 2012 to March 2013).	December 31, 2011 ..	Final rule publication date.	About one month prior to payment date.	14 calendar days prior to payment date.	July 20, 2012.
1st semiannual Assessment (April–September).	December 31	About two weeks after the determination date.	.....	.....	March 15 (or prior business day).
2nd semiannual Assessment (October–March).	June 30	.....	.....	.....	September 15 (or prior business day).

* No later than 30 days prior to the first day of an assessment period.
** Rate published in the Notice of Fees.

The first time a company is determined an assessed company, Treasury will send, in conjunction with the confirmation statement, instructions on how to establish an account with *www.pay.gov* for direct debits. As part of these instructions, each assessed company would be required to designate a deposit account and authorize the Treasury to initiate an electronic debit transaction from that account to satisfy the assessment fee by completing the FRF Assessment Fee Agreement Form (''agreement form''). The agreement form asks for contact information for the account holder, including the appropriate account (ABA) routing number. The agreement form should be completed by the date indicated in the instructions, which would be about two weeks after the confirmation statement is issued and, thereafter, maintained for all subsequent assessment periods for which the company would be subject to assessment. The agreement form authorizing an electronic debit transaction would remain in effect for all subsequent assessments unless the assessed company or account holder submits a modified agreement form to the Treasury. For the initial assessment period including the end of fiscal year 2012 (July 20, 2012 to September 30, 2012) and first half of fiscal year 2013 (October 1, 2012 to March 31, 2013), the

agreement form would be sent in conjunction with the confirmation statement on the day the final rule is published and Treasury will work with the companies to complete the agreement form.

Fourteen calendar days prior to the payment date, the Treasury will issue an electronic billing notification, and on the payment date, through *www.pay.gov,* would initiate an electronic debit transaction for each assessed company.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.,* requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the proposed rule on small entities. Section 605(b) allows an agency to prepare a certification in lieu of an IRFA if the proposed rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 USC 605(b), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The size standard for determining whether a bank holding company or a nonbank financial company is small is $7 million in average annual receipts. Under Section 155 of the Dodd-Frank Act, only bank holding companies with more than $50 billion in total consolidated assets or nonbank financial companies regulated by the Federal Reserve will be subject to assessment. As such, this proposed rule will not apply to small entities and a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

We estimate that there are certain direct costs associated with complying with these rules. On a one time basis, assessed entities would be required to set up a bank account for fund transfers and provide the required information to the Treasury Department through an information collection form. The information collection form includes bank account routing information and contact information for the individuals at the company that will be responsible for setting up the account and ensuring that funds are available on the billing date. We estimate that approximately 50 companies could be affected, and that filling out the form and submitting it to the Treasury Department would take approximately fifteen minutes. The aggregate paper work burden is estimated at 12.5 hours. We note that this represents a conservative estimate of administrative burden, as some of these companies may have already established an account for payments or collections to the U.S. government.

On a semi-annual basis, assessed companies will have the opportunity to review the confirmation statement and assessment bill. The rules do not require the companies to conduct the review, but it does permit it. We anticipate that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d).

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by email to *oira_submission@omb.eop.gov.* A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by March 5, 2012.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The information collections are included in § 150.6.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

It has been determined that this regulation is a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563, in that this rule would have an annual effect on the economy of $100 million or more. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

1. Description of Need for the Regulatory Action

Section 155 of the Dodd-Frank Act directs the Board to provide funding sufficient to cover the expenses of the OFR and FSOC during the two-year period following enactment. (The Dodd-Frank Act was enacted on July 21, 2010.) To provide funding after July 21, 2012, Section 155(d) of the Dodd-Frank Act directs the Secretary of the Treasury to establish by regulation, and with the approval of the FSOC, an assessment schedule for bank holding companies with total consolidated assets of $50 billion or greater and nonbank financial companies supervised by the Board.

2. Provision—Affected Population

Section 155(d) of the Dodd-Frank Act defines the population of assessed companies as bank holding companies with total consolidated assets of $50 billion or greater and nonbank financial companies supervised by the Board.

Under this definition, U.S. bank holding companies and foreign banking organizations with $50 billion or more in total worldwide consolidated assets and nonbank financial companies supervised by the Board qualify for assessment. However, under the proposed rule only U.S.-based assets from foreign banking organizations' would be used to calculate their assessments. Foreign banking organizations with less than $50 billion in U.S.-based assets would not be assessed. Based on information provided by the Board, we estimate that forty-eight bank holding companies met the criteria as assessed companies as of June 30, 2011.

Nonbank financial companies determined by the FSOC to require heightened supervision under Title I would be assessed on the basis of their total consolidated assets for U.S. entities and on the basis of total consolidated assets of U.S. operations for foreign entities, similar to bank holding companies. All such nonbank financial companies would be assessed, regardless of their level of total consolidated assets.[12]

[12] To date, the Council has not made a determination regarding the applicability of Board supervision under section 113 for a nonbank financial company. Moreover, it is unclear as to what type of nonbank financial companies the Council may consider for a determination. For these reasons, as the Council begins to make determinations regarding nonbank financial companies under section 113, the Treasury's methodology for determining the assessment fee for these companies would be reviewed and, as needed, revised through the rulemaking process to

3. Baseline

The Dodd-Frank Act requires establishment of the FSOC, the OFR, and the FDIC's orderly liquidation facility. These activities are directed by the Dodd-Frank Act to be funded by the Board for a two-year period to end on July 21, 2012. There is no provision in the Dodd-Frank Act for the FSOC or the OFR to receive appropriated funds. Section 152(e) of the Dodd-Frank Act allows departments or agencies of government to provide funds, facilities, staff, and other support services to the OFR as the OFR may determine advisable. Section 152(e) and Section 111(j) allow for employees of the Federal Government to be detailed to the OFR and the FSOC, respectively, without reimbursement. Funding through departments or agencies of government would not be sufficient to perform all of the functions of the FSOC, the OFR, and the FDIC required by the Act. Agencies funded by appropriations would be restricted in the amount of funding support they could provide to the FSOC or the OFR. Agencies not funded by appropriations would be restricted in the amount of funding support they could provide for activities outside their primary mandate. Restrictions on the availability of funds or lack of predictability of funding would make it difficult to maintain consistent program activities, and complete analysis required to identify possible threats to financial stability.

4. Assessment of Total Fees Collected

It is anticipated that the annual assessments for the FRF will exceed $100 million, making the rule a significant regulatory action as defined in Executive Order 12866.

The assessment and collection of fees described in this rule represent an economic transfer from assessed companies to the government, for purposes of providing the benefits described above. As such, the assessments do not represent an economic cost for purposes of this analysis. However, the allocation of the assessment may have distributional impacts.

There is a wide range of possible assessment schedules which could be used to collect funds for the OFR and the FSOC. For example, the schedule could be structured to charge eligible companies a similar fee, it could include tiered fees and rates, or it could include assessments for all eligible companies as opposed to just entities with $50 billion in U.S.-based assets (i.e., including foreign banking organizations with more than $50 billion in worldwide assets but less than $50 billion in U.S.-based assets). Having a simple, more transparent assessment schedule reduces costs for government and for assessed companies by making assessments easier to calculate, budget for, and manage administratively. Executive Order 12866 specifically requires that agencies ''design its regulations in the most cost-effective manner to achieve the regulatory objective.''

The selection of the assessment schedule was governed by two guiding principles:

- The assessment structure should be simple and transparent; and
- Allocation should take into account differences among such companies, based on the considerations for establishing the prudential standards under section 115 of the Dodd-Frank Act as required by the Act.

Under Section 155 of the Act, the assessment schedule is required to take into account criteria for establishing prudential standards for supervision and regulation of large bank holding companies and nonbank financial companies as described in Section 115 of the Act. The criteria in Section 115 include: ''capital structure, riskiness, complexity, financial activities (including the financial activities of subsidiaries), size, and any other risk-related factors that the Council deems appropriate.'' Selection of total consolidated assets as the basis for assessments was intended to take into account the criteria identified in Section 115, while providing a more transparent and administratively cost effective metric. Using other risk-related metrics as a base for calculation could dramatically increase the cost of calculating assessments, as well as reduce a company's ability to project their assessment level. As of June 30, 2011, companies meeting the criteria for assessment had $18.7 trillion in total consolidated assets.

Under the proposed assessment structure, each assessed company's eligible assets would be multiplied by an assessment fee rate to determine their assessment amount. (Eligible assets would be total worldwide consolidated assets for U.S.-based bank holding companies and designated U.S.-based nonbank financial companies, and total U.S.-based assets for foreign banking organizations and foreign designated nonbank financial companies.) Assessments would be made semiannually, generally based on an average of the company's last four quarters of total consolidated assets.

Based on data on assessable assets as of June 30, 2011, for every $100 million collected the range of assessments would be $280,000 for the smallest assessed company (with just over $50 billion in assets) to $12.5 million for the largest assessed company (with approximately $2.3 trillion in assets).[13] The ten largest assessed companies would provide roughly two-thirds of the total assessed amount.

Based on currently available data, no assessed company will have less than $50 billion in assets, thus no small businesses are directly affected by the regulation. Under the proposed structure of the rule, the only assessed companies that could have less than $50 billion in assets would be nonbank financial companies subject to enhanced prudential supervision by the Board. While no such determinations have yet been made, Treasury believes that the FSOC will not make such a determination for any nonbank financial company that is a small business. It is not anticipated that the regulation will unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.

We estimate that there are certain direct costs associated with complying with these rules. On a one time basis, assessed entities would be required to set up a bank account for fund transfers and provide the required information to the Treasury Department through an information collection form. The information collection form includes bank account routing information and contact information for the individuals at the company that will be responsible for setting up the account and ensuring that funds are available on the billing date. We estimate that approximately 50 companies could be affected, and that the cost associated with filling out the form and submitting it to the Treasury Department is approximately $600.[14] We note that this represents a conservative estimate of costs as some of these companies may have already

assure that the corresponding assessment fees charged to these companies would be appropriate.

[13] Semiannual assessments will be set to maintain FRF balance at 12 months of budgeted capital expenses and 6 months of budgeted operating expenses. The initial assessment basis would be equivalent to the budgeted expenses for the end of fiscal year 2012 (July 20, 2012 to September 30, 2012), 7 months of budgeted capital expenses and 6 months of budgeted operating expenses for FY 2013.

[14] The cost of this activity is calculated by multiplying the 50 companies by the time it takes to complete the form (15 minutes) by an approximate hourly wage of $48 (assuming an annual salary of $100,000).

established an account for payments or collections to the U.S. government.

On a semi-annual basis, assessed companies will have the opportunity to review the confirmation statement and assessment bill. The rules do not require the companies to conduct the review, but it does permit it. We anticipate that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

5. Alternative Approaches Considered

We have noted that there are many possible assessment structures which could be employed to collect assessments. As part of the rulemaking process, Treasury contemplated a variety of structures for determining how assessments would be allocated. Particularly, Treasury considered alternate approaches with regard to the complexity of the method of assessment. In addition, Treasury considered alternative approaches with the following features: (1) Approaches designed to charge assessed companies at a similar fee level, distributing collections more evenly; (2) approaches designed to charge different rates for different levels of total consolidated assets, creating a ''tiered'' structure of rates; and (3) approaches designed to charge all eligible bank holding companies, as opposed to just those with $50 billion in assessable assets. We discuss these alternative approaches below.

a. Complexity of Approach

In evaluating methodologies for determining individual company assessments, the Treasury notes that there has been a variety of assessment approaches employed by other federal and international agencies which incorporate measures of risk that are similar to the considerations mentioned in Section 115 of the Dodd-Frank Act. For example, Basel III capital adequacy standards are based on charges against risk-weighted assets and include additional charges for a mandatory capital conservation buffer and a discretionary countercyclical buffer. The risk-based charges incorporate capital tiers, leverage, credit valuation adjustments, and other factors. In the U.S., as required by the Dodd-Frank Act, the FDIC recently revised how banks are charged deposit insurance assessments. With some minor exceptions, the FDIC assessment base is total consolidated assets minus tangible equity.

In each of these cases, and in other related determinations, the complexity of the assessment methodology is tied to the goal of the charge. For instance, the Dodd-Frank Act requires the Board to collect assessments designed to cover the costs of heightened regulation and supervision of large bank holding companies, large savings and loan holding companies, and nonbank financial companies supervised by the Board.

In evaluating these arrangements, Treasury notes that complexity in the assessment design increases the administrative burden to assessed companies, including planning for those assessments, and decreases transparency to the public. Treasury does not believe that the benefits of a complex methodology justify their increased costs in the context of this rulemaking.

b. Charging Companies Fees at a Similar Level

Section 155 of the Dodd-Frank Act requires that the assessment schedule take into account criteria for establishing prudential standards for supervision and regulation of large bank holding companies and nonbank financial companies as described in Section 115 of the Act. The criteria in Section 115 include: ''capital structure, riskiness, complexity, financial activities (including the financial activities of subsidiaries), size, and any other risk-related factors that the Council deems appropriate.'' The option of charging companies at a similar level was rejected as it would appear to contradict the intent of the Act for the schedule to charge larger, more complex and riskier firms higher fees. On the basis of size alone, we estimate that the largest eligible companies have over 40 times the assessable assets of smallest companies.

c. Charging Fees Under a Tiered Rate Structure

A number of regulators rely on tiered assessment schedules to collect fees. The Office of the Comptroller of the Currency uses a tiered assessment structure to collect fees associated with regulating and supervising national banks. The Office of Thrift Supervision used a tiered structure to collect fees to regulate and supervise thrifts. The main benefit of a tiered structure is that it allows fees to be charged at different rates to different companies. For example, supervision may benefit from economies of scale, meaning that the additional resources required for supervision do not grow dollar for dollar with the size of the entity. Alternatively, larger companies may pose risks that are disproportionately larger than their asset size, requiring even more resources for supervision than do smaller companies. A tiered approach could accommodate such differences by allowing different fee rates to be charged against assessed assets by tier.

Consideration was given to establishing such a structure for FRF assessments. The primary benefit would have been greater flexibility in determining the relative amounts assessed on larger companies versus smaller companies. However, these benefits were balanced against an interest for assessment fees to be reasonably estimable and simpler to calculate, reducing administrative costs both for assessed companies and the Treasury, improving transparency, and allowing companies to better anticipate assessment amounts. Given that all assessed companies are large (generally with over $50 billion in assets) and by definition systemically important, and the activities of the FSOC, the OFR, and the FDIC's orderly liquidation facility correspond to all of them, the relative benefits of a tiered structure over a fixed rate structure were unclear.

d. Charging All Eligible Bank Holding Companies

Based on the definition of ''bank holding company'' in Title I of the Dodd-Frank Act, assessments can be made against any foreign banking organizations with $50 billion or more in total consolidated assets. Since many of these eligible foreign banking companies have a relatively small percentage of their operations in the United States, there is limited basis for assessing these companies. Consideration was given to charging a small fee, so that all eligible companies would be charged, but the additional costs associated with administering the fee and cost of compliance by these companies outweighed the perceived benefits of this choice. The final proposal was to charge foreign banking organizations with $50 billion or more in total U.S.-based assets and U.S.-based bank holding companies with $50 billion or more in total consolidated assets.

6. Request for Comments

Treasury is seeking comments on all aspects of this proposed rulemaking. Treasury is specifically seeking comment on the following issues:

1. Does the proposed rule provide sufficient time if an assessed company requests redetermination?

2. Does the method for determining the allocation of assessments provide companies with a reasonable ability to estimate or anticipate the assessment?

3. Is the method proposed for consolidation in the case where more

than one top-tier bank holding company has a legal authority of control appropriate?

4. Is the evaluation of alternative approaches considered (in Section III.C.5) appropriate? Please provide specific information and data to support your comment.

List of Subjects in 31 CFR Part 150

Bank Holding Companies, Nonbank financial companies, Financial Research Fund.

For the reasons set forth in the preamble, Treasury proposes to amend Title 31, Chapter I of the Code of Federal Regulations by adding a new part 150 as set forth below.

PART 150—FINANCIAL RESEARCH FUND

Sec.
150.1 Scope.
150.2 Definitions.
150.3 Determination of assessed companies.
150.4 Calculation of assessment basis.
150.5 Calculation of assessments.
150.6 Notice and payment of assessments.

Authority: 12 U.S.C. 5345; 31 U.S.C. 321.

§ 150.1 Scope.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 5345.

§ 150.2 Definitions.

As used in this part:

Assessed company means:

(1) A bank holding company that has $50 billion or more in total consolidated assets, based on the average of total consolidated assets as reported on the bank holding company's four most recent quarterly Consolidated Financial Statements for Bank Holding Companies (or, in the case of a foreign banking organization, based on the average of total assets at end of period as reported on such company's four most recent Capital and Asset Information for the Top-tier Consolidated Foreign Banking Organization submissions, or most recent annual submission, as appropriate); or

(2) A nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act.

Assessment basis means, for a given assessment period, an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the Office and the Council as set out in the Dodd-Frank Act (including expenses of the Corporation that shall be treated as expenses of the Council pursuant to section 210(n)(10) of the Dodd-Frank).

Assessment fee rate, with regard to a particular assessment period, means the rate published by the Department for the calculation of assessment fees for that period.

Assessment payment date means:

(1) For the initial assessment period, July 20, 2012;

(2) For any semiannual assessment period ending on March 31 of a given calendar year, September 15 of the prior calendar year; and

(3) For any semiannual assessment period ending on September 30 of a given calendar year, March 15 of the same year.

Assessment period means any of:

(1) The initial assessment period; or

(2) Any semiannual assessment period.

Bank holding company means:

(1) A bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

(2) A foreign banking organization.

Board means the Board of Governors of the Federal Reserve System.

Corporation means the Federal Deposit Insurance Corporation.

Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act.

Department means the Department of the Treasury.

Determination date means:

(1) For the initial assessment period, December 31, 2011.

(2) For any semiannual assessment period ending on March 31 of a given calendar year, June 30 of the prior calendar year.

(3) For any semiannual assessment period ending on September 30 of a given calendar year, December 31 of the prior calendar year.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign banking organization means a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

Initial assessment period means the period of time beginning on July 20, 2012 and ending on March 31, 2013.

Office means the Office of Financial Research established by section 152 of the Dodd-Frank Act.

Semiannual assessment period means:

(1) Any period of time beginning after the initial assessment period on October 1 and ending on March 31 of the following calendar year; or

(2) Any period of time beginning after the initial assessment period on April 1 and ending on September 30 of the same calendar year.

Total assessable assets means:

(1) For a bank holding company other than a foreign banking organization, total consolidated assets, as reported on the bank holding company's most recent FR Y–9C;

(2) For any other bank holding company that has $50 billion or more in total consolidated assets, the company's total assets of combined U.S. operations, based on the combined total assets of the foreign banking organization's U.S. subsidiaries as reported on the foreign banking organization's most recent financial reports; or

(3) For a nonbank financial company supervised by the Board under section 113 of the Dodd-Frank Act, either total consolidated assets, if the company is a U.S. company, or total assets of combined U.S. operations, if the company is a foreign company.

§ 150.3 Determination of assessed companies.

(a) The determination that a bank holding company or a nonbank financial company is an assessed company will be made by the Department.

(b) The Department will apply the following principles in determining whether a company is an assessed company:

(1) For tiered bank holding companies for which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company shall be the top-tier, regulated holding company.

(2) In situations where more than one top-tier, regulated bank holding company has a legal authority for control of a U.S. bank, each of the top-tier regulated holding companies shall be designated as an assessed company.

(3) In situations where a company has not filed four consecutive quarters of the financial reports referenced above for the most recent quarters (or two consecutive years for annual filers of the FR Y–7Q or successor form), such as may be true for companies that recently converted to a bank holding company, the Department will use, at its discretion, other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings, to determine a company's total consolidated assets.

(4) In situations where a company does not report total consolidated assets in its public reports or where a company uses a financial reporting methodology other than U.S. GAAP to report on its U.S. operations, the Department will use, at its discretion, any comparable financial information that the

Department may require from the company for this determination.

(c) Any company that the Department determines is an assessed company on a given determination date will be an assessed company for the entire assessment period related to such determination date, and will be subject to the full assessment fee for that assessment period, regardless of any changes in the company's assets or other attributes that occur after the determination date.

§ 150.4 Calculation of assessment basis.

(a) For the initial assessment period, the Department will calculate the assessment basis such that it is equivalent to the sum of:

(1) Budgeted operating expenses for the Office for the period beginning July 21, 2012 and ending March 31, 2013;

(2) Budgeted operating expenses for the Council for the period beginning July 21, 2012 and ending March 31, 2013;

(3) Capital expenses for the Office for the period beginning July 21, 2012 and ending April 30, 2013;

(4) Capital expenses for the Council for the period beginning July 21, 2012 and ending April 30, 2013; and

(5) Reasonable implementation expenses of the Corporation for the period beginning July 21, 2012 and ending September 30, 2013 under section 210(n)(10) of the Dodd-Frank Act.

(b) For each subsequent assessment period, the Department will calculate an assessment basis that shall be sufficient to replenish the Financial Research Fund to a level equivalent to the sum of:

(1) Budgeted operating expenses for the Office for the applicable assessment period;

(2) Budgeted operating expenses for the Council for the applicable assessment period;

(3) Budgeted capital expenses for the Office for the 12-month period beginning on the first day of the applicable assessment period;

(4) Budgeted capital expenses for the Council for the 12-month period beginning on the first day of the applicable assessment period; and

(5) Reasonable implementation expenses of the Federal Deposit Insurance Corporation for the applicable assessment period under section 210(n)(10) of the Dodd-Frank Act.

§ 150.5 Calculation of assessments.

(a) For each assessed company, the Department will calculate the total assessable assets in accordance with the definition in § 150.2.

(b) The Department will allocate the assessment basis to the assessed companies in the following manner:

(1) Based on the sum of all assessed companies' total assessable assets, the Department will calculate the assessment fee rate necessary to collect the assessment basis for the applicable assessment period.

(2) The assessment payable by an assessed company for each assessment period shall be equal to the assessment fee rate for that assessment period multiplied by the total assessable assets of such assessed company.

(3) Foreign banking organizations with less than $50 billion in total assessable assets shall not be assessed.

§ 150.6 Notice and payment of assessments.

(a) No later than the thirtieth calendar day prior to the first day of a semiannual assessment period (or, in the case of the initial assessment period, the effective date of this rule), the Department will send to each assessed company a statement that:

(1) Confirms that such company has been determined by the Department to be an assessed company; and

(2) States the total assessable assets that the Department has determined will be used for calculating the company's assessment.

(b) If a company that is required to make an assessment payment for a given semiannual assessment period believes that the statement referred to in paragraph (a) contains an error, the company may provide the Department with a written request for a revised statement. Such request must be received by the Department via email within 14 calendar days and must include all facts that the company requests the Department to consider. The Department will respond to all such requests within 14 calendar days of receipt thereof.

(c) No later than the 14 calendar days prior to the payment date for a given assessment period, the Department will send an electronic billing notification to each assessed company, containing the final assessment that is required to be paid by such assessed company.

(d) For the purpose of making the payments described in § 150.5, each assessed company shall designate a deposit account for direct debit by the Department through *www.pay.gov* or successor Web site. No later than the later of 30 days prior to the payment date for an assessment period, or the effective date of this rule, each such company shall provide notice to the Department of the account designated, including all information and authorizations required by the Department for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the company designates a different account for assessment debit by the Department, in which case the requirements of the preceding sentence apply.

(e) Each assessed company shall take all actions necessary to allow the Department to debit assessments from such company's designated deposit account. Each such company shall, prior to each assessment payment date, ensure that funds in an amount at least equal to the amount on the relevant electronic billing notification are available in the designated deposit account for debit by the Department. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. The Department will cause the amount stated in the applicable electronic billing notification to be directly debited on the appropriate payment date from the deposit account so designated.

(f) In the event that, for a given assessment period, an assessed company materially misstates or misrepresents any information that is used by the Department in calculating that company's total assessable assets, the Department may at any time re-calculate the assessment payable by that company for that assessment period, and the assessed company shall take all actions necessary to allow the Department to immediately debit any additional payable amounts from such assessed company's designated deposit account.

(g) If a due date under this section falls on a date that is not a business day, the applicable date shall be the previous business day.

Dated: December 22, 2011.

Cyrus Amir-Mokri,

Assistant Secretary for Financial Institutions, Department of the Treasury.

[FR Doc. 2011–33659 Filed 12–30–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0103; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Sierra Nevada Red Fox as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list Sierra Nevada red fox (*Vulpes vulpes necator*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this subspecies may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the subspecies to determine if listing Sierra Nevada red fox is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this subspecies. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before March 5, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After March 5, 2012, you must submit information directly to the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R8–ES–2011–0103, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0103; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section, below, for more details).

FOR FURTHER INFORMATION CONTACT: Karen Leyse, Sacramento Field Office Listing/Critical Habitat Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone at (916) 414–6600; or by facsimile at (916) 414–6712. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on Sierra Nevada red fox from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing Sierra Nevada red fox is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation for the species''; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will

post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On April 27, 2011, we received a petition dated April 27, 2011, from the Center for Biological Diversity, requesting that Sierra Nevada red fox be listed as endangered or threatened, and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a May 24, 2011, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we were required to complete a significant number of listing and critical habitat actions in Fiscal Year 2011 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, but that we had secured funding for Fiscal Year 2011 to allow publication of a finding in the **Federal Register** in early Fiscal Year 2012. This finding addresses the petition.

Species Information

Sierra Nevada red fox is classified in the mammalian order Carnivora, family Canidae, and is one of 10 subspecies of red fox recognized in North America (Lariviére and Pashitschniak-Arts 1996, pp. 1–2; Aubry 1997, p. 55). The Sierra Nevada red fox can be distinguished from other red fox subspecies based on morphology, coloration, and habitat use (Roest 1977, p. 13). The Sierra Nevada red fox was first described by Merriam (1900, as cited in Roest 1977, p. 1) as the species *Vulpes necator,* but was considered by Grinnell *et al.* (1937, p. 377) to be a subspecies of the red fox. The scientific community continues to recognize the Sierra Nevada red fox as a subspecies (Roest 1977, p. 1; Lariviére and Pashitschniak-Arts 1996, pp. 1–2; Aubry 1997, p. 55; Sachs *et al.* 2010, p. 1542). Therefore, we accept the classification of the Sierra Nevada red fox as a subspecies of the red fox.

The red fox is a relatively small canid with an elongated snout, large ears, slender legs and body, and a bushy tail with a white tip (Lariviére and Pashitschniak-Arts 1996, p. 2; Aubry 1997, p. 55). Sierra Nevada red fox is typically red, but can occur in black or silver phases (Grinnell *et al.* 1937, p. 377; Roest 1977, p. 1), and is generally smaller than other red fox subspecies in North America (California Department of Fish and Game (CDFG) 1987, p. 3).

Historically, Sierra Nevada red fox occupied high-elevation areas of the Sierra Nevada and Cascade mountain ranges in California (Zielinski *et al.* 2005, p. 1389), ranging from Tulare County north to Sierra County, and from the vicinity of Lassen Peak and Mt. Shasta west to the Trinity Mountains in Trinity County (Grinnell *et al.* 1937, p. 381). However, a recent study by Sachs *et al.* (2010, p. 1536) indicates that the historical range of Sierra Nevada red fox includes the southern Cascade mountain range in Oregon, as far north as the Columbia River. The current distribution of Sierra Nevada red fox is believed to be restricted to two small populations: one in the vicinity of Lassen Peak (Perrine 2005, p. 105; California Natural Diversity Database (CNDDB) 2011, pp. 54–60) and the other in the vicinity of Sonora Pass (Perrine *et al.* 2010, notes in proof; CNDDB 2011, pp. 54–60). Although its entire historical range was not surveyed, systematic surveys by Zielinski *et al.* (2005, p. 62010, p1389) failed to detect Sierra Nevada red fox. The U.S. Forest Service recently conducted carnivore surveys on National Forest System lands throughout the Sierra Nevada using track plates and remotely triggered cameras, but Sierra Nevada red fox were detected only in the Lassen National Forest and Humboldt-Toiyabe National Forest (Perrine *et al.* 2010, notes in proof and p. 8). Current population levels of Sierra Nevada red fox are unknown, but the subspecies is believed to occur at very low density (Perrine *et al.* 2010, p. 9).

While the red fox is one of the most studied carnivores, little is known about Sierra Nevada red fox ecology (Perrine *et al.* 2010, p. 14). Sierra Nevada red fox is one of three high-elevation montane subspecies referred to as mountain foxes (Aubry 1997, p. 55). It is found in alpine and subalpine habitats typically above 1,525 meters (m) (5,000 feet (ft)) elevation, including meadows, dense mature forests, talus (rocks accumulated at the base of a cliff, chute, or slope), and fell fields (treeless rock-strewn areas dominated by scattered plants or grasses) (Perrine *et al.* 2010, p. 18; CNDDB 2011, pp. 1–60). Radio telemetry data indicate that Sierra Nevada red fox are most active at dusk and at night (Perrine 2005, p. 114). Habitat use by Sierra Nevada red fox varies seasonally. During the summer (generally June to November (Perrine 2005, p. 160)), they prefer barren, high-elevation habitats (Perrine 2005, p. 137) and utilize high-elevation shrub and conifer communities in proportion to their availability (Perrine 2005, p. 161). During the winter (generally November to June (Perrine 2005, p. 160)), they are associated with mature closed-canopy forest (Perrine 2005, p. 163) and preferentially select forested areas for travel, possibly to avoid deep snow (Benson *et al.* 2005, p. 128). A study of Sierra Nevada red fox in the vicinity of Lassen Peak suggests that the subspecies requires large home ranges averaging 2,323 hectares (ha) (5,740 acres (ac)), with individual home ranges ranging from 262 ha (647 ac) to 6,981 ha (17,250 ac) (Perrine 2005, p. 137). The Sierra Nevada red fox demonstrates seasonal elevation migration, moving to lower elevations during the winter months (Perrine *et al.* 2010, p. 21), presumably to areas where prey are more readily available due to lower snow depths (Perrine 2005, p. 146). Sierra Nevada red fox, like other red fox in North America, appear to be opportunistic predators and foragers, with a diet primarily composed of small rodents (Perrine *et al.* 2010, p. 24).

Little is known about Sierra Nevada red fox reproductive biology. Other red fox subspecies are predominately

monogamous and mate over several weeks in the late winter and early spring (Aubry 1997, p. 57). The gestation period for red fox is 51 to 53 days, with birth occurring from March through May in sheltered dens. Sierra Nevada red fox have been documented to use natural openings in rock slides, talus, and riven (broken) granite as denning sites (Grinnell *et al.* 1937, p. 394), and it is likely that earthen dens are also used (Aubry 1997, p. 58). Grinnell *et al.* (1937, p. 394) reports that litter size averages six pups with a range of three to nine pups; however, recent evidence suggests that litter sizes of two to three is more typical (Perrine 2005, p. 152). The pups are weaned by 8 to 10 weeks of age, begin exploring their parents' home range by 12 weeks, and disperse in the early fall when fully grown (Perrine *et al.* 2010, pp. 14–15).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to Sierra Nevada red fox, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petition asserts that Sierra Nevada red fox habitat is threatened by logging, fire suppression, domestic livestock grazing, and recreation, including over-snow vehicle (OSV) (such as snowmobile) and off-road vehicle (ORV) use. The petition also states that the structural changes associated with logging and fire suppression activities could facilitate invasion by coyotes and nonnative red fox, resulting in increased competition, predation, and possible interbreeding with nonnative red fox (Center for Biological Diversity 2011, pp. 18 and 22). Predation related to logging is discussed under Factor C, while competition and interbreeding is discussed under Factor E.

Logging—Information Provided in the Petition

The petition claims that logging has reduced the extent of old conifer forest by 82 percent within the southern Cascade mountains and by 79 percent within the eastern Cascade mountain forests, with similar reductions in the Sierra Nevada (Center for Biological Diversity 2011, p. 18). Perrine (2005, p. 137) found that Sierra Nevada red fox detections were positively associated with dense, mature, mid-elevation forests exhibiting canopy cover greater than 40 percent and trees larger than 60 centimeters (cm) (23.6 inches (in)) diameter at breast height. Winter home ranges of Sierra Nevada red fox are dominated by Sierran mixed conifer, red and white fir communities in which fox use the cavities under logs and trees, and tree wells (area of loose or no snow around the trunk of a tree), as day rest sites (Perrine 2005, p. 146; Center for Biological Diversity 2011, p. 17). The petitioners state that the removal of the large trees that form tree wells or that fall and provide cavities that Sierra Nevada red fox use as day rests, as well as the structural changes of forest complexity associated with logging, render habitats less suitable for Sierra Nevada red fox (Center for Biological Diversity 2011, pp. 17–18).

Logging—Evaluation of Information Provided in the Petition and Available in Service Files

Approximately 80 percent of Sierra Nevada red fox's range occurs on National Forest System Lands (Center for Biological Diversity 2011, p. 11). Historical logging activities in the Sierra Nevada have resulted in the reduction of habitat that may be used by the Sierra Nevada red fox. Prior to logging in the Sierra Nevada, suitable forested habitat was projected to occur on 55 percent of National Forest lands, while logging reduced the suitable habitat to 13 percent of National Forest lands (SNEP 1996, p. 99). The largest extant population of Sierra Nevada red fox occurs in the vicinity of Lassen Peak within both Lassen National Park and Lassen National Forest. Lassen National Forest currently has planned fuels treatment projects that may affect approximately 19,584 ha (48,392 ac), including approximately 929 ha (2,296 ac) that contain habitat suitable for red fox (USDA Forest Service 2009, pp. 509–510). Although forested habitats utilized by Sierra Nevada red fox have historically undergone logging or fuels treatment activities, and future treatment is planned in suitable habitat that may be occupied by the fox, neither the petition nor our files contain information about potential ongoing or future threats that may occur as a result of logging activities. Although the information does not support the petitioner's assertions on this subject, we will further consider effects that logging may have on the subspecies' habitat in our status review.

Fire Suppression—Information Provided in the Petition

The petition asserts that fire suppression activities impact the natural role of fire in developing the habitat components used by Sierra Nevada red fox (Center for Biological Diversity 2011, p. 22). The petition also states that forest openings, fell fields, and early-seral (period from disturbance to crown closure of conifer stands) post-fire habitats are important components for Sierra Nevada red fox as these areas provide habitat for a majority of the fox's prey base (Center for Biological Diversity 2011, p. 22). Finally, the petition claims that fire suppression

activities may result in direct impacts to Sierra Nevada red fox, as well as alter and fragment the structure of the habitat. The potential for fire suppression activities to directly impact Sierra Nevada red fox individuals is addressed under Factor E below.

Fire Suppression—Evaluation of Information Provided in the Petition and Available in Service Files

We do not have any information in our files, nor does the petition provide specific information, on the reduction or fragmentation of foraging habitat for Sierra Nevada red fox due to fire suppression. The petition also does not document that wildfire is necessary to create or maintain this foraging habitat. While the petition does provide general information about historical fire intervals in the Sierra Nevada, it does not provide any specific information about fire intervals or the likelihood of future fires within Sierra Nevada red fox's current range. Although the information does not support the petitioner's assertions on this subject, we will further consider effects that fire suppression activities may have on the subspecies' habitat in our status review.

Domestic Livestock Grazing

The petition states that domestic livestock grazing impacts Sierra Nevada red fox foraging habitat by removing the vegetative habitat components that support their prey (Center for Biological Diversity 2011, p. 20). Because the information presented in the petition is related more closely to prey availability than Sierra Nevada red fox habitat, the threat from domestic livestock grazing will be discussed below in Factor E.

Recreation—Information Provided in the Petition

The petition asserts that recreational activities (including OSV, ORV, dirt bike activity, hiking, and camping) can degrade Sierra Nevada red fox habitat, interfere with normal behavior, and cause shifts in habitat use. The petition did not include any information on the habitat alteration other than to state that habitat degradation occurs. All recreational impacts presented in the petition are related to direct impacts to the subspecies, such as death, injury, increased competition, or behavioral changes, which are discussed under Factor E.

Recreation—Evaluation of Information Provided in the Petition and Available in Service Files

We do not have any information in our files, nor does the petition provide any information, on the degradation of Sierra Nevada red fox habitat due to recreation.

Although the information does not support the petitioner's assertions on this subject, we will further consider effects that recreation may have on the subspecies' habitat in our status review.

Factor A Summary

The petitioner states that Sierra Nevada red fox habitat is threatened by logging, fire suppression, domestic livestock grazing, and recreation (including OSV and ORV use). While the petition provides information about historical impacts to habitat from logging and fire suppression, it does not provide any information about current or future threats due to logging and fire suppression practices within the subspecies' range. Our files contain some information about proposed fuels treatment projects on the Lassen National Forest that would be within the subspecies' range. However, we have no information available in the petition or our files to indicate that Sierra Nevada red fox individuals or populations respond negatively to habitat impacts resulting from logging and fire suppression, nor do we have information regarding potential ongoing or future threats that may occur as a result of these activities. Although the information does not support the petitioner's assertions about activities discussed above, we will further investigate whether the present or threatened destruction, modification, or curtailment of its habitat or range is threatening the subspecies in our status review.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Information Provided in the Petition

The petition asserts that Sierra Nevada red fox is threatened by accidental capture or poaching in California, Oregon, and Nevada, and by legal trapping in Oregon and Nevada (Center for Biological Diversity 2011, pp. 24–25).

Evaluation of Information Provided in the Petition and Available in Service Files

Sierra Nevada red fox's current range is restricted to two areas of California (Perrine 2005, p. 105; CNDDB 2011, pp. 54–60), a State in which hunting for Sierra Nevada red fox is prohibited (Title 14 California Code of Regulations Section 460). California does allow hunting and trapping of other furbearing animals, and it is possible that Sierra Nevada red fox could be accidentally trapped (Center for Biological Diversity 2011, p. 25). However, neither the petition nor Service files present any evidence of incidental killing of Sierra Nevada red fox while trapping other furbearers. Trapping of Sierra Nevada red fox is allowed in the adjacent States of Oregon and Nevada; however, Sierra Nevada red fox is not known to occur in these States.

Factor B Summary

The information provided in the petition and in our files does not indicate that any impact from overutilization is occurring to Sierra Nevada red fox. However, we will further investigate overutilization for commercial, recreational, scientific, or educational purposes in our status review for this subspecies.

C. Disease or Predation

The petition states that Sierra Nevada red fox is threatened by salmon poisoning disease, disease transmission by domestic dogs, and increased coyote predation due to recreation activities, logging, and fire suppression activities in logged forests (Center for Biological Diversity 2011, pp. 21–28).

Salmon Poisoning Disease (SPD)—Information Provided in the Petition

The petition states that Sierra Nevada red fox are threatened by salmon poisoning disease (SPD), which is found in wild populations of salmonid fish in northern California, Oregon, and Washington, but also could be spread to other areas through fish stocking, and is fatal to dogs, foxes, and other canids (Center for Biological Diversity 2011, p. 25). Salmon poisoning disease is caused by *Neorickettsia helminthoeca,* a bacteria that can be carried by trout and salmon. If an infected fish is ingested by a dog or other canid, the bacteria can result in fever, anorexia, vomiting, and bloody diarrhea, with a 90 percent mortality rate if untreated (Rikihisa *et al.* 1991, p. 1928). The disease has also been detected in at least three State hatcheries and four private farms in northern California (Perrine *et al.* 2010, p. 28).

If infected trout and salmon are present in waters within Sierra Nevada red fox's current range and Sierra Nevada red fox consume infected fish, the likelihood of red fox mortality is high (Perrine *et al.* 2010, p. 28). The petition provides a list of 47 water bodies within the subspecies' approximate current range that were stocked with trout or salmon by CDFG between 2002 and 2006 (Center for Biological Diversity 2011, Appendix B). The petitioner indicates that potential

exposure of the Sierra Nevada red fox to infected fish is a threat to the subspecies.

The petition also claims that the risk of Sierra Nevada red fox exposure to SPD is increased by fire retardant use (Center for Biological Diversity 2011, p. 28). Fire retardants are used on National Forest lands to combat wildfires. Exposure of fish to these retardants is known to result in substantial fish kills (USFWS 2008, p. 30). While the risk is small, if fire retardants were used in an SPD-infected waterway within the current range of the subspecies, the threat of SPD to Sierra Nevada red fox would be increased by the fox foraging on dead fish.

Salmon Poisoning Disease (SPD)—Evaluation of Information Provided in the Petition and Available in Service Files

SPD has been documented in both hatchery and wild salmonids in northern California (Perrine *et al.* 2010, p. 28). In order to limit the spread of SPD beyond this area, CDFG does not allow salmonids from their northern California hatcheries to be stocked south of the Feather River (Beale 2011, pers. comm.). The Sierra Nevada red fox population in the Sonora Pass area is located far to the south of the Feather River, where the potential for stocking infected fish does not exist. Therefore, only the fox population in the vicinity of Lassen Peak has the potential to be impacted by SPD. Because SPD has been documented in both hatchery and wild fish populations in northern California (Perrine *et al.* 2010, p. 28), it is likely that this disease occurs within the range of the Sierra Nevada red fox. Within the area where the disease occurs, Sierra Nevada red fox may be exposed to infected fish as the result of scavenging for dead fish, misapplication of aerial fish stocking, or the use of dead salmonids as bait for camera stations (Perrine *et al.* 2010, p. 28).

Although salmonid mortality from the use of fire retardants could potentially increase exposure of Sierra Nevada red fox to SPD, current guidelines minimize exposure of salmonids to fire retardants. The aerial application of fire retardant by the U.S. Forest Service is governed by guidelines that provide for a 91-m (300-ft) buffer around all aquatic features (USDA Forest Service 2011a, p. 7). Additionally, based on calculations of misapplication over the past 3 years, there is a 0.42 percent chance of fire retardant being applied to aquatic features (USDA Forest Service 2011a, p. 104). Although mortality of salmonids due to fire retardant application may be high, the likelihood that fire retardant will cause the mortality of salmonids infected by SPD and that Sierra Nevada red fox will consume the dead infected fish is extremely low. Therefore, we do not anticipate that the use of fire retardants will appreciably contribute to the spread of the disease.

Given the high mortality associated with SPD disease in canids, and the potential pathways for exposure of Sierra Nevada red fox to SPD as the result of fish stocking in the Lassen National Forest area, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to transmission of SPD. We will review the possible effects of SPD to Sierra Nevada red fox more thoroughly in our 12-month status review.

Domestic Dog Predation and Disease—Information Provided in the Petition

The petition asserts that exposure of Sierra Nevada red fox to domestic dogs places them at risk of attack, death, or diseases such as rabies, sarcoptic mange, canine distemper, and parvovirus (Center for Biological Diversity 2011, p. 28).

The petition asserts that the risk of domestic dog predation and disease is associated with the presence of roads and recreational sites within the subspecies' range (Center for Biological Diversity 2011, p. 22). Pierre *et al.* (2010, p. 28) found that road development and recreational sites within the Sierra Nevada red fox's range increases the risk of interaction with domestic pets and exposure to diseases.

Domestic Dog Predation and Disease—Evaluation of Information Provided in the Petition and Available in Service Files

Diseases commonly associated with domestic dogs have been documented in other subspecies of red fox, and can be fatal (Little *et al.* 1998, p. 623). Both Lassen National Park and Lassen National Forest contain recreation areas that are within the Sierra Nevada red fox's current range (Perrine 2005, p. 149; USDA Forest Service 2009, p. 510). A number of documented sightings have occurred in campgrounds, in parking areas, and along roads in Lassen National Park where Sierra Nevada red foxes have begged for food from humans (Perrine 2005, p. 28). The use of these areas by humans and their domestic dogs increases the risk of transmitting diseases such as canine distemper, rabies, and sarcoptic mange to Sierra Nevada red fox (Perrine *et al.* 2010, p. 28), leading to a decreased level of fitness and potential mortality. In a radiotelemetry study of Sierra Nevada red fox in the Lassen Peak area, Perrine (2005, p. 141) documented mortality of three collared individuals, attributing the death of one directly to a dog attack. Given that the Sierra Nevada red fox populations are believed to be small in number and restricted to two locations (Perrine 2005, p. 105; CNDDB 2011, pp. 54–60), an outbreak of canine distemper or other lethal disease, as well as predation by domestic dogs, could have a population-level impact. Therefore, we conclude that there is substantial information in the petition and in our files to indicate that attacks and transmission of disease from domestic dogs may be a threat to Sierra Nevada red fox.

Coyote Predation—Information Provided in the Petition

The petition claims that changes in forest structure resulting from logging, recreation, and fire suppression facilitate the movement of coyotes into the Sierra Nevada red fox's range (Center for Biological Diversity 2011, pp. 18–22). The petition further claims that increased presence of coyotes could result in increased predation upon Sierra Nevada red fox, thus potentially reducing their population and reproductive success.

Coyote Predation—Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not provide any information, nor do we have any in our files, to indicate that changes in forest structure resulting from logging, recreation, and fire suppression facilitate the movement of coyotes into the Sierra Nevada red fox's range. The abundance and distribution of coyotes has been demonstrated to affect the distribution of the red fox in North Dakota (Sargeant *et al.* 1987, p. 291), and, although no predation of red fox by coyotes was observed in this study, numerous accounts of coyotes predating upon red fox have been documented (Sargeant and Allen 1989, p. 631). In the Lassen Peak area, Perrine (2005, pp. 83–84) documented range overlap of Sierra Nevada red fox and coyotes, especially in summer habitat use. As coyotes are known to prey upon foxes and occur in areas occupied by the Sierra Nevada red fox, predation of the Sierra Nevada red fox by coyotes is likely. Because the subspecies is believed to occur at a very low density (Perrine *et al.* 2010, p. 9), predation by coyotes could significantly impact the population. Therefore, we conclude that there is substantial information in our files to indicate that

coyote predation may be a threat to Sierra Nevada red fox. We will review the possible effects of coyote predation on Sierra Nevada red fox more thoroughly in our 12-month status review.

Factor C Summary

The petition states that Sierra Nevada red fox is threatened by SPD, disease transmission by domestic dogs, and increased coyote predation in logged forests. The information contained in the petition and in our files indicates that SPD has been found in California and has the potential to be introduced to water bodies within the subspecies' range. In addition, diseases carried by domestic dogs are known to kill red fox, and the petition provides information about the presence of Sierra Nevada red fox at recreational sites where they could interact with humans and their pets. While the Perrine (2005, pp. 1–191) study did not document the predation of Sierra Nevada red fox by coyotes, coyotes are known to kill and prey upon red fox in other areas, and there is range overlap between Sierra Nevada red fox and coyotes. In summary, we find that the information presented in the petition and in our files presents substantial information indicating that the petitioned action may be warranted due to the threat of disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition asserts that Sierra Nevada red fox are threatened by inadequate regulatory mechanisms, such as the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Sierra Nevada Forest Plan Amendment (SNFPA), the Northwest Forest Plan (NWFP), climate change initiatives, the California Endangered Species Act (CESA), as well as Oregon and California hunting regulations (Center for Biological Diversity 2011, pp. 28–32).

The petition states that NEPA requires a Federal agency to analyze the impacts of proposed activities on Sierra Nevada red fox, but does not require the agency to select an alternative with the least impacts to the subspecies, nor require the agency to mitigate project impacts (Center for Biological Diversity 2011, p. 32). The petition asserts that the SNFPA provides an outline of discretionary measures that the U.S. Forest Service may implement for the protection of Sierra Nevada red fox; however, discretionary actions are not adequate to protect Sierra Nevada red fox because National Forests are managed for multiple resource objectives (Center for Biological Diversity 2011, p. 32). Further, the petition asserts that the NWFP does not specifically address the protection of Sierra Nevada red fox, but relies on the protection of other species that may incidentally provide protection to Sierra Nevada red fox (Center for Biological Diversity 2011, p. 32).

The petition asserts that the climate change initiatives are insufficient, including California's Global Warming Solutions Act of 2006, the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and the international United Nations Framework Convention on Climate Change. The petition claims that these initiatives are inadequate due to a lack of implementation (Center for Biological Diversity 2011, pp. 30–32).

The petition claims that the CESA is an inadequate regulatory mechanism because it does not provide adequate protections for Sierra Nevada red fox against logging, livestock grazing, recreation, and other human disturbance (Center for Biological Diversity 2011, p. 29). The threats of logging, livestock grazing, recreation, and other human disturbance are addressed under Factors A, C, and E. The petition also claims that the Oregon furbearer, trapping, and hunting regulations, and the California hunting regulations, provide inadequate regulatory mechanisms for Sierra Nevada red fox (Center for Biological Diversity 2011, p. 31). These State hunting and trapping regulations address overutilization for commercial or recreational purposes, and were addressed under Factor B above.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition provides basic information regarding a number of possible regulatory mechanisms, such as NEPA, SNFPA, NWFP and CESA. It is not clear from the information provided in the petition or available in our files that these possible regulatory mechanisms are inadequate to reduce the possible threats of disease and predation (see Factor C) or other natural or manmade factors affecting its continued existence (see Factor E).

Factor D Summary

The information provided in the petition and in our files does not indicate that any impact from the inadequacy of existing regulatory mechanisms is occurring to Sierra Nevada red fox. However, we will further investigate the inadequacy of existing regulatory mechanisms in our status review for this subspecies.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petition asserts that the following Factor E impacts threaten Sierra Nevada red fox: Invasion of Sierra Nevada red fox habitat by coyotes and nonnative red foxes, competition with coyotes and nonnative red foxes, domestic livestock grazing, recreation, small population size, and climate change (Center for Biological Diversity 2011, pp. 18, 22–32).

Invasion by and Competition with Coyote and Nonnative Red Foxes—Information Provided in the Petition

The petition asserts that Sierra Nevada red fox is threatened by competition for prey with coyotes and nonnative red foxes and increased interbreeding with nonnative red foxes, both of which are facilitated by logging, fire suppression activities, and recreation (Center for Biological Diversity 2011, pp. 18, 22–32). The petition also asserts that fire suppression activities may result in the direct mortality or injury of Sierra Nevada red fox (Center for Biological Diversity 2011, p. 22).

Invasion by and Competition With Coyote and Nonnative Red Foxes—Evaluation of Information Provided in the Petition and Available in Service Files

We do not have any information in our files, nor does the petition provide specific information, on how logging, fire suppression activities, or recreation has the potential to facilitate invasion by coyote and nonnative foxes, nor is there any evidence that this facilitation has occurred. Information contained within our files does not indicate that competition with nonnative red foxes or interbreeding is a concern for Sierra Nevada red fox, as there is no indication of range overlap with any other fox species. Neither the petition nor our files contain any evidence of fire suppression activities resulting in the direct mortality of individual Sierra Nevada red foxes.

Coyotes and Sierra Nevada red fox have been documented to have overlapping summer habitat ranges in the Lassen Peak area (Perrine 2005, pp. 83–84). Winter habitat use by the fox does not correlate closely with that of the coyote (Perrine 2005, p. 83), presumably because of snow depths and competition for prey (Perrine 2005, p. 40–41), resulting in decreased prey

availability in winter months. Competition for prey between coyote and fox is potentially exacerbated by low prey availability in the area of Lassen Peak (USDA Forest Service 2009, p. 506). Sargeant *et al.* (1987, p. 291) determined that the distribution and abundance of red fox are affected by the distribution and abundance of coyote. Sargeant and Allen (1983, pp. 631–632) documented the interactions between coyotes and other subspecies of red fox, discovering that coyote will frequently chase foxes and kill them, often not utilizing them as prey. As there is substantial range overlap between coyotes and Sierra Nevada red fox, there is likely competition for prey items; additionally, because coyotes are known to kill red foxes, we find that the petition and information in our files present substantial information to indicate that interaction with coyotes may be a threat to Sierra Nevada red fox.

Domestic Livestock Grazing—Information Provided in the Petition

The petition states that domestic livestock grazing impacts the Sierra Nevada red fox's foraging habitat by removing the vegetative habitat components that support its prey (Center for Biological Diversity 2011, p. 20). For example, the petition cites a number of studies that found that high levels of livestock grazing can reduce the density and biomass of a number of prey species, such as rodents and birds (Center for Biological Diversity 2011, pp. 20–21). The petition also claims that the use of rodenticides associated with domestic cattle grazing may also reduce the availability of small prey species in grazed areas (Center for Biological Diversity 2011, p. 21).

Domestic Livestock Grazing—Evaluation of Information Provided in the Petition and Available in Service Files

The petition provides some evidence that livestock grazing may alter the availability of some prey species for Sierra Nevada red fox. While grazing may result in a decrease in populations of some prey species, grazing has been demonstrated to increase populations of other potential prey species (Ratliff 1985, as cited in Perrin *et al.* 2010, p. 29). Therefore, there is evidence that grazing may not reduce prey availability overall, but rather cause a shift in prey species (Perrine *et al.* 2010, p. 29). While the petition asserts rodenticide use associated with cattle grazing causes a reduction in the availability of prey for Sierra Nevada red fox, the widespread use of rodenticides on public lands as it relates to grazing has been outlawed (Perrine *et al.* 2010, p. 29). Sierra Nevada red fox utilizes a wide variety of prey species (Perrine 2005, p. 40–41), and there is no information indicating that the use of rodenticides associated with grazing is responsible for a reduction in available prey. Therefore, the information presented in the petition and available in our files does not support the petitioner's claim that domestic livestock grazing as it relates to reduced prey may be a threat to the subspecies. However, we will further investigate the potential impacts of domestic livestock grazing in our status review for this subspecies.

Over-Snow Vehicle (OSV) and Off-Road Vehicle (ORV) Use—Information Provided in the Petition

The petition claims that OSV and ORV use have the potential to result in direct mortality to Sierra Nevada red fox through vehicle strikes (Center for Biological Diversity 2011, pp. 23–24). In addition, the petition asserts that noise and visual disturbance from the use of OSVs and ORVs in winter and spring disrupt mating and breeding behavior (Center for Biological Diversity 2011, pp. 23–24). The petition also claims that OSVs negatively impact the prey base of Sierra Nevada red fox by compacting subnivean (beneath the snow layer) spaces that small mammals use in the winter (Center for Biological Diversity 2011, p. 23).

Over-Snow Vehicle (OSV) and Off-Road Vehicle (ORV) Use—Evaluation of Information Provided in the Petition and Available in Service Files

Recreation areas for both OSVs and ORVs occur in the vicinity of known Sierra Nevada red fox populations in both the Lassen Peak and Sonora Pass areas (USDA Forest Service 2009, p. 510; 2011b, p. 29), and OSV and ORV use in these areas has the potential to interfere with reproduction and foraging behavior due to noise and visual disturbance (Center for Biological Diversity 2010, p. 23; USDA Forest Service 2009, p. 510; 2011b, p. 29). Additionally, according to the U.S. Department of Agriculture (USDA) Forest Service, the compaction of snow attributed to OSVs is likely to result in a decrease in subnivean species utilized as prey by the fox (USDA Forest Service 2011b, p. 29). While the response of Sierra Nevada red fox to OSVs and ORVs is largely undocumented, studies involving other mammalian species have demonstrated noise disturbance attributed to OSVs and ORVs has resulted in elevated heart rates and glucocorticoid stress levels, increased energy expenditure, interference with reproduction and foraging behavior, and direct or indirect mortality (Baker and Buthmann 2005, pp. 15–16; Center for Biological Diversity 2011, pp. 23–24; Creel *et al.* 2002, pp. 811–812; Ouren *et al.* 2007, pp. 16, 19). Given that populations of the Sierra Nevada red fox overlap with OSV and ORV use areas, the negative responses of other mammal species to OSVs and ORVs, and the potential reduction in the fox's winter prey base, we find the petition presents substantial information that the petitioned action may be warranted due to OSV and ORV use.

Vulnerability of Small Isolated Populations—Information Provided in the Petition

The petition asserts that the small population size of Sierra Nevada red fox magnifies the potential for extinction of the subspecies due to the other threats impacting it (Center for Biological Diversity 2011, p. 33). The petition states that the population size of Sierra Nevada red fox in the vicinity of Lassen peak is believed to consist of fewer than 50 individuals, likely as few as 15 (Center for Biological Diversity 2011, p. 33). Inherent threats related to small population size include the chance of extinction due to stochastic (random, unpredictable) events (Center for Biological Diversity 2011, p. 33), such as genetic drift, demographic fluctuations related to mating and survival, environmental conditions, and local catastrophes (Lacey 1997, p. 329).

Vulnerability of Small Isolated Populations—Evaluation of Information Provided in the Petition and Available in Service Files

Perrine's (2005, pp. 1–195) radiotelemetry study that covered a portion of the Lassen Peak area was limited to a sample size of five individual Sierra Nevada red foxes, which likely represented the entire fox population within the 311.5-square-kilometer (120.3-square-mile) study area (Perrine 2005, p. 135). The recently detected Sierra Nevada red fox population in the Sonora Pass area includes only three confirmed individuals to date (CNDDB 2011, pp. 54–60); however, there are no current estimates of population size. Events (such as disease outbreaks, reproductive failure, or a combination of several events) could destroy a portion of either of the two populations or an entire population. The loss of individual Sierra Nevada red fox could further increase the risk of extirpation resulting from the genetic and demographic problems inherent to small populations (Lacey 1997, pp. 329, 331). Based on the

information presented in the petition and our files indicating that few animals exist in only two populations, paired with the risk of catastrophic events (such as disease; see Factor C), we conclude that substantial information exists to indicate that Sierra Nevada red fox could be threatened by vulnerabilities of small populations.

Climate Change—Information Provided in the Petition

The petition claims that anthropogenic climate change poses a significant threat to Sierra Nevada red fox because it has already resulted in warmer and drier conditions in the Sierra Nevada and Cascade mountains (Center for Biological Diversity 2011, p. 34). The petition asserts that climate projections indicate that temperatures in the Sierra Nevada will continue to rise and there will be a decrease in snowpack (Center for Biological Diversity 2011, p. 37), thereby magnifying the other threats to Sierra Nevada red fox.

Climate Change—Evaluation of Information Provided in the Petition and Available in Service Files

Climate change models conducted for the Sierra Nevada Ecoregion suggest that climate change may potentially have an impact on wildlife populations in the Sierra Nevada region due to changes in vegetation communities (PRBO Conservation Science 2011, p. 25). The petition presents information on projected climate change within the range of Sierra Nevada red fox, as well as speculation on the potential impact of climate change on the fox. However, the petitioner does not provide specific information regarding the impact of climate change on Sierra Nevada red fox populations. Therefore, the information presented by the petitioner and readily available in our files does not support the petitioner's claim that climate change poses a threat to Sierra Nevada red fox. However, we will further investigate the potential impacts of climate change in our status review for this subspecies.

Summary of Factor E

The petition states that Sierra Nevada red fox is threatened by domestic livestock grazing, competition, OSV or ORV use, the vulnerability of small isolated populations, and climate change. The information contained in the petition and in our files indicates that competition with the coyote may result in the direct mortality of Sierra Nevada red fox, limited availability of prey, and altered habitat use by Sierra Nevada red fox. OSV or ORV use may interfere with essential behaviors, such as breeding and feeding, through disturbance and reduction in prey. Currently, the Sierra Nevada red fox is known from only two small isolated populations; therefore, small population size is a factor that may make the fox more vulnerable to other threats, such as competition, catastrophic events, or genetic or demographic problems. In summary, we find that the information presented in the petition and in our files presents substantial scientific or commercial information indicating the petitioned action may be warranted due to the threat of other natural or manmade factors affecting the subspecies' continued existence.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing Sierra Nevada red fox throughout its range may be warranted. This finding is based on information provided under Factors C (disease or predation) and E (other natural or manmade factors affecting the subspecies' continued existence). Although information provided under Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range), B (overutilization for commercial, recreational, scientific, or educational purposes), and D (inadequacy of existing regulatory mechanisms) does not support the petition's assertions, we will further consider information relating to these factors in the status review.

Because we have found that the petition presents substantial information indicating that listing Sierra Nevada red fox may be warranted, we are initiating a status review to determine whether listing Sierra Nevada red fox under the Act is warranted.

The petition asserts that Sierra Nevada red fox occurs in two possible distinct population segments (DPS) and implies that, as a subspecies, Sierra Nevada red fox is also endangered or threatened throughout a significant portion of its range. We conclude that the petition presents substantial information that listing the entire subspecies may be warranted. Therefore, we have not specifically evaluated whether the petition provides substantial information with respect to the two potential DPSes outlined within the petition, or the extent to which Sierra Nevada red fox is endangered or threatened throughout a significant portion of its range. An analysis of these additional entities will occur during the status review if we determine that listing of the entire subspecies is not warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 21, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–33610 Filed 12–30–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111011616–1750–01]

RIN 0648–BB51

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 23

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement regulations through Framework Adjustment 23 to the Atlantic Sea Scallop Fishery Management Plan, which was developed and adopted by the New England Fishery Management Council and submitted to NMFS for approval. Framework Adjustment 23 includes measures to: Minimize impacts on sea turtles through the requirement of a turtle deflector dredge; improve the effectiveness of the scallop fishery's accountability measures related to the yellowtail flounder annual catch limits; adjust the limited access general category Northern Gulf of Maine management program; and modify the scallop vessel monitoring system trip notification procedures to improve flexibility for the scallop fleet.

DATES: Comments must be received by 5 p.m., local time, on January 18, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 23 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 23, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments on this document, identified by NOAA–NMFS–2011–0255, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0255 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 Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Scallop Framework 23 Proposed Rule.''
- *Fax:* (978) 281–9135; *Attn:* Emily Gilbert.

Instructions: 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 for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281–9244; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) adopted Framework Adjustment 23 (Framework 23) on September 27, 2011, initially submitted it to NMFS on October 25, 2011, for review and approval, and submitted a revised final framework document on November 30, 2011. Framework 23 includes measures that would require the use of a turtle deflector dredge (TDD), including where, when, and to which vessels this TDD requirement would apply. Framework 23 proposes to revise the current accountability measures (AMs) related to the yellowtail flounder (YTF) annual catch limits (sub-ACLs) for the Georges Bank (GB) and Southern New England/Mid-Atlantic (SNE/MA) YTF stock areas. These modifications would only alter the months when a closure would apply and would not change the locations for these seasonal closure AMs. Framework 23 also includes a change to how scallop landings would be applied to the Northern Gulf of Maine Management (NGOM) total allowable catch (TAC) when harvested by federally NGOM-permitted vessels. Finally, Framework 23 proposes procedural changes to when and where a vessel can declare a scallop trip through vessel monitoring systems (VMS).

The Council reviewed the Framework 23 proposed rule regulations, as drafted by NMFS, and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule also includes several revisions to the regulatory text that were duplicative and unnecessary, outdated, unclear, or otherwise could be improved through revision. These were not recommended by the Council, but are proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to a fishery management plan (FMP) are carried out in accordance with the FMP. These additional measures are identified and described below.

Requirement to Use a TDD

The proposed measure would require all limited access (LA) vessels (regardless of permit category or dredge size), and limited access general category (LAGC) Individual Fishing Quota (IFQ) vessels that have a dredge with a width of 10.5 ft (3.2 m) or greater, to use a TDD in the Mid-Atlantic (west of 71 °W long.) from May through October. According to recent research indicating where sea turtle interactions most often occur, the proposed area for the TDD requirement includes the majority of overlap between the scallop fishery and expected turtle interactions in the Mid-Atlantic. The majority of takes for the scallop fishery have been loggerheads, but Kemps ridley turtles and one green sea turtle have also been observed to interact with scallop gear as well. Overall, data suggest that sea turtles are most likely to be present in areas that overlap with the scallop fishery in the Mid-Atlantic between May and October. All observed takes of sea turtles in the scallop dredge fishery have been recorded in June through October. May was included in the proposed action because, based primarily on satellite, stranding, and projected sea turtle bycatch data, sea turtles are expected to be in the Mid-Atlantic during that month as well. Several sources of satellite data recorded sea turtles in offshore waters that overlap with the scallop fishery during May, and sea surface temperature and turtle distribution information indicate that waters are warm enough to support sea turtles during that time. In addition, there have been observed sea turtle takes in both the bottom trawl and sink gillnet fisheries in May, which indicates a potential for interactions with scallop fishing during that month as well.

The TDD is designed to reduce injury and mortality of sea turtles that come into contact with scallop dredges on the sea floor by deflecting sea turtles over the dredge frame and dredge bag. The TDD includes five modifications to the standard commercial dredge frame:

(1) The cutting bar must be located in front of the depressor plate.

(2) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(3) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar.

(4) Struts must be spaced no more than 12 in (30.5 cm) apart from each other.

(5) The TDD must include a straight extension (''bump out'') connecting the outer bale bars to the dredge frame. This ''bump out'' must exceed 12 in (30.5 cm) in length.

Each element of this dredge is based on direct field research that has been conducted over several years. The combination of these modifications is designed to reduce the likelihood of a sea turtle passing under the dredge frame when the gear is on the seafloor, which could result in the sea turtle being crushed or injured. For example, the cutting bar in a standard dredge is behind and under the depressor plate, impeding a sea turtle from rising above the dredge. By moving the cutting bar in front of the dredge frame, the TDD would deflect sea turtles up and over the dredge. The angle of 45-degrees or less between the cutting bar and the top of the frame would provide a smoother transition for a sea turtle to move over the dredge, but would maintain the same overall height as a standard commercial scallop dredge. The requirement to remove the interior bale bars, with the exception of the center support bar, would create an unobstructed space for sea turtles to escape up and over the dredge, thus maximizing survival. The additional allowance for a flaring bar to be attached to the outer bale bar was identified during Council deeming of the proposed regulations at its November 2011 Council meeting. Gear operators use the flaring bar upon initial dredge deployment to position the gear correctly in the water before it descends to the sea floor. The flaring bar, a short stub (usually no longer than 12 inches (30.5 cm)) welded to the inside of the outer bale and close to the frame end, prevents the flaring line from sliding up the outer bale, assists in safely positioning the dredge once in the water. In a conventional New Bedford style dredge, operators usually run the flaring line through the space between the outer bale bar and the bale support bar closest to the outer bale bar on the side of the dredge that is closest to the vessel when the dredge is upright in the setting position. The bale support bars prevents the line from sliding up the outer bale to the gooseneck; the flaring line can only perform its function if it remains near the frame end. Because the TDD has no bale support bars that can prevent the flaring line from moving up the bale, the Council voted to include the additional allowance of a flaring bar to the outer bale bar in the TDD regulations.

Tests show that sea turtles are less likely to enter the dredge with struts spaced less than 12 inches (30.5 cm) from each other than with wider spacing of struts. Lastly, the 12 inches (30.5 cm) or greater ''bump out'' addresses the potential for sea turtles to get caught in the narrow corners of the dredge frame by offering a greater area for escape. Tests show that these modifications cumulatively benefit sea turtle conservation, while not compromising the structural integrity of the dredge design and scallop yield. These TDD components could be modified by future actions, if additional modifications are developed to further minimize impacts on sea turtles or additions are identified that would improve the effectiveness of these measures.

This action proposes that all LA vessels, regardless of permit category or dredge width, and all LAGC IFQ vessels that fish with dredge gear greater than or equal to 10.5 feet (3.2 m) in width in the applicable area and season would be required to use a TDD. Because the bump out modification has not been fully tested on small dredges, Framework 23 proposes to exempt LA scallop vessels that use dredges with a width less than 10.5 ft (3.2 m) from that requirement of the TDD. Thus, LA vessels with smaller dredges would only have to use a TDD with the first four modifications listed above. If an LA vessel fishes with two dredges at a time, both of which are less than 10.5 ft (3.2 m) in width, neither dredge is required to have the bump out extension, even though the combined width of both dredges is greater than 10.5 ft (3.2 m). The bump out exemption does not apply to LAGC vessels that use dredges less than 10.5 ft (3.2 m) wide because such vessels would be exempted from the requirement to use a TDD entirely, due to concerns of the financial burden that building a new dredge would have on these small day boats, which may have lower IFQ allocations. Based on the Framework 23 document, if an LAGC vessel fishes with two dredges, both of which are less than 10.5 ft (3.2 m) wide, neither dredge would be required to comply with the TDD requirements, even though the combined width of both dredges is greater than 10.5 ft (3.2 m). The Council's Framework 23 document estimated that out of the 179 active LAGC IFQ vessels, 85 vessels (47 percent) have a dredge width greater than or equal to 10.5 ft (3.2 m) and would be required to use the TDD. The remaining 94 LAGC IFQ vessels would be exempt from the TDD requirement entirely.

Due to the time it would take manufacturers to develop TDDs for the scallop fishery, this proposed measure would be effective 1 year after the effective date of Framework 23, if approved (*e.g.,* if Framework 23 is effective on March 1, 2012, the TDD regulations would be effective March, 1, 2013, and TDDs would be required to be used starting May 1, 2013). This delay would also give vessel operators and crew time to fish with the new dredge design before the TDD season begins.

Adjustments to the AMs Related to the Scallop Fishery's YTF Sub-ACLs

1. Revised AM Closure Schedules

The proposed action would revise the YTF seasonal closure AM schedules in both GB and SNE/MA such that the closures would be during months with the highest YTF catch rates, rather than being in place for consecutive months beginning at the start of the fishing year (FY). The proposed AM adjustments would still only apply to LA vessels. Table 1 compares the current SNE/MA AM schedule with that proposed under Framework 23. The major difference for SNE/MA is that the proposed closure schedule would occur in the early spring and winter first, rather than starting with the spring and summer, as under the current AM for that stock area. AMs would occur in the same FY, with the winter closures occurring at the end of the FY. For example, if the scallop fishery exceeds its FY 2011 SNE/MA sub-ACL by 7 percent, the proposed AM closure for FY 2012 would occur in March, April, and May of 2012, and February 2013. The area would not close from June 2012 through January 2013.

TABLE 1—COMPARISON OF CURRENT SNE/MA AM SCHEDULE AND PROPOSED SCHEDULE UNDER FRAMEWORK 23

Current AM schedule		Proposed	
Percent overage	LA closure	Percent overage	LA closure
1–2	March.	2 or less	March–April.
3–5	March–April.	2.1–3	March–April, and February.
6–8	March–May.	3.1–7	March–May, and February.
9–12	March–June.	7.1–9	March–May, and January, February.
13–14	March–July.	9.1–12	Marcy–May, and December–February.
15	March–August.	12.1–15	March–June, and December–February.
16	March–September.	15.1–16	March–June, and November–February.
17	March–October.	16.1–18	March–July, and November–February.
18	March–November.	18.1–19	March–August, and October–February.
19	March–January.	19.1 or more	March–February.
20 and higher	March–February.		

Tables 2 and 3 compare the current GB AM schedules with those proposed under framework 23. The GB AM schedule is still complex because the extent of the closure period depends on whether or not Closed Area II Scallop Access Area (CAII) is open in the FY following a GB sub-ACL overage. In general, the major difference is that the GB AM closures begin in the fall, when YT YTF catch rates are highest, followed by the winter months. The proposed GB schedule would begin the closures at a time of year when scallop meat weights are lowest, thus impacts on the scallop resource and fishery should be lower compared to closing the area beginning in March through the spring and summer when scallop meat weights are larger. Similar to the SNE/MA proposed schedule, all closures would occur in the same FY. For example, if the FY 2013 sub-ACL was exceeded by 3.5 percent, the resulting FY 2014 a.m. (assuming CAII is closed that year) would occur in March, August, September, October, November, and December of 2014, and in January and February of 2015. The area would be open from April through July of 2014 in FY 2014. However, if CAII was open in FY 2014, the closure would extend from September through November in FY 2014.

TABLE 2—COMPARISON OF CURRENT GB AM SCHEDULE AND PROPOSED SCHEDULE UNDER FRAMEWORK 23 FOR YEARS WHEN CAII IS OPEN

Current AM schedule		Proposed	
Percent overage	LA closure.	Percent overage	LA closure.
1	March–May.	3 or less	October–November.
2–24	March–June.	3.1–14	September–November.
25–38	March–July.	14.1–16	September–January.
39–57	March–August.	16.1–39	August–January.
58–63	March–September.	39.1–56	July–January.
64–65	March–October.	Greater than 56	March–February.
66–68	March–November.		
69	March–December.		
70 and higher	March–February.		

TABLE 3—COMPARISON OF CURRENT GB AM SCHEDULE AND PROPOSED SCHEDULE UNDER FRAMEWORK 23 FOR YEARS WHEN CAII IS CLOSED

Current AM schedule		Proposed	
Overage	LA closure	Overage	LA closure
1	March–May.	1.9 or less	September–November.
2	March–June.	2.0–2.9	August–January.
3	March–July.	3.0–3.9	March, and August–February.
4–5	March–August.	4.0–4.9	March, and July–February.
6 and higher	March–February.	5.0–5.9	March–May, and July–February.
		6.0 or greater	March–February.

2. Re-Evaluating AM Determination Mid-Year

This action proposes a modification to the YTF AM regulations that would allow NMFS to re-examine the implementation of an AM once the FY has ended and all data are available. After the end of a given FY, if available end-of-year data results in different projected YTF catch levels than those that determined the initial announcement of any AM triggering (*e.g.,* the extent of the estimated overage was higher or lower than originally estimated, or that an AM should or should not have been triggered), the AM determination would be adjusted to reflect the best information available. Currently the only sub-ACLs allocated to the scallop fishery are for SNE/MA YTF and GB YTF, but the Council's intent is for this flexibility to apply to any species' sub-ACL, should they be implemented in the scallop fishery in the future.

On or before January 15 of each year, the Regional Administrator determines if the bycatch sub-ACLs are projected to be exceeded for that FY. For example, based on the current process, the projection of 2012 YTF catch in the scallop fishery will be available by January 15, 2013, using all available data from that FY to date (*i.e.* March 1, 2012, through December 2012). Projections must be made for the remaining months of the FY using data from the previous year; for example, January and February values for 2013 must be projected using data from January and February 2012 in order to calculate a total estimate of YTF catch for FY2012. Several months after the FY is complete, a final estimate of YTF catch in the scallop fishery will be completed when all observer and scallop catch data are available. The timing of the final YTF year-end estimate is ultimately based on the availability of the observer data for the previous FY. For example, this year the January and February 2011 data were not available until September 2011, and the final estimate was provided shortly thereafter. Ideally, observer data in open areas will be available 90 days after the completion of an observed trip. As such, the earliest month that a full FY's observer data would be available would be June, roughly 3 months after the last observed trip during the previous FY. If the final estimate of YTF catch for Year 1, available several months after the start of the FY in Year 2, differs from the original estimate provided in January of Year 1, this action would give the Regional Administrator the authority to revise the AM for the YTF sub-ACLs based on the final estimates.

Changing an AM mid-year would be complicated by the fact that some of the AM closure schedules begin during the first few months of the FY and may have passed before final estimates of YTF catch are available. For example, if the preliminary estimate of FY 2012 SNE/MA YTF catch in January 2013 is estimated to be 5 percent over the sub-ACL, AMs will trigger and the limited access fishery will be prohibited from fishing in specific areas in SNE/MA for March through May 2013, and February 2014, based on the proposed YTF closure schedule in this action. If, in June 2013, the final estimate of SNE/MA YTF catch concludes that the scallop fishery caught only 1.5 percent over the sub-ACL, the closure should have been a 2-month closure in March and April 2013. Since the area was already closed through May, the solution would be to open the area for the last month of the AM closure (*i.e.,* February 2013) because the final overage estimate was less than the original projection. If the final estimate is higher than the original projection, this action would also give the Regional Administrator the authority to close the area for longer than the original schedule. Due to the timing of the current AMs, there may not always be an opportunity to adjust AMs if the seasonal closure has already occurred during that FY, but the intent is to be more flexible to incorporate updated information when possible. This action does not give the Regional Administrator authority to impose AMs outside the scope of approved measures.

Modifications to the NGOM Management Program

To address some concerns regarding the management of the NGOM, Framework 23 proposes to allow federally permitted NGOM vessels to declare a state waters-only trip within the NGOM and not have those landings applied to the Federal NGOM TAC. If the vessel decides to fish exclusively in state waters within the NGOM area (*i.e.,* MA, NH, and ME state waters), on a trip-by-trip basis, the scallop catch from state water only trips would not be applied against the Federal NGOM TAC. On a trip-by-trip basis, each NGOM vessel can decide which area it is going to fish in (*i.e.,* Federal or state NGOM trip). A NGOM vessel could still fish in both state and Federal waters on a single trip, but that vessel would need to declare a Federal trip before leaving, and the entire catch from that trip would be applied to the Federal TAC, even if some of it was harvested in state waters.

Currently, NGOM and IFQ vessels that declare NGOM trips must have all landings applied to the Federal TAC, regardless of whether or not they were fishing in state or Federal waters of the NGOM. Although this action would make adjustments for NGOM-permitted vessels, the Council did not include a similar provision for IFQ vessels that fish in the NGOM. As a result, if this measure is approved for NGOM-permitted vessels, IFQ vessels would continue to have all of their landings applied to the NGOM TAC, as well as their IFQ allocations, when fishing in Federal or state waters within the NGOM.

Once the Federal TAC is closed, all federally permitted scallop vessels (*i.e.,* LA, IFQ, and NGOM) are prohibited from fishing in any part of the NGOM until the next FY, unless they permanently relinquish their Federal NGOM permits and fish exclusively in state waters. Framework 23 did not change this provision. NGOM vessels would no longer be able to declare state-only NGOM trips after the effective date of the Federal NGOM closure.

To date, the annual NGOM TAC of 70,000 lb (31.75 mt) has not been fully harvested in any FY, and most NGOM landings come from vessels fishing in state waters. Framework 23 does not change the NGOM hard TAC of 70,000 lb (31.75 mt). The Council will reevaluate the NGOM TAC in the next framework adjustment that would set the specifications for FYs 2013 and 2014.

Although this action would apply to all NGOM permitted vessels, the ability for such vessels to fish in state waters within the NGOM (*i.e.,* ME, NH, MA state waters) depends on whether or not such vessels have the necessary state permits to do so. In addition, NGOM permit holders would still have to abide by the more restrictive possession limit of either their state or Federal NGOM scallop permit. This action does not exempt vessels from their Federal possession limit when fishing in state waters of the NGOM. To be exempt from Federal scallop possession limits, a state would have to apply for such exemption through the scallop state waters exemption program.

Adjustments to VMS Trip Notifications for Scallop Vessels

This action proposes a measure that would change the current VMS trip declaration requirement for scallop vessels only, allowing them to declare a scallop trip anywhere shoreward of the VMS Demarcation Line, rather than from a designated port. Under current regulations, vessels that are involved in

VMS fisheries (*e.g.,* vessels with scallop, monkfish, multispecies, surfclam/quahog, and herring permits) must make their VMS trip declarations from inside a port. This proposed measure would allow scallop vessels the authority to declare their trips outside of a designated port, prior to crossing the VMS Demarcation Line and fishing, but would not change the trip declaration requirements for any other fishery. The Council's rationale behind this alternative is to improve safety by eliminating the requirement that sometimes results in scallop vessels steaming into unfamiliar ports to declare their scallop trips before being able to fish. The Council may choose to address this issue in other VMS fisheries in future actions for those FMPs, and NMFS recommends that the Council discuss this further for other FMPs in order to be consistent, where possible, with addressing safety issues across all fisheries requiring VMS.

The Council has proposed this action for LA, LAGC IFQ, and LAGC NGOM vessels, although many of these scallop-permitted vessels would likely continue to declare from port, regardless of the option to do otherwise. The only vessels that would likely take advantage of this increased flexibility in trip notifications would be limited access vessels declaring scallop DAS trips for fishing grounds that are far from their home port. These trips are what most commonly require a vessel to go into an unfamiliar port to declare into the DAS program because DAS begin to accrue once a vessel crosses to the seaward side of the VMS Demarcation Line and it is not possible, safe, or practicable to remain inside the VMS Demarcation Line throughout the steam closer to the fishing grounds. Because the current estimate of landings-per-unit-effort (LPUE) is currently calculated based on DAS charged, this action would not change how LPUE is estimated, and increased catch is not expected.

Other Clarifications and Modifications

This proposed rule includes several revisions to the regulatory text to address text that is duplicative and unnecessary, outdated, unclear, or otherwise could be improved through revision. For example, there are terms and cross references in the current regulations that are now inaccurate due to the regulatory adjustments made through Amendment 15 rulemaking (*i.e.,* references to ''TAC'' in some cases should now refer to ''annual catch limits (ACLs)''). NMFS proposes to revise the regulations to clarify the terminology intended by Amendment 15 to the FMP (76 FR 43746, July 21, 2011) and to provide more ease in locating these regulations by updating cross references.

This action also proposes revisions that would clarify the intent of certain regulations. For example, the VMS regulations are clarified in § 648.10 to more clearly indicate the reporting requirements for various aspects of the scallop fishery (*e.g.,* pre-landing notification requirements and state water exemption trip declaration requirements), to reflect the instructions currently available through on-board VMS units. Additionally, there are currently prohibitions in § 648.14 that imply that NGOM and incidental scallop vessels may have more than their allowable possession limit if they are assigned industry-funded observers during scallop trips. This text is unnecessary and confusing because NGOM and incidental scallop vessels are not part of the scallop industry-funded observer program and would not be assigned such observers to begin with. As such, NMFS proposes to remove these references from the regulations. NMFS also proposes to clarify how LAGC vessels are charged fees by observer providers in § 648.14, since such an explanation exists for LA vessels. A restriction on transferring IFQ in § 648.53(h)(5)(iii) would be clarified to allow vessels to complete multiple IFQ transfers during the course of a FY, as long as the transfers are for a portion of the IFQ and do not exceed the total yearly allocation. NMFS received some applications for permanent transfers of 100 percent of the vessel's IFQ in the same FY that IFQ was already leased from the same vessel. While this remains prohibited because transfers of allocation percentage is effectively a transfer of pounds, the restriction was not intended to prevent someone from completing multiple transfers of portions of their IFQ. As a result, the regulations would be clarified to indicate that such multiple IFQ transfers are possible during a single FY.

NMFS also proposes to remove outdated text regarding LAGC quarterly TACs, which ceased to exist after the IFQ program was implemented in FY 2010, and references to the CAII rotational management schedule, which was intended to be removed in the rulemaking for Framework 22, along with the schedules for the other GB access areas. NMFS proposes these changes consistent with section 305(d) of the Magnuson-Stevens Act.

NMFS also proposes pursuant to its authority under section 305(d) of the Magnuson-Stevens Act, a change to the coordinates of the Closed Area I (CAI) access area and the CAI North and South essential fish habitat (EFH) areas. These coordinates were initially developed through Framework 16 to the FMP (69 FR 63460, November 2, 2004) and recently implemented through Amendment 15 for FY 2011. During the course of FY 2011, vessels fishing in the CAI access area discovered that the new coordinates for the access area created a western boundary that is ¼ of a mile (0.4 km) to the east of the CAI western boundary, described in § 648.81 (a)(1) as the line extending between the points CI1 (41°30′ N lat.; 69°23′ W long.) and CI2 (40°45′ N lat.; 68°45′ W long.). However, the access area was designed to cover the whole middle portion of CAI and extend out to the CAI western boundary. In reviewing the coordinates, NMFS found that the western coordinates for the CAI access area were established using imprecise matching of coordinates to the CAI western boundary line. NMFS proposes to update these coordinates in the regulations to extend the western boundary of CAI. To avoid any confusion on intent, in the case that various mapping software used by the industry or NOAA's Office of Law Enforcement provide slightly different results, NMFS also clarifies that the western boundary of the CAI access area is the same as the western boundary of CAI that lies between the two western-most coordinates of the CAI access area. Since these two coordinates also are included in the coordinates of the CAI North and CAI South EFH closed areas, NMFS proposes the same changes to those EFH area coordinates as well.

Finally, although this does not affect the current regulations, NMFS wants to clarify an error in table 3 of the final rule to Framework 22 (76 FR 43774; July 21, 2011). The scallop sub-ACL values of YTF in GB and SNE/MA were mistakenly reversed in this table and should have stated that the FY 2011 sub-ACLs in GB and SNE/MA are 200.8 mt and 82 mt, respectively, and the FY 2012 sub-ACLs in GB and SNE/MA are 307.5 mt and 127 mt, respectively. The regulations already indicate the correct values for these FYs so this action proposes no changes.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of Framework 23 analyses, its draft IRFA, and the preamble to this proposed rule. A summary of the analysis follows.

Statement of Objective and Need

This action proposes four specific management measures applicable to the scallop fishery for FY 2012 and beyond. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 23 and the preamble of this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The RFA defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to $4 million annually. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to the dealer's data for FYs 1994 to 2010. In FY 2010, total average revenue per full-time scallop vessel was just over $1.2 million, and total average scallop revenue per LAGC vessel was just under $120,000. The IRFA for this and prior Scallop FMP actions do not consider individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small versus large entities under the RFA is still unclear and will be addressed in future analyses.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of ''small entity''), not the difference between segments of small entities. Because Framework 23 estimates that no individual vessel grosses more than $3 million in any FY from 1994 through 2010, all permit holders in the sea scallop fishery were considered small business entities for the purpose of the IRFA analysis. Therefore, it is not necessary to perform the disproportionality assessment to compare the effects of the regulatory actions on small versus large entities. A summary of the economic impacts relative to the profitability criterion is provided below under ''Economic Impacts of Proposed Measures and Alternatives.'' The proposed regulations would affect vessels with LA and LAGC scallop permits. The Framework 23 document provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time (*i.e.,* vessels that receive annual scallop allocations that are 40 percent of what is allocated to full-time vessels, based on the permit eligibility criteria established through Amendment 4 to the Scallop FMP) LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits (*i.e.,* vessels that receive annual scallop allocations that are 8.33 percent of what is allocated to full-time vessels, based on the permit eligibility criteria established through Amendment 4 to the Scallop FMP). In FY 2010, the first year of the LAGC IFQ program, 333 active IFQ (including IFQ permits issued to vessels with a LA scallop permit), 122 NGOM, and 285 incidental catch permits were issued. Since all scallop permits are limited access, vessel owners would only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but the decline would likely be less than 10 permits per year.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

Economic Impacts of Proposed Measures and Alternatives

Summary of the Aggregate Economic Impacts

A detailed analysis of the economic impacts of the proposed actions can be found in Section 5.4 of the Framework 23 document. All economic values are presented in terms of 2010 dollars.

In summary, in the short-term, the aggregate economic impacts of the proposed measures on small businesses could range from a low negative to low positive, depending on the extent that positive impacts of the measures outweigh the costs of TDD requirement. These measures are not expected to have significant impacts on the viability of the vessels, especially in a highly profitable industry like the scallop fishery. Over the long term, Framework 23 is expected to have positive economic impacts on the participants of the scallop fishery and related businesses. The proposed action is not expected to have a considerable adverse impact on the net revenues and profits of the majority of the scallop vessels in the short and the medium term.

Economic Impacts of the Proposed Measures and Alternatives

1. Requirement To Use a TDD

The proposed action would require the use of a TDD on scallop vessels from May 1 through October 31 in waters west of 71° W long. This requirement would be applicable to all LA vessels (regardless of permit category or dredge size) and to those LAGC vessels that fish with a dredge(s) that has a width of 10.5 ft (3.2 m) or greater. The Council estimates that the cost of a new dredge plus the cost of freight would be about $5,000 for a standard dredge, and $2,500 to $3,000 for smaller dredges. The cost of buying a dredge and freight cost would be a very small proportion (1 to 2 percent) of the average scallop revenues per LA vessel, even when the maximum estimate of costs was used. For an average LAGC vessel that uses only one dredge, the cost could be small, as well, amounting to about 2 percent of scallop revenue. Alternatively, for some vessels that use two dredges, the cost of buying and installing the dredges could be higher. Some of these vessels could choose to fish during times and areas for which a TDD is not required. The Council considered two other alternatives regarding which vessels would be required to use a TDD: One would have required the TDD for all LA vessels and no LAGC vessels, and thus would not have any adverse impacts on the LAGC IFQ vessels. The other non-selected alternative would have required the use of TDD for all vessels, including all LA and LAGC IFQ vessels, and would have had negative impacts on some LAGC IFQ vessels that use smaller dredges. There would be some short-term costs associated with buying and installing TDDs under all alternatives, but these costs are not large and are not expected to have adverse impacts on the financial viability of small business entities. Indirect positive economic benefits over the medium to long term are expected to outweigh these costs under the proposed alternative, particularly

because the proposed alternative exempts LAGC vessels that use small dredges.

The option to have the TDD be required west of 71° W long. covers the majority of areas the scallop fishery and expected turtle interactions in the Mid-Atlantic overlap and excludes GB, where interactions with turtles are very rare. This proposed option would minimize the economic impacts for scallop vessels that fish solely in GB east of 71° W long. and those that fish in the Gulf of Maine. The proposed action would exempt LAGC vessels with dredges less than 10.5 ft (3.2 m) in width from TDD requirement, mitigating some of these negative impacts on the smaller boats fishing in those areas. The only other location option related to the TDD requirement was the area used to set effort limitations in Framework 22, which is the greatest area of overlap in the distribution of scallop fishing gear and sea turtles, with the exception of waters due south of Rhode Island. Thus, the proposed location option would exclude those areas that LAGC vessels are active, and would minimize the negative economic impacts of TDD requirement on those vessels. Exemption of LAGC vessels that use a dredge less than 10.5 ft (3.2 m) wide would mitigate the impacts of the proposed boundary option and minimize the differences between the impacts of the two location options considered.

Based on research indicating that using a TDD is not expected to have negative impacts on scallop landings, the season for the TDD requirement would probably have marginal economic impacts on the fishery overall. LA vessels are unlikely to change dredges during the year, once they are required to operate with a TDD during a part of the year. Therefore, the relative difference between the proposed season (May 1 through October 31) and other options (*i.e.,* May 1 through November 1, or June 1 through October 31) is likely to have only negligible impacts on these vessels. The difference between the season options could impact LAGC IFQ vessels relatively more than the LA vessels, but the exemption of LAGC IFQ vessels that use dredges less than 10.5 ft (3.2 m) wide would prevent the proposed measure from negatively affecting smaller vessels. The increase in costs could also be minimized to some degree by leasing of quota to LAGC IFQ vessels that fish in other areas. The shortest season considered by the Council (June through October) would have had the least impacts, and the longest considered season option (May through November) would have had the largest impact on vessels and would have impacted a larger proportion of landings. The proposed season option would maximize the benefits of reducing the impacts on turtles, while not impacting a large proportion of scallop landings.

The proposed implementation date of the TDD requirements, 1 year after Framework 23, if approved, is implemented (*i.e.,* May 1, 2013, if Framework 23 is implemented on March 1, 2012), would allow manufacturers enough time to build dredges and give vessels time to fish with the new dredge before the TDD requirement would begin. A shorter period for implementation, such as the options for 90 days after Framework 23's implementation, would not be feasible because so many dredges need to be built, and 180 days after implementation (*i.e.,* September 1, 2012, in this example) would not benefit sea turtles very much for that FY because TDDs would only be required for 2 months. Overall, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

2. Adjustments to the AMs Related to the Scallop Fishery's YTF Sub-ACLs

The proposed action would revise the YTF seasonal closure AM schedules in both GB and SNE/MA such that the closures would be during months with the highest YTF catch rates when an overage occurs, rather than beginning at the start of the FY and running for consecutive months under No Action. Overall, these modifications are not expected to have large impacts on scallop vessels given that only a small percentage of LA scallop landings took place in those areas. Because the revised closure schedules include the winter months, shifting effort to seasons when the meat weights are larger will benefit the scallop resource, increase landings and overall economic benefits for the scallop vessels in the medium to long term. There are no other alternatives that would generate higher economic benefits for the participants of the scallop fishery.

The action to re-evaluate the AM determination mid-year, thus allowing for more flexibility in determining the appropriate AM seasonal closure length, would be positive for LA scallop vessels compared to No Action. Although adjusting the FY to which the AMs would apply could result in higher benefits to the scallop fishery by making this need for flexibility necessary (*e.g.,* if YTF AMs were triggered the year after the overage occurred), these measures were not considered by the Council and can be re-examined in a future framework action. Thus, given the two alternatives considered by the Council, the proposed action would generate the higher economic benefits for the participants of the scallop fishery.

3. Modifications to the NGOM Management Program

The proposed action would allow all vessels with a Federal NGOM permit to fish exclusively in state waters, on a trip-by-trip basis, without the scallop catch from exclusive state water trips counted against the Federal NGOM TAC. This change is not expected to have any significant impacts under the current resource conditions on landings and revenues from this area. However, if the scallop resource abundance and landings within the State of Maine's waters increase in the future, the proposed action would prevent a reduction in landings from federally permitted NGOM vessels fishing in the NGOM. This action could potentially have positive economic impacts on the vessels that fish both in the state and Federal waters. In addition, this action will keep the Federal NGOM hard-TAC at 70,000 lb (31.74 mt), which would have a positive economic impact on the participants of the NGOM scallop fishery. The only other TAC alternative would have lowered the Federal TAC to 31,000 lb (14.06 mt) to prevent excess fishing in the NGOM above potentially sustainable levels. Although the proposed TAC alternative, if continued over the long-term, could result in reduced landings and revenues for the NGOM fishery if effort in Federal waters increases substantially, given the present lack of effort in the Federal portion of the NGOM, it is unlikely that keeping the TAC at the proposed level would cause near-term problems. In addition, the Council will re-evaluate the NGOM TAC in the next framework adjustment that will set the specifications for FYs 2013 and 2014. Thus, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

4. Change to When a Scallop Trip Can Be Declared Through VMS

The proposed action would allow a vessel to declare into the scallop fishery west of the VMS Demarcation Line rather than from a designated port, enabling the vessel to reduce steaming time to scallop fishing grounds and decease its fuel and oil costs. Therefore, the proposed modification would have positive economic impacts on scallop vessels and small business entities. The only other alternative considered by the

Council was No Action and, as such, there are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 20, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, paragraphs (e)(5)(i), (e)(5)(ii), (f) introductory text, (f)(1), (f)(2), (f)(3), (f)(4)(ii), (f)(5)(i)(A), (g)(1), (h)(1) introductory text, and (h)(8) are revised, and (g)(3)(iii) is added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owner/operators.

* * * * *

(e) * * *

(5) * * *

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip, unless the vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

* * * * *

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a ''declared out of fishery'' VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a ''declared out of fishery'' trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (*i.e.,* agrees that the vessel will not possess, retain, or land scallops while declared out of the fishery) by notifying the Regional Administrator through the VMS. If the vessel has not fished for any other fish (*i.e.,* steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20′ N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the IFQ scallop vessel has not fished for any other fish (*i.e.,* steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(2) *NGOM scallop fishery.* A NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the NGOM management area TAC, specified in § 648.62(b)(1), unless:

(i) Prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the NGOM scallop vessel has not fished for any other fish (*i.e.,* steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(ii) The vessel has specifically declared into the state-only NGOM fishery, thus is fishing exclusively in the state waters portion of the NGOM management area.

(3) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery.

* * * * *

(4) * * *

(ii) Scallop Pre-Landing Notification Form for IFQ and NGOM vessels. Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be

submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and, if scallops will be landed, must include the vessel's captain/operator name, the amount of scallop meats and/or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, the VTR serial number recorded from that trip's VTR, and whether any scallops were caught in the NGOM. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds. If no scallops will be landed, the form only requires the vessel's captain/operator name, the VTR serial number recorded from that trip's VTR, and indication that no scallops will be landed. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report.

(5) * * *

(i) * * *

(A) Notify the Regional Administrator, via their VMS, prior to each trip of the vessel under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

* * * * *

(g) * * *

(1) Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (e)(1)(iv) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b) of this section, unless exempted under paragraph (f) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip.

* * * * *

(3) * * *

(iii) The vessel carries onboard a valid limited access or LAGC scallop permit, has declared out of the fishery in port, and is steaming to another location, pursuant to paragraph (f) of this section.

* * * * *

(h) * * *

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

* * * * *

(8) Regardless of whether a vessel's owner or authorized representative provides correct notification as required by paragraphs (e) through (h) of this section, a vessel meeting any of the following descriptions shall be deemed to be in its respective fishery's DAS or Scallop Access Area Program for purpose of counting DAS or scallop access area trips/pounds, and, shall be charged DAS from the time of sailing to landing:

(i) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops;

(ii) A vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless otherwise specified in § 648.60(d)(2);

(iii) Any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops;

(iv) Any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops;

(v) Any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and

(vi) Any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c).

* * * * *

3. In § 648.11, paragraphs (g)(1) and (g)(5)(i)(A) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and LAGC IFQ vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

* * * * *

(5) * * *

(i) * * *

(A) *Access Area trips.*—(*1*) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full ''days.''

(*2*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(*3*) For purposes of determining the daily rate in a specific Sea Scallop

Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

* * * * *

4. In § 648.14,

a. Paragraphs (i)(1)(iii)(A)(*1*)(*iv*), (i)(1)(iv)(C), (i)(2)(ii)(B)(*3*), (i)(2)(iv)(A), (i)(3)(iii)(C), (i)(3)(iv)(B), (i)(3)(v)(B), (i)(4)(i)(C), (i)(4)(i)(D), (i)(4)(i)(E), (i)(4)(ii)(A), (i)(4)(iii)(A), (i)(5)(i), and (i)(5)(iii) are revised;

b. Paragraphs (i)(1)(iv)(E), (i)(2)(v)(C), (i)(2)(v)(D), (i)(3)(iv)(C), (i)(3)(iv)(D) and (i)(5)(iv) are added; and

c. Paragraphs (i)(1)(iii)(A)(*1*)(*v*) and (i)(1)(iii)(A)(*2*)(*v*) are removed and reserved.

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) * * *

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has been harvested.

* * * * *

(iv) * * *

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

* * * * *

(E) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(*3*) Fail to comply with the turtle deflector dredge vessel gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11).

* * * * *

(iv) * * *

(A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and is lawfully fishing in a LAGC scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

* * * * *

(v) * * *

(C) If a limited access scallop vessel declares a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in§ 648.23(b), until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

* * * * *

(3) * * *

(iii) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

* * * * *

(iv) * * *

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(b).

(C) If an LAGC scallop vessel declares a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(v) * * *

(B) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of a notification published in the **Federal Register** stating that the number of LAGC trips have been taken, as specified in § 648.60.

* * * * *

(4) * * *

(i) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(E) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Access Area Program as specified in § 648.60.

* * * * *

(ii) * * *

(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(5)(ii) and (iii).

* * * * *

(iii) * * *

(A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ACL.

* * * * *

(5) * * *

(i) Declare into, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

* * * * *

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

* * * * *

5. In § 648.51, paragraph (b)(1) is revised and paragraph (b)(5) is added to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section and in § 648.60(g)(2). However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, *i.e.,* the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

* * * * *

(5) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—

(i) *Requirement to use chain mats.* See § 223.206(d)(11) for chain mat requirements for scallop dredges.

(ii) *Requirement to use a turtle deflector dredge (TDD) frame*—(A) From May 1 through October 31, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(*1*) through (b)(5)(ii)(A)(5) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(*1*) The cutting bar must be located in front of the depressor plate.

(*2*) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(*3*) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar;

(*4*) Struts must be spaced 12 in (30.5 cm) apart or less from each other.

(*5*) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (''bump out'') connecting the outer bale bars to the dredge frame. This ''bump out'' must exceed 12 in (30.5 cm) in length.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD except that such a vessel is exempt from the ''bump out'' requirement specified in paragraph (b)(5)(ii)(A)(*5*) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m) because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) *TDD-related definitions.*—(*1*) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(*2*) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(*3*) The top of the dredge frame refers to the posterior point of the depressor plate.

(*4*) The struts are the metal bars connecting the cutting bar and the depressor plate.

* * * * *

6. In § 648.53, paragraphs (b)(4)(vii), (h)(2) introductory text, (h)(2)(i), (h)(2)(ii)(C), (h)(2)(iv), (h)(3)(i)(A), and (h)(5)(iii) are revised to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(b) * * *

(4) * * *

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip would receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) of this section, but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels would receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimate open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS − 4.1 DAS = 3.7 DAS).

* * * * *

(h) * * *

(2) *Calculation of IFQ.* The ACL allocated to IFQ scallop vessels, and the ACL allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(4)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the ACL allocated to the IFQ scallop fishery, or limited

access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(4)(i) and (ii) of this section.

(ii) * * *

(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(*1*) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(*2*) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in paragraph (a)(4) of this section and the method of calculating the IFQ provided in paragraph (h) of this section.

Years active	Index factor
1	0.75
2	0.875
3	1.0
4	1.125
5	1.25

* * * * *

(*iv*) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with an ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt)).

* * * * *

(3) * * *

(i) * * *

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(ii) of this section.

* * * * *

(5) * * *

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. A vessel's total IFQ allocation can be transferred only once during a given fishing year. For example, a vessel owner can complete several transfers of portions of his/her vessel's IFQ during the fishing year, but cannot complete a temporary transfer of a portion of its IFQ then request to either temporarily or permanently transfer the entire IFQ in the same fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

* * * * *

7. In § 648.55, paragraphs (c)(1) and (c)(5) are revised to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(c) * * *

(1) *OFL.* OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F, above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as specified in paragraphs (c)(2) through (5) of this section.

* * * * *

(5) *Sub-ACLs for the limited access and LAGC fleets.* The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in § 648.53(b)(4)(iii).

* * * * *

8. In § 648.56, paragraph (d) is revised to read as follows:

§ 648.56 Scallop research.

* * * * *

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (a)(4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process as identified in § 648.60(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

* * * * *

9. In § 648.59, paragraph (b)(3) and the heading to paragraph (c) are revised, to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude
CAIA1	41°26′ N.	68°30′ W.
CAIA2	40°58′ N.	68°30′ W.
CAIA3	40°54.95′ N.	68°53.40′ W.
CAIA4	41°04.30′ N.	69°01.29′ W.
CAIA1	41°26′ N.	68°30′ W.

* * * * *

(c) *Closed Area II Access Area.* * * *

* * * * *

10. In § 648.60, the section heading is revised and paragraph (g)(2) is revised to read as follows:

§ 648.60 Sea scallop access area program requirements.

* * * * *

(g) * * *

(2) *Limited Access General Category Gear Restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, and Nantucket Lightship Access Areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Access Areas described in § 648.59 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

* * * * *

11. In § 648.61, paragraph (a)(4) is revised to read as follows:

§ 648.61 EFH Closed Areas.

(a) * * *

(4) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (a) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I–North and Closed Area I–South, which are the areas bounded by straight lines connecting the following points in the order stated, and so that the line connecting points CI1 and CIH1, and CI2 and CIH3 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between those points:

Point	N. lat.	W. long.
Closed Area I—North Habitat Closure Area		
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04.30′ N.	69°01.29′ W.
CI1	41°30′	69°23′
Closed Area I—South Habitat Closure Area		
CIH3	40°54.95′ N.	68°53.40′ W.
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°54.95′ N.	68°53.40′ W.

* * * * *

12. In § 648.62, paragraphs (a), (b) introductory text, (b)(2), and (c) are revised to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) The NGOM scallop management area is the area north of 42°20′ N. lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips would not be deducted from the Federal NGOM quota.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(4) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as specified in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL specified in § 648.53(a).

* * * * *

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

* * * * *

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel can declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

* * * * *

13. In § 648.63, paragraphs (b)(2)(i) and (b)(2)(iii) are revised to read as follows:

§ 648.63 General category sectors and harvest cooperatives.

* * * * *

(b) * * *

(2) * * *

(i) The sector allocation shall be equal to a percentage share of the ACL allocation for IFQ scallop vessels specified in § 648.53(a), similar to a IFQ scallop vessel's IFQ as specified in § 648.53(h). The sector's percentage share of the IFQ scallop fishery ACL

catch shall not change, but the amount of allocation based on the percentage share will change based on the ACL specified in § 648.53(a).

* * * * *

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels specified in § 648.53(a)(4)(i) or (ii).

* * * * *

14. In § 648.64, paragraphs (b)(2)(i), (b)(2)(ii), (c)(2), and (e) are revised, and paragraph (f) is removed and reserved to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

* * * * *

(b) * * *

(2) * * *

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
3 or less	October through November.
3.1–14	September through November.
14.1–16	September through January.
16.1–39	August through January.
39.1–56	July through January.
Greater than 56.	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1.9 or less	September through November.
2.0–2.9	August through January.
3.0–3.9	March and August through February.
4.0–4.9	March and July through February.
5.0–5.9	March through May and July through February.
6.0 or greater	March through February.

* * * * *

(c) * * *

(2) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less	March through April.
2.1–3	March through April, and February.
3.1–7	March through May, and February.
7.1–9	March through May and January through February.
9.1–12	March through May and December through February.
12.1–15	March through June and December through February.
15.1–16	March through June and November through February.
16.1–18	March through July and November through February.
18.1–19	March through August and October through February.
19.1 or more	March through February.

* * * * *

(e) *Process for implementing the AM.* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure. The initial projected estimate shall be updated after the end of each scallop fishing year once complete fishing year information becomes available. An AM implemented at the start of the fishing year will be reevaluated and adjusted proportionately, if necessary, once updated information is obtained. For example, if in January 2013, the preliminary estimate of 2012 Southern New England/Mid-Atlantic yellowtail flounder catch is estimated to be 5 percent over the 2012 sub-ACL, the Regional Administrator shall implement AMs for the 2013 scallop fishing year in that stock area. Based on the schedule in paragraph (c)(2) of this section, limited access vessels would be prohibited from fishing in the area specified in paragraph (c)(1) of this section for 4 months (*i.e.,* March through May 2013, and February 2014). After the 2012 fishing year is completed, if the final estimate of Southern New England/Mid-Atlantic yellowtail flounder catch indicates the scallop fishery caught 1.5 percent of the sub-ACL, rather than 5 percent, the Regional Administrator, in accordance with the APA, would adjust the AM for the 2014 fishing year based on the overage schedule in paragraph (c)(2) of this section. As a result, limited access vessels would be subject to a 2-month seasonal closure in March and April 2013. In this example, due to the availability of final fishing year data, it is possible that the original AM closure was already in effect during the month of May. However, the unnecessary AM closure in February 2014 would be avoided. If the Regional Administrator determines that a final estimate is higher than the original projection, the Regional Administrator, if necessary, shall make adjustments to the current fishing year's respective AM closure schedules in accordance with the overage schedule in paragraphs (b)(2)(i), (b)(2)(ii), and (c)(2) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110826540–1774–01]

RIN 0648–XA674

Western Pacific Fisheries; 2012 Annual Catch Limits and Accountability Measures

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes annual catch limits for western Pacific bottomfish, crustacean, precious coral, and coral reef ecosystem fisheries, and accountability measures to correct or mitigate any overages of catch limits. The proposed catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: Comments must be received by January 18, 2012.

ADDRESSES: Comments on this proposed specification, identified by NOAA–NMFS–2011–0269, may be sent to either of the following addresses:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov;* or

• *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

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

Three environmental assessments (EA) were prepared that describe the impact on the human environment that would result from this proposed action. Based on the EAs, NMFS prepared a finding of no significant impact (FONSI) for the proposed action. Copies of the EAs and FONSI are available from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, (808) 944–2108.

SUPPLEMENTARY INFORMATION: Fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands are managed under four archipelagic-based fishery ecosystem plans (FEP), including the American Samoa FEP, the Hawaii FEP, the Pacific Remote Islands FEP, and the Mariana FEP (covering Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), and one FEP for pelagic fisheries. The FEPs were developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Each FEP contains a process for the Council and NMFS to specify annual catch limits (ACLs) and accountability measures (AMs); that process is codified at 50 CFR 665.4 (76 FR 37285, June 27, 2011). The regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species (MUS) included in an FEP, as recommended by the Council and in consideration of the best available scientific, commercial, and other information about the fishery. If an ACL is exceeded, the regulations require the Council to take action to reduce the ACL for the subsequent fishing year by the amount of the overage, or take other actions, as appropriate.

Specification of Annual Catch Limits

NMFS proposes to specify ACLs for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS in American Samoa, Guam, the CNMI, and Hawaii. NMFS based the proposed specifications on recommendations from the Council at its 152nd meeting held on October 17–19, 2011. A total of 101 ACLs are proposed: 22 in American Samoa, 27 in Guam, 22 in the CNMI, and 30 in Hawaii. The ACLs would be specified for the 2012 fishing year which begins on January 1 and ends on December 31, except for precious coral fisheries which begin on July 1 and end on June 30 the following year.

NMFS is not proposing ACLs at this time for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS in the PRIA because commercial fishing is prohibited out to 50 nautical miles by Presidential Proclamation 8336 which established the Pacific Remote Island Marine National Monument (74 FR 1565, January 12, 2009), and there is no habitat to support such fisheries in the EEZ beyond the monument boundaries. The Council is separately working on a draft amendment to the relevant FEP containing fishery management measures for the Pacific Remote Islands Marine National Monument (as well as the Rose Atoll and Marianas Trench Marine National Monuments). Additionally, ACLs are not proposed for MUS that are currently subject to Federal fishing moratoria or prohibitions. They include all species of gold coral (73 FR 47098, August 13, 2008), all species of deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010), and the three Hawaii seamount groundfish: pelagic armorhead, alfonsin, and raftfish (75 FR 69015, November 10, 2010). The current prohibitions on fishing for these MUS serve as a functional equivalent of an ACL of zero.

NMFS is also not proposing ACLs for pelagic MUS at this time because it previously determined that pelagic species are subject to international fishery agreements or have a life cycle of approximately one year and, therefore, have statutory exceptions to the ACL requirements.

NMFS and the Council developed the proposed ACLs in accordance with the FEPs and Federal regulations. At its 152nd meeting, the Council recommended specifying the 2012 ACL for each FEP MUS as being equal to the acceptable biological catch (ABC) as recommended by the Council's Scientific and Statistical Committee (SSC) at the 108th SSC meeting held October 17–19, 2011, except for precious corals in Hawaii where the Council recommended maintaining the current harvest quotas (which are lower than the ABCs) as the ACLs. The Council did not recommend increasing catch limits to equal the SSC's ABCs on the basis that there has been no activity in the precious coral fishery for over a decade and industry lacks the capacity to exploit an increased quota. The data, methods, and procedures considered by the SSC and the Council in developing their respective fishing level recommendations are described in detail in the three environmental assessments that support this action (see **ADDRESSES**).

Proposed Annual Catch Limit Specifications

TABLE 1—AMERICAN SAMOA

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Bottomfish multi-species stock complex	99,200 lb (44,996 kg).
Crustacean	Deepwater Shrimp	80,000 lb (36,287 kg).
	Spiny Lobster	2,300 lb (1,043 kg).
	Slipper Lobster	30 lb (14 kg).
	Kona Crab	3,200 lb (1,451 kg).
Precious Coral	Black Coral	790 kg (1,742 lb).
	Precious Corals in the American Samoa Exploratory Area	1,000 kg (2,205 lb).

TABLE 1—AMERICAN SAMOA—Continued

Fishery	Management unit species	Proposed ACL specification
Coral Reef Ecosystem	*Acanthuridae*—surgeonfish	19,516 lb (8,852 kg).
	Lutjanidae—snappers	18,839 lb (8,545 kg).
	Selar crumenophthalmus—atule or bigeye scad	8,396 lb (3,808 kg).
	Mollusks—turbo snail; octopus; giant clams	16,694 lb (7,572 kg).
	Carangidae—jacks	9,490 lb (4,305 kg).
	Lethrinidae—emperors	7,350 lb (3,334 kg).
	Scaridae—parrotfish	8,145 lb (3,695 kg).
	Serranidae—groupers	5,600 lb (2,540 kg).
	Holocentridae—squirrelfish	2,585 lb (1,173 kg).
	Mugilidae—mullets	2,857 lb (1,296 kg).
	Crustaceans—crabs	2,248 lb (1,020 kg).
	Bolbometopon muricatum—bumphead parrotfish	235 lb (107 kg).
	Cheilinus undulatus—Humphead (Napoleon) wrasse	1,743 lb (791 kg).
	Carcharhinidae—Reef Sharks	1,309 lb (594 kg).
	All Other CREMUS combined	18,910 lb (8,577 kg).

TABLE 2—MARIANA ARCHIPELAGO—GUAM

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Bottomfish multi-species stock complex	48,200 lb (21,863 kg).
Crustaceans	Deepwater Shrimp	48,488 lb (21,994 kg).
	Spiny Lobster	2,700 lb (1,225 kg).
	Slipper Lobster	20 lb (9 kg).
	Kona Crab	1,900 lb (862 kg).
Precious Coral	Black Coral	700 kg (1,543 lb).
	Precious Corals in the Guam Exploratory Area	1,000 kg (2,205 lb).
Coral Reef Ecosystem	Acanthuridae—surgeonfish	70,702 lb (32,070 kg).
	Carangidae—jacks	45,377 lb (20,583 kg).
	Selar crumenophthalmus—atulai or bigeye scad	56,514 lb (25,634 kg).
	Lethrinidae—emperors	38,720 lb (17,563 kg).
	Scaridae—parrotfish	28,649 lb (12,995 kg).
	Mullidae—goatfish	25,367 lb (11,506 kg).
	Mollusks—turbo snail; octopus; giant clams	21,941 lb (9,952 kg).
	Siganidae—rabbitfish	26,120 lb (11,848 kg).
	Lutjanidae—snappers	17,726 lb (8,040 kg).
	Serranidae—groupers	17,958 lb (8,146 kg).
	Mugilidae—mullets	15,032 lb (6,818 kg).
	Kyphosidae—chubs/rudderfish	13,247 lb (6,009 kg).
	Crustaceans—crabs	5,523 lb (2,505 kg).
	Holocentridae—squirrelfish	8,300 lb (3,765 kg).
	Algae	5,329 lb (2,417 kg).
	Labridae—wrasses	5,195 lb (2,356 kg).
	Bolbometopon muricatum—bumphead parrotfish	797 lb (362 kg) (CNMI and Guam combined).
	Cheilinus undulatus—Humphead (Napoleon) wrasse	1,960 lb (889 kg).
	Carcharhinidae—Reef Sharks	6,942 lb (3,149 kg).
	All Other CREMUS combined	83,214 lb (37,745 kg).

TABLE 3—MARIANA ARCHIPELAGO—CNMI

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Bottomfish multi-species stock complex	182,500 lb (82,781 kg).
Crustacean	Deepwater Shrimp	275,570 lb (124,996 kg).
	Spiny Lobster	5,500 lb (2,495 kg).
	Slipper Lobster	60 lb (27 kg).
	Kona Crab	6,300 lb (2,858 kg).
Precious Coral	Black Coral	2,100 kg (4,630 lb).
	Precious Corals in the CNMI Exploratory Area	1,000 kg (2,205 lb).
Coral Reef Ecosystem	Lethrinidae—emperors	27,466 lb (12,458 kg).
	Carangidae—jacks	21,512 lb (9,758 kg).
	Acanthuridae—surgeonfish	6,884 lb (3,123 kg).
	Selar crumenophthalmus—atulai or bigeye scad	7,459 lb (3,383 kg).
	Serranidae—groupers	5,519 lb (2,503 kg).
	Lutjanidae—snappers	3,905 lb (1,771 kg).
	Mullidae—goatfish	3,670 lb (1,665 kg).
	Scaridae—parrotfish	3,784 lb (1,716 kg).
	Mollusks—turbo snail; octopus; giant clams	4,446 lb (2,017 kg).
	Mugilidae—mullets	3,308 lb (1,500 kg).

TABLE 3—MARIANA ARCHIPELAGO—CNMI—Continued

Fishery	Management unit species	Proposed ACL specification
	Siganidae—rabbitfish	2,537 lb (1,151 kg).
	Bolbometopon muricatum—bumphead parrotfish	797 lb (362 kg) (CNMI and Guam combined).
	Cheilinus undulatus—Humphead (Napoleon) wrasse	2,009 lb (911 kg).
	Carcharhinidae—Reef Sharks	5,600 lb (2,540 kg).
	All Other CREMUS combined	9,820 lb (4,454 kg).

TABLE 4—HAWAII

Fishery	Management unit species	Proposed ACL specification
Bottomfish	Non-Deep 7 Bottomfish	135,000 lb (61,235 kg).
Crustacean	Deepwater Shrimp	250,773 lb (113,749 kg).
	Spiny Lobster	10,000 lb (4,536 kg).
	Slipper Lobster	280 lb (127 kg).
	Kona Crab	27,600 lb (12,519 kg).
Precious Coral	Auau Channel Black Coral	2,500 kg (5,512 lb).
	Pink/Bamboo Coral; Makapuu Bed	1,000/250 kg (2,205/551 lb).
	Pink/Bamboo Coral; 180 Fathom Bank	222/56 kg (489/123 lb).
	Pink/Bamboo Coral; Brooks Bank	444/111 kg (979/245 lb).
	Pink/Bamboo Coral; Kaena Point Bed	67/17 kg (148/37 lb).
	Pink/Bamboo Coral; Keahole Bed	67/17 kg (148/37 lb).
	Precious Corals in the Hawaii Exploratory Area	1,000 kg (2,205 lb).
Coral Reef Ecosystem	Selar crumenophthalmus—akule or bigeye scad	651,292 lb (295,421 kg).
	Decapterus macarellus—opelu or mackerel scad	393,563 lb (178,517 kg).
	Carangidae—jacks	193,423 lb (87,735 kg).
	Mullidae—goatfish	125,813 lb (57,068 kg).
	Acanthuridae—surgeonfish	80,545 lb (36,535 kg).
	Lutjanidae—snappers	65,102 lb (29,530 kg).
	Holocentridae—squirrelfish	44,122 lb (20,013 kg).
	Mugilidae—mullets	41,112 lb (18,648 kg).
	Mollusks—turbo snails; octopus; giant clams	28,765 lb (13,048 kg).
	Scaridae—parrotfish	33,326 lb (15,116 kg).
	Crustaceans—crabs	20,686 lb (9,383 kg).
	Carcharhinidae—Reef Sharks	111,566 lb (50,605 kg).
	All Other CREMUS combined	142,282 lb (64,538 kg).

Technical Corrections to Proposed ACL Specifications

NMFS identified several technical errors in the calculation of ABC for some MUS after the Council made their recommendations. Because the ABCs were derived from control rules and formulas contained in the FEPs, NMFS corrected the technical errors in this proposed specification by recalculating the ABCs based on the corrected information. NMFS has provided the corrected proposed ACL specifications to the Council's Executive Director and Chairperson for their review and concurrence that the corrected proposed ACL specifications are consistent with the Council's recommendation to establish ACLs for precious corals in Hawaii that are equal to current harvest quotas, and to establish ACL equal to ABC for all other fisheries. The resulting corrected ACL specifications are proposed here. Descriptions of the affected MUS, technical errors, and corrected ABC and ACL values are provided in the EAs, and summarized as follows:

Hawaii Deepwater Shrimp

The pre-corrected recommended ACL for Hawaii deepwater shrimp was equal to the ABC of 544,000 lb, which was based on the application of the Tier 4 control rule: ABC = 0.91 × (maximum sustainable yield (MSY)). The most current estimate of MSY for the deepwater shrimp in Hawaii is 125 mt/yr or 275,575 lb/yr (Tagami and Ralston 1988); however, in calculating ABC, the value for exploitable biomass (271.4 mt/yr or 598,328 lb) as estimated by Ralston and Tagami, (1992) was used instead of MSY. The resulting ACL recommendation of 544,000 exceeded the estimated MSY by more than 268,000 lb. NMFS corrected the ABC by applying the correct MSY value of 125 mt/yr or 275,575 lb/yr into the Tier 4 control rule, resulting in a corrected ABC of 250,773 lb. Consistent with the Council recommendation that ACL be set equal to ABC, NMFS proposes an ACL of 250,773 lb for Hawaii deepwater shrimp in 2012.

CNMI Deepwater Shrimp

The pre-corrected recommended ACL for CNMI deepwater shrimp was equal to the ABC of 268,000 lb, which was based on the application of the Tier 4 control rule: ABC = 0.91 × MSY. The most current estimate of MSY for the deepwater shrimp in CNMI is 137.4 mt/yr or 302,830 lb/yr (Moffitt and Polovina 1987); however, in calculating ABC, the incorrect value for MSY was used (133.8 mt/yr or 294,975 lb/yr), resulting in an ABC of 268,000 lb. NMFS corrected the ABC by applying the correct MSY value of 137.4 mt/yr or 302,830 lb/yr in the Tier 4 control rule, resulting in a corrected ABC of 275,575 lb. Consistent with the Council recommendation that ACL be set equal to ABC, NMFS proposes an ACL of 275,575 lb for CNMI deepwater shrimp in 2012.

Guam Deepwater Shrimp

The pre-corrected recommended ACL for Guam deepwater shrimp was equal to the ABC of 56,000 lb which was based on the application of the Tier 4 control rule: ABC = 0.91 × MSY. The

most current estimate of MSY for the deepwater shrimp in Guam is 24.1 mt/yr or 53,116 lb/yr (Moffitt and Polovina 1987); however, in calculating ABC, the incorrect value for MSY was used (27.7 mt/yr or 61,067 lb/yr), resulting in an ABC of 56,000 lb. The resulting ACL of 56,000 lb exceeded the MSY estimated by Moffitt and Polovina (1987) by over 2,800 lb. NMFS corrected the ABC by applying the correct MSY value of 24.1 mt/yr into the Tier 4 control rule, resulting in a corrected ABC of 22 mt/yr or 48,488 lb/yr. Consistent with the Council recommendation that ACL be set equal to ABC, NMFS proposes to specify an ACL of 48,488 lb for Guam deepwater shrimp in 2012.

Hawaii Pink and Bamboo Corals

The recommended ACLs for Hawaii deepwater pink and bamboo corals at all established and conditional beds were set equal to the current harvest quotas as specified in 50 CFR 665 (75 FR 2198, January 14, 2010), except at the Makapuu Established Bed. At this bed, the current harvest quotas for pink and bamboo corals are 2,000 kg and 500 kg, respectively, and may be taken over a two year timeframe. However, since ACLs must be specified annually, the recommended ACLs were set at one half of the current harvest quota, or 1,000 kg/yr and 250 kg/yr, respectively, and shown in Table 5.

TABLE 5—COUNCIL RECOMMENDED ACLS FOR HAWAII PINK AND BAMBOO CORALS

Bed	Pink coral ACL (kg)	Bamboo coral ACL (kg)
Makapuu Established Bed	1,000	250
180 Fathom Bank Conditional Bed	222	56
Brooks Bank Conditional Bed	444	111
Kaena Point Conditional Bed	67	17
Keahole Point Conditional Bed	67	17

However, the Council's recommended ACL of 17 kg for bamboo corals at the Kaena Point and Keahole Point Conditional beds exceed the ABC of 16 kg as calculated by the SSC at its 108th meeting as shown in Table 6. In accordance with the Magnuson-Stevens Act and National Standard 1, the ACL may not exceed the ABC.

TABLE 6—SSC RECOMMENDED ABCS FOR HAWAII PINK AND BAMBOO CORALS

Bed	Pink coral ABC *(0.91*MSY)* (kg)	Bamboo coral ABC *(0.91*MSY)* (kg)
Makapuu Established Bed	1,400	260
180 Fathom Bank Conditional Bed	1,400	260
Brooks Bank Conditional Bed	1,400	260
Kaena Point Conditional Bed	85	16
Keahole Point Conditional Bed	85	16

The ABCs were based on the application of the Tier 4 control rule: ABC = 0.91 × MSY. In calculating ABC for pink coral at the Makapuu Established Bed, the SSC applied a revised estimate of MSY for pink coral reported in Grigg (2002). Specifically, Grigg (2002) estimated an MSY for pink coral at the Makapuu bed of 1,500 kg/year. In calculating ABC for bamboo coral at the Makapuu Established bed, the SSC relied on the MSY estimate of 285 as provided in the Hawaii FEP. Based on these MSY estimates the SSC calculated ABC for pink coral and bamboo coral at the Makapuu bed as 1,400 kg/yr and 260 kg/yr, respectively.

There are no MSY estimates for pink or bamboo coral at any conditional beds. Therefore, to calculate an MSY proxy for pink coral and bamboo coral for these beds, the SSC applied the formula provided in the Hawaii FEP which was used to set the existing harvest quotas. Specifically, the Hawaii FEP explains that the harvest quotas for pink and bamboo corals at any conditional bed is extrapolated, based on bed size, by comparison with that of the Makapuu Established Bed using the following formula:

$$\frac{\text{MSY for Makapuu Bed}}{\text{Area of Makapuu Bed}} = \frac{\text{MSY for Conditional Bed}}{\text{Area of Conditional Bed}}$$

Framework Amendment 1 to the Precious Corals FMP (WPFMC 2001) defines the bed area for all established and conditional beds in Hawaii and defines the Makapuu Established Bed as 3.60 km^2, and both the Keahole Point and Kaena Point Conditional Beds as 0.24 km^2. However, in calculating the MSY proxies for pink and bamboo corals at Keahole Point and Kaena Point Conditional Beds, incorrect values for the Makapuu Established Bed area (12.57 nm^2) and both the Keahole and Kaena Point Conditional Bed area (0.79 nm^2) were used in the formula above resulting in a bamboo coral MSY proxy of 18 kg/yr for the two latter beds. Applying the Tier 4 control rule (ABC = 0.91 × MSY) resulted in an ABC of 16 kg for both Keahole Point and Kaena Point Conditional Beds.

NMFS corrected the ABCs by applying the correct bed area for Makapuu (3.60 km^2) and for both Keahole Point and Kaena Point (0.24 km^2) into the formula above, resulting in a corrected bamboo coral MSY proxy

of 19 kg for the two latter beds. Next, NMFS applied the Tier 4 control rule (ABC = 0.91 × MSY), resulting in a corrected ABC of 17 kg. These technical corrections are consistent with the intent of the SSC and Council and represent the best available scientific information regarding Hawaii precious corals. Additionally, the technical corrections allow for the Council's recommended ACL of 17 kg for bamboo corals at the Kaena Point and Keahole Point Conditional Beds to be acceptable ACLs as they no longer exceed ABC.

Proposed Accountability Measures

Each fishing year, NMFS and local resource management agencies in American Samoa, Guam, the CNMI, and Hawaii will collect information about MUS catches and apply them toward the appropriate ACLs. Pursuant to 50 CFR 665.4, when the ACL for a stock or stock complex is projected to be reached, based on available information, NMFS must notify permit holders that fishing for that stock or stock complex will be restricted in Federal waters on a specified date. The restriction serves as the AM to prevent an ACL from being exceeded and may include, but is not limited to closure of the fishery, closure of specific areas, changes to bag limits, or restrictions in effort. However, local resource management agencies presently do not have the personnel or resources to process catch data in near-real time, so fisheries statistics are generally not available to NMFS until at least six months after the data has been collected. While the State of Hawaii has the capability to monitor and track the catch of seven preferentially-targeted bottomfish species in near-real time in comparison with previously specified ACLs (76 FR 54715, September 2, 2011), additional resources would be required to extend these capabilities to other bottomfish, crustacean, precious coral, and coral reef ecosystem MUS. Significant resources would also be required to support the establishment of in-season monitoring and tracking capabilities in American Samoa, Guam and the CNMI. Additionally, reliance on Federal logbook and reporting from Federal waters will not be sufficient in accurately monitoring and tracking catches towards the proposed ACL specifications as the majority of fishing for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS occurs primarily in non-Federal waters generally 0–3 nautical miles from shore. For these reasons, NMFS proposes to implement the Council's recommended AM, which requires the Council to conduct a post-season accounting of the annual catch for each stock and stock complex of MUS relative immediately after the end of the fishing year. If an ACL is exceeded, the Council would take action in accordance with 50 CFR 600.310(g) which may include a recommendation that NMFS reduce the ACL for the subsequent fishing year by the amount of the overage, or other measure, as appropriate.

NMFS will consider public comments on the proposed ACLs and AMs and will announce the final specifications as soon as possible. Regardless of the final ACL specifications and AMs, all other management measures will continue to apply in the fisheries. To be considered, comments on these proposed specifications must be received by January 18, 2012, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the applicable western Pacific FEPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

NMFS based the proposed specifications on recommendations from the Western Pacific Fishery Management Council (Council) at its 152nd meeting held on October 17–19, 2011. A total of 101 ACLs are proposed: 22 in American Samoa, 27 in Guam, 22 in the CNMI, and 30 in Hawaii. The ACLs would be specified for the 2012 fishing year, which begins on January 1 and ends on December 31, except for precious coral fisheries. These measures would apply to precious coral fisheries from July 1, 2011—June 30, 2012. Some ACLs would be applied to fisheries for which there are no participants. These include certain crustacean fisheries (*i.e.,* deepwater shrimp and Kona crab), and all precious coral fisheries outside Hawaii.

Fishery participants should not face any adverse economic impacts as a direct result of the proposed ACLs and AMs. The Council and NMFS are not considering in-season closures in any of the fisheries to which these ACLs apply, due to the current inability of fishery management entities to conduct in-season tracking of catch in relation to the ACLs. As a result, participants in these fisheries would be able to fish throughout the entire season; in addition, the ACLs, as proposed, would not change the gear types, areas fished, effort, or participation of the fishery during the 2012 fishing season. A post-season review of the catch data would be required to determine whether any of those ACLs is exceeded. If any of the ACLs is exceeded, the Council and NMFS would take action to correct the operational issue that caused the ACL overage. NMFS cannot, however, speculate on operational measures or the magnitude of any potential overage adjustment; therefore, the environmental and socio-economic impacts of future actions, such as changes to future ACLs or AMs, would need to be evaluated separately once the required data are available.

Other alternatives that were considered but not selected called for alternative specifications for the 101 ACLs, some higher and some lower than those that were proposed. However, because in-season tracking of catch data cannot be achieved in these fisheries, in-season AMs such as a fishery closure are not possible, and fishery participants would be able to fish throughout the entire season under all alternatives considered. Therefore, the direct economic impacts to small entities during the 2012 fishing season would not likely differ among the alternatives.

As described earlier, the proposed action of specifying ACLs and AMs is expected to have little, if any, direct adverse economic impact. For fisheries with active participants, the ACLs are generally in line with or greater than the current annual yields and there should be no disproportionate economic impacts between large and small entities. Furthermore, there is likely to be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length. Because the proposed action would have little to no direct economic impact, NMFS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b).

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Dated: December 27, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Commodity Credit Corporation

[Docket No. NRCS–2011–0025]

Cooperative Conservation Partnership Initiative and Wetlands Reserve Enhancement Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Notice of request for proposals through the Mississippi River Basin Healthy Watersheds Initiative (MRBI).

SUMMARY: The Natural Resources Conservation Service (NRCS) announces the availability of financial assistance funds in fiscal year (FY) 2012 for up to $11.74 million in the Cooperative Conservation Partnership Initiative (CCPI) and up to $25 million in the Wetlands Reserve Enhancement Program (WREP) through MRBI. These funding levels are available for new MRBI proposals only. However, CCPI and WREP will not be the only funding mechanisms for MRBI in FY 2012. The Chief of NRCS reserves discretion in utilizing other NRCS conservation program funds and mechanisms in support of the objectives of MRBI.

Through agreements, partners and NRCS will provide assistance to eligible participants in the 54 designated focus areas (8-digit hydrologic unit codes (HUCs)) in the following 13 States: Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Ohio, Tennessee, South Dakota, and Wisconsin. The purpose of this notice is to solicit proposals from potential partners to enter into agreements with NRCS and to inform agricultural producers and landowners of the future availability of program funds through approved partnership projects. Proposals must be based on one or more 12-digit HUCs within the 54 designated focus areas. Partners who are currently involved in approved MRBI agreements through CCPI or WREP and want to work in other 12-digit watersheds must submit new proposals for a new project.

DATES: Eligible partners may submit proposals for MRBI–CCPI and MRBI–WREP via email or U.S. Postal Service; however, all proposals must be received on or before March 19, 2012.

ADDRESSES: Applicants are encouraged to submit proposals electronically to *MRBI–CCPI@wdc.usda.gov* for CCPI and *MRBI–WREP@wdc.usda.gov* for WREP. If submitting a paper proposal, the proposal may be mailed to: Martin Lowenfish, Acting Team Leader, Conservation Initiatives Team, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

Do not send submissions via registered or certified mail. Do not send the same proposal both electronically and to the Post Office Box address; use only one method to submit a proposal. If submitting more than one project proposal, please submit each separately.

FOR FURTHER INFORMATION CONTACT: Deena Wheby, MRBI Coordinator, Conservation Initiatives Team, Natural Resources Conservation Service; Telephone: (859) 224–7403 or email: *deena.wheby@ky.usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Part A—General WREP and CCPI Proposal Information

Focus Area Watersheds

Fifty-four focus area (8-digit HUC) watersheds have been selected by NRCS State Conservationists, with input from the State Technical Committees and State water quality agencies, to help improve water quality by reducing nitrogen, phosphorous, and sediment levels in the watersheds of the Mississippi River Basin, as well as improve wildlife habitat and restore wetlands. The designated 8-digit HUC focus areas are listed below. A complete list of the smaller-scale, 12-digit HUC sub-watersheds within the designated 8-digit HUC focus areas can be found on the MRBI home page. The MRBI home page can be found by searching for MRBI at: *http://www.nrcs.usda.gov.*

DESIGNATED FOCUS AREAS FOR THE MRBI FY 2012 (8-DIGIT HUCS)

State(s)	Watershed	Hydrologic Unit Code	Proposals accepted for:
Arkansas/Missouri	Cache	08020302	CCPI and/or WREP.
Arkansas	Lake Conway-Point Remove	11110203	CCPI and/or WREP.
Arkansas	L'Anguille	08020205	CCPI and/or WREP.
Arkansas/Missouri	Lower St. Francis	08020203	CCPI and/or WREP.
Arkansas	Bayou Meto	08020402	CCPI and/or WREP.
Arkansas	Lower White	08020303	CCPI and/or WREP.
Arkansas	Lower White-Bayou Des Arc	08020301	CCPI and/or WREP.
Arkansas	Lower Arkansas	08020401	CCPI and/or WREP.
Arkansas	Big	08020304	CCPI and/or WREP.
Arkansas/Kentucky/Missouri/Tennessee	Lower Mississippi—Memphis	08010100	WREP only.
Arkansas/Mississippi	Lower Mississippi—Helena	08020100	WREP only.
Arkansas/Louisiana/Mississippi	Lower Mississippi—Greenville	08030100	WREP only.
Illinois	Lower Illinois-Senachwine Lake	07130001	CCPI and/or WREP.
Illinois	Vermillion (Upper Mississippi River sub-basin)	07130002	CCPI and/or WREP.
Illinois/Indiana	Vermillion (Upper Ohio River sub-basin)	05120109	CCPI and/or WREP.

DESIGNATED FOCUS AREAS FOR THE MRBI FY 2012 (8-DIGIT HUCS)—Continued

State(s)	Watershed	Hydrologic Unit Code	Proposals accepted for:
Indiana	Eel	05120104	CCPI and/or WREP.
Indiana	Upper East Fork White	05120206	CCPI and/or WREP.
Indiana	Wildcat	05120107	CCPI and/or WREP.
Indiana/Ohio	Upper Wabash	05120101	CCPI and/or WREP.
Iowa	Boone	07100005	CCPI and/or WREP.
Iowa	Maquoketa	07060006	CCPI and/or WREP.
Iowa	North Raccoon	07100006	CCPI and/or WREP.
Iowa/Minnesota	Upper Cedar	07080201	CCPI and/or WREP.
Kentucky/Tennessee	Bayou De Chien-Mayfield	08010201	CCPI and/or WREP.
Kentucky	Licking	05100101	CCPI and/or WREP.
Kentucky	Lower Green	05110005	CCPI and/or WREP.
Louisiana	Mermentau	08080202	CCPI and/or WREP.
Louisiana	Lower Mississippi—Baton Rouge	08070100	WREP only.
Louisiana/Arkansas	Bayou Macon	08050002	CCPI and/or WREP.
Louisiana/Arkansas	Boeuf River	08050001	CCPI and/or WREP.
Louisiana/Mississippi	Lower Mississippi—Natchez	08060100	WREP only.
Minnesota	Middle Minnesota	07020007	CCPI and/or WREP.
Minnesota	Root	07040008	CCPI and/or WREP.
Minnesota	Sauk	07010202	CCPI and/or WREP.
Mississippi	Big Sunflower	08030207	CCPI and/or WREP.
Mississippi/Louisiana/Arkansas	Deer-Steele	08030209	CCPI and/or WREP.
Mississippi	Upper Yazoo	08030206	CCPI and/or WREP.
Missouri/Iowa	Lower Grand	10280103	CCPI and/or WREP.
Mississippi	Coldwater Creek	08030204	CCPI and/or WREP.
Missouri	North Fork Salt	07110005	CCPI and/or WREP.
Missouri	South Fork Salt	07110006	CCPI and/or WREP.
Missouri/Arkansas	Little River Ditches	08020204	CCPI and/or WREP.
Ohio/Indiana	Upper Great Miami	05080001	CCPI and/or WREP.
Ohio	Upper Scioto	05060001	CCPI and/or WREP.
Tennessee	Forked Deer	08010206	CCPI and/or WREP.
Tennessee/Kentucky	Obion	08010202	CCPI and/or WREP.
Tennessee	South Fork Obion	08010203	CCPI and/or WREP.
Tennessee/Kentucky	Red River	05130206	CCPI and/or WREP.
South Dakota/Minnesota	Upper Minnesota	07020001	CCPI and/or WREP.
Wisconsin/Illinois	Upper Rock	07090001	CCPI and/or WREP.
Wisconsin	Kickapoo	07070006	CCPI and/or WREP.
Wisconsin	Middle Rock	07090002	CCPI and/or WREP.
Wisconsin/Iowa	Grant-Little Maquoketa	07060003	CCPI and/or WREP.
Wisconsin/Minnesota	Rush-Vermillion	07040001	CCPI and/or WREP.

Under MRBI, NRCS works with partners through CCPI and WREP to help address conservation concerns and opportunities within the watershed of the Mississippi River Basin. In approved MRBI–CCPI project areas, NRCS will make Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), and Wildlife Habitat Incentive Program (WHIP) funds available to eligible producers consistent with the proposal design as much as possible. In approved MRBI–WREP project areas, funds are available through the Wetlands Reserve Program (WRP).

Proposal Submission, Review, and Notification

Potential partners are highly encouraged to submit proposals to the email address provided in the ''Addresses'' section of this notice. If the proposal is submitted in hard copy, the potential partner must submit two copies of the proposal, typewritten or printed on 8-1/2″ x 11″ white paper. The entire project proposal, not including letters of support, cannot exceed 12 pages in length including a summary, responses to the information requested in this **Federal Register**, maps, and other supporting documents. The proposal must address, in sufficient detail, all the criteria outlined in the ''Proposal Requirements'' section of this notice in order to be considered.

MRBI–CCPI and MRBI–WREP proposals submitted to NRCS become the property of the agency for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted for review and ranking, there will be no further opportunity for the potential partner to change or re-submit the proposal; however, NRCS may request certain changes before finalizing the selection and approval of a project. Incomplete proposals or those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant. Partner proposals may be withdrawn by written notice to Deena Wheby, MRBI Coordinator, Conservation Initiatives Team, at any time prior to selection (see **ADDRESSES** section in this notice).

NRCS will review, evaluate, and rank proposals based on the criteria set forth in the respective ''Proposal Requirements'' sections of this notice for both MRBI–CCPI and MRBI–WREP. Potential partners should recognize that the proposal is the only document NRCS will use in the evaluation process. The proposal must request NRCS program funds for obligation beginning in FY 2012 (October 1, 2011–September 30, 2012). Proposals which request funding with obligation starting after FY 2012 will not be evaluated or considered under this request for proposals.

Partners whose proposals have been selected will receive an official letter of

notification. Upon notification of selection, the partner should contact the appropriate State Conservationist(s) to develop the required partnership agreement and other project implementation requirements. Potential partners should note that, depending upon available funding and agency priorities, NRCS may offer a reduced amount of program financial assistance from what was requested in the proposal and may require adjustments to the proposal as a condition of approval to meet program or other requirements. Partner submissions of proposals that are not selected will also be notified by mail.

State Conservationist(s) Proposal Review

Once a project proposal is received, the agency will provide a copy of it to the appropriate State Conservationist(s). State Conservationist(s) will review the proposals to:

(a) Document potential duplication with other projects or existing programs;

(b) Confirm adherence to and consistency with program regulations, including requirements related to land and landowner eligibility and other program requirements;

(c) Address expected benefits for project implementation in their State(s);

(d) For multi-State proposals, coordinate with all State Conservationists involved in the proposal to verify concurrence and support for the project;

(e) Identify other issues or concerns that should be considered; and

(f) Provide a recommendation, along with justification, to the NRCS Chief for approval or disapproval of the project.

Waiver Authority

To assist in the implementation of approved WREP and CCPI projects, the Chief may waive the applicability of the Adjusted Gross Income Limitation, on a case-by-case basis, in accordance with 7 CFR part 1400. Such waiver requests must be submitted in writing from the program applicant, not the sponsoring partner, addressed to the Chief, through the local NRCS designated conservationist.

Part B—The Cooperative Conservation Partnership Initiative Component of MRBI

To improve the health of the watersheds within the Mississippi River Basin, NRCS and its partners will help producers to voluntarily implement conservation practices that avoid, control, and trap nutrient runoff; improve wildlife habitat; restore wetlands; and maintain agricultural productivity. These improvements will be accomplished through a conservation systems approach to address water quality, wetland, and wildlife related resource concerns. NRCS will provide producers assistance in implementing a suite of practices that will reduce the impacts of nutrients and sediment leaving agricultural fields. In the Lower Mississippi River Basin States, practices may also address water quantity as a compatible resource concern with water quality as the primary resource concern.

Overview of the CCPI

The CCPI is a voluntary conservation initiative that enables the use of certain conservation programs, combined with resources from eligible partners, to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands in order to enhance conservation outcomes and achieve resource conservation objectives. The functions of CCPI can best be described in two parts: CCPI partnerships and CCPI program participation.

CCPI Partnerships

Under CCPI, eligible potential partners may submit proposals addressing the criteria that are outlined in this request for proposals. Partners who may enter into partnership agreements with NRCS include federally recognized Indian Tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations which have a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land. Individual agricultural producers are not eligible partner entities and may not submit CCPI proposals. However, individual agricultural producers can participate by applying for program assistance in the approved proposal areas through their local NRCS office.

Proposals will be evaluated through a competitive review process. After selection, the partners will enter into a partnership agreement with NRCS. The partnership agreement will not obligate funds, but as applicable, will address the following:

(a) Role of the partner;

(b) Role of NRCS;

(c) Responsibilities of the partner as it relates to the monitoring and evaluation;

(d) Frequency and duration of monitoring and evaluation to be completed by the partner;

(e) Format and frequency of reports that are required as a condition of the partnership agreement;

(f) Budget which includes other funding sources (if applicable) for financial and technical assistance;

(g) Specified project schedule and timeframe; and

(h) Other requirements deemed necessary by NRCS to further the purposes of MRBI.

Where flexibility is needed to meet project objectives, the partner may request that program adjustments be allowed, provided such adjustments are within the scope of the applicable programs' statutory and regulatory program authorities. An example of an adjustment may be to expedite the applicable program ranking process in a situation where a partner has identified the producers approved to participate in the project. Other examples of flexibilities are payment percentage rates, or use of a single area-wide conservation plan of operations rather than individual conservation plans of operation. An example of an ineligible flexibility would be to request funds for activities that do not meet NRCS conservation practice standards.

CCPI is not a grant program, and all Federal funds made available through this request for proposals will be paid directly to producers through program contract agreements. If desired, producers may elect to have their payments assigned to another party. No technical assistance funding may be provided to a partner through the CCPI partner agreement. However, if requested by a partner, the State Conservationist may consider development of a separate contribution agreement with a qualified partner to provide funding for delivery of technical services to producers participating in an approved CCPI project.

CCPI Program Participation

Once the agency approves and announces the selected partner projects, eligible agricultural producers located within the approved project areas may apply directly to NRCS for funding through one or more of the following programs: EQIP, CSP, or WHIP. CCPI uses the funds, policies, and processes of these programs to deliver assistance to eligible producers to implement approved core and supporting conservation practices, enhancements, and activities under MRBI. Producers interested in applying must meet the eligibility requirements of the program for which they are applying. Individual applications from eligible producers will be evaluated and ranked to ensure

that producer applications selected for funding are most likely to achieve project objectives. Once applications are selected, the producers may enter into one or more contracts or cost-share agreements with NRCS within one or more of the programs offered under CCPI. During FY 2012, an objective of MRBI–CCPI is to deliver EQIP, CSP, and WHIP assistance to producers to achieve MRBI priority conservation objectives in geographic areas defined by the partner. Depending upon the program available in the project area, the assistance provided enables eligible producers to implement conservation practices and enhancements, including the development and adoption of innovative conservation practices and management approaches.

Availability of Funding

Effective on the publication date of this notice, the Commodity Credit Corporation announces the availability of up to $9 million in EQIP and $500,000 in WHIP financial assistance and 140,000 acres in CSP for MRBI–CCPI during FY 2012.

Proposal Requirements

The proposal must include the following. Please provide the information in the order as listed below:

(1) Proposal Cover and Summary:

(a) Project Title;

(b) Project director/manager name, telephone number, mailing address, and email address;

(c) Name and contact information for lead partner entity submitting proposal and other collaborating partners; and

(d) Short summary of project including:

i. Project start and end dates (not to exceed a period of 4 years);

ii. Designated 12-digit HUC, or contiguous multiple 12-digit HUCs sub-watersheds where the project is located, including the State(s) and county(s);

iii. General project objectives and resource concerns to be addressed as they relate to MRBI priorities and objectives;

iv. Total amount of CCPI financial assistance being requested by program;

v. Whether any of the proposed 12-digit project HUCs have previously been approved for a MRBI CCPI project; and

vi. Whether the MRBI–CCPI proposal will be used in conjunction with a MRBI–WREP, MRBI–CIG, or other Federal programs to meet MRBI objectives. Include the name of the program and the associated Federal agency. (**Note:** Federal funds cannot be used as a match to the funds provided by NRCS.)

(2) Project Natural Resource Objectives and Concerns:

(a) Identify and provide detail about the project objectives. Objectives should be specific, measureable, achievable, and results-oriented.

(b) Identify and provide detail about the natural resource concern(s) to be addressed in this project. Include in this description how the proposal objectives will address the priority MRBI resource concerns of water quality, wetland restoration, and improved wildlife habitat. Water quantity may be addressed as a complementary resource concern in the Lower Mississippi River Basin States. Potential partners will work with the State Conservationist(s) to ensure the priority resource concerns are addressed by utilizing approved conservation practices, enhancements and activities, and conservation program requirements. A list of NRCS approved natural resource concerns for MRBI may be found on the MRBI Web site which can be found by searching for MRBI at *http://www.nrcs.usda.gov.*

(3) Detailed Project Description:

(a) A detailed description of the geographic area covered by the proposal, including:

i. Types of land uses to be treated; and

ii. The location and size of the proposed project area, and what 12-digit HUC sub-watershed(s) the project will be within.

(b) A detailed map showing the project area. Include on the map:

i. Outlined areas that need conservation treatments;

ii. Location where conservation treatments are needed; and

iii. Priority order for the different areas to be treated.

(c) A description of the project timeline. Include:

i. Duration of the project, not to exceed 4 consecutive years in length beginning in FY 2012;

ii. Project implementation schedule that details when different objectives and conservation practices and enhancements will be completed;

iii. When partner and Federal resources will be used within the timeframe of the project. Include the total amount of financial assistance funds requested for each fiscal year of the project to be made available for producer contracts and cost-share agreements (for multi-State projects, provide the funds or acres by State as appropriate); and

iv. When the final project report will be submitted.

(d) A description of the plan for evaluating and reporting on progress made toward achieving the objectives of the agreement.

(e) Identify potential criteria to be used by NRCS to prioritize and rank agricultural producers' applications for EQIP, CSP, and WHIP in the project area. Potential partners should collaborate with NRCS to develop meaningful criteria that NRCS can use to evaluate and rank producer program applications. This will ensure that producer applications which will best accomplish MRBI objectives will be selected.

(f) An estimate of the percentage of producers, including nonindustrial private forest landowners, in the project area that may participate in the project along with an estimate of the total number of producers located in the project area. Provide details about additional information such as how the partner will encourage producer participation; does the project include any Tribal producers, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or limited resource farmers or ranchers; and are there groups of producers who may submit joint applications to address resource issues of common interest and need.

(g) A listing and description of the approved MRBI–CCPI core conservation practices, conservation activity plans, enhancements, and partner activities to be implemented during the project timeframe and the general sequence of implementation of the project. Information about approved MRBI–CCPI EQIP, WHIP, and CSP practices, enhancements, and activities can be accessed at *http://www.nrcs.usda.gov.* Only the conservation practices listed, which are available in the applicable State's Field Office Technical Guide, are eligible for use in MRBI. For each conservation practice, estimate the amount of practice extent (feet, acres, number, etc.) the partner expects producers to implement and the amount of financial assistance requested to support implementation of each practice through producer contracts.

(h) Also address technical assistance efforts that will be made by the partner. Describe any activities that are innovative and include outcome-based performance measures, such as water quality monitoring, to be implemented by the partner.

(i) Indicate whether the project will address specific regulatory compliance and any other outcomes the partner expects to complete during the project period.

(j) A detailed description of any requested adjustments, by program, with an explanation of why the adjustment is needed in order to achieve the objectives of the project. Requested adjustments or flexibilities must comply with statutory and regulatory requirements.

(k) A science-based description of how the proposal's objectives also may provide additional benefits by addressing energy conservation or mitigating the effects of climate change, if applicable.

(l) If applicable, a detailed description of a plan to conduct water quality monitoring and evaluation and the reporting of progress made toward achieving MRBI objectives and desired outcomes. NRCS is especially interested in proposals that adopt a three-tiered monitoring and evaluation approach designed to assess environmental outcomes at the edge-of-field, in-stream, and at the 12-digit HUC level; however, only those partners with the capacity to implement monitoring and evaluation at these three tiers, or a partnership with an entity that has agreed to perform this task, should include this in the project proposal. Capacity includes the ability, expertise, available staff, and any needed financial assistance beyond CCPI funding to conduct monitoring and evaluation including identification of monitoring locations, collection and analysis of samples, reporting of results, etc.. If an entity other than the applicant entity will be responsible for monitoring and evaluation, a letter of commitment is to be included with the project proposal submission. Higher priority will be given to projects that adopt this three-tiered approach where the partner provides resources or technical services to carry it out. Higher priority will also be given to projects that utilize environmental indicators to assess water quality and evaluate effects of conservation systems and activities implemented through the project at the edge-of-field level in conjunction with in-stream and 12-digit HUC monitoring. Information concerning water quality monitoring and evaluation can be found at on the MRBI home page. The MRBI home page can be found by searching for MRBI at *http://www.nrcs.usda.gov.*

(4) Partner Description:

(a) A description of the partner(s) history of working with agricultural producers to address conservation priorities;

(b) A description of how the partner(s) will collaborate to achieve the objectives of the agreement including:

i. The roles, responsibilities, and capabilities of the partner(s); and

ii. The financial or technical commitments of each of the partner(s) and how they will be leveraged by the Federal contribution through EQIP, WHIP, CSP, or a combination of the three. Include specifically what commitments will be used toward water quality monitoring needs. If partners who do not submit the proposal intend to commit resources, a letter or other documentation from these partners confirming a commitment of specified resources is required.

(c) A description of the resources (financial and technical assistance) requested from each of the applicable NRCS programs (EQIP, WHIP, and CSP) and the non-Federal resources provided by the partner that will be leveraged by the Federal contribution. Partners need to clearly state, by project objective, how they intend to leverage Federal funds along with partner resources. The funding and time contribution by agricultural producers to implement agreed-to conservation practices and enhancements in program contracts will not be considered any part of a match from the potential partner for purposes of CCPI.

(d) A description of how the partner will facilitate the submission of landowner applications;

(e) A description of how the partner will provide for outreach to beginning farmers or ranchers, limited resource farmers or ranchers, socially disadvantaged farmers or ranchers, and Indian Tribes.

National Ranking Considerations

The agency will evaluate proposals using a national competitive process. A higher priority may be given to proposals that:

(a) Have a high percentage of producers actively farming or managing working agricultural or nonindustrial private forest lands included in the proposed project area;

(b) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or Federal efforts. This includes resources committed to provide for water quality monitoring and evaluation of conservation practices;

(c) Integrate both WREP and CCPI within a project area;

(d) Deliver high percentages of applied conservation practices to address water quality, wildlife habitat, and wetland restoration;

(e) Provide innovation in approved conservation practices, conservation methods, and delivery, including outcome-based performance measures and methods such as adaptive management strategies;

(f) Complete the application of the conservation practices and activities on all of the covered program contracts or cost-share agreements in 4 years or less;

(g) Assist the participants in meeting local, State, and Federal regulatory requirements;

(h) Provide for environmental monitoring and evaluation of conservation practices, enhancements, and activities, which includes the ability, expertise, available staff, and any needed financial assistance beyond CCPI funding to conduct monitoring and evaluation including identification of monitoring locations, collection and analysis of samples, reporting of results, etc.;

(i) Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian Tribes within the proposed project area;

(j) Have a high potential to achieve MRBI water quality objectives of nitrogen, phosphorous, and sediment reductions leaving the field; and

(k) Identify other factors and criteria which best achieve the purposes of MRBI–CCPI.

Part C—The Wetlands Reserve Enhancement Program Component of MRBI

Availability of Funding

Effective upon publication of this notice, NRCS on behalf of the CCC, announces that within the designated focus areas in the Mississippi River Basin Watersheds, up to $25 million in financial assistance funds are available in FY 2012 for WREP to eligible participants through approved partnership projects within the 54 designated 8-digit HUC focus area watersheds in the following states: Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Ohio, Tennessee, South Dakota, and Wisconsin.

Under WREP, NRCS enters into multi-year agreements with eligible State and local governments, nongovernmental organizations, and Indian Tribes to target and leverage resources to carry out high priority wetland protection, restoration, and enhancement activities; and improve water quality and wildlife habitat. Eligible partners should submit complete proposals to the addresses listed in this notice addressing the MRBI conservation objectives to be achieved in one or more 12-digit HUC watersheds within the 54 eligible 8-digit HUC focus area watersheds. Proposals that integrate a MRBI–WREP proposal with a MRBI–CCPI project in one or more 12-digit HUC watersheds will be given additional consideration in the selection process.

Overview

WREP is a voluntary conservation program which is a component of WRP. WREP leverages resources of eligible partners to provide financial assistance

to eligible landowners to protect, restore, and enhance high priority wetlands; improve wildlife habitat; and improve water quality. WREP partners are required to contribute a match as detailed in the proposal requirement section at 3(e). Proposals which include additional partner resources will be given higher priority consideration in the selection process.

WREP financial assistance is delivered to eligible landowners and partners in approved project areas through easement acquisition, conservation program contracts, cooperative agreements, contribution agreements, or Federal contracts. Restoration may be achieved through payments to other parties who conduct the restoration activities.

Only States and local units of government, Indian Tribes, and nongovernmental organizations are eligible to submit a proposal and enter into agreements with NRCS. A nongovernmental organization is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986. Individual landowners may not submit WREP proposals through this submission process. However, once a WREP project has been approved and announced, eligible landowners may apply for WREP through their local NRCS office. As part of the agreement, approved partners may also help facilitate the submission of landowner applications, provide additional technical or financial assistance to landowners, and provide other resources as defined in the agreement.

Written proposals are to be submitted by eligible partners, and project evaluation will be based upon a competitive process and the criteria established in this notice. Once NRCS selects a partner's proposal, landowners within the selected project area may submit an application directly to NRCS for participation in WRP. Individual landowner applications will be evaluated and ranked along with other applications in the watershed or geographic project area, when applicable, to ensure that the properties selected for funding will achieve project objectives.

Wetland restoration and enhancement actions will be designed to improve water quality and maximize wildlife habitat benefits and wetland functions and values according to the WRP regulation, 7 CFR part 1467, and NRCS conservation practice standards. Additionally, the successful restoration of land and the resultant wetland values must take into consideration the cost of such restoration, as required by the WRP statute and reflected in the WRP regulation at 7 CFR part 1467.4. Proposals must conform to the WRP guidelines for restoration and management of lands subject to a WRP easement.

Benefits to the partners in WREP agreements include:

- Involvement in wetland restorations in high priority MRBI focus areas;
- Ability to cost-share restoration or enhancement components beyond those required by NRCS;
- Ability to participate in management or monitoring of selected project locations; and
- Opportunity to utilize innovative restoration methods and practices.

Land Eligibility

The land eligibility criteria for WREP are the same as for WRP and are listed in 7 CFR 1467.4.

Proposal Requirements

For consideration, the proposal must be in the following format and contain the information set forth below.

(1) *Proposal Cover and Summary.* The first few pages of the proposal must include—

(a) Project Title.

(b) Project Director/Manager name, telephone, mailing address, and email address.

(c) Name and contact information for lead partner submitting proposal and other collaborating partners.

(d) Short general summary of project, including:

(i) Potential acres to be enrolled in the project area,

(ii) Designated 12-digit watershed(s) where the project is located, including the State(s), and county(s). Include a general location map,

(iii) Proposed project start and end dates that do not exceed 4 consecutive years including FY 2012,

(iv) The project objectives and resource concerns to be addressed, and

(v) Total amount of financial assistance being requested.

(2) *Project Natural Resource Objectives and Actions.* The proposal must—

(a) Identify and provide detail about the wildlife and water quality concerns to be addressed and how the proposal's objectives will address those concerns. Objectives should be specific, measurable, achievable, results-oriented, and include a timeline for completion.

(b) For each objective, identify the actions to be completed to achieve that objective and address the identified natural resource concern. Specify which actions are to be addressed through this project using WREP assistance, and which are being addressed through alternate non-Federal funding sources or other resources provided.

(c) Identify the total acres that require wetland protection, restoration, and enhancement.

(3) *Detailed Project Description.* Information provided in the proposal must include—

(a) A description of the partner(s) history of working cooperatively with landowners on conservation easements.

(b) A description of the watershed characteristics within the designated focus area covered by the proposal including a detailed watershed map that indicates the project location. The description should include information related to land use types, vegetation, soils, hydrology, potential sources of water quality impairments, occurrences of at-risk species, proximity to other protected areas, and a summary of resource concerns. Proposals should state whether a MRBI–WREP proposal is integrated with a MRBI–CCPI proposed project and include the name of the proposed project.

(c) A description of the partner(s) and the roles, responsibilities, and capabilities of the partner(s). Proposals which include resources from partners other than the lead partner must include a letter or other documentation confirming the commitment of resources.

(d) A description of the project duration, plan of action, and project implementation schedule. Project proposals cannot exceed 4 years.

(e) A description of the financial assistance resources that are requested through WREP, and the non-Federal resources provided by the partner(s) that will be leveraged by the Federal contribution. WREP requires partners to contribute a match of:

(i) In-kind only contributions of at least 20 percent of the restoration costs,

(ii) cash only contributions of at least 5 percent of the restoration costs, or

(iii) a combination of in-kind and cash contributions of at least 20 percent of the restoration costs.

Proposals which include additional partner resources will be given additional consideration in the selection process. Contributions provided by the partners to achieve additional ranking points can be in the form of technical or financial assistance for the protection, restoration, and enhancement of the wetland. Contributions can also be in the form of assistance with management and monitoring activities. Contributions above the match requirement can be cash or in-kind equipment or services. Partners may provide incentives to landowners to participate in WREP;

however, incentive payments will not be considered part of the match requirement. Incentives include sign-up bonuses, practice incentive payments, or similar activities not funded through WRP.

(f) Total budget for the project including all partner resources which will be leveraged for the project and the amount of WREP financial assistance being requested for project broken out by fiscal year with totals. Include a description of the amount of funds needed annually for easement acquisition and wetland restoration and enhancement activities.

(g) A description of non-Federal resources that will be available for implementation of the proposal. Proposals which include additional non-Federal resources will be given higher consideration in the selection process. The partner needs to state clearly how they intend to leverage Federal funds along with partner resources. Landowner contributions in the implementation of agreed-to wetland restoration and enhancement practices may not be considered any part of a match from the potential partner for purposes of WREP. Partners will also be required to submit a plan for monitoring, evaluating, and reporting progress made toward achieving the objectives of the agreement.

(h) An estimate of the percentage of potential landowners, or estimate of the percentage of acres likely to be enrolled within the project area, compared to the total number of potential landowners or acres located in the project area. A statement on how the partner will encourage participation to guarantee success of the project. It is not necessary for a target area to involve multiple landowners to be selected. Projects will be evaluated based on the ecological merits of the proposal and contributions by the partners.

(i) A statement describing how the partner will provide outreach, especially to encourage participation by Indian Tribes, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and limited resource farmers or ranchers.

(j) A description of the wetland protection, restoration, and enhancement activities to be implemented during the project timeframe, and the general sequence of implementation of the project. Activities may include those efforts undertaken by the partner and those that the partner requests NRCS to address through financial support.

National Ranking Considerations

The appropriate State Conservationist will evaluate proposals and forward recommendations, with justification, to the NRCS Chief for review and selection. The Chief will give a higher priority to proposals that:

(a) Have a high potential to achieve wetland restoration;

(b) Have a high potential to significantly improve water quality;

(c) Have a high potential to significantly improve wildlife habitat;

(d) Have a high potential to remove frequently flooded lands from agricultural production returning lands to more natural conditions;

(e) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, tribal, or Federal efforts;

(f) Demonstrate the partner's history of working cooperatively with landowners on conservation easements;

(g) Provide innovation in wetland protection, restoration, enhancement, and management methods and outcome-based performance measures and methods;

(h) Provide evidence that wetland restoration and enhancement activities will be completed within 2 years of easement closing;

(i) Provide for monitoring and evaluation of the effectiveness of the restoration activities on water quality;

(j) Provide for matching financial or technical assistance funds to assist landowners with the implementation of the Wetlands Reserve Plan of Operations and associated contracts;

(k) Facilitate the submission of landowner applications;

(l) Provide for outreach to, and participation of, Indian Tribes, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and limited resource farmers or ranchers within the area covered by the agreement; and

(m) Integrate a MRBI–WREP proposal with a MRBI–CCPI proposed or approved project.

Partnership Agreements

Upon proposal selection, NRCS will enter an agreement with a partner as the mechanism for partner participation in WREP. At a minimum, the agreement will address:

(a) The role of the partner;

(b) The role of NRCS;

(c) The format and frequency of reports that is required as a condition of the agreement;

(d) The Plan of Work and budget to identify other funding sources (if applicable) for financial or technical assistance;

(e) The specified project schedule and timeframe;

(f) Whether the agreement will serve as an obligating document or whether funds will be obligated under a separate agreement with the partner or with a third party; and

(g) Other requirements deemed necessary by NRCS to achieve purposes of the WRP.

Landowner Application

Landowners must meet the eligibility requirements of WRP, as published in 7 CFR part 1467. Landowners interested in participating may apply for designated WREP funds at their local service center after WREP proposals are selected. In FY 2012, NRCS will make WREP funds available to eligible landowners to enroll land under a permanent easement, a 30-year easement, a 30-year contract on acreage owned by Indian Tribes, or through a Restoration Agreement.

NRCS and the partner may assist landowners in determining whether the application is appropriate for WREP depending on the wetland protection, restoration, and enhancement activities that the applicant seeks to install or perform.

Signed the 22nd day of December, 2011, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2011–33692 Filed 12–30–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Preliminary Rescission of the Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on honey from the People's Republic of China (''PRC'') for the period of review (''POR'') December 1, 2009, to November 30, 2010. As discussed below, we have preliminarily determined to rescind this administrative review because we have found the sales made by Dongtai Peak Honey Industry Co., Ltd. (''Dongtai Peak'') that entered during the POR were not *bona fide*.

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, telephone: (202) 482–3207, or Josh Startup, telephone: (202) 482–5260; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

The Department received timely requests from Petitioners [1] and Dongtai Peak, a Chinese producer and exporter of honey, in accordance with 19 CFR 351.213(b), during the anniversary month of December, to conduct a review of honey exporters from the PRC. On January 28, 2011, the Department initiated this review with respect to all 60 requested companies.[2]

On February 7, 2011, Mongolia Altin Bee-Keeping Co., Ltd., Suzhou Shanding Honey Product Co., Ltd., and Wuhu Fenglian Co., Ltd. submitted a letter certifying they had no shipments during the POR and requesting the Department rescind this review with respect to each of them.[3] On February 24, 2011, Petitioners withdrew the request for review for all companies requested except for Dongtai Peak. On March 9, 2011, the Department published a notice of partial rescission in the **Federal Register** for all of the companies for which the request for review was withdrawn.[4] Dongtai Peak remains the only company subject to this review. On August 4, 2011, the Department published a notice extending the time period for issuing the preliminary results by 120 days to December 31, 2011.[5]

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[6] However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers, if it is not practicable to examine all exporters or producers for which the review is initiated.

On January 21, 2011, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (''APO'') to all interested parties having access to materials released under APO inviting comments regarding the CBP data and respondent selection. The Department did not receive any comments on the CBP data.

On February 16, 2011, the Department selected Dongtai Peak as the only mandatory respondent.[7] As noted above, Mongolia Altin Bee-Keeping Co., Ltd., Suzhou Shanding Honey Product Co., Ltd., and Wuhu Fenglian Co., Ltd. submitted a letter certifying they had no shipments during the POR and are no longer subject to this review. As discussed below, Petitioners have alleged that Dongtai Peak's sales were non-*bona fide* transactions,[8] and therefore did not provide a reasonable or reliable basis for the Department to calculate a dumping margin.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.[9] Other than Dongtai Peak's Section A portion of the questionnaire response filed on March 16, 2011, no companies submitted a separate rate application or certification.

Questionnaires

On February 25, 2011, the Department issued its initial non-market economy (''NME'') antidumping duty questionnaire to the mandatory respondent Dongtai Peak. Dongtai Peak timely responded to the Department's initial and subsequent supplemental questionnaires between February and December 2011.[10]

Period of Review

The POR is December 1, 2009, through November 30, 2010.

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Bona Fide Analysis

In this administrative review, Petitioners alleged that the sales of Dongtai Peak were non-*bona fide.* Therefore, because there was an allegation regarding the *bona fide* nature of these sales the Department undertook that analysis in this review. Where all of the sales in a review are deemed as non-*bona fide* commercial transactions, this must end the review.[11] To determine whether a sale in a review is unrepresentative or extremely distortive, and therefore excludable as non-*bona fide,* the Department employs a totality of the circumstances test.[12] In examining the totality of the circumstances, the Department looks to whether or not the transaction is ''commercially unreasonable'' or ''atypical.'' [13] Atypical or non-typical in this context means unrepresentative of a normal business practice.[14]

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[1] The American Honey Producers Association and Sioux Honey Association, collectively ''Petitioners.''

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011) (''*Initiation Notice*'').

[3] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

[4] *See Honey from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 12940 (March 9, 2011).

[5] *See Ninth Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 76 FR 47238 (August 4, 2011).

[6] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

[7] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Josh Startup, International Trade Analyst, Office 9; Selection of Respondents for the Antidumping Review Honey from the People's Republic of China (''PRC''), dated February 16, 2011.

[8] *See, e.g.,* Petitioners' submissions received on August 1, 2011, October 14, 2011, and November 21, 2011.

[9] *See Initiation Notice.*

[10] While the Department continued to receive submissions from both Petitioners and Dongtai Peak through December, we were unable to take submissions submitted on or after December 13, 2011, into consideration for these preliminary results due to the close proximity to statutory deadlines. Submissions received on or after December 13, 2011, will be taken into consideration for the final results.

[11] *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1249 (CIT 2005) (''*TTPC*'').

[12] *See Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.,* 69 FR 47405, 47406 (August 5, 2004).

[13] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review,* 68 FR 1439, 1440 (January 10, 2003).

[14] *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1339 (CIT 2005) (''*New Donghua*''), *citing Windmill Int'l Pte., Ltd.* v. *United States,* 193 F. Supp. 2d 1303, 1313 (CIT 2002) (''*Windmill*''); *see also TTPC,* 366 F. Supp. 2d at 1249–50.

The Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.[15] In *TTPC,* the court affirmed the Department's practice of considering that ''any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,'' [16] and found that ''the weight given to each factor investigated will depend on the circumstances surrounding the sale.'' [17] The Court stated that the Department's practice makes clear that the Department is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.[18] Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.[19]

In evaluating whether sales subject to review are commercially reasonable, and therefore *bona fide,* the Department normally considers a number of factors such as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis; [20] (6) as well as the business practices of the importer and U.S. customers.[21] In this case and as further discussed below, the Department determines that the business practices of the importer and U.S. customer are so atypical and unusual that no other factors need to be analyzed.

When performing its *bona fide* analysis, the Department reviews the circumstances surrounding a respondent's sales of subject merchandise that entered the United States during the POR.[22] Concurrent with this notice, we are issuing a business proprietary memorandum [23] detailing our analysis of the *bona fides* of Dongtai Peak's U.S. entries and our preliminary decision to rescind the administrative review of Dongtai Peak based on the totality of the circumstances of its sales, because much of the information relied upon by the Department to analyze the *bona fides* issue is business proprietary. The Department determined that the sales made by Dongtai Peak were not *bona fide* for the following reasons: (1) The ultimate disposition of the honey is unknown, and no documentation was produced to demonstrate its status; (2) the licensing inconsistencies of the U.S. importer and its resale customer; and (3) the unusual channels of trade which the honey entered following its importation. Therefore, we preliminarily find that Dongtai Peak's sales that entered the United States during the POR are not *bona fide* commercial transactions, and that Dongtai Peak's sales entering the United States during the POR do not provide a reasonable or reliable basis for calculating a dumping margin.

Preliminary Determination To Rescind

As discussed above,[24] we preliminarily determine that Dongtai Peak's U.S. sales were not *bona fide* commercial transactions; accordingly, Dongtai Peak has not met the requirements to qualify for an administrative review during the POR. Therefore, the Department is preliminarily rescinding this review with respect to Dongtai Peak because Dongtai Peak has no reviewable entries during the POR.[25]

Public Hearing

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.[26] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs.[27] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[28]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value factors of production (''FOPs'') within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Any interested party may request a hearing within 30 days of publication of this notice.[29] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[30] The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on rates calculated in previous reviews. Due to the fact that this review of Dongtai Peak is preliminarily rescinded, if this preliminary rescission is adopted in our final results of review, Dongtai Peak's antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with

[15] *See New Donghua,* 374 F. Supp. 2d at 1340, n.5, *citing TTPC,* 366 F. Supp. 2d at 1260, and *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

[16] *See TTPC,* 366 F. Supp. 2d at 1250.

[17] *See id.* at 1263.

[18] *See New Donghua,* 374 F. Supp. 2d at 1339.

[19] *See id.*

[20] *See TTPC,* 366 F. Supp. 2d at 1250.

[21] *See New Donghua,* 374 F. Supp. 2d at 1343–44.

[22] *See* Dongtai Peak's Sections C and D Questionnaire Response, submitted April 4, 2011, at C–1.

[23] *See* Memorandum to the File from Josh Startup, International Trade Analyst, through Catherine Bertrand, Program Manager, to James C. Doyle, Director, regarding ''Antidumping Duty Administrative Review of Honey from the People's Republic of China: *Bona Fide* Analysis of Sales Under Review for Dongtai Peak Honey Industry Co., Ltd.,'' dated concurrently with this notice (''Dongtai *Bona Fides* Memo'').

[24] *See also* Dongtai *Bona Fides* Memo.

[25] *See TTPC,* 366 F. Supp. 2d at 1249 (''{P}ursuant to the rulings of the Court, Commerce may exclude sales from the export price calculation where it finds that they are not bona fide'').

[26] *See* 19 CFR 351.309(c)(ii).

[27] *See* 19 CFR 351.309(d).

[28] *See* 19 CFR 351.309(c) and (d).

[29] *See* 19 CFR 351.310(c).

[30] *See* 19 CFR 351.310(d).

this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 23, 2011.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–33669 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Correction to Initiation of 2010–2011 Antidumping Duty Administrative Review: Narrow Woven Ribbons With Woven Selvedge From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: EFFECTIVE DATE: January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Holly Phelps, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0629 and (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Correction: On October 31, 2011, the Department of Commerce published its initiation of an administrative review of the antidumping duty order covering narrow woven ribbons with woven selvedge (narrow woven ribbons) from Taiwan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 67133, 67138 (Oct. 31, 2011). The period of review is September 1, 2010, through August 31, 2011.

Subsequent to the publication of the initiation of this segment of the proceeding in the **Federal Register**, we identified four inadvertent errors in the initiation notice. Three companies had typographical errors in their names: FinerRibbon.com, shown as FinerRibbons.com; Shienq Huong Enterprise Co., Ltd., shown as Shieng Huong Enterprise Co., Ltd.; and Hubschercorp, shown as Hubs Hsien Chan Enterprise Co., Ltd. In addition, one company was omitted in error (*i.e.,* Intercontinental Skyline). This notice serves as a correction to the list of companies under review in the above-referenced proceeding. The initiation of the administrative review of narrow woven ribbons from Taiwan is correct and remains unchanged.

This correction is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: December 21, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33670 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Oregon State University, 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: 11–067. *Applicant:* Oregon State University, Corvallis, OR. 97331. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., the Netherlands. *Intended Use:* See notice at 76 FR 74045, November 30, 2011.

Docket Number: 11–068. *Applicant:* Regents of the University of California at Riverside, Riverside, CA 92521–0411. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., the Netherlands. *Intended Use:* See notice at 76 FR 74045, November 30, 2011.

Docket Number: 11–069. *Applicant:* U.S. Food and Drug Administration, Silver Spring, MD 20903. Instrument: Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 76 FR 74045, November 30, 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 22, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–33679 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Extension of Time Limit for the Final Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek at (202) 482–2778; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2011, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the countervailing duty order on certain kitchen appliance shelving and racks from the People's Republic of China, covering the period January 7, 2009, through December 31, 2009. *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review,* 76 FR 62364 (October 7, 2011) (''Preliminary Results''). In the *Preliminary Results* we stated that we would issue our final results for the countervailing duty administrative review no later than 120 days after the date of publication of the *Preliminary Results. See Preliminary Results,* 76 FR at 62373.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days of the publication of

the *Preliminary Results.* If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

Extension of Time Limits for Final Results

The Department has determined that completion of the final results of this review within the original time period (i.e., by February 4, 2012) is not practicable. The Department needs additional time to conduct a post-preliminary analysis of certain subsidy programs. *See Preliminary Results,* 76 FR at 62370, 62372. Therefore, the Department is extending the time limit for completion of the final results to not later than April 4, 2012, which is 180 days from the date of publication of the *Preliminary Results,* in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: December 27, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33672 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, except for the review of the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China (A–570–890), the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

If the Department limits the number of respondents selected for individual examination in the administrative review of the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China (A–570–890), it intends to select respondents based on volume data contained in responses to quantity and value questionnaires. Further, the Department intends to limit the number of quantity and value questionnaires issued in the wooden bedroom furniture review based on CBP data for U.S. imports classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') headings identified in the scope of the order. Since the units used to measure import quantities are not consistent for the HTSUS headings identified in the scope of the order on Wooden Bedroom Furniture from the People's Republic of China, the Department will limit the number of quantity and value questionnaires issued based on the import values in the CBP data as a proxy for import quantities. Parties subject to the review to which the Department does not send a quantity and value questionnaire may file a response to the quantity and value questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. Additionally, exporters subject to the review to which the Department does not send a quantity and value questionnaire may file a separate rate application or separate rate certification, as appropriate, by the applicable deadline without filing a response to the quantity and value questionnaire.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (i.e., investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity

and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after January 2012, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of January 2012,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period of review
Antidumping Duty Proceedings	
Brazil: Prestressed Concrete Steel Wire Strand, A–351–837	1/1/11–12/31/11
India: Prestressed Concrete Steel Wire Strand, A–533–828	1/1/11–12/31/11
Mexico: Prestressed Concrete Steel Wire Strand, A–201–831	1/1/11–12/31/11
South Africa: Ferrovanadium, A–791–815	1/1/11–12/31/11
Republic of Korea: Prestressed Concrete Steel Wire Strand, A–580–852	1/1/11–12/31/11
Thailand: Prestressed Concrete Steel Wire Strand, A–583\814	1/1/11–12/31/11
The People's Republic of China:	
Crepe Paper Products, A–570–895	1/1/11–12/31/11
Ferrovanadium, A–570–873	1/1/11–12/31/11
Folding Gift Boxes, A–570–866	1/1/11–12/31/11
Potassium Permanganate, A–570–001	1/1/11–12/31/11
Wooden Bedroom Furniture, A–570–890	1/1/11–12/31/11
Countervailing Duty Proceedings	
The People's Republic of China: Certain Oil Country Tubular Goods, C–570–944	1/1/11–12/31/11
Circular Welded Carbon Quality Steel Line Pipe, C–570–936	1/1/11–12/31/11
Suspension Agreements	
Mexico: Fresh Tomatoes, A–201–820	1/1/11–12/31/11
Russia: Certain Cut-To-Length Carbon Steel Plate, A–821–808	1/1/11–12/31/11

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at *http://ia.ita.doc.gov.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2012. If the Department does not receive, by the last day of January 2012, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33678 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–428–815	731–TA–616	Germany	Corrosion-Resistant Carbon Steel Flat Products (3rd Review).	Dana Mermelstein (202) 482–139.
A–580–816	731–TA–618	South Korea	Corrosion-Resistant Carbon Steel Flat Products (3rd Review).	David Goldberger (202) 482–4136.
C–580–818	701–TA–350	South Korea	Corrosion-Resistant Carbon Steel Flat Products (3rd Review).	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to

business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Dated: December 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33674 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA911

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee in January 2012 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 25, 2012 at 9:30 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Habitat Committee to recommend management alternatives discussed on January 24 for further development and analysis. As compared to the roundtable-style format used on the previous day, this meeting will be conducted as a formal committee meeting.

Agenda items include: (1) Management alternatives related to deep-sea corals, and (2) management options related to adverse effects minimization, including recommendations about research areas. For each topic, staff will review discussion from Day 1, particularly any suggested modifications. The Committee will decide on measures to be forwarded to the Council for analysis in a NEPA document. Coral management will be discussed in the morning and adverse effects management and research areas will be addressed in the afternoon.

The Committee will also receive a presentation about the Muskeget Channel Tidal Energy Project, and may recommend that the Council submit comments on this issue.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 27, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–33616 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA910

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Habitat/MPA/Ecosystem Committee and Advisory Panel (AP) in January 2012 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 24, 2012, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Habitat Committee, Advisory Panel, and Plan Development Team (PDT) members, and other interested parties, to reach a common understanding of the Omnibus EFH Amendment management options as currently developed, and to provide suggestions on how to refine and improve upon those options.

Agenda items include: (1) Management alternatives related to deep-sea corals, and (2) management options related to adverse effects minimization, including recommendations about research areas. For each topic, Council staff, assisted by other PDT members as necessary, will present the range of options and answer questions, followed by roundtable discussion between Advisory Panel, Committee and PDT members. It is highly recommended that AP and other participants bring supporting information regarding suggested changes to management area boundaries and associated restrictions. Coral management will be discussed in the morning and adverse effects management and research areas will be addressed in the afternoon.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 27, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–33615 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA872

Taking of Marine Mammals Incidental to Specified Activities; U.S. Marine Corps Training Exercises at Air Station Cherry Point

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Marine Corps (USMC) to take marine mammals, by Level B harassment only, incidental to military training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina. The USMC's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2004.

DATES: Effective January 1, 2012 through December 31, 2012.

ADDRESSES: A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The following associated documents are also available at the same internet address: *Environmental Assessment MCAS Cherry Point Range Operations* (USMC 2009) and the associated Finding of No Significant Impact (FONSI). Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as: ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On September 22, 2011, NMFS received an application from the USMC requesting an IHA for the harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to air-to-surface and surface-to-surface training exercises conducted around two bombing targets (BTs) within southern Pamlico Sound, North Carolina, at MCAS Cherry Point. NMFS first issued an IHA to the USMC for the same activities that was valid for a period of one year, beginning December 1, 2011 (75 FR 72807; November 26, 2010).

Weapon delivery training will occur at two BTs: Brant Island Target (BT–9) and Piney Island Bombing Range (BT–11). Training at BT–9 will involve air-to-surface (from aircraft to in-water targets) and surface-to-surface (from vessels to in-water targets) warfare training, including bombing, strafing, special (laser systems) weapons; surface fires using non-explosive and explosive ordnance; and mine laying exercises (inert). Training at BT–11 will involve air-to-surface exercises to provide training in the delivery of conventional (non-explosive) and special (laser systems) weapons. Surface-to-surface training by small (i.e., 24–85 ft) military watercraft will also be executed here. The types of ordnances proposed for use at BT–9 and BT–11 include small arms, large arms, bombs, rockets, missiles, and pyrotechnics. All munitions used at BT–11 are inert practice rounds. No live firing occurs at BT–11. Training for any activity may occur year-round, day or night. Active sonar is not a component of these specified training exercises; therefore, no harassment from active sonar is covered by the IHA.

Description of the Specified Activity

All inert and live-fire exercises at MCAS Cherry Point are conducted so that all ammunition and other ordnances strike and/or fall on the land or water based target or within the existing danger zones or water restricted areas. The BTs are located at the convergence of the Neuse River and Pamlico Sound, North Carolina. Military training activities at the BTs include gunnery; mine laying; bombing; or rocket exercises and are classified into two categories here based on delivery method: (1) Surface-to-surface gunnery and (2) air-to-surface bombing. Exercises may occur year round, day or night (less than 15 percent of training occurs at night).

Surface-to-surface fires are fires from boats at sea to targets at sea. These can be direct (targets are within sight) or indirect (targets are not within sight). Gunnery exercise employing direct fire is the only category of surface-to-surface activity currently conducted within MCAS Cherry Point. There are four types of air-to-surface activities conducted within the MCAS Cherry Point BTs: Inert mine laying; bombing; gunnery; and rocket exercises which are carried out via fixed wing or rotary wing aircraft. High explosive ordnance is used only at BT–9. The USMC estimates that it may conduct approximately 1,539 aircraft-based and 165 vessel-based sorties, annually, at BT–9 and approximately 6,727 aircraft-based and 51 vessel-based sorties, annually, at BT–11. The standard sortie consists of two aircraft per bombing run or an average of two and maximum of six vessels. A complete description of these military readiness activities, including the type and amount of ammunition used during training, is available in the proposed **Federal Register** notice for this action (76 FR 71535; November 18, 2011).

Description of Marine Mammals in the Area of the Specified Activity

Only one marine mammal species, the bottlenose dolphin, occurs within Pamlico Sound around the BTs. The endangered West Indian manatee (*Trichechus manatus*) has been sighted rarely (Lefebvre *et al,* 2001; DoN, 2003) within Pamlico Sound; however, the U.S. Fish and Wildlife Service oversees management of this species. Therefore, authorization to harass West Indian manatees is not included in any NMFS' authorization and will not be discussed further.

Four out of seven designated coastal stocks of the Atlantic bottlenose dolphin may occur in North Carolina waters at some part of the year: The Northern Migratory stock (NM; winter); the Southern Migratory stock (SM; winter); the Northern North Carolina Estuarine stock (NNCE; resident, year round); and the more recently identified Southern North Carolina stock (SNC; resident, year round). Dolphins encountered at the BTs likely belong to the NNCE and SNC stock; however, this may not always be the case. NMFS' 2008 stock assessment report provides further detail on stock delineation. All stocks discussed here are considered Depleted under the MMPA (Waring *et al.,* 2010).

In Pamlico Sound, bottlenose dolphins concentrate in shallow water habitats along shorelines, and few, if any, individuals are present in the central portions of the sounds (Gannon, 2003; Read *et al.,* 2003a, 2003b). Fine-scale dolphin abundance and density studies have been conducted in Pamlico Sound via aerial and boat based surveys (Read *et al.,* 2003; Mayer, 2003; Goodman *et al.,* 2007). Read *et al.* (2007) also conducted passive acoustic monitoring to determine dolphin presence around the BTs. The survey resulted in varying abundance and density estimates; however, in general, abundance was higher in summer than winter, density estimates ranged from 0.09 to 0.18 dolphins/km^2, and abundance around BT–11 was greater than BT–9. A complete description of bottlenose dolphin biology and ecology within Pamlico Sound can be found in the proposed IHA **Federal Register** notice prepared for this action (76 FR 71535; November 18, 2011).

Effects on Marine Mammals

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as:

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

The USMC and NMFS have determined that harassment to marine mammals (specifically, bottlenose dolphins) may occur incidental to noise and detonations related to munitions firing on the BTs. These military readiness activities will result in increased noise levels, explosions, and munition debris within bottlenose dolphin habitat. In the absence of planned mitigation and monitoring measures, it is possible that injury or mortality of bottlenose dolphins could occur; however, due to the implementation of the planned measures, NMFS does not anticipate that harassment would rise to the level of injury (Level A harassment), serious injury, or mortality. Therefore, the IHA solely authorizes Level B (behavioral) harassment incidental to the USMC's training activities. NMFS anticipates that bottlenose dolphins may undergo temporary threshold shift, masking, stress response, and altered behavioral patterns (e.g., traveling, resting, opportunistic foraging). A complete description of these impacts is available in the proposed IHA **Federal Register** notice prepared for this action (76 FR 71535; November 18, 2011).

Effects on Marine Mammal Habitat

Detonations of live ordnance will result in temporary modification to

physical water properties. Munitions are designed to hit the targets and not explode in-water; however, because the targets are on the water (e.g., ship hull on shoals); in-water explosions may occur. Such explosions will result in the release of gaseous by-products and creation of oscillating bubbles. Should a high-explosive miss the target and explode in-water, a small water plume may erupt. However, these impacts will be temporary and not expected to last more than a few seconds. Any direct hit on the targets are not expected to cause the aforementioned effects as the target would absorb the impact.

Similarly, no long term impacts with regard to hazardous constituents are expected to occur. MCAS Cherry Point has an active Range Environmental Vulnerability Assessment (REVA) program in place to monitor impacts to habitat from its activities. One goal of REVA is to determine the horizontal and vertical concentration profiles of heavy metals, explosives constituents, perchlorate nutrients, and dissolved salts in the sediment and seawater surrounding BT–9 and BT–11. Results of recent sampling indicate that explosive constituents (e.g., trinitrotoluene (TNT), cyclotrimethylenetrinitramine (RDX), and hexahydro-trinitro-triazine (HMX) were not detected in any sediment or water sample surrounding the BTs. Metals were not present above toxicity screening values. Perchlorate was detected in a few sediment samples above the detection limit (0.21 ppm), but below the reporting limit (0.6 ppm). The ongoing REVA would continue to evaluate potential migration of munitions constituents from operational range areas to off-range areas and MCAS Cherry Point would continue to implement mitigation measures as necessary.

In summary, in the absence of planned mitigation and monitoring measures, the potential exists for negative effects on marine mammal habitat. However, because dolphins are not expected to be in the immediate area during live firing, due to monitoring and mitigation measure implementation (discussed later in this document), they will not be subject to any short term habitat alterations caused by in-water and near-water explosions. REVA has found no significant impact on habitat from the USMC's training activities and the ongoing REVA will continue to evaluate potential migration of munitions constituents from operational range areas to off-range areas and MCAS Cherry Point would continue to implement mitigation measures as necessary. Therefore, the impacts to marine mammal habitat will be minimal.

Comments and Responses

On November 18, 2011, NMFS published in the **Federal Register** a notice of a proposed IHA for the taking of marine mammals incidental to the USMC's training exercises at MCAS Cherry Point and requested comments regarding this request (76 FR 71535). NMFS also sent the proposed IHA notice to the Marine Mammal Commission (Commission). During the 30-day public comment period, NMFS received comments from the Commission on the application and proposed IHA, and has evaluated and considered those comments in the course of making the necessary findings under the MMPA Section 101(a)(5)(D). No additional public comment was received.

Comment 1: The Commission recommends that, before issuing the IHA, NMFS require the USMC to (1) describe in detail the environmental and operational parameters and methods used to determine the zones of exposure and to estimate the associated number of takes; and (2) ensure that the USMC has determined the zones of exposure and associated number of takes for all types of ordnance (including practice bombs and 25-mm live rounds).

Response: NMFS disagrees with the Commission's statements that the methods used by the USMC to derive safety zones, take, and estimate strike probability were lacking or inadequate. The USMC's application describes how safety zones were derived (based on NMFS explosive harassment criteria) and concluded that Level A harassment could occur at distances around 200 m (656 ft) from the target, based on a threshold of 13 psi-msec. However, the USMC will establish a ''no fire'' zone for a 1000 m (3281 ft) radius around BT–9, or anywhere within Raritan Bay at BT–11, providing a conservative approach to bottlenose dolphin safety.

The Commission notes that net explosive weights are presented in Table 2 of the proposed IHA **Federal Register** notice for several munitions types that do not have corresponding modeling information presented in Table 9 of the same document. Information for 25-mm live rounds was presented in error; high explosive rounds planned for use by USMC include only 30- and 40-mm rounds. Practice bombs contain no explosive filler, only a small signal cartridge which emits smoke used for visual observation of weapon target impact. Potential impact to marine mammals from use of these charges is discountable.

Comment 2: The Commission also requested that detailed mitigation, monitoring, and reporting requirements be specified in the application and that NMFS should withhold the authorization until the USMC develops and is prepared to implement a plan to evaluate the effectiveness of monitoring and mitigation measures before beginning or, at the very least, in conjunction with, conducting exercises covered by the proposed IHA.

Response: NMFS worked closely with the USMC during the application process to develop proper mitigation, monitoring, and reporting requirements designed to minimize and detect impacts from the specified activities. In order to ensure that NMFS can make the findings necessary for issuance of an IHA, NMFS worked with the USMC to develop more comprehensive and acceptable mitigation, monitoring, and reporting requirements. As a result, the USMC prepared a *Marine Mammal and Protected Species Monitoring Plan* (Plan) and additional monitoring and mitigation measures are contained within the IHA and this notice. NMFS has determined that the Plan and additional monitoring and mitigation measures are adequate to satisfy the requirements of the MMPA.

Comment 3: The Commission recommends the NMFS require the USMC to use either direct strike or dynamic Monte Carlo models to determine the probability of ordnance strike.

Response: The Commission recommended ''direct strike or dynamic Monte Carlo methods'' while noting that the result of using a new risk probability model would likely provide negligible changes from the model described in the application. The Commission did not provide further guidance on how to calculate risk from a Monte Carlo method and, because any change would be negligible, NMFS does not agree that this alternative method of modeling is necessary for purposes of issuing an MMPA incidental take authorization.

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 adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA of 2004 amended the MMPA as it relates to

military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The training activities described in the USMC's application are considered military readiness activities.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (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, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. NMFS has determined that the mitigation measures described below 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 while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The USMC, in collaboration with NMFS, has worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. These proposed mitigation measures are listed below. Mitigation monitoring is also described in the *Marine Mammal and Protected Species Monitoring Plan,* the specifications of which are included as conditions in the IHA. While the primary focus of monitoring for both mitigation and reporting shall be on bottlenose dolphins, personnel will also attempt to identify any other marine mammals that might be present within the exclusion zone. In the unlikely event that a marine mammal other than bottlenose dolphin is sighted within the exclusion zone or determined to have been stranded, injured or killed by target operations, then the same mitigation measure for delay of exercises (described later in this document) prescribed for bottlenose dolphins, or immediate suspension of activities, shall apply, and relevant information will be included in weekly reports and post-IHA monitoring reports.

(1) *Range Sweeps:* The VMR–1 squadron, stationed at MCAS Cherry Point, includes three specially equipped HH–46D helicopters. The primary mission of these aircraft, known by the military acronym PEDRO, is to provide search and rescue for downed 2d Marine Air Wing aircrews. On-board are a pilot, co-pilot, crew chief, search and rescue swimmer, and a medical corpsman. Each crew member has received extensive training in search and rescue techniques, and is therefore particularly capable at spotting objects in the water.

PEDRO crew will conduct a range sweep the morning of each exercise day prior to the commencement of range operations. The primary goal of the pre-exercise sweep is to ensure that the target area is clear of fishermen, other personnel, and protected species. The sweep is flown at 100–300 m (328–984 ft) above the water surface, at airspeeds between 60–100 knots. The path of the sweep runs down the western side of BT–11, circles around BT–9 and then continues down the eastern side of BT–9 before leaving. The sweep typically takes 20–30 minutes to complete. The Pedro crew is able to communicate directly with range personnel and can provide immediate notification to range operators. The PEDRO aircraft will remain in the area of a sighting until clear if possible or as mission requirements dictate.

If a marine mammal is sighted during a range sweep, sighting data will be collected and entered into the US Marine Corps sighting database, web-interface, or report generator and this information will be relayed to the training Commander. Sighting data includes the following (collected to the extent possible): (1) Species identification; (2) group size; (3) the behavior of marine mammals (e.g., milling, travel, social, foraging); (4) location and relative distance from the BT; (5) date, time and visual conditions (e.g., sea state (as indicated by Beaufort Wind Force Scale), weather) associated with each observation; (6) direction of travel relative to the BT; and (7) duration of the observation.

(2) *Cold Passes:* All aircraft participating in an air-to-surface exercise will be required to perform a ''cold pass'' immediately prior to ordnance delivery at the BTs both day and night. That is, prior to granting a ''First Pass Hot'' (use of ordnance), pilots will be directed to perform a low, cold (no ordnance delivered) first pass which serves as a visual sweep of the targets prior to ordnance delivery to determine if unauthorized civilian vessels or personnel, or protected species, are present. The cold pass is conducted with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 200–3000 ft (61–914 m) over the target area. The viewing angle is approximately 15 degrees. A blind spot exists to the immediate rear of the aircraft. Based upon prevailing visibility, a pilot can see more than one mile forward upon approach. The aircrew and range personnel make every attempt to ensure clearance of the area via visual inspection and remotely operated camera operations (see Proposed Monitoring and Reporting section in this document). The Range Controller may deny or approve the First Pass Hot clearance as conditions warrant.

(3) *Delay of Exercises:* An active range will be considered ''fouled'' and not available for use if a marine mammal is present within 1000 yards (914 m) of the target area at BT–9 or anywhere within Rattan Bay (BT–11). Therefore, if a marine mammal is sighted within 1000 yards of the target at BT–9 or anywhere within Rattan Bay at BT–11 during the initial range sweep, the pre-ordnance delivery cold pass, or from range camera detection (see 4, later in this document), training will be delayed until the marine mammal moves beyond the 1000 yard radius from the BT–9 target, and is on a heading away from the safety zone, or out of Rattan Bay at BT–11. This mitigation applies to both air-to-surface and surface-to-surface exercises.

(4) *Range Camera Use:* To increase the safety of persons, property, or protected resources near the targets, Range Operation and Control personnel monitor the target area through tower mounted safety and surveillance cameras. The remotely operated range cameras are high resolution and, according to range personnel, allow a clear visual of even small objects floating near the target. A new, enhanced camera system will be installed on BT–11 towers 3 and 7, and on both towers present at BT–9. The new camera system has night vision capabilities with resolution levels near those during daytime. Lenses on the camera system have focal lengths of 40 mm to 2200 mm (56×), with view angles of 18° 10′ and 13° 41′, respectively. The

field of view when zoomed in on the Rattan Bay targets will be 23 ft (7 m) wide by 17 ft (5 m) high. When focused on the mouth of Rattan Bay, the field of view will be 87 × 66 ft (27 × 20 m).

Again, in the event that a marine mammal is sighted within 1000 yards (914 m) of the BT–9 target, or anywhere within Rattan Bay, the target is declared fouled. Operations may commence in the fouled area after the animal(s) have moved 1000 yards from the BT–9 target and/or out of Rattan Bay.

(5) *Vessel Operation:* All vessels used during training operations will abide by the NMFS' Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals (*http://www.nmfs.noaa.gov/pr/education/southeast/*).

(6) *Stranding Network Coordination:* The USMC shall coordinate with the local NMFS Stranding Coordinator regarding any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

(7) *Delay of Operations:* If there is evidence that a marine mammal has been stranded, injured or killed as a direct result of target operations, the USMC would immediately suspend those activities within the specific target area and re-evaluate the presence of bottlenose dolphins, or other marine mammals if necessary, around the specific target. The incident will be reported immediately to the Range Management Office and NMFS' Stranding Network and Office of Protected Resources.

NMFS specifically investigated the efficacy of these mitigation measures during nighttime operations. The USMC identified that nighttime operations occur infrequently (less than 15 percent). In 2007, 2008, and 2009, nighttime training involving high explosives occurred on 2, 10, and 0 nights, respectively. For the same years, training using inert bombs occurred on 20, 16, and 33 nights, respectively. These exercises last, on average, 2.5 hours but may last as long as 6 hours. Post-exercise training monitoring has never revealed evidence of a dolphin injury or fatality.

Regardless of the infrequency of night exercises or lack of recorded marine mammal injuries or fatalities, NMFS evaluated the efficacy of marine mammal detection during low-light and no-light conditions as training will occur during these conditions. As described above, the new camera systems installed at BT–9 and BT–11 have night-vision capabilities with resolution levels near those during daytime. In addition, pilots are outfitted with night-vision goggles which are able to detect a marine mammal breaking the water's surface. Pilots will observe the waters in line with the flight path upon approach to the target. In addition, the pre-training range sweeps and other methods designed to ensure vessels and the public are not around the BTs would be carried out and would contain a marine mammal detection component. Should a marine mammal be observed by the range camera operators, pilots or other USMC personnel within the designated ''no fire'' zones, the training would be delayed.

Monitoring and Reporting

In order to issue an IHA 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 incidental take authorizations 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.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals: (a) An increase in our understanding of how many marine mammals are likely to be exposed to munition noise and explosions that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS; (b) an increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to gunnery and bombing exercises (at specific received levels) expected to result in take; (c) an increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival); (d) an increased knowledge of the affected species; (e) an increase in our understanding of the effectiveness of certain mitigation and monitoring measures; (f) a better understanding and record of the manner in which the authorized entity complies with the incidental take authorization; and (g) an increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general.

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 expected to be present within the action area are as follows:

(1) *Protected Species Observer Training:* Operators of small boats and other personnel monitoring for marine mammals from watercraft shall be required to take the Marine Species Awareness Training (Version 2), maintained and promoted by the Department of the Navy. Pilots conducting Range Sweeps shall be instructed on marine mammal observation techniques during routine Range Management Department briefings. This training will make personnel knowledgeable about marine mammals and other protected species, and visual cues related to the presence of marine mammals and protected species.

(2) *Weekly and Post-Exercise Monitoring:* Post-exercise monitoring shall be conducted the morning following an exercise, unless an exercise occurs on a Friday, in which case the post-exercise sweep would take place the following Monday. Weekly monitoring events will include a maximum of five pre-exercise and four post-exercise sweeps. The maximum number of days that will elapse between pre- and post-exercise monitoring events will be approximately three days, which would occur only on weekends. If marine mammals are observed during this monitoring, sighting data identical to those collected by PEDRO crew will be recorded and logged. Monitoring is described in greater detail in the *Marine Mammal and Protected Species Monitoring Plan*.

(3) *Long-term Monitoring:* The USMC has awarded the Duke University Marine Lab (DUML) duties to obtain abundance, group dynamics (e.g., group size, age census), behavior, habitat use, and acoustic data on the bottlenose dolphins that inhabit Pamlico Sound, specifically those around BT–9 and BT–11. DUML began conducting boat-based surveys and passive acoustic monitoring of bottlenose dolphins in Pamlico Sound in 2000 (Read *et al.,* 2003) and specifically at BT–9 and BT–11 in 2003 (Mayer, 2003). To date, boat-based surveys indicate that bottlenose dolphins may be resident to Pamlico Sound and use BT restricted areas on a frequent basis. Passive acoustic monitoring (PAM) is providing more detailed insight into how dolphins use the two ranges by monitoring for their vocalizations year-round, regardless of

weather conditions or darkness. In addition to these surveys, DUML scientists are testing a real-time PAM system at BT–9 that will allow automated detection of bottlenose dolphin whistles, providing another method of detecting dolphins prior to training operations. Although it is unlikely this PAM system will be active for purposes of implementing mitigation measures before an exercise prior to expiration of the proposed IHA, it will be operational for future MMPA incidental take authorizations.

(4) *Reporting:* The USMC will submit a report to NMFS within 90 days after expiration of the IHA or, if a subsequent incidental take authorization is requested, within 120 days prior to expiration of the IHA. The report will summarize the type and amount of training exercises conducted, all marine mammal observations made during monitoring, and if mitigation measures were implemented. The report will also address the effectiveness of the monitoring plan in detecting marine mammals.

Estimated Take by Incidental Harassment

The following provides the USMC's model for take of dolphins from explosives (without consideration of mitigation and with the conservative assumption that all explosives will land in the water and not on the targets or land) and potential for direct hits and NMFS' analysis of potential harassment from small vessel and aircraft operations.

The method to estimate the number of marine mammals potentially taken by the specified activities is based on dolphin density, the amount and type of ordnance proposed, and distances to NMFS' harassment threshold criteria. The acoustic criteria for underwater detonations are comprehensively explained in NMFS' proposed IHA **Federal Register** notice for this action (75 FR 32398, June 8, 2010) and consider hearing and physiological damage and behavioral harassment for single and multiple explosions (Table 1).

TABLE 1—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury.	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological.	50 percent Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re: 1 microPa^2-sec).	Level A.
Injurious Physiological.	Onset Slight Lung Injury.	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological.	TTS	Greatest energy flux density level in any 1/3-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures.	182 dB re 1 microPa^2-sec	Level B.
Non-injurious Physiological.	TTS	Peak pressure over all exposures	23 psi	Level B.
Non-injurious Behavioral.	Multiple Explosions Without TTS.	Greatest energy flux density level in any 1/3-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2-sec	Level B.

To calculate take, the distances to which animals may be harassed were considered along with dolphin density. The density estimate from Read *et al.* (2003) was used to calculate take from munitions firing (0.183/km^2). Take calculations for munitions firing are based on 100 percent water detonation (though the goal of training is to hit the targets), and do not consider pre-exercise monitoring or mitigation. Therefore, take estimates can be considered conservative.

Based on dolphin density and amount of munitions expended, there is very low potential for Level A harassment, serious injury, or mortality and monitoring and mitigation measures are anticipated to further negate this potential. Accordingly, NMFS is not authorizing these levels of take. In total, from firing of explosive ordnances, the USMC is requesting, and NMFS is proposing to issue, the incidental take of 25 bottlenose dolphins from Level B harassment (Table 2). This take estimation is described in greater detail in the **Federal Register** proposed IHA notice (76 FR 71535; November 18, 2011).

TABLE 2—NUMBER OF DOLPHINS POTENTIALLY TAKEN FROM EXPOSURE TO EXPLOSIVES BASED ON THRESHOLD CRITERIA

Ordnance type	Level B—Behavioral (177 dB re 1 microPa^2-s)	Level B—TTS (23 psi)	Level A—Injurious (205 dB re 1 microPa^2-s or 13 psi)	Mortality (30.5 psi)
2.75'' Rocket HE	N/A	4.97	0.17	0.06
5'' Rocket HE	N/A	3.39	0.09	0.03
30mm HE	2.55	N/A	0.05	0.00
40mm HE	12.60	N/A	0.16	0.01
G911 Grenade	N/A	0.87	0.03	0.01
Total	15.15	9.23	0.5	0.11

As described in the proposed IHA **Federal Register** notice for this action, the USMC and NMFS have determined that the chance of take from direct hit and vessel operation is discountable. The probability of hitting a bottlenose dolphin at the BTs can be derived as follows: Probability = dolphin's dorsal surface area * density of dolphins. The estimated dorsal surface area of a bottlenose dolphin is 1.425 m^2 (or the average length of 2.85 m times the average body width of 0.5 m). Thus, using Read *et al.* (2003)'s density estimate of 0.183 dolphins/km^2, without consideration of mitigation and monitoring implementation, the probability of a dolphin being hit in the waters of BT–9 is 2.61 x 10^7 and of BT–11 is 9.4 x 10^8. Using the proposed levels of ordnance expenditures at each in-water BT (Tables 4 and 5) and taking into account that only 36 percent of the ordnance deployed at BT–11 is over water, as described in the application, the estimated potential number of ordnance strikes on a marine mammal per year is 0.263 at BT–9 and 0.034 at BT–11. It will take approximately three years of ordnance deployment at the BTs before it will be likely or probable that one bottlenose dolphin will be struck by deployed inert ordnance. Again, these estimates are without consideration to proposed monitoring and mitigation measures. The USMC is proposing three methods of exercise monitoring (i.e., PEDRO, cold pass, and range cameras). When considering the implementation of the mitigation and monitoring measures described above, the chance of a marine mammal being taken by direct hit is discountable.

Interactions with vessels are not a new experience for bottlenose dolphins in Pamlico Sound. Pamlico Sound is heavily used by recreational, commercial (e.g., fishing, daily ferry service, tugs), and military (including the Navy, Air Force, and Coast Guard) vessels year-round. The NMFS' Southeast Regional Office has developed marine mammal viewing guidelines to educate the public on how to responsibly view marine mammals in the wild and avoid causing a take (*http://www.nmfs.noaa.gov/pr/education/southeast*). The guidelines recommend that vessels should remain a minimum of 50 yards (46 m) from a dolphin, operate vessels in a predictable manner, avoid excessive speed or sudden changes in speed or direction in the vicinity of animals, and not to pursue, chase, or separate a group of animals. The USMC will abide by these guidelines to the fullest extent practicable. The USMC will not engage in high speed exercises should a marine mammal be detected within the immediate area prior to training commencement and will not chase or pursue dolphins.

Based on the description of the action, the other activities regularly occurring in the area, the species that may be exposed to the activity and their observed behaviors in the presence of vessel traffic, and the implementation of measures to avoid vessel strikes, NMFS believes it is unlikely that the operation of vessels during surface-to-surface maneuvers will result in the take of any marine mammals, whether in the form of behavioral harassment,injury, serious injury, or mortality.

Aircraft will move swiftly through the area and will typically fly approximately 914 m (2999 ft) from the water's surface before dropping unguided munitions and above 4572 m (15,000 ft) for precision-guided munitions bombing. While the aircraft may approach as low as 152 m (500 ft) to drop a bomb, this is not the norm and will not be done around marine mammals. Regional whale watching guidelines advise aircraft to maintain a minimum altitude of 300 m (1000 ft) above all marine mammals, including small odontocetes, and to not circle or hover over the animals to avoid harassment. NMFS' approach regulations limit aircraft from flying below 300 m (1000 ft) over a humpback whale (*Megaptera novaeangliae*) in Hawaii, a known calving ground, and limit aircraft from flying over North Atlantic right whales (*Eubalaena glacialis*) closer than 460 m (1509 ft). Given that USMC aircraft will not fly below 300 m on the approach, will not engage in hovering or circling the animals, and will not drop to the minimal altitude of 152 m if a marine mammal is in the area, NMFS believes it is unlikely that the operation of aircraft, as described above, will result in take of bottlenose dolphins in Pamlico Sound.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, serious injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. 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.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number and manner of takes, alone, is not enough information on which to base a negligible impact determination. NMFS must also consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The USMC has been conducting gunnery and bombing training exercises at BT–9 and BT–11 for years and, to date, no dolphin injury or mortality has been attributed to these military training exercises. The USMC has a history of notifying the NMFS stranding network when any injured or stranded animal comes ashore or is spotted by personnel on the water. Therefore, stranded animals have been examined by stranding responders, further confirming that it is unlikely training contributes to marine mammal injuries or deaths. Due to the implementation of the aforementioned mitigation measures, no take by Level A harassment or serious injury or mortality is anticipated nor is any authorized in the IHA. NMFS is authorizing 25 Level B harassment takes associated with training exercises.

The USMC has proposed a 1,000-yard (914 m) safety zone around BT–9, a conservative measure considering that the distance to NMFS explosive Level B harassment threshold is 228 yards (209 m). They also will consider an area fouled if any dolphins are spotted within 1000 yards (914 m) of the target area at BT–9, or anywhere within Raritan Bay (where BT–11 is located). The Level B harassment takes allowed for in the IHA will likely result in dolphins being temporarily behaviorally affected by bombing or gunnery exercises. In addition, takes may be attributed to animals not using the area when exercises are occurring; however, this is difficult to calculate. Instead, NMFS looks at whether the specified activities occur during times or within habitat important to vital life functions to better inform its negligible impact determination.

Read *et al.* (2003) concluded that dolphins rarely occur in open waters in the middle of North Carolina sounds and large estuaries, but instead are concentrated in shallow water habitats along shorelines. However, no specific areas have been identified as vital reproduction or foraging habitat. Scientific boat-based surveys conducted throughout Pamlico Sound conclude that dolphins use the areas around the BTs more frequently than other portions of Pamlico Sound (Maher, 2003) despite the USMC actively training in a manner identical to the specified activities described here for years.

As described in the *Affected Species* section of this notice, bottlenose dolphin stock segregation is complex with stocks overlapping throughout the coastal and estuarine waters of North Carolina. It is not possible for the USMC to determine to which stock any individual dolphin taken during training activities belong as this can only be accomplished through genetic testing. However, it is likely that many of the dolphins encountered will belong to the NNCE or SNC stock. These stocks have population estimates of 919 and 4818, respectively. NMFS is proposing to authorize 25 takes of bottlenose dolphins in total; therefore, this number represents 2.72 and 0.005 percent, respectively, of those populations.

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 finds that the specified MCAS Cherry Point BT–9 and BT–11 training activities will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks. Further, NMFS does not anticipate any impact on annual rates of recruitment or survival for any potentially affected stock.

Subsistence Harvest of Marine Mammals

Marine mammals are not taken for subsistence use within Pamlico Sound; therefore, issuance of an IHA to the USMC for MCAS Cherry Point training exercises will not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area; therefore, there is no requirement for NMFS to consult under Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA.

National Environmental Policy Act (NEPA)

On February 11, 2009, the USMC issued a Finding of No Significant Impact for its Environmental Assessment (EA) on MCAS Cherry Point Range Operations. Based on the analysis of the EA, the USMC determined that the proposed action will not have a significant impact on the human environment. NMFS adopted USMC's EA and signed a FONSI on August 31, 2010. NMFS has reviewed the proposed application and public comments and determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary. The EA referenced above is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Dated: December 27, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33689 Filed 12–30–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2011–0029]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on February 2, 2012 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking 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 and docket number 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. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on December 21, 2011 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: December 28, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 AF A3 B DoD

SYSTEM NAME:

DoD Foreign Clearance Program Records (April 6, 2007, 72 FR 17136).

* * * * *

CHANGES:

SYSTEM NAME:

Delete entry and replace with ''Department of Defense (DoD) Foreign Clearance Program Records.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military, DoD civilians, and non-DoD personnel traveling under DoD sponsorship (contractors, foreign

nationals and dependents), and includes temporary travelers worldwide as defined by the DoD Foreign Clearance Program.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 22 U.S.C. 4801, Findings and purpose; 22 U.S.C. 4802, Responsibility of Secretary of State; and 22 U.S.C. 4805, Cooperation of other Federal Agencies; Public Law 99–399, Omnibus Diplomatic Security and Antiterrorism Act of 1986; Department of Defense Directive (DODD) 4500.54E, DoD Foreign Clearance Program; and E.O. 12333, United States Intelligence Activities.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved using individual's name, passport numbers, and dates of travel.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Aircraft diplomatic clearance and personnel travel records are permanent. Personally Identifiable Information is deleted from the record one year after mission/travel is completed. Records are only electronic.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, DoD Foreign Clearance Program, Strategic Plans and Policy Division, Headquarters, United States Air Force, 1480 Air Force Pentagon, Washington, DC 20330–1480.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to HQ USAF/A5XP, 1480 Air Force Pentagon, Washington, DC 20330–1480.

For verification purposes, individual should provide their full name, passport number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to HQ USAF/A5XP, 1480 Air Force Pentagon, Washington, DC 20330–1480.

For verification purposes, individual should provide their full name, passport number, any details which may assist in locating records, and their signature.

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If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

F011 AF A3 B DoD

SYSTEM NAME:

Department of Defense (DoD) Foreign Clearance Program Records.

SYSTEM LOCATION:

Andrew T. McNamara Headquarters Complex, Defense Technical Information Center (DTIC), 8725 John J Kingman Road, Fort Belvoir, VA 22060–6218.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, DoD civilians, and non-DoD personnel traveling under DoD sponsorship (contractors, foreign nationals and dependents), and includes temporary travelers worldwide as defined by the DoD Foreign Clearance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aircraft diplomatic clearance and personnel travel requests, which may contain the individual's name; rank/pay grade; military branch or department; passport number; office address and telephone number; official and personal email address; detailed information on sites to be visited; visitation dates; and purpose of visit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 22 U.S.C. 4801, Findings and purpose; 22 U.S.C. 4802, Responsibility of Secretary of State; and 22 U.S.C. 4805, Cooperation of other Federal Agencies; Public Law 99–399, Omnibus Diplomatic Security and Antiterrorism Act of 1986; Department of Defense Directive (DODD) 4500.54E, DoD Foreign Clearance Program; and E.O. 12333, United States Intelligence Activities.

PURPOSE(S):

To provide the DoD with a web-based automated system to request, clear, and audit aircraft diplomatic and personnel travel clearances worldwide; to provide individual travelers with intelligence and travel warnings; and to provide the United States Defense Attaché and other DoD authorized officials with information necessary to verify aircraft diplomatic clearances and official travel by DoD personnel.

ROUTINE USERS OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT OF 1974, THESE RECORDS CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

To the Department of State Regional Security Officer, U.S. Embassy officials, and foreign law enforcement and security agencies for the purpose of coordinating mission and security support for DoD travelers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media.

RETRIEVABILITY:

Records are retrieved using individual's name, passport numbers, and dates of travel.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level.

RETENTION AND DISPOSAL:

Aircraft diplomatic clearance and personnel travel records are permanent. Personally Identifiable Information is deleted from the record one year after mission/travel is completed. Records are only electronic.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, DoD Foreign Clearance Program, Strategic Plans and Policy Division, Headquarters, United States Air Force, 1480 Air Force Pentagon, Washington, DC 20330–1480.

Notification procedures:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to HQ USAF/A5XP, 1480 Air Force Pentagon, Washington, DC 20330–1480.

For verification purposes, individual should provide their full name, passport number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to HQ USAF/A5XP, 1480 Air Force Pentagon, Washington, DC 20330–1480.

For verification purposes, individual should provide their full name, passport number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

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If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information will be obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–33662 Filed 12–30–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Revision to the Notice for the Great Lakes and Mississippi River Interbasin Study (GLMRIS) Regarding Public Conference Calls Scheduled for January 10 and February 8, 2012

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD (USACE).

ACTION: Notice.

SUMMARY: In a December 21, 2011 notice, **Federal Register** Notice (76 FR 79167), USACE announced the release of the ''Inventory of Available Controls for Aquatic Nuisance Species of Concern—Chicago Area Waterway System'' (ANS Control Paper), a public comment period and two (2) public conference calls. USACE is hosting the calls to provide the public with an opportunity to ask questions regarding the ANS Control Paper. The December 21, 2011 notice did not include a security code for these conference calls. This notice includes the phone number, and access and security codes. Please refer to December 21, 2011 notice for information regarding the public comment period.

DATES: On Tuesday, January 10, 2012 from 2 p.m.–4 p.m. (CST) and Wednesday, February 8, 2012 from 10 a.m.–12 p.m. (CST), USACE will host two (2) public conference calls. Please refer to the ''*Public Conference Calls—ANS Control Paper''* section below for call information.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about GLMRIS, please contact USACE, Chicago District, Project Manager, Mr. David Wethington, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, or *by email: david.m.wethington@usace.army.mil.*

For media inquiries, please contact USACE, Chicago District, Public Affairs Officer, Ms. Lynne Whelan, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, *by phone:* (312) 846–5330 or *by email: lynne.e.whelan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background.* In a December 8, 2010 notice of intent, **Federal Register** Notice (75 FR 76447), USACE announced it will prepare a feasibility report and an environmental impact statement (EIS) for GLMRIS. GLMRIS is a feasibility study of the range of options and technologies that could be applied to prevent ANS transfer between the Great Lakes and Mississippi River basins through aquatic pathways. USACE is conducting GLMRIS in consultation with other federal agencies, Native American tribes, state agencies, local governments and non-governmental organizations. The ANS Control Paper is an interim product of GLMRIS. For additional information regarding GLMRIS, please refer to the project Web site *http://glmris.anl.gov.* USACE will develop screening criteria consistent with study objectives and refine the list of ANS Controls to determine which warrant further consideration. USACE will formulate plans comprised of one or more of the screened ANS Controls in consideration of four criteria: Completeness, effectiveness, efficiency

and acceptability. USACE will then evaluate and compare the effects of the alternative plans.

USACE is conducting GLMRIS in accordance with the National Environmental Policy Act (NEPA) and with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies,* Water Resources Council, March 10, 1983.

2. *Public Conference Calls—ANS Control Paper.* USACE will host a conference call on Tuesday, January 10, 2012 from 2 p.m.–4 p.m. (CST) and Wednesday, February 8, 2012 from 10 a.m.–12 p.m. (CST). The conference calls are intended to provide the public with an opportunity to ask questions regarding the ANS Control Paper. Call-in information for both calls is: USA Toll-Free: (877) 336–1839, Access Code: 8506361, Security Code: 0000.

3. *Authority.* This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061, Public Law 110–114, 121 STAT. 1121, and NEPA of 1969, 42 U.S.C. 4321, *et seq.,* as amended.

Dated: December 27, 2011.

David F. Bucaro,

Analysis Section, USACE, Chicago District.

[FR Doc. 2011–33656 Filed 12–30–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–3–000]

Commission Information Collection Activities, Proposed Collection (FERC–598); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Information Collection and Request for Comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (FERC or Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due March 5, 2012.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC12–3–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's email address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at: *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at: *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC12–3–000. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, or by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Commission uses the information collected under the requirements of FERC–598, ''Self Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status'' (OMB Control No. 1902–0166), to implement the statutory provisions of Title XII, subchapter F of the Energy Policy Act of 2005 (EPAct 2005).[1]

EPAct 2005 repealed the Public Utility Holding Company Act (PUHCA) of 1935 in its entirety, including section 32. This repeal enabled the Commission to exempt wholesale generators from PUHCA 1935 on a case-by-case basis. The Commission amended its regulations (in Order No. 667 [2]) to add procedures for self-certification by entities seeking exempt wholesale generator (EWG) and foreign utility company (FUCO) status. Moreover, Order No. 667 implemented the repeal of PUHCA 1935 and the supplementary enactment of PUHCA 2005. This self-certification is similar to the process available to entities that seek qualifying facility status.

An EWG is a ''person engaged directly, or indirectly through one or more affiliates * * *, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.'' [3] A FUCO is a company that ''owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company: (1) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and (2) neither the company nor any of its subsidiary companies is a public-utility company operating in the United States.'' [4]

An exempt EWG or FUCO or its representative may file with the Commission a notice of self certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company. In the case of EWGs, the person filing a notice of self certification must also file a copy of the notice of self certification with the state regulatory authority of the state in which the facility is located and that person must also represent to the Commission in its submission that it has filed a copy of the notice with the appropriate state regulatory authority.[5]

A submission of the information is necessary for the Commission to carry out its responsibilities under EPAct 2005.[6] The Commission implements its responsibilities through the Code of Federal Regulations (CFR) Title 18 Part 366. These filing requirements are mandatory.

Action: The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection. The information filed with the Commission is mandatory.

[1] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005) (codified at 42 U.S.C. 16451, *et seq.*)

[2] Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, 70 FR. 75,592 (2005), FERC Statutes and Regulations ¶ 31,197 (2005) *Order on reh'g,* 71 FR 28,446 (2006), FERC Statutes and Regulations ¶ 31,213 (2006), *order on reh'g,* 71 FR 42,750 (2006), FERC Statutes and Regulations ¶ 31,224 (2006), *order on reh'g,* FERC ¶ 61,133 (2007).

[3] 18 CFR 366.1.

[4] 18 CFR 366.1.

[5] 18 CFR 366.7.

[6] 42 U.S.C. 16451 *et seq.*

Burden Statement: The Commission estimates the Public Reporting Burden for this collection as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)*(2)*(3)
102	1	6	612

The total annual cost of filing FERC–598 is: 612 hours/2080 [7] hours × $142,372 [8] per year = $41,890. The annual cost of filing FERC–598 per respondent is $411. This cost estimate for respondents includes salary and employee benefits and is based on the cost for professional and clerical support within the Commission.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, using technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable filing instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Dated: December 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33636 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

[7] Number of hours an employee works per year.

[8] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–4–000]

Commission Information Collection Activities, Proposed Collection (FERC–716); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (FERC or Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by March 5, 2012.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format. The comments should refer to Docket No. IC12–4–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's email address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at: *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at: *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC12–4–000. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Commission uses the information collected under the requirements of FERC–716 (''Good Faith Request for Transmission Service and Response by Transmitting Utility Under Sections 211(a) and 213(a) of the Federal Power Act'' [OMB No. 1902–0170]) to implement the statutory provisions of sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act 1992. FERC–716 also includes the requirement to file a section 211 request if the negotiations between the transmission requestor and the transmitting utility are unsuccessful. For the initial process, the information is not filed with the Commission. However, the request and response may be analyzed as a part of a section 211 action. The Commission may order transmission services under the authority of FPA 211.

The Commission's regulations in the Code of Federal Regulations (CFR), 18 CFR 2.20, provide standards by which the Commission determines if and when a valid good faith request for transmission has been made under section 211 of the FPA. By developing the standards, the Commission sought to encourage an open exchange of data with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, 18 CFR 2.20 identifies 12 components of a good faith estimate and 5 components of a reply to a good faith request.

Action: The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection.

Burden Statement: The Commission estimates the Public Reporting Burden for this information collection as:

FERC data collection FERC–716 (OMB control No. 1902–0170)	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)*(2)*(3)
Information exchange between parties	3	1	100	300
Application submitted to FERC if parties' negotiations are unsuccessful	3	1	2.5	*8
Total				308

*Rounded.

The total annual cost of filing FERC–716 is: 308 hours/2080 hours [1] × $142,372 = $21,082.[2]

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, using technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable filing instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The Commission bases the cost estimate for respondents upon salaries within the Commission for professional and clerical support. This cost estimate includes respondents' total salary and employment benefits.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical 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 those who are to respond, including through the use of automated collection techniques or other forms of information technology.

[1] Number of hours an employee works in a year.

[2] Average annual salary per employee.

Dated: December 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33643 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13022–003]

Barren River Lake Hydro LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 13022–003.

c. *Date Filed:* December 9, 2011.

d. *Applicant:* Barren River Lake Hydro LLC (Barren Hydro).

e. *Name of Project:* Barren River Lake Dam Hydroelectric Project.

f. *Location:* On the Barren River, in Allen County, Kentucky. The project would occupy 18.65 acres of land, the majority of which are United States lands administered by the U.S. Army Corps of Engineers (Corps).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Brent Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, Oregon 97702; (541) 330–8779; email—*brent.smith@symbioticsenergy.com.*

i. *FERC Contact:* Allan Creamer, (202) 502–8365 or via email at *Allan.Creamer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 7, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1 (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. This application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Corps' Barren River Lake

Dam and would consist of the following new facilities: (1) Lining the existing outlet structure with a 280-foot-long, 14-foot-diameter steel penstock; (2) a new gate and bifurcation where the penstock exits the dam; (3) a powerhouse containing one vertical Kaplan turbine unit with a total capacity of 6.8 megawatts (MW); (4) a 110-foot-long, 80-foot-wide tailrace; (5) a proposed 0.83-mile-long, 12.5 kilovolt (kV) transmission line; (6) a switchyard; and (7) appurtenant facilities. The proposed project would have an average annual generation of 24.2 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Barren River Lake Dam, as directed by the Corps.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter	March 2012.
Issue Acceptance letter	July 2012.
Issue Scoping Document 1 for comments	August 2012.
Request Additional Information (if necessary)	October 2012.
Issue Scoping Document 2 (if necessary)	October 2012.
Notice of application is ready for environmental analysis	February 2013.
Notice of the availability of the draft EA	October 2013.
Notice of the availability of the final EA	April 2014.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33638 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–33–000]

Caledonia Energy Partners, LLC; Notice of Application

Take notice that on December 16, 2011, Caledonia Energy Partners, LLC (Caledonia), 20329 Highway 249, Suite 400, Houston, Texas 77070, filed in Docket No. CP12–33–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and pursuant to Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity, as well as, a request that the Commission vacates that portion of its July 17, 2008 order that granted Caledonia certificate authority to develop an adjacent field (County Line Expansion) in Lowndes County, Mississippi. Specifically, Caledonia requests to upgrade the Maximum Allowable Operating Pressure (MAOP) of the Caledonia Storage Facility from 2,700 pounds per square inch (psig) to 3,300 psig. The proposed request to vacate will result in a decrease in the Commission-authorized maximum storage capacity of the Caledonia Storage Facility, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Daryl W. Gee, Enstor Operating Company, 20329 Highway 249, Suite 400, Houston, Texas 77070, telephone no. (281) 374–3062, facsimile no. (281) 374–3051, and email: *Daryl.gee@enstorinc.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing

comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 18, 2012.

Dated: December 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33642 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14322–000]

Corbett Water District; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14322–000.

c. *Dated Filed:* November 14, 2011.

d. *Submitted By:* Corbett Water District.

e. *Name of Project:* Corbett Hydroelectric Project.

f. *Location:* On the North and South Forks of Gordon Creek, in Multnomah County, Oregon. The project occupies less than one acre of United States lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* James Jans, Corbett Water District, 36120 E. Historic Columbia River Hwy., Corbett, OR 97019; (503) 695–2284; email—*jim.corbettwater@reconnects.com.*

i. *FERC Contact:* Ken Wilcox at (202) 502–6835; or email at *ken.wilcox@ferc.gov.*

j. Corbett Water District filed its request to use the Traditional Licensing Process on November 14, 2011. Corbett Water District provided public notice of its request on November 19, 2011. In a letter dated December 22, 2011, the Director of the Division of Hydropower Licensing approved Corbett Water District's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Oregon State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Corbett Water District filed a Pre-Application Document (PAD; including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (http://www.ferc.gov), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1-(866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33646 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2333–078]

Rumford Falls Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Request to remove lands from the project boundary.

b. *Project No.:* 2333–078.

c. *Date Filed:* December 12, 2011.

d. *Applicant:* Rumford Falls Hydro, LLC.

e. *Name of Project:* Rumford Falls Hydroelectric Project.

f. *Location:* Androscoggin River in the city of Rumford, Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brian Stetson, Rumford Falls Hydro, LLC, 1024 Central Street, Millinocket, ME 04462, (207) 723–4341.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this

notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2333–078) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to remove two parcels of land from the project boundary. The first parcel is located adjacent to the existing penstocks at the Lower Station Development. The applicant proposes to re-convey an existing easement to New Page Mill to allow them to make improvements to their wastewater treatment plant. The parcel was originally included in the project boundary to allow for a possible third penstock, however, the applicant has abandoned the idea. The second parcel is less than one acre in size and has an existing easement that allows third party utilities to cross land owned by the applicant. The applicant recently learned that there is a gap in the easement and the third party utilities need to correct the easement. As a result, the applicant is proposing to remove the parcel because it never served any specific use by the applicant and it was only originally included in the project boundary because the applicant owned it.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: December 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33645 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14294–000]

Turnbull Hydro LLC; Notice of Application Accepted for Filing for Exemption for a Small Conduit Hydroelectric Facility and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Conduit Exemption.

b. *Project No:* 14294–000.

c. *Date Filed:* September 23, 2011.

d. *Applicant:* Turnbull Hydro LLC.

e. *Name of Project:* Mary Taylor Hydroelectric Project.

f. *Location:* The proposed project would be located at the Spring Valley Canal in Teton County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404, (208) 522–8069; Nicholas E. Josten, GeoSense, 2742 Saint Charles Ave., Idaho Falls, ID 83404, (208) 528–6152.

i. *FERC Contact:* Jake Tung, (202) 502–8757, or email at *hong.tung@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 29, 2012.

Comments, motions to intervene, and protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

k. *Description of Request:* The proposed small conduit hydroelectric project would consist of: (1) An intake structure on the left side of Spring

Valley Canal, with a trash rack and a stop log slot; (2) an underground 400-foot-long, 8-foot-diameter penstock; (3) a metal powerhouse containing one single turbine and one 890-kilowatt generating unit; and (4) draft tubes and a tailrace discharging into Greenfields Main Canal. The average annual energy production would be 1,840 megawatt hours. The Applicant has purchased all land required for construction of the intake, penstock, powerhouse and substation and will obtain an easement agreement for the transmission line.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–(866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Development Application:* Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

p. All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have—no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33641 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13679–002]

JD Products, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 13679–002.

c. *Dated Filed:* October 27, 2011.

d. *Submitted By:* JD Products, LLC.

e. *Name of Project:* San Onofre Electricity Farm.

f. *Location:* The project would be located in the Pacific Ocean, 2,000 feet off of the beach, near San Onofre, in San Diego County, California. The project would occupy federal lands administered by the Department of Defense.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Chong Hun Kim, General Manager; JD Products, LLC; 16807 Woodridge Circle, Fountain Valley, CA 92708; (714) 767–7553; *chong.kim@jdproductsllc.com.*

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434 or email at *kenneth.hogan@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. JD Products, LLC filed with the Commission a Pre-Application

Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph (h).

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph (h). In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

o. All filings with the Commission must include on the first page, the project name (San Onofre Electricity Farm) and number (P–13679–002), and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by February 21, 2012.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Tuesday, January 24, 2012, 1 p.m.

Location: DoubleTree Suites by Hilton Hotel Doheny Beach—Dana Point, 34402 Pacific Coast Highway, Dana Point, California 92629.

Phone Number: (949) 661–1100

Evening Scoping Meeting

Date and Time: Tuesday, January 24, 2012, 7 p.m.

Location: DoubleTree Suites by Hilton Hotel Doheny Beach—Dana Point, 34402 Pacific Coast Highway, Dana Point, California 92629.

Phone Number: (949) 661–1100.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an *Environmental Site Review* of the project on Wednesday, January 25, 2012. Interested participants should meet no later than 9 a.m. at the parking lot located just inside the entrance to San Onofre State Beach. For more information about the environmental site review please contact Kenneth Hogan at *kenneth.hogan@ferc.gov.* Directions to San Onofre State Beach are as follows: From Interstate 5, take exit 71 for Basilone Road. Travel south on Basilone Road, past the San Onofre Nuclear Generating Station. Basilone Road will end at the entrance station to the San Onofre State Beach campground parking. If additional directions are needed please contact Mr. David Pryor, Senior Environmental Scientist—California State Parks, at *dpryor@parks.ca.gov,* (949) 497–1421, or (949) 433–7264.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: December 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33639 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13005–003]

Oliver Hydro LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 13005–003.

c. *Date Filed:* December 14, 2011.

d. *Applicant:* Oliver Hydro LLC.

e. *Name of Project:* William Bacon Oliver Lock and Dam Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) William Bacon Oliver Lock and Dam on the Black Warrior River, in Tuscaloosa County, Alabama. The project would occupy 8.7 acres of United States lands administered by the Corps' Mobile District.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702; (541) 330–8779; or email *brent.smith@symbioticsenergy.com.*

i. *FERC Contact:* Allan Creamer, (202) 502–8365; or via email at *Allan.Creamer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 13, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. This application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Corps' William Bacon Oliver Lock and Dam, and would consist of the following new facilities: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 11.72 megawatts (MW); (4) a 150-foot-long, 68-foot-wide tailrace; (5) a proposed 1.7-mile-long, 25 kilovolt (kV) transmission line; (6) a switchyard; and (7) appurtenant facilities. The proposed project would have an average annual generation of 42.6 GWh, and operate run-of-river utilizing surplus water from the William Bacon Oliver Lock & Dam, as directed by the Corps.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—March 2012
Issue Acceptance Letter—July 2012
Issue Scoping Document 1 for comments—August 2012
Request Additional Information (if necessary)—October 2012
Issue Scoping Document 2 (if necessary)—October 2012
Notice of application is ready for environmental analysis—February 2013
Notice of the availability of the draft EA—October 2013
Notice of the availability of the final EA—April 2014

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33637 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–22–000.

Applicants: Perrin Ranch Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Perrin Ranch Wind, LLC.

Filed Date: 12/22/11.

Accession Number: 20111222–5130.

Comments Due: 5 p.m. ET 1/12/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2877–001.

Applicants: Cobb Electric Membership Corp.

Description: Cobb Electric Membership Corp. Updated Market Power Analysis.

Filed Date: 12/20/11.

Accession Number: 20111220–5150.

Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER10–3254–001.

Applicants: Cooperative Energy Incorporated (an Electric Membership Corp).

Description: Cooperative Energy Inc Updated Market Power Analysis.

Filed Date: 12/20/11.
Accession Number: 20111220–5142.
Comments Due: 5 p.m. ET 2/21/12.
Docket Numbers: ER11–4336–003.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.17(b): Effective Date Change for ''Fully Integrated'' DR Rules to be effective 6/1/2016.
Filed Date: 12/22/11.
Accession Number: 20111222–5135.
Comments Due: 5 p.m. ET 12/29/11.
Docket Numbers: ER12–10–001.
Applicants: Energy International Power Marketing.
Description: Energy International Power Marketing submits tariff filing per 35: EIP Compliance Filing to be effective 10/3/2011.
Filed Date: 12/22/11.
Accession Number: 20111222–5121.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–645–001.
Applicants: California Ridge Wind Energy LLC.
Description: Supplement to December 21, 2011 Market-Based Rate Application to be effective 2/20/2012.
Filed Date: 12/22/11.
Accession Number: 20111222–5032.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–662–000.
Applicants: Southern California Edison Company.
Description: SGIA WDAT SERV AG SCE–SEPV 8 LLC SEPV 8 Project to be effective 12/23/2011.
Filed Date: 12/22/11.
Accession Number: 20111222–5001.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–663–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. Request for Waiver of Tariff Provision and Expedited Treatment.
Filed Date: 12/22/11.
Accession Number: 20111222–5069.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–664–000.
Applicants: PacifiCorp.
Description: UMPA ARTSOA Rev 2 to be effective 2/21/2012.
Filed Date: 12/22/11.
Accession Number: 20111222–5106.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–665–000.
Applicants: ITC Midwest LLC.
Description: Filing of Agreements with MidAmerican Energy Company to be effective 2/21/2012.
Filed Date: 12/22/11.
Accession Number: 20111222–5107.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–666–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO tariff revisions regarding solar-fueled generators to be effective 2/20/2012.
Filed Date: 12/22/11.
Accession Number: 20111222–5115.
Comments Due: 5 p.m. ET 1/12/12.
Docket Numbers: ER12–667–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: ITC Midwest—Northern States Power Company 205 Filing to be effective 2/21/2012.
Filed Date: 12/22/11.
Accession Number: 20111222–5153.
Comments Due: 5 p.m. ET 1/12/12.

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 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33677 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–645–000]

California Ridge Wind Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of California Ridge Wind Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 11, 2012.

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 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33633 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–6–000]

Skelly-Belvieu Pipeline Company, L.L.C.; Notice of Petition for Declaratory Order

Take notice that on December 19, 2011, pursuant to Rule 207(a)(2) of the

Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2), Skelly-Belvieu Pipeline Company, L.L.C (Skelly-Belvieu) filed a Petition for Declaratory Order, requesting that the Federal Energy Regulatory Commission (Commission) issue an order approving the overall tariff, rate and priority service structure for a proposed expansion of Skelly-Belvieu's existing natural gas liquid pipeline system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 18, 2012.

Dated: December 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33644 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14284–000]

Boundary Creek Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 12, 2011, Boundary Creek Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Boundary Creek Hydroelectric Project (project) to be located on Boundary Creek near Bonners Ferry in Boundary County, Idaho. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An 8-foot-high, 150-foot-wide weir-type diversion with a penstock inlet and trash rack; (2) a 6.4-mile-long, 6-feet-diameter steel penstock; (3) a concrete powerhouse equipped with three 12-megawatt (MW) Pelton turbines for a total capacity of 36 MW; (4) a 2.7-mile-long, 13.8-kilovolt transmission line connecting to the existing Smith Falls Hydropower substation. The estimated annual generation of the Boundary Creek Hydroelectric Project would be 100 gigawatt-hours.

Applicant Contact: Mr. Justin Barker, Boundary Creek Hydro, LLC; 975 South State Highway 89/91; Logan, UT 84321; phone: (435) 752–2580.

FERC Contact: Ian Smith; phone: (202) 502–8943.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14284–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33635 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14283–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Earth By Design, Inc.

On October 13, 2011, and supplemented on October 30, 2011, Earth By Design, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the NUMC–A Hydroelectric Power Project (project) to be located on the North Unit Main Canal of the U.S. Bureau of Reclamation's Deschutes (Irrigation) Project near Madras in Jefferson County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 4-foot-high, 40-foot-long concrete intake structure; (2) a

1210-foot-long, 72-inch-diameter penstock consisting of a 365-foot-long, 72-inch-diameter underground weholite pipe and an 845-foot-long, 72-inch-diameter underground steel pipe; (3) two Kaplan turbines totaling 2.03 megawatts; (4) a 10-foot-long, 14-foot-wide concrete powerhouse; (5) two siphon tubes directing flows back into the canal; (6) a 0.5-mile-long, 12.5-kilovolt (kV) transmission line which will interconnect with an existing overhead 69-kV transmission line. The estimated annual generation of the project would be 7.2 gigawatt-hours.

Applicant Contact: Mr. Jim Gordon, President, Earth By Design, Inc., 20407 Cady Lane Bldg. A, Bend, Oregon 97701; phone: (541) 385–1135.

FERC Contact: Ian Smith; phone: (202) 502–8943.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14283–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33640 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13590–001]

Lockhart Power Company, Inc.; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–13590–001.

c. *Date filed:* August 31, 2010.

d. *Applicant:* Lockhart Power Company, Inc.

e. *Name of Project:* Riverdale Hydroelectric Project.

f. *Location:* On the Enoree River, near Enoree, in Spartanburg and Laurens counties, South Carolina. The proposed project would not affect any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contacts:* Bryan D. Stone, Chief Operating Officer, Lockhart Power Company, Inc., 420 River Street, P.O. Box 10, Lockhart, SC 29364; (864) 545–2211.

i. *FERC Contact:* Sarah Florentino at (202) 502–6863, or via email at *Sarah.Florentino@ferc.gov.*

j. *Deadline for filing scoping comments:* 60 days from the issuance date of this notice, or February 21, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*), under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The existing, currently non-operational, Riverdale Project consists of: (1) A 12-foot high, 425-foot-long concrete gravity dam with 2-foot flashboards; (2) a 6.6-acre impoundment; (3) a headrace leading to a 110-foot-long steel penstock; (4) a powerhouse containing a single 1.24-megawatt turbine-generator unit; (5) a 510-foot-long tailrace channel; and (6) appurtenant facilities. Lockhart Power Company, Inc. proposes to repair or upgrade the turbine unit and return the project operation. The proposed project would generate about 5,318 megawatt hours annually.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

n. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process.

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Riverdale Hydroelectric Project, in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information on the Scoping Document (SD) issued on December 22, 2011.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket

number, excluding the last three digits in the docket number field, to access the document. For assistance, call 1–(866) 208–3676, or for TTY, (202) 502–8659.

Dated: December 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33634 Filed 12–30–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0974; FRL–9614–2]

Inquiry To Learn Whether Businesses Assert Business Confidentiality Claims Regarding Waste Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) receives from time to time Freedom of Information Act (FOIA) requests for documentation received or issued by EPA or data contained in EPA database systems pertaining to the export and import of Resource Conservation and Recovery Act (RCRA) hazardous waste from/to the United States, the export of cathode ray tubes (CRTs) and spent lead acid batteries (SLABs) from the United States, and the export and import of RCRA universal waste from/to the United States. These documents and data may identify or reference multiple parties, and describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. The purpose of this notice is to inform ''affected businesses'' about the documents or data sought by these types of FOIA requests in order to provide the businesses with the opportunity to assert claims that any of the information sought that pertains to them is entitled to treatment as confidential business information (CBI), and to send comments to EPA supporting their claims for such treatment. Certain businesses, however, do not meet the definition of ''affected business,'' and are not covered by today's notice. They consist of any business that actually submitted to EPA any document at issue pursuant to applicable RCRA regulatory requirements and did not assert a CBI claim as to information that pertains to that business in connection with the document at the time of its submission; they have waived their right to do so at a later time. Nevertheless, other businesses identified or referenced in the documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

DATES: Comments must be received on or before February 2, 2012. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under the FOIA is pending.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2011–0974, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: kreisler.eva@epa.gov.*
- *Address:* Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2011–0974 . 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. Instructions about how to submit comments claimed as CBI are given later in this notice. 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. Please include your name and other contact information with any disk or CD–ROM you submit by mail. 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 HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the docket for this notice is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–8186; email address: *kreisler.eva@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice relates to any documents or data in the following areas: (1) Export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H; (2) import of RCRA hazardous waste under 40 CFR part 262, subparts F and H; (3) transit of RCRA hazardous waste under 40 CFR part 262, subpart H, through the United States and foreign countries; (4) export of cathode ray tubes under 40 CFR part 261, subpart E; (5) exports of non-crushed spent lead acid batteries with intact casings under 40 CFR part 266 subpart G; (6) export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F; (7) submissions from transporters under 40 CFR part 263, or from treatment, storage

or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)3) and 265.71(a)(3).

I. General Information

EPA has previously published notices similar to this one in the **Federal Register**, the latest one being at 76 FR 362, January 4, 2011 that address issues similar to those raised by today's notice. The Agency did not receive any comments on the previous notices. Since the publication of the January 4, 2011, notice, the Agency has continued to receive FOIA requests for documents and data contained in EPAs database related to hazardous waste exports and imports.

II. Issues Covered by This Notice

Specifically, EPA receives FOIA requests from time to time for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties, and that describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. This notice informs ''affected businesses,'' [1] which could include, among others, ''transporters'' [2] and ''consignees,'' [3] of the requests for information in EPA database systems and/or contained in one or more of the following documents: (1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H, including but not limited to the ''notification of intent to export,'' [4] ''manifests,'' [5] ''annual reports,'' [6] ''EPA acknowledgements of consent,'' [7] ''any subsequent communication withdrawing a prior consent or objection,'' [8] ''responses that neither consent nor object,'' ''exception reports,'' [9] ''transit notifications,'' [10] and ''renotifications;'' [11] (2) documents related to the import of hazardous waste under 40 CFR part 262, subparts F and H, including but not limited to notifications of intent to import hazardous waste into the U.S. from foreign countries; (3) documents related to the transit of hazardous waste under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.; (4) documents related to the export of cathode ray tubes (CRTs) under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs; (5) documents related to the export of non-crushed spent lead acid batteries (SLABs) with intact casings under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs; (6) submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)(3) and 265.71(a)(3),and (7) documents related to the export and import of RCRA ''universal waste'' [12] under 40 CFR part 273, subparts B, C, D, and F.

Certain businesses, however, do not meet the definition of ''affected business,'' and are not covered by today's notice. They consist of any business that actually submitted information responsive to a FOIA request, under the authority of 40 CFR parts 260 through 266 and 268, and did not assert a claim of business confidentiality covering any of that information at the time of submission. As set forth in the RCRA regulations at 40 CFR 260.2(b), ''if no such [business confidentiality] claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.'' Thus, for purposes of this notice and as a general matter under 40 CFR 260.2(b), a business that submitted to EPA the documents at issue, pursuant to applicable regulatory requirements, and that failed to assert a claim as to information that pertains to it at the time of submission, cannot later make a confidentiality claim.[13] Nevertheless, other businesses identified or referenced in the same documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

In addition, EPA may develop its own documents and organize into its database systems information that was originally contained in documents from submitting businesses relating to exports and imports of hazardous waste. If a submitting business fails to assert a CBI claim for the documents it submits to EPA at the time of submission, not only does it waive its right to claim CBI for those documents, but it also waives its right to claim CBI for information in EPA's documents or databases that is based on or derived from the documents that were originally submitted by that business.[14]

In accordance with 40 CFR 2.204(c) and (e), this notice inquires whether any affected business asserts a claim that any of the requested information constitutes CBI, and affords such business an opportunity to comment to EPA on the issue. This notice also informs affected businesses that, if a claim is made, EPA would determine under 40 CFR part 2, subpart B, whether any of the requested information is entitled to confidential treatment.

1. Affected Businesses

EPA's FOIA regulations at 40 CFR 2.204(c)(1) require an EPA office that is responsible for responding to a FOIA request for the release of business information (''EPA office'') ''to determine which businesses, if any, are affected businesses * * *.'' ''Affected business'' is defined at 40 CFR 2.201(d) as, ''* * * with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.''

[1] The term ''affected business'' is defined at 40 CFR 2.201(d), and is set forth in this notice, below.

[2] The term ''transporter'' is defined at 40 CFR 260.10.

[3] The term ''consignee'' is defined, for different purposes, at 40 CFR 262.51 and 262.81(c).

[4] The term ''notification of intent to export'' is described at 40 CFR 262.53.

[5] The term ''manifest'' is defined at 40 CFR 260.10.

[6] The term ''annual reports'' is described at 40 CFR 262.56.

[7] The term ''EPA acknowledgement of consent'' is defined at 40 CFR 262.51.

[8] The requirement to forward to the exporter ''any subsequent communication withdrawing a prior consent or objection'' is found at 42 U.S.C. 6938(e).

[9] The term ''exception reports'' is described at 40 CFR 262.55.

[10] The term ''transit notifications'' is described at 40 CFR 262.53(e).

[11] The term ''renotifications'' is described at 40 CFR 262.53(c).

[12] The term ''universal waste'' is defined at 40 CFR 273.9.

[13] However, businesses having submitted information to EPA relating to the export and import of RCRA universal waste are not subject to 40 CFR 260.2(b) since they submitted information in accordance with 40 CFR part 273, and not parts 260 through 266 and 268, as set forth in 40 CFR 260.2(b). They are therefore affected businesses that could make a claim of CBI at the time of submission or in response to this notice.

[14] With the exception, noted above, of the submission of information relating to the export and import of RCRA universal waste.

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with affected businesses prior to EPA's making a final determination concerning the confidentiality of the information at issue: the preliminary inquiry and the notice of opportunity to comment.

a. Inquiry To Learn Whether Affected Businesses (Other Than Those Businesses That Previously Asserted a CBI Claim) Assert Claims Covering Any of the Requested Information

Section 2.204(c)(2)(i) provides, in relevant part:

If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e)(1) of Title 40 of the Code of Federal Regulations require that written notice be provided to businesses that have made claims of business confidentiality for any of the information at issue, stating that EPA is determining under 40 CFR part 2, subpart B, whether the information is entitled to confidential treatment, and affording each business an opportunity to comment as to the reasons why it believes that the information deserves confidential treatment.

3. The Use of Publication in the Federal Register

Section 2.204(e)(1) of Title 40 of the Code of Federal Regulations requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact affected businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business's claim(s) of confidentiality for any information in the types of documents identified in this notice.

6. What To Include in Your Comments

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to confidential treatment, please specify which portions of the information you consider confidential. Information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question No. 1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available data bases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response ''CONFIDENTIAL'' or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information as confidential, it may be made available to the requestor without further notice to you.

III. 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. Please submit this information by mail to the address identified in the ADDRESSES section of today's notice for inclusion in the non-public CBI docket. 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. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B. In addition to the submission of 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.

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

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Dated: December 15, 2011.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. 2011–33462 Filed 12–30–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0884, FRL–9615–3]

Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is issuing a notice to solicit data and information associated with revisions to the Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development Point Source Category issued under the Clean Water Act. The regulation, as originally issued on December 1, 2009, established requirements that reduce pollutants discharged from construction and development sites, including requirements for a subset of sites to comply with a numeric effluent limitation for turbidity. On November 5, 2010, EPA published a direct final rule and companion proposal staying the numeric turbidity limitation established by the December 2009 rule to correct a calculation error. The Agency received no adverse comments regarding the stay, and therefore, effective on January 4, 2011, the numeric turbidity limitation was stayed. In today's notice, EPA is seeking data on the effectiveness of technologies in controlling turbidity in discharges from construction sites and information on other related issues. Today's notice also seeks comment on passive treatment data already available to the Agency.

DATES: Comments must be received on or before March 5, 2012, 60 days after publication in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0884, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Water Docket, USEPA Docket Center, Public Reading Room, 1301 Constitution Avenue NW., Room 3334, EPA West Building, Washington DC 20004. 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–2010–0884. 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 *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 *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, 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 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse W, Pritts, Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–1038; fax number: (202) 566–1053; email address: *pritts.jesse@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Entities potentially affected by this action include:

Category	Examples of affected entities	North American Industry Classification System (NAICS) Code
Industry	Construction activities required to obtain NPDES permit coverage and performing the following activities:	
	Construction of buildings, including building, developing and general contracting	236
	Heavy and civil engineering construction, including land subdivision	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed on the table could also be affected. To determine whether your may be affected by this action, you should carefully examine the applicability criteria in Section 450.10 of the December 1, 2009 final rule (74 FR 62995) and the definition of ''storm water discharges associated with industrial activity'' and ''storm water discharges associated with small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(B)(15), respectively. If you have questions regarding the applicability of this action to a particular activity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Overview

EPA promulgated Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (hereafter referred to as the ''C&D rule'') on December 1, 2009 (74 FR 62995). The final rule established requirements based on Best Practicable Control Technology Currently Available, Best Available Technology Economically Achievable, Best Conventional Pollutant Control Technology, and New Source Performance Standards based on Best Available Demonstrated Control Technology.

The rule included non-numeric requirements to:

- Implement erosion and sediment controls;
- Stabilize soils;
- Manage dewatering activities;
- Implement pollution prevention measures;
- Prohibit certain discharges; and
- Utilize surface outlets for discharges from basins and impoundments.

The December 2009 final rule also established a numeric limitation on the allowable level of turbidity in discharges from certain construction sites. The technology basis for the final numeric limitation was passive treatment controls including polymer-aided settling to reduce the turbidity in discharges.

Since issuing the final rule, an error in EPA's interpretation of the data used to establish the numeric limitation was identified in petitions from the U.S. Small Business Administration and the National Association of Home Builders (NAHB). Today's notice seeks comment in the form of data and information on several of the issues raised in the petitions, as well as other topics.

II. Background

A. NPDES Regulations, Construction General Permits and Applicability of 40 CFR Part 450 Requirements

EPA promulgated the Phase I National Pollutant Discharge Elimination System (NPDES) stormwater regulations (55 FR 47990) on November 16, 1990. The Phase I regulations require that dischargers must apply for and obtain authorization to discharge (or ''permit coverage''). One of the categories of dischargers that must obtain permits is discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- Will result in the disturbance of five acres or greater; or
- Will result in the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.

See 40 CFR 122.26(b)(14)(x).

The Phase II stormwater regulations, promulgated on December 8, 1999 (64 FR 68722) extended permit coverage to construction activity that:

- Will result in land disturbance of equal to or greater than one acre and less than five acres; or
- Will result in disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

See 40 CFR 122.26(b)(15).

Since 1992, EPA has issued a series of Construction General Permits (CGPs) that cover areas where EPA is the NPDES permitting authority. At present, EPA is the permitting authority in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all other U.S. territories with the exception of the Virgin Islands, Federal facilities in four states (Colorado, Delaware, Vermont, and Washington), most Indian lands and other specifically designated activities in specific states (*e.g.,* oil and gas activities in Texas and Oklahoma).

In areas where EPA is not the NPDES permitting authority, states issue general permits for construction activity. Many state permits contain requirements similar to those contained in the EPA CGP. In addition, a few state permits contain monitoring requirements and/or requirements to comply with numeric effluent limitations. For example, California's, Washington's, Oregon's, Georgia's and Vermont's current CGPs include discharge monitoring requirements. In addition, California's current CGP contains numeric effluent limitations for a subset of construction sites within the State.

EPA issued new regulations at 40 CFR part 450 on December 1, 2009 (the C&D Rule). The C&D Rule applies to all construction stormwater discharges required to obtain NPDES permit coverage. The C&D rule applies to the entire country, not just the areas where EPA is the permitting authority. Any permit issued by a state or EPA after the effective date of the rule (which was February 1, 2010) must include the requirements contained in that rule. The requirements include BMPs but do not include a numeric limitation which was stayed on January 4, 2011.

B. Petitions for Administrative Reconsideration and Petitions for Review of the Final Construction and Development Regulation in the U.S. Circuit Court of Appeals for the Seventh Circuit

Following promulgation of the December 2009 final C&D rule, the Wisconsin Home Builders Association

and the National Association of Home Builders (NAHB) filed petitions for review in the U.S. Circuit Courts of Appeals for the Fifth, Seventh, and DC Circuits. The petitions were consolidated in the Seventh Circuit. Subsequently, the Utility Water Act Group (UWAG) also filed suit in the Seventh Circuit. On July 8, 2010, the petitioners filed their briefs.

In April 2010, the Small Business Administration (SBA) filed with EPA a petition for administrative reconsideration of several technical aspects of the C&D Rule. SBA identified potential deficiencies with the dataset that EPA used to support its decision to adopt the numeric turbidity limitation. In June 2010, the National Association of Homebuilders also filed a petition for administrative reconsideration with EPA incorporating by reference SBA's argument regarding the deficiencies in the data.

C. EPA's Unopposed Motion

On August 12, 2010, EPA filed an unopposed motion with the Court seeking to hold the litigation in abeyance until February 15, 2012 (see DCN 70084) and asking the Court to remand the record to EPA and vacate the numeric limitation portion of the rule. In addition, EPA agreed to reconsider the numeric limitation and to solicit site-specific information regarding the applicability of the numeric effluent limitation to cold weather sites and to small sites that are part of a larger project.

On August 24, 2010, the Court issued its decision remanding the matter to the Agency but without vacating the numeric limitation. Subsequently on September 9, 2010, the petitioners filed an unopposed motion asking the Court to reinstate the litigation, hold it in abeyance until February 15, 2012, and vacate the numeric limitation. On September 20, 2010 the Court reinstated the litigation and held it in abeyance until February 15, 2012, but did not vacate the numeric limitation.

D. Stay of the Numeric Limitation

On November 5, 2010, EPA issued a direct final regulation and a companion proposed regulation to stay the numeric limitation at 40 CFR 450.22 indefinitely. The proposed rule solicited comment due no later than December 6, 2010. Since no adverse comments were received, the direct final rule took effect on January 4, 2011.

Since the numeric portion of the rule was stayed, states are no longer required to incorporate the numeric turbidity limitation and monitoring requirements found at § 450.22(a) and § 450.22(b). However, the remainder of the regulation is still in effect and must be incorporated into newly issued permits. The purpose of this notice is to solicit new data from the public and request comment on a number of issues that EPA would like to consider in the context of establishing numeric effluent limitations for construction site stormwater discharges.

III. Review of Treatment Data in EPA's Current Dataset

A. Approach To Calculating the December 2009 Turbidity Limitation

The December 2009 C&D rule established a numeric limitation for discharges of turbidity from construction sites. The final limitation was set at 280 nephelometric turbidity units (NTU) based on the application of polymer-aided settling, or passive treatment. The data used in the derivation of this limitation came from several construction sites that were using polymer-aided settling in impoundments or in channel applications. EPA's data represented treatment at eight separate construction sites located in Washington State, New York, and North Carolina.

The data used in the calculation of the December 2009 numeric limitation included data from ponds that were used to pre-treat stormwater prior to chitosan-enhanced sand filtration (CESF) active treatment systems (ATS). Data representing the final effluent leaving CESF had been used in the calculation of the November 28, 2008 proposed C&D rule numeric limitation (73 FR 72562), which was based on the performance of full CESF.

EPA considered effluent from the CESF pretreatment ponds as representing passive treatment, and used some such data in the calculation of the December 2009 limitation. An integral part of CESF and ATS is the ability to recirculate pretreated water or effluent from the filters back to the pretreatment ponds if turbidity levels are above pre-established thresholds. Although this recirculated water is above these thresholds, it may be lower in turbidity than the untreated stormwater entering the ponds, and/or water that is already in the ponds. The effect of recirculating water that is lower in turbidity than water contained in the pretreatment ponds would be to reduce the turbidity of the water in the pretreatment ponds. Concerns have been raised that such recirculation represents an additional level of ''treatment'' that goes beyond what is otherwise understood as ''passive'' treatment.

B. Passive and Semi-Passive Treatment Dataset

If EPA excludes data from the ATS pretreatment ponds, the remainder of EPA's passive treatment dataset used in the December 2009 final rule consists of data from three passive treatment systems. Since promulgation of this rule, EPA has received additional information and data from several sources on the performance of passive and semi-passive treatment approaches. As discussed below, EPA also had additional data in the record regarding passive treatment that was not used in calculating the December 2009 final rule. The following discussion summarizes the information and data that comprise EPA's currently reviewed dataset of passive and semi-passive treatment that is available in the docket. EPA continues to receive and review additional data as it becomes available. EPA may consider these data and any data submitted during the public comment period and collected by EPA in a future rulemaking to correct and remove the stay of the numeric turbidity limitation. Any data that EPA is considering for use in this rule making will be placed in the public docket once it has been reviewed.

Steeltown Road and Curley Maple Road, North Carolina (*DCN 70018 and 70065*). This study evaluated the performance of fiber check dams with polyacrylamide (PAM) on two mountain roadway projects in North Carolina. These data were available at the time of the December 2009 final rule, but additional information on sample collection times and turbidity were submitted to EPA in 2011 (DCN 70065).

Orange County, North Carolina Skimmer Basin (*DCN 70034 and 70065*). This paper evaluated a skimmer sediment basin with PAM at an institutional construction project. These data were available at the time of the December 2009 final rule, but additional information on sample collection times and turbidity were submitted to EPA in 2011 (DCN 70065).

Petersburg airport culvert replacement (*DCN 70000*). This study demonstrated the performance of two chitosan lactate biopolymer formulations in removing turbidity from pumped water at the Petersburg, Alaska airport. Water was semi-passively treated by pumping turbid water from one of five culvert locations through a cartridge applicator and then into sediment traps constructed of filter fabric. Additional treatment was accomplished by allowing the water to exit the trap and flow through a vegetated area (called a biofilter).

Testing at this site occurred during March and April of 2009. Reported air temperatures varied between −1.0 and 10 degrees Celsius and reported water temperatures varied between −0.1 and 1.0 degrees Celsius during the study, demonstrating the effectiveness of passive treatment during cold-weather conditions. The study did note that chitosan lactate dissolution rates were slower due to the cold temperatures. The study noted that average daily turbidity of discharge from the sediment trap was 248 NTU, and discharge from the biofilter was 102 NTU. Influent turbidities were reported as high as approximately 5,000 NTU. In order to overcome the slower dissolution rate of the chitosan lactate due to the cold temperatures, additional cartridges were installed in order to deliver the appropriate dosage. In addition, the vendor indicated that a new formulation has been developed that dissolves at a higher rate specifically for use in colder climates. This report also provides diagrams showing various forms of passive and semi-passive dosing that have been developed. Additional references describing this project are also included in the docket (see DCNs 70001 and 70002). EPA requests comment on whether this dataset should be considered representative of the BAT technology as described in the 2009 final rule.

Water Quality Improvements Using Modified Sediment Control Systems on Construction Sites (*DCN 70063*). This research project studied three types of sediment capture and treatment systems at a highway construction project (I–485) between 2003 and 2006 in North Carolina. The first type of system consisted of unlined diversion ditches with rock check dams leading to a standard sediment trap with a rock dam outlet. The second type of system added a forebay, porous baffles and PAM treatment in the diversion ditches and the forebay. The third type of system tested was the same design as the second system except the rock check dam was replaced with a floating outlet or skimmer. The author reported that the three sediment trapping systems with modifications including forebays, porous baffles, ditch lining, and PAM application had storm weighted average turbidity and peak turbidity of 990 and 1,580 NTU, respectively.

North Carolina State University Typar® Field Test (*DCN 70003*). North Carolina State University (NCSU) conducted a field test of the Typar® geotextile product at the university's field laboratory. The study evaluated the performance of the material in an in-channel application. The tests incorporated polyacrylamide to aid in sediment removal. Both total suspended solids and turbidity were evaluated. The study evaluated varying flow rates as well as varying sediment loading rates. The report contains a considerable amount of data. The report indicates that the system is expected to meet a 280 NTU limitation, but points out that field testing outside of the field laboratory setting, where turbidity and total suspended solids (TSS) levels may be higher, would provide additional insights into performance.

Other Research at North Carolina State University (*DCN 70004*). Researchers at NCSU have conducted research on a number of passive and semi-passive treatment approaches. Examples include fiber check dams with PAM, sediment basins and traps with PAM, PAM applied to erosion control matting down a slope, PAM application in pipes and geotextile filter bags with PAM. DCN 70004 contains data from a number of evaluations. Additional data on one of the projects identified in DCN 70004 is also presented in DCN 70053—70060 and 70062.

North Carolina Department of Transportation (*NCDOT*) (*DCN 70005, 70006*). NCDOT conducted a demonstration to evaluate the performance of a dual biopolymer system in removing turbidity. In this application, water from culvert sites and caissons at bridge construction sites that was impounded in a baffled skimmer basin was pumped through a manifold containing biopolymers. The biopolymers dissolve as water is pumped through the manifold, and mixing occurs in the manifold, which aids flocculation. The water then passes through a geotextile filter bag, which retains the flocculated solids. In this demonstration, turbidity in the water from the basin was 1,283 NTU, which was reduced to below 100 NTU following the filter bag.

StormKlear® (*DCN 70007 through 70013 and 70070 through 70080*). StormKlear®/HaloSource® provided information regarding a number of sites using both passive and semi-passive dosing of a dual biopolymer system. Sites described were Annapolis, Maryland (DCN 70007), Austin, Texas (DCN 70008), Beaverton, Oregon (DCN 70009), Griffin, Georgia (DCN 70010), Raleigh, North Carolina (DCN 70011), Memphis, Tennessee (DCN 70011), Jacksonville, North Carolina (DCN 70011), Birmingham, Alabama (DCN 70011), Tampa, Florida (DCN 70012), Tennessee (DCN 70013), Huntersville, North Carolina (DCN 70070), Hanover, Maryland (DCN 70071), Apex, North Carolina (DCN 70072), Bonita Springs, Florida (DCN 70073), Staten Island, New York (DCN 70074), Cabarrus County, North Carolina (DCN 70075), Anne Arundel County, Maryland (DCN 70076), Cartersville, Georgia (DCN 70077), Central, South Carolina (DCN 70078), Fairview, North Carolina (DCN 70079) and Lavonia, Georgia (DCN 70080). The range of turbidity values reported at these sites is presented in Table 1.

TABLE 1—RANGE OF TURBIDITY VALUES REPORTED IN DUAL BIOPOLYMER FIELD TRIALS

Site	Untreated NTU	Treated NTU
Annapolis, MD	300–400	15.
Austin, TX	598	10.5–117.
Beaverton, OR	42–44	14.
Griffin, GA	2,189	21.1–433.
Raleigh, NC	2,500–3,000	14.
Memphis, TN	1,200	20.
Jacksonville, NC	300	15.
Birmingham, AL	1,500	20.
Tampa, FL	Not Reported	<1.
Huntersville, NC	950	425.
Hanover, MD	570	<50.
Apex, NC	3,787	297 (1.4 after basin).
Bonita Springs, FL	162–187	3.2–43.
Staten Island, NY	1,057	5–45.
Cabarrus County, NC	1,195	42.

TABLE 1—RANGE OF TURBIDITY VALUES REPORTED IN DUAL BIOPOLYMER FIELD TRIALS—Continued

Site	Untreated NTU	Treated NTU
Anne Arundel County, MD	547	120.
Cartersville, GA	>4,000	51.
Central, SC	687	32.
Fairview, NC	>4,000	731 (131 after basin).
Lavonia, GA	>4,000	32.8.

ALPURT B2 Motorway Construction Project (*DCN 70049*). The Auckland, New Zealand Regional Council evaluated the use of polyaluminum chloride (PAC) to reduce sediment discharges from a motorway construction project. A rainfall-activated dosing system was used to deliver PAC prior to settling in a sediment basin. Samples were analyzed for TSS, particle size distribution and dissolved aluminum. This study did not evaluate reductions in turbidity.

ALPURT and Greenhihte Trials (*DCN 70067*). The Auckland, New Zealand Regional Council conducted trials using alum, PAC and PAM at several sites. The study evaluated both rainfall-activated liquid chemical dosing systems as well as solid forms. This study evaluated reductions in TSS, but not turbidity.

Bluffs Community Baffle Grid System (*DCN 70050*). This project, located in the metropolitan Atlanta, Georgia area, was a residential construction project. A passive treatment system was utilized consisting of a grit pit followed by a polymer mixing chamber. The water then flowed into another grit pit and then into a baffle grid system. Polymer was dosed using polymer floc logs. Polymer was also applied to exposed soils up-slope of the treatment system. This system produced an average treated turbidity of 18 NTU, according to the study authors. The attached data file shows a range of turbidity after the baffle grid ranging from 1.0 to 703 NTU.

Cleveland Municipal Airport, Cleveland, Tennessee (*DCN 70085*). This site is a multi-year construction project that started in 2009. The site utilizes passive treatment including ditches lined with jute matting with PAM and sediment basins. Monitoring is conducted after the sediment basins as well as in-stream both upstream and downstream of the construction site. Only limited monitoring data was available for this site. The turbidity reported in effluent at the outfalls after implementation of the PAM treatment ranged from 23 to 280 NTU.

C. Additional Data

At the time of this notice, only one state (California) has a numeric effluent limitation for discharges from construction activities that applies to a subset of construction sites statewide. Other sites in the state are subject to monitoring requirements and action levels.[1] Between July 1, 2010 and June 20, 2011, permittees reported 735 daily average turbidity values. The range of these daily average turbidity values was zero to 1,572 NTU with a median value of 42 NTU (see DCN 70051). EPA did not obtain information about the individual sites and treatment systems (such as detailed site plans, SWPPPs, etc.), and has not evaluated the utility of this data in the context of establishing effluent guidelines. EPA has not evaluated whether any of these facilities were subject to numeric discharge standards for turbidity.

As described in the December 2009 final rule preamble, Warner et al. evaluated several innovative erosion and sediment controls at a full-scale demonstration site in Georgia. In this project, polymers or flocculants were not utilized, but instead a comprehensive system of erosion and sediment controls were designed and implemented to mimic pre-developed peak flow and runoff volumes with respect to both quantity and duration. The system included perimeter controls that were designed to discharge through multiple outlets to a riparian buffer, elongated sediment controls (called seep berms) designed to contain runoff volume from 3- to 4-inch storms and slowly discharge to down-gradient areas, multi-chambered sediment basins designed with a siphon outlet that discharged to a sand filter, and various other controls. Monitoring conducted at the site illustrates the effectiveness of these controls. For one particularly intense storm event of 1.04 inches (0.7 inches of which occurred during one 27-minute period), the peak sediment concentration monitored prior to the basin was 160,000 mg/L of TSS while the peak concentration discharged from the passive sand filter[2] after the basin was 168 mg/L. Effluent turbidity values ranged from approximately 30 to 80 NTU. Using computer modeling, it was shown that discharge from the sand filter, which flowed to a riparian buffer, was completely infiltrated for this event. Thus, no sediment was discharged to waters of the state from the sand filter for this event. For another storm event, a 25-hour rainfall event of 3.7 inches occurred over a two-day period. Effluent turbidity from one passive sand filter during this storm ranged from approximately 50 to 375 NTU, with 20 of the 24 data points below 200 NTU. For a second passive sand filter, effluent turbidity ranged from approximately 50 to 330 NTU, with nine of 11 data points below 200 NTU. In the Warner et al. study low levels of turbidity in discharges were achieved without relying on chemical flocculants or polymers or pumping of water. Although these data were available to EPA at the time, EPA did not use the Warner et al. data in calculating the limitation contained in the December 2009 final rule because the site did not use polymers. EPA requests comment on whether the Warner et al. data, data from passive sand filters in general as described by Warner et al., and data from sites not using polymers or flocculants should be used in evaluating the feasibility of a numeric effluent limitation and whether these data should be considered representative of

[1] In December 2011, the California Superior Court invalidated the California numeric standard of 500 NTU, which applied to a subset of construction projects, because the state did not evaluate performance data from available technologies under a variety of site conditions. Construction projects subject to the standard did not have ''reasonable assurance that the technologies are capable of achieving the turbidity NEL (numeric technology based effluent limitation).'' Decision at 16; California Building Industry Association v. State Water Resources Control Board, Case No. 34–2009–800000338 (Sacramento Superior Court) December 2, 2011. See DCN 70086.

[2] The term ''passive sand filter'' in this context is used to describe an in-ground filter constructed by placing sand and gravel into an excavated area. The filter receives surface discharge from up-slope sediment controls which is distributed across the filter surface using distribution pipes. Water flows down through the filter bed and is collected by an underdrain system where it is conveyed down-slope. All flow in this application is by gravity. The system did not incorporate any pumps or any treatment chemicals. A passive sand filter differs from the sand filters which are used as part of CESF, which are operated by a programmable logic controller or onsite personnel, are pressurized and operate at much higher flowrates, among other differences.

the BAT technology as described in the 2009 final rule.

IV. Solicitation of Data and Comments on Numeric Effluent Limitations for Turbidity

The following presents the issues and areas where EPA is soliciting feedback, data and information.

A. Control of Turbidity—Effectiveness, Costs and Feasibility of Different Technologies

On November 28, 2008 EPA issued a proposed rule that would have established a numeric effluent limitation for turbidity based on the application of what is termed active or advanced treatment, or ATS, specifically chitosan-enhanced sand filtration (CESF). ATS consists of a variety of technologies, the two most prevalent being CESF and electrocoagulation. The basic premise behind CESF is to collect the stormwater in a pond or basin, withdraw the water from the basin (using pumps), add a treatment chemical (in this case chitosan, although the technology is adaptable to other treatment chemicals), and remove the flocculated solids using filtration. Pretreatment with a treatment chemical (such as chitosan) is frequently used to reduce the turbidity of the stormwater withdrawn from the pond or basin to a range that will allow for efficient filtration. This is frequently done in dedicated pretreatment cells or tanks, but the configuration can depend on requirements specified by the regulatory agency or the operator. CESF typically incorporates a programmable logic controller to monitor turbidity and pH of the treated water continuously or during some specified time interval, and valves can be actuated automatically by the controller to recycle the treated water back to the pretreatment cells or storage pond if the discharge does not meet pre-established thresholds. Electrocoagulation does not use a polymer or treatment chemical, but rather uses an electrical process to destabilize the particles. Agglomerated particles are removed by settling and/or filtration. ATS, based on information available to EPA on the performance of CESF, appears capable of producing very low turbidity (generally less than 50 NTU, and in many cases less than 5 NTU) in treated stormwater from construction sites. Performance can be further enhanced by polishing the filtered water in bag or cartridge filters. EPA requests comment on this description of ATS.

Costs for ATS systems include equipment rental (pumps, filters, generators and control equipment), fuel, chemicals, labor, management of residuals, piping, and miscellaneous consumables (residual polymer test kits, filtration media, etc.) and data management and reporting. A stabilized area (such as a gravel pad) may be necessary in some cases. In colder climates, consideration of measures to prevent freezing of equipment may also be necessary. The requirement to store water in ponds and to pretreat water can add costs. Also, managing dewatering of a series of large impoundments on some sites may be complicated, particularly during extended periods of precipitation. The costs of large ponds may be offset to some extent if they are converted to post-construction stormwater water-quality or flood-control ponds. This is frequently accomplished by removing the accumulated sediment captured during the construction phase and altering the outlet structure of the basin to achieve the water quality and peak discharge rate control desired for the post-developed condition. This can result in considerable cost savings for the post-construction ponds, since significant costs are associated with excavation of the basins. However, recent trends toward use of decentralized stormwater management may be a disincentive toward utilizing large ponds (although the need for flood control ponds and ponds to control stream channel erosion may still exist). Practices such as bioretention, porous pavement, infiltration systems and harvest and use systems may replace, to some extent, centralized conveyance and stormwater detention and retention ponds. However, if decentralized controls are used for postconstruction stormwater management, then basins used during the construction phase may not need to be converted for post-construction use. In these cases, the construction phase basins may need to be filled in, at additional expense to the developer. In some instances, this may provide space where additional structures, parking or other amenities can be placed, which may provide a benefit to the developer.

Passive treatment systems (PTS) in the context of construction site stormwater management are practices that do not rely on computerized systems with pumps, filters and real-time controls but do incorporate a treatment chemical to aid in sediment and turbidity removal. Passive treatment could include pumps where they are necessary to move water around the construction site, and pumping may be integral to properly dosing the water with treatment chemicals in some cases. When pumps are utilized to pump the water through a manifold or other apparatus to dose the chemical, this type of treatment has been characterized by the industry as semi-passive treatment. In passive treatment, polymer can be placed in channels that convey water on the construction site, or they may be used prior to basins or other practices (such as a baffle-grid, in-ground sand filter or a geotextile filter bag) that allow for settling and/or filtration of the flocculated material. Treatment chemicals, either in solid or liquid forms, can be applied at various locations on the site. Common PTS include fiber check dams with PAM and sediment basins dosed with PAM as described by McLaughlin (see DCNs 70018, 70034 and 70063). The Auckland, New Zealand Regional Council also described a PTS that utilized a rainfall-actuated system to deliver liquid chemical (see DCN 70049 and 70067). Minton (see DCN 70069) described a ''pump and treat'' system whereby water was pumped from a basin, a treatment chemical was added, and the water was allowed to settle in dedicated treatment cells. Water can be re-circulated with the pump and additional chemical added if the settled water does not meet specifications. As stated above, the term semi-passive treatment has been used to describe practices that utilize pumped water to dose the chemical, or applications where the water is first held in a basin or other impoundment and withdrawn under more controlled conditions for subsequent treatment. Recent improvements to PTS incorporate the use of two polymers (see DCNs 70006–70013, 70070–70080), which can be placed in a manifold or in a channel. The use of baffles and floating outlets or ''skimmers'' on basins are frequently incorporated as part of PTS, and directing treated water to vegetated areas or ''biofilters'' can also provide additional sediment and turbidity removal prior to discharge. EPA requests comment on these descriptions of ''passive'' and ''semi-passive'' treatment systems and comments on what practices should be considered representative of the BAT technology as described in the 2009 final rule.

The performance of PTS varies based on the type of system, the method used to dose chemicals, as well as other factors. The performance of simple PTS appears to be sensitive to the type and frequency of maintenance and system configuration, as well as the intensity and duration of storm events. An advantage of simple PTS, such as fiber check dams w/PAM, is that they are

very inexpensive and can be easily incorporated into sites at multiple locations and do not require large ponds for storage prior to treatment. A disadvantage may be that achieving a consistent level of performance may be more difficult due to variations in storm flows and sediment loads and little control over dosage rates. The data available to EPA does show high levels of turbidity in discharges for some events, indicating that simple passive treatment systems may not perform well during larger and/or more intense storm events. Data collected at a construction site in North Carolina that used passive treatment measured peak turbidity in excess of 40,000 NTU during an intense storm event (see DCN 70064.3).

Semi-passive approaches, which first hold the water in a basin, tank or impoundment and then release water either by gravity or with a pump to provide dosing, appear to be capable of providing lower, and perhaps more consistent, turbidity levels due to dampening of the storm flows by the basins. An advantage of semi-passive approaches is that since the water is withdrawn by pumping (although semi-passive dosing can be accomplished using gravity flow in certain cases), flowrates and dosing rates can be more easily controlled, allowing for more consistent and likely better performance. Since the water is withdrawn from the storage pond and dosed at a more controlled rate, the large variability and poorer performance that may occur under some precipitation conditions with simple passive treatment can potentially be avoided. A disadvantage may be that the stormwater must first be stored in ponds, tanks or other impoundments in order to provide a controlled release. As with ATS, these storage requirements can add costs and additional operational considerations to address, particularly during extended periods of precipitation. As described earlier, these costs may be offset to some extent depending on the nature of post-construction stormwater requirements in place.

An integral component of ATS and PTS is the use of a treatment chemical to aid in removal of sediment and turbidity. However, data presented by Warner and Collins-Camargo (see DCN 70052) indicates that a comprehensive suite of erosion and sediment controls is also capable of producing treated stormwater with low levels of turbidity. EPA has little data on which to base a numeric limitation on these types of practices as this level of management does not appear to be typical at most construction sites.

EPA is soliciting data and information on the costs, effectiveness and feasibility of different technologies to control TSS, settleable solids, suspended sediment concentration and turbidity in construction site stormwater discharges. EPA is also soliciting data on other water quality parameters, such as pH, nutrients and metals. EPA is especially interested in receiving data on the performance of passive and semi-passive treatment approaches. Data collected both before the treatment or management practice (influent data) as well as data after the treatment or practice (effluent concentration) would be useful. EPA already has a large dataset on the performance of ATS in removing turbidity, but additional data on the costs of ATS would potentially be useful to EPA. To be most useful, EPA requests that treatment performance data represent multiple discharge events, that samples are collected over regular intervals over the course of the event (or the discharge), and that the data contain, if available, the following descriptive information:

- Site information, such as project size, project type (residential, commercial, road/highway, etc.), location, phase of construction (e.g., before, during or after grading, site stabilization, etc), etc.;
- Sample date(s) and time(s) of collection and date(s) and time(s) of analysis;
- Sample type (grab sample, flow or time-weighted composite, continuous turbidity measurement, etc.);
- Analytical method and/or type of field instrument used to measure the parameter; and
- Description of the treatment technology, including method of treatment chemical dosing utilized.

Additional information that would be useful in evaluating these data includes:

- Estimates of the amount and intensity of precipitation for the time preceding and/or during sampling events;
- Drainage characteristics (predominant soil types/textures, drainage area, estimate of the quantity or percent of the drainage area that is disturbed);
- The ambient air temperature when the data is being collected;
- Date of last calibration if a field instrument was used; and
- Descriptions of any quality assurance/quality control procedures implemented for the data collection activity.

In order to be most useful, data on costs should include:

- Installation costs (both material and labor);
- Operation and maintenance burden (in terms of labor hours and/or costs);
- Quantity, cost and frequency of treatment chemical use; and
- Other costs (residuals management, consumables, energy use, etc.).

EPA requests comment on other factors EPA should consider other that those listed above in evaluating treatment performance data and what metadata commenters consider important to consider in the context of establishing effluent limitations.

B. Sampling and Data Collection—Procedures and Protocols To Ensure Representativeness of Data; Differences in Analytical Equipment

EPA is aware that there are several issues associated with collecting turbidity data in the field at construction sites. These issues are associated with sampling equipment limitations, turbidimeter limitations, differences between turbidity measuring equipment, and sample handling and analysis. The following discussion presents information that EPA is aware of with respect to these issues and solicits data and comment on these issues. These issues relate both to collecting samples for the purposes of establishing effluent limitations as well as collecting samples for compliance determination.

Sampling Equipment Limitations

Collecting samples of stormwater at construction sites can be accomplished using either automated equipment or by collecting grab samples. Automated equipment typically requires the use of a flow measuring device and an automated sampler. Flow measurement devices require that a weir, flume or other structure be installed in the conveyance that has a known rating curve (discharge vs. flow depth), or that a custom rating curve be developed for open channels based on surveyed channel geometry that can be used to estimate flow as a function of depth of water. Automated samplers can be set up to collect samples after a predetermined amount of flow has passed through the measuring device (flow-weighted) or after a predetermined amount of time has passed (time-weighted). In either case, the sample collection interval must be selected such that sufficient samples are collected over the course of the hydrograph to adequately characterize the discharge. This is frequently difficult, as it is not known in advance how much precipitation and flow will occur. If the sample collection interval is set too low, then the sampler may fill up before the end of the event. In this

case, a portion of the hydrograph may not be sampled. If the interval is set too high, then too few samples may be collected to adequately characterize the event. Given the variability in stormwater flows, this may make the use of automated sampling challenging.

Grab samples are easier to collect than automated samples. However, collecting grab samples requires that someone be physically present on the site. Given the variable nature of storm events and that those events can occur during all hours of the day, collecting grab samples to characterize performance can also be challenging. This is particularly true when the site is not located in close proximity to field offices of the sampling personnel.

In the context of characterizing performance for establishing effluent limitations, both grab samples and automated samples are potentially useful. Generally, EPA believes that samples used to characterize performance should be collected regularly over the course of the event in order to capture variability in flows and associated pollutant parameters. This is particularly true in the case of passive treatment, which does not involve capture of the water in a pond or basin for controlled release, so that one would expect greater variability in sampled parameters. For treatment of water discharged in a controlled rate from a pond, one would expect less variability in flows and performance, so less frequent sample collection would likely be necessary in order to adequately characterize performance.

Turbidimeter Limitations

Samples collected for turbidity can be measured in the field using a hand-held turbidimeter, or can be sent to a laboratory for analysis using a benchtop turbidimeter. Both methods are simple and inexpensive. However, turbidimeters only operate within specific ranges. The high-end of the range is typically around 1,000 NTU or more. Samples with high amounts of turbidity may need to be diluted in order for the turbidity of the sample to be within the operating range of the instrument. This is a potential source of error, especially if done in the field. Another method for measuring turbidity is to use an in-situ meter coupled to a datalogger. In-situ meters can be programmed to record turbidity continuously at some specified time interval (such as every 15 minutes). As with other instruments, in-situ turbidimeters typically operate within a specific range. With these instruments, turbidity above the measurement range of the instrument cannot be determined, since a physical sample is not collected. This is a potential source of error, particularly during periods of peak flows where turbidity may be very high. This is a downside of in-situ meters because an average turbidity for an event cannot be determined if some of the data exceeds the measurement range of the instrument. In these cases, the use of both an in-situ meter as well as collection of a physical sample during peak flow periods may be necessary to accurately determine the average turbidity for the event. In-situ meters are also susceptible to failure, such as from battery failure or a piece of debris obscuring the detector.

Different types of turbidimeters may provide different measurements of turbidity for the same sample. This is due to differences in light sources and differences in the orientation of the light source with respect to the detector. In addition, while turbidity measured in NTUs is the standard contained in EPA's methods, turbidity can also be measured in other units, such as formazin turbidity units (FTUs). While EPA believes that NTUs are the appropriate units in the context of effluent limitations for construction site stormwater, EPA solicits comments on the types of equipment that should be allowable and other considerations related to differences in measurement equipment and measurement units.

Sample Handling and Analysis

EPA notes that some of the data in EPA's dataset did not follow the sample preservation protocols contained in EPA's approved analytical methods. EPA method 180.1 states that turbidity samples should be immediately refrigerated or iced to 4°C and analyzed within 48 hours. EPA is aware that many of the samples collected by researchers at North Carolina State University and described in DCNs 70004, 70018, 70034, 70053, 70054 and 70065 were collected using automated samplers, and that the samples were not analyzed within 48 hours or refrigerated or iced. In many instances, samples were analyzed several days or weeks after collection. While EPA notes the deviation from approved methods, EPA does not believe that this deviation would produce appreciable changes in measured turbidity in these cases. The sample refrigeration and analytical timeframe guidelines are intended to minimize changes in turbidity that would result due to microbial decomposition of solids in the sample. Since EPA expects little organic material to be present in samples of stormwater runoff from construction sites since the solids are primarily composed of inert soil particles, EPA would not expect biological activity to appreciably change the turbidity of the samples. EPA does note that since these samples incorporated polyacrylamides, some additional flocculation could occur in the sample bottles during the time period between collection and analysis or during transport from the field to the laboratory, if residual or un-bound polyacrylamide was present in the sample. EPA solicits comment on the appropriateness of using data from samples not analyzed within 48 hours or otherwise not in compliance with established analytical methods in the context of a future regulation.

EPA also notes that the samples collected by researchers at North Carolina State University were allowed to settle for approximately 30 seconds after mixing before a subsample was collected and analyzed for turbidity. EPA understands that this 30-second settling period after mixing was to allow large flocculated particles to settle, since analyzing turbidity of a sample that contains large agglomerates may prevent the turbidity meter from producing a stable reading or may underestimate turbidity of the sample. The EPA approved sampling method does not describe an appropriate period of time between mixing of the sample bottle and collection of the subsample for analysis. As described in EPA's method 180.1 for measuring turbidity, the approved analytical procedure is ''Mix the sample to thoroughly disperse the solids. Wait until air bubbles disappear then pour the sample into the turbidimeter tube. Read the turbidity directly from the instrument scale or from the appropriate calibration curve.'' (see DCN 70083), The method states that ''The presence of floating debris and coarse sediments which settle out rapidly will give low readings. Finely divided air bubbles can cause high readings.'' Floating debris and course sediments and finely divided air bubbles are therefore considered sources of interference when measuring turbidity. The practice utilized by researchers at North Carolina State University of allowing mixed sample bottles to sit for 30 seconds before collecting the subsample for analysis, which would allow any course sediments to settle, may be an appropriate means of addressing possible interferences due to the presence of large particles. EPA also acknowledges that allowing the sample to settle prior to collecting the subsample for analysis may result in fewer particles generally being present in the subsample and thus an artificially low turbidity reading. EPA solicits

comment on the appropriateness of using turbidity data where a sample was allowed to settle for 30 seconds (or some other time period) after mixing before collection of the subsample for analysis for purposes of evaluating the performance of technologies and for compliance purposes and the expected magnitude of the effects of varying settling time on observed turbidity values.

EPA understands that the subsamples for TSS were collected by the researchers and analyzed immediately after mixing. As a result, there are certain cases where particular samples in these data had TSS concentrations (in mg/L) that would appear inconsistent when compared to the corresponding turbidity measurements (in NTU) since the large particles could be present in the TSS subsample. EPA notes that the ratios of TSS to turbidity for some samples are much higher than for other samples, which EPA believes can be attributed to the 30-second settling time prior to collection of the turbidity subsample. EPA welcomes comments on this topic.

In the context of compliance demonstration, the specifics of a particular site (such as the location of the site, the number of discharge points, proximity of discharge points, accessibility of discharge points, etc.) are important considerations in determining the type of sample to be collected. Generally, both automated samples and grab samples are potentially useful for compliance determinations. However, the inherent limitations with sampling equipment and equipment malfunctions may be important considerations. With grab samples, equipment limitations and equipment malfunctions are not of concern.

EPA solicits comment on the appropriate methods for sample collection in the context of both compliance sampling and analytical sampling for the purpose of setting limits for a turbidity effluent limitation for construction site stormwater discharges. EPA recognizes that logistics and cost are important considerations, and would like to better understand the potential costs and challenges of sample collection and analysis in these cases.

C. Effect of Storm Size, Intensity and Duration of Precipitation on Performance of Passive Treatment

In establishing effluent guidelines and new source performance standards, proper operation of the candidate best available technology economically achievable (BAT) and best available demonstrated control technology (BADCT) should result in meeting the numeric limitation a very high percentage of the time. In the case of industrial wastewater, treatment systems typically perform well within a range of flowrates and influent pollutant concentrations, and systems typically operate within these ranges. Due to variations in manufacturing production cycles, the flowrates and pollutant concentrations in wastewater can vary over the course of a day. Industrial wastewater treatment systems typically incorporate equalization to dampen these diurnal variations in flowrates and pollutant concentrations. This dampening assures that high flows and/or pollutant loads do not overwhelm the treatment system, or that low flows and/or pollutant loads do not compromise unit processes.

This same concept applies to stormwater treatment. Since precipitation is a stochastic process, there can be variation in stormwater flowrates and sediment loads during the course of a given precipitation event. Data available to EPA indicates that passive treatment with limited storage may perform well for some storm events, but that larger and/or more intense storm events may degrade the performance of these systems. The likely reasons for a decrease in performance include inadequate treatment chemical dosing during periods of higher flows, exhausting the treatment chemical during larger and/or longer storm events, high sediment loads during intense periods of precipitation that overwhelm the systems, and short-circuiting/overtopping of controls. These occurrences are difficult to address as they occur on construction sites in the context of passive treatment, which is not based on a high level of operator involvement.

A potential shortcoming of EPA's current dataset on passive treatment is that much of the data was collected during smaller storm events. EPA has little data available on the performance of this type of flow-through passive treatment during larger and/or more intense storm events, but the limited data available indicate that the performance of simple passive treatment approaches may not be as good for these events. The candidate BAT/BADCT should be capable of meeting the limitation up to whatever cutoff is established for the limitation. In the 2009 rule, the compliance storm event was the 2-year, 24-hour storm event (see Section IV.D for additional discussion of storm event exemptions).

EPA does not expect this concern to arise with treatment that first holds the water in a pond, basin or impoundment. Impounding the water has two primary benefits for subsequent treatment—equalization of flows and reduction/dampening of sediment/turbidity levels. The amount of sediment and turbidity mobilized during a storm event can vary greatly, depending on factors such as storm intensity, storm duration, soil type and composition, slopes of the contributing watershed, extent of soils exposed, and the extent and nature of construction activities occurring. When water is held in a basin, a significant portion of the settleable materials would be expected to be removed. When water is withdrawn for subsequent treatment, one would expect much lower variability in the amount of turbidity over the course of the treatment period.

D. Exemptions—Design Storm Depth vs. Intensity

The December 2009 final rule exempted discharges from compliance with the turbidity limitation on days where precipitation exceeded the local 2-year, 24-hour storm depth. The rationale for this exemption was that large storm events would potentially overwhelm the passive treatment systems, making compliance with the limitation difficult. If an impoundment is used to store water prior to treatment, a total storm depth may be an appropriate compliance threshold since impoundments are typically designed to store a certain quantity of water. Runoff in excess of that volume would either bypass storage or be discharged through an overflow riser or over a spillway. However, both storm depth and storm intensity may be important drivers for system performance and appropriate compliance thresholds for simple in-line passive treatment systems. Total storm depth (and the total volume of stormwater passing through the passive treatment system) is an important driver of performance because the amount of treatment chemical available in a simple passive treatment application is limited (unless more is applied during the event). At some point, available treatment chemical may be exhausted and treatment performance would be expected to decline. Storm intensity may be a much more important driver of performance of in-line simple passive systems than storm depth. During high intensity rainfall periods, which occur frequently in many parts of the country, sediment detachment and mobilization can be significant due to the high energy of the raindrops. This high level of sediment mobilization, coupled with flashy flows through conveyances, can deposit large quantities of sediment in passive treatment systems and flowrates

can exceed the dosing capacity of these simple systems. Therefore, EPA solicits data indicating what critical storm intensity would render simple passive treatment systems ineffective. In addition, any compliance threshold tied to storm intensity would optimally specify both storm intensity as well as a duration over which that storm occurs. For example, a storm may have a peak five-minute intensity of two inches per hour, but if the storm only lasted for five minutes, then the total amount of runoff would be small. In addition, optimally, EPA would specify how long after the intensity threshold has been exceeded the site would qualify for an exemption from the limitation (e.g., for the rest of the day, only during the period when the peak storm intensity had been exceeded, for one hour after the peak storm intensity had been exceeded, etc.). EPA solicits data and information on what would be appropriate exemption criteria.

With semi-passive or ATS approaches, storm intensity would likely not be as critical, given that the water is first held in a basin or impoundment. Therefore, an exemption based on total storm depth may be appropriate, since the standard could specify a storage volume and a drawdown time (e.g., basins must be sized to store runoff from the 2-year, 24-hour storm and the treatment system sized to dewater the entire storage volume in 48 hours). Any flow going over the riser or emergency spillway during that time period could be exempt from the limitation.

E. Use of Treatment Chemicals, Disposal and Toxicity Concerns

ATS, passive and semi-passive treatment practices on construction sites utilize a variety of treatment chemicals. Common treatment chemicals include chitosan, polyacrylamides (PAM), alum, polyaluminum chloride (PAC), diallydimethyl-ammonium chloride (DADMAC) and gypsum. These chemicals are used to help destabilize and flocculate soil particles, allowing for removal by filtration, adhesion or settling. Additional chemicals may be used to adjust pH or other water chemistry parameters. Treatment chemicals in use on construction sites have varying toxicity profiles. EPA has limited data on acute and chronic toxicity of these treatment chemicals in the context of their use to treat construction site stormwater; however it is generally known that unbound cationic chemicals can exhibit mechanical lethality to some species in some instances. The degree of toxicity of any treatment chemical is a function of the organism, chemical formulation, charge density, dose rate, exposure time, and degree of sediment/turbidity in the receiving environment. Some states have approved specific chemicals and formulations for use on construction sites. Some stakeholders raised concerns about the toxicity of the treatment chemicals in comments received on the November 2008 proposed rule. EPA is also aware that some states do not currently allow addition of any treatment chemicals to stormwater on construction sites. In these cases, it is unclear how permittees would comply with a numeric limitation, although as stated earlier, a comprehensive suite of conventional practices was demonstrated to produce low turbidity in discharges at the project described in Warner et al.

As mentioned above, stakeholders have raised concerns regarding acute and chronic aquatic toxicity effects due to the use of chemicals in treatment of construction site stormwater. The concerns are related to the lack of control of dosage rates in passive treatment, operator error in passive, semi-passive and ATS applications, and other accidental or unintended releases. Anionic granular and water-based PAMs that are used in surface water treatment applications (such as for managing construction site stormwater and in agricultural applications) are generally considered to have a low toxicity profile when used appropriately and within established dosing ranges (see DCN 70081). Oil-based PAM and cationic PAM are known to exhibit acute and chronic aquatic toxicity. The Auckland, New Zealand Regional Council evaluated the ecotoxicological and environmental risk of polyelectrolytes and inorganic aluminum salts (see DCN 70082) and found that ''there appears to be a small risk to the natural aquatic environment arising from potential losses of unbound residual flocculants from treatment ponds on construction sites. Impacts are likely to be low level and also likely to not be significant in relation to other factors which govern the health of aquatic communities. The benefit of reduced sediment levels in discharges is considered to outweigh the risk of any low level impacts attributable to residual flocculants.''

There are also concerns related to flocculated material containing polymers or other treatment chemicals that may pass through passive or semi-passive treatment systems. Anecdotal information indicates that PAM bound to soil particles may be discharged to receiving waters in certain cases in simple passive treatment systems, either due to the flocculated material not being removed by the practice or previously-removed material being re-suspended during subsequent storm events. It is unclear what, if any, downstream effects may be attributable to these discharges, as sediment-bound PAM is thought to have limited bioavailability (see DCN 70081). It is also unclear how any detrimental effects due to discharged chemical would compare to the detrimental effects of the additional sediment and turbidity that would be discharged had the chemical not been used. Additional concerns have been raised regarding the disposal of treatment residuals, which consist of sediment bound with treatment chemicals. Common practice is to use treatment residuals as fill material. If fill material is placed in locations that are not adjacent to surface waters and in areas where they cannot be re-mobilized, then the potential for subsequent release may be minimized. However, EPA is not aware of data or studies that have looked at the fate and transport of treatment chemicals contained in residuals. It is, however, generally known that components of some chemicals, such as polysaccharides, will readily degrade into benign compounds. And, as stated in the previous paragraph, sediment-bound PAM is thought to have limited bioavailability since there is little or no desorption from soil particles.

EPA is seeking comment and additional data on the toxicity associated with the use of chemicals in controlling sediment discharge in construction stormwater.

F. Cold Weather Considerations

EPA solicits information and data on the performance of polymers as an aid to reducing turbidity in cold weather. EPA is aware that temperature may affect dissolution rates of treatment chemicals and therefore may impact the performance of polymer-aided settling and filtration (see DCN 70000, 70001 and 70002). Data contained in DCN 70000 indicates that while dissolution rates may be lower, there are methods available to mitigate detrimental effects on treatment system performance, such as providing additional application in order to provide the proper dosing rates and/or use of product formulations designed specifically for use in colder climates. Directing discharges to a vegetated buffer (or biofilter) would also be expected to provide additional removal (see DCN 70000, which illustrates such an application in a cold climate). This issue was addressed in EPA's comment response document for the December 2009 final rule (EPA–HQ–OW–2008–0465–1660, page 507):

EPA expects that NPDES permittees working in cold-climate regions, such as Alaska, shall be able to comply with the requirements of the final rule. Very little surface runoff (and hence discharges) occurs during freezing conditions. As temperatures warm and snow and ice melt and discharges occur, the limitation would apply to discharges on those sites that meet the applicability criteria. In some cases, permittees may need to consider the need for freeze protection for items such as pumps and polymer dosing systems, if permittees elect to use these or other items as components of their treatment systems. Stormwater infiltration may be limited in cold climates, but the ELGs are flexible enough to allow permittees to comply with the regulation regardless of frozen soil/ ground conditions.

In addition, comments submitted by the National Association of Home Builders on the November 29, 2008 proposed rule (EPA–HQ–OW–2008–0465–1360.2, page 188) indicate that little, if any, runoff would be expected during the cold months:

In very cold climates, erosion and sediment movement is nonexistent during the cold months. Once the freeze sets in, the soil does not move since the freeze penetrates to well below the surface. Typically builders and contractors do their land disturbing activities during the summer months. (Home builders line up a number of home foundations where the building of the houses can proceed during the winter without the need to move soil.) If digging is done on site during the winter to put in a foundation, the soil removed will remain in place until the thaw. Permitting authorities normally require that sites are stabilized prior to freezing and inspections take place to ensure stabilization during the spring, including stabilization for any dirt dug out during the winter.

EPA solicits additional data on the performance of polymer-aided settling and filtration in colder climates.

G. Small Sites That Are Part of a Larger Common Plan of Development or Sale

EPA solicits comments on the ability to effectively treat discharges from small sites that are part of a larger common plan of development or sale. An example would be a site that is above any regulatory threshold requiring compliance with a turbidity limitation, but has a portion of the site (such as an individual lot or small group of lots) that may not be treated in a common system that treats discharges for the entire site. These small areas would still be subject to any numeric limitation because the overall size of the construction site exceeds the size threshold, and therefore these sites would need to treat any discharge from their area if there is a concentrated point of discharge that would be subject to the numeric limitation. EPA is soliciting data and information on the ability to apply treatment to small areas within a larger common plan of development or sale.

Information in the record for the C&D rule indicates polymer-aided settling and filtration is scalable, and that therefore there are technologies available that can be used on any size site and any drainage area. Some of the data used to calculate the December 2009 numeric limitation, such as the North Carolina roadway project and the North Carolina institutional project, were collected on small drainage areas. Small drainage areas need only provide a sufficient storage volume (such as a sediment trap) or a conveyance system (such as a channel with check dams) to treat stormwater discharges.

For small drainage areas without appreciable slope, or where a conveyance or impoundment could not be feasibly installed, EPA would expect that stormwater would be conveyed primarily as overland flow, once the underlying soil has been saturated, which would be amenable to treatment through a filter berm, vegetated buffer or other appropriate control. EPA would not expect stormwater discharges to become concentrated to such a degree from small, flat drainage areas that monitoring and compliance with a numeric limitation would be required since channelization is likely not to occur, except for larger storm events. In addition, the use of surface covers, tackifiers and other covers have been shown to be highly effective in preventing mobilization of soil particles (see the Technical Development Document for the December 2009 rule for additional information). These practices can be used on any size area of disturbance and would be particularly effective on small, flat areas of disturbance. Therefore, EPA believes that technologies are available for managing any size site or drainage area.

EPA further believes that decisions the permittee chooses to make regarding how to grade the site and how to convey stormwater are important factors to consider during the planning phase of a project, and that these choices will affect the level of technology needed to meet a turbidity limitation and the number of discharge points that will require monitoring, particularly for smaller drainage areas. EPA solicits comment and data on this issue.

H. Electric Utility Transmission Line Construction

EPA solicits information and data on the costs and feasibility of implementing controls to achieve a numeric effluent limitation for turbidity in discharges from electric utility transmission line construction projects. As discussed below, the length of electric utility transmission line projects, the multitude of discharge points, the distance between such discharge points, and the relatively brief construction period would make it potentially difficult for permittees to identify all discharge points in advance and monitor at the numerous points where monitoring would potentially be required.

Since promulgation of the December 2009 C&D rule, EPA has received information from UWAG (see DCN 70031) regarding several attributes of construction for electric utility transmission line construction projects. Information provided to the Agency and the Agency's understanding of this information indicates that electric utility transmission line construction projects are different than other types of linear construction projects, such as roads. Electric utility transmission line construction projects can span anywhere from a few dozen miles to hundreds of miles in length and the area of disturbance is typically non-contiguous. Other linear construction projects, such as roads, typically do not span the longer distances in this range and typically have relatively contiguous areas of disturbance. EPA's understanding of the information provided by UWAG indicates that, given the considerable length of electric transmission projects and the number of individual areas where pads and/or poles are installed, the number of discharge points could run into the hundreds. This number of discharge points is unique to long, linear electric utility transmission line construction projects. Further, the distance between individual areas of disturbance for electric utility transmission line construction projects can be considerable. This differs from other linear projects, such as roads, in that other linear projects typically do not have such distances between areas of disturbance. For example, a typical road widening project could potentially be up to dozens of miles long, but the areas of disturbance are generally contiguous or in close proximity to each other.

Another significant difference between electric utility transmission line construction projects and other linear construction projects is that the duration of disturbance for a given piece of land is typically much shorter and the intensity of disturbance is much less for electric utility transmission line construction projects than for other linear construction projects, such as roads. Construction of a new roadway,

or expansion of an existing roadway to add a new lane or lanes, typically takes many months and involves intensive land disturbance (clearing, grading, cut and fill, excavation, etc.), whereas construction of an individual pad for an electric utility transmission line tower and/or pole may last a matter of days or weeks.

Based on the length of such electric utility transmission line construction projects, the multitude of discharge points, the distance between such discharge points, and the relatively brief construction period, EPA solicits comments on whether it would be practical to require such dischargers to identify all discharge points in the notice of intent to be covered for their permit, for the permitting authority to determine representative discharge points, and for the discharger to monitor at the numerous points where monitoring would potentially be required for these types of projects. EPA solicits comments on the information provided to EPA by UWAG and additional data on construction of electric utility transmission lines to support or refute the ability of these projects to implement controls and monitor discharges.

Dated: December 27, 2011.

Michael H. Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. 2011–33661 Filed 12–30–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9615–1]

Final Reissuance of General NPDES Permits (GP) for Facilities Related to Oil and Gas Extraction

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Final Notice of reissuance of a general permit.

SUMMARY: A GP regulating the activities of facilities related to oil and gas extraction on the North Slope of the Brooks Range, Alaska expired on January 2, 2009. On July 2, 2009, EPA proposed to reissue the GP expanding the coverage area to the TransAlaska Pipeline Corridor along with other potential corridors. There was a 45 day comment period. During the comment period, EPA received many comments and decided to make changes to the draft based on the comments received. On August 2, 2011, EPA re-noticed the GP with a new Fact Sheet requesting new comments. The comment permit ended on September 17, 2011.

EPA received several comments, the major one being a request not to cover the pipeline corridors under this GP. EPA agreed so the final coverage area reverts back to the North Slope Borough, Alaska. EPA has also renumbered the permit to distinguish it from the previous GP which covered more types of discharges.

DATES: The GP (Permit Number AKG–33–1000 formerly AKG–33–0000) will be effective February 2, 2012. Facilities with administratively extended coverage under the expired GP whose discharges are covered by the GP will be covered on the effective date of this GP thus ending any administrative extension for those permittees. Facilities that are not covered by the new GP but have administratively extended coverage under the previous GP will continue to have coverage under AKG–33–0000 until a new permit is issued to address those discharges.

ADDRESSES: Copies of the GP and Response to Comments are available upon request. Written requests may be submitted to EPA, Region 10, 1200 Sixth Avenue, Suite 900, OWW–130, Seattle, WA 98101. Electronic requests may be mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov*

FOR FURTHER INFORMATION CONTACT: The GP, Fact Sheet and Response to Comments may be found on the Region 10 Web site at *http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/General+NPDES+Permits.* Requests by telephone may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561.

SUPPLEMENTARY INFORMATION:

Executive Order 12866: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), certified on December 19, 2011, that the subject discharges comply with the applicable provisions of Sections 208(e), 301, 302, 306 and 307 of the Clean Water Act.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that these general permits, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: December 22, 2011.

Michael A. Bussell,

Director, Office of Water & Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 2011–33663 Filed 12–30–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9615–2]

Proposed CERCLA Administrative Cost Recovery Settlement; North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site, located in the vicinity of Los Angeles, California, with the following settling party: Waste Management Recycling & Disposal Services of California, Inc., dba Bradley Landfill & Recycling Center. The settlement requires the settling party to pay a total of $185,734 to the North Hollywood Operable Unit Special Account within the Hazardous Substance Superfund. The settlement also includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which

indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the City of Los Angeles Central Library, Science and Technology Department, 630 West 5th Street, Los Angeles CA 90071 and at the EPA Region 9 Superfund Records Center, Mail Stop SFD–7C, 95 Hawthorne Street, Room 403, San Francisco, CA 94105.

DATES: Comments must be submitted on or before February 2, 2012.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region 9 Superfund Records Center, Mail Stop SFD–7C, 95 Hawthorne Street, Room 403, San Francisco, CA 94105. A copy of the proposed settlement may also be obtained from the EPA Region 9 Superfund Record Center, 95 Hawthorne Street, Mail Stop SFD–7C, Room 403, San Francisco, CA 94105, (415) 820–4700. Comments should reference the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site, and EPA Docket No. 9–2011–0015 and should be addressed to Michael Massey, EPA Region 9, 75 Hawthorne Street, Mail Stop ORC–3, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Kelly Manheimer, EPA Region 9, 75 Hawthorne Street, Mail Stop SFD–7–1, San Francisco, CA 94105, (415) 972–3290.

Dated: December 22, 2011.

Kathleen Salyer,

Acting Superfund Division Director.

[FR Doc. 2011–33667 Filed 12–30–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9612–9]

Biological Processors of Alabama; Decatur, Morgan County, AL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Biological Processors of Alabama Superfund Site located in Decatur, Morgan County, Alabama.

DATES: The Agency will consider public comments on the settlement until February 2, 2012. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments by Site name Biological Processors of Alabama Superfund Site by one of the following methods:

- *www.epa.gov/region4/waste/sf/enforce.htm.*
- *Email. Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at (404) 562–8887.

Dated: December 14, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–33680 Filed 12–30–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Jennifer Jamieson, State University of New York, Upstate Medical University: Based on the report of an investigation conducted by the State University of New York, Upstate Medical University (SUNY US) and additional analysis conducted by ORI in its oversight review, ORI found that Ms. Jennifer Jamieson, former graduate student, Department of Cell and Developmental Biology, SUNY US, engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM047607–18A1, and National Heart, Lung, and Blood Institute (NHLBI), NIH, grants R01 HL70244–05.

ORI found that Respondent engaged in research misconduct by falsifying data that were included in grant application R01 GM047607–18A1, in a manuscript submitted for publication to the *Journal of Cell Biology,* and in several interdepartmental data presentations. Specifically, ORI found that:

- Respondent falsified Figure 1A in a manuscript submitted for publication to the *Journal of Cell Biology,* by altering immunoprecipitation Western blot data to make this experiment appear that no Vav2 SH2 was associated with PKL 3YF, when in fact it did. In addition, the Respondent falsified five figures depicting Western blots of similar experiments in four laboratory meeting presentations. The purpose of the falsifications was to show that the experimental results were as described when they were not, or to show that the results were of greater significance than they actually were.
- Respondent falsified Figure 3I in a manuscript submitted for publication to the *Journal of Cell Biology* by falsely labeling a Western blot to indicate levels of expression for various Vav2 mutants, when the experimental data were taken from a completely unrelated experiment.
- Respondent falsified Figure 6A in an interdepartmental laboratory presentation by falsifying Western blot data to falsely depict Paxillin and Hic-5 expression and phosphorylation levels after siRNA treatment.
- Respondent falsified Figure 5 from NIGMS, NIH, grant application GM047607–18A1, by falsifying Western blot data to support the hypothesis that co-transfection of PKL plus RhoA GEF Vav2 induces RhoA activation and signaling upon plating on fibronectin.

Ms. Jamieson has entered into a Voluntary Settlement Agreement (Agreement). Ms Jamieson neither admits nor denies ORI's finding of scientific misconduct nor any particular finding of fact asserted in support of that finding. The settlement is not an admission of liability on the part of the Respondent.

Ms. Jamieson has voluntarily agreed for a period of three (3) years, beginning on December 20, 2011:

(1) To have her research supervised if employed by an institution that receives or applies for U.S. Public Health Service (PHS) funding; Respondent agrees that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of her duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that she shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI;

Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing her shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology were accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude herself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–33650 Filed 12–30–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Mahesh Visvanathan, Ph.D., Kansas University: Based on an inquiry conducted and written admission obtained by Kansas University (KU) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Mahesh Visvanathan, Research Assistant Professor in the K–INBRE [1] Bioinformatics Core Facility, KU, engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically the INBRE program of the National Center for Research Resources (NCRR), National Institutes of Health (NIH), grant P20 RR016475.

Specifically, ORI found that Respondent engaged in research misconduct by intentionally and knowingly plagiarizing large amounts of text from other writers' published papers without attribution or citation in the following three (3) papers and one (1) abstract. The specific published documents as well as the relevant source documents are:

- Visvanathan, M., Adagarla, B., Lushington, G., Sittampalam, S., *Proceedings of the 2009 International Joint Conference on Bioinformatics, Systems, Biology and Intelligent Computing,* 2009, 494–497. Greater than half (50%) of the total text was obtained from (1) Yang, C.–S., Chuang, L.–Y., Ke, C.–H., Yang, C.–H., *International Journal of Computer Science, International Association of Engineers,* August 2008 35(3), (2) Goffard, N. and Weiller, G., *Nucleic Acids Research,* 2007, 35L:W176– W18l, and (3) Chuang, L.–Y., Yang, C.–H., Tu, C.–J., Yang, C.–H., *Proceedings of the Joint Conference on Information Sciences,* Atlantis Press, October 2006.

Retracted: Retracted administratively by IEEE on Jan 5, 2011 *http://ieeexplore.ieee.org/xpl/freeabs_all.jsp?arnumber=5260432.*

- Vijayan, A.; Skariah, B. E., Nair, B.; Lushington, G., Subramanian, S., Visvanathan, M., *Proceedings of the IEEE International Conference on Bioinformatics and Biomedicine Workshop,* 2009, BIBMW2009, 267–271. Approximately 15%of the text was plagiarized from Goffard, N. and Weiller, G., *Nucleic Acids Research,* 2007, 35L:W176–W18l.

Retracted: Retracted administratively by IEEE on Jan 5, 2011 *http://www.computer.org/portal/web/csdl/doi/10.1109/BIBMW.2009.5332106.*

- Visvanathan, M., Netzer, M., Seger, M., Adagarla, B. S., Baumgartner, C., Sittampalam, S., Lushington, G., *International Journal of Computational Biology and Drug Design,* 2009, 2,236–251. A complete paragraph of the text was plagiarized from Goffard, N. and Weiller, G., *Nucleic Acids Resea*rch, 2007, 35L:W176– W18l.

- Adagarla, B., Lushington, G., Visvanathan, M., ISMB International Conference, January 2009; the entire abstract for this poster was obtained by plagiarizing text from Pihur, V., Datta, S., Datta S., *Genomics,* 2003, 92:400–403.

Dr. Visvanathan has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of two (2) years, beginning on December 20, 2011:

(1) To have any PHS-supported research supervised; ORI acknowledges that Respondent's research is currently being supervised by KU; Respondent shall ensure that a plan for supervision of his PHS-related duties is submitted to ORI for approval either within two weeks of this Agreement becoming final or prior to receiving or applying for PHS funds if such support is not current at the time this Agreement is completed; the supervision plan must be designed to ensure the scientific integrity of his research contribution; because of the ongoing review of Respondent's research by KU, ORI will only require a summary report on the first and second anniversary of the Agreement detailing how KU has ensured that Respondent's research and language in PHS grant applications and reports of PHS-supported research have been verified to be his own and accurately reported; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That this annual summary, provided by any institution employing him, shall provide assurance that each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent was involved, was based on actual experiments or was otherwise legitimately derived, that the data, procedures, and methodology were accurately reported in the application, report, manuscript, or abstract, and that the text in such submissions was his own or properly cited the source of copied language and ideas; and

(3) To exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–33651 Filed 12–30–11; 8:45 am]

BILLING CODE 4150–31–P

[1] K–INBRE: The Kansas IDeA Network of Biomedical Research Excellence, which is a consortium of a number of schools and centers in Kansas.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0916]

Draft Guidance for Industry and Food and Drug Administration Staff; Medical Device Classification Product Codes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Medical Device Classification Product Codes.'' The purpose of the guidance document is to educate regulated industry and FDA Staff on how, when, and why to use classification product codes for medical devices regulated by the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER). This document describes how classification product codes are used in a variety of FDA program areas to regulate and track medical devices. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 2, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Medical Device Classification Product Codes'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at (301) 847–8149. The draft guidance may also be obtained by mail by calling CBER at (800) 835–4709 or (301) 827–1800. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Diane Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1644, Silver Spring, MD 20993–0002, (301) 796–6559; and

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, (301) 827–6210.

I. Background

Since the May 28, 1976, Medical Device Amendments were passed, the Classification Regulation Panels (parts 862 through 892 (21 CFR parts 862 through 892)) have been the basis for the CDRH's Classification Product Code structure and organization. These 16 Panels have largely been the driving force for CDRH's internal organizational structure as well. Relying on the Classification Regulation Panels structure, CDRH created classification product codes to assist in accurate identification and tracking of current medical devices and to allow for tracking and easy reference of predicate device types.

Classification product codes are a method of classifying medical devices. Medical device product codes consist of a three-letter combination, which associates a device's type with a product classification. Classification product codes and information associated with these devices, such as names and attributes, are assigned by CDRH to support their regulation.

The purpose of the guidance document is to educate regulated industry and FDA Staff on how, when, and why to use classification product codes for medical devices in a variety of FDA program areas to regulate and track medical devices. This document is limited to medical devices as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and does not discuss classification products codes used to regulate non-medical electronic radiation emitting products.

The scope of the guidance document includes devices described in the existing classification under parts 862 through 892. It also describes how classification product codes are used for CBER regulated devices, which currently do not fall within this existing classification. This guidance may also be applicable to future devices. It also covers unclassified devices and devices not yet classified.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on medical device classification product codes. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* To receive ''Medical Device Classification Product Codes,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to (301) 847–8149 to receive a hard copy. Please use the document number 1774 to identify the guidance you are requesting.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–33686 Filed 12–30–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; (240) 276–2600 (voice), (240) 276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, (615) 255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, (504) 361–8989/(800) 433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, (800) 445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, (229) 671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, (215) 674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, (662) 236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, (519) 679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, (713) 856–8288/(800) 800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, (908) 526–2400/(800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, (919) 572–6900/(800) 833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, (866) 827–8042/(800) 233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927/(800) 873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, (905) 817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, (651) 636–7466/(800) 832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295/(800) 950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, (612) 725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250/(800) 350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, (888) 747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, (800) 328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, (509) 755–8991/(800) 541–7891x7.
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, (858) 643–5555.
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, (800) 729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, (610) 631–4600/(877) 642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, (800) 877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300/(800) 999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176 x1276.
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, (602) 438–8507/(800) 279–0027.
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052.
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, (800) 442–0438.
Toxicology & Drug Monitoring Laboratory,
University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, (573) 882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, (305) 593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, (301) 677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: December 22, 2011.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2011–33406 Filed 12–30–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–600, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–600, Application for Certificate of Citizenship.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 27, 2011, at 76 FR 59710, allowing for a 60-day public comment period. USCIS received comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 2, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 or via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at (202) 395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0057 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* USCIS uses the information on Form N–600 to make a determination that the citizenship eligibility requirements and conditions are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 57,000 responses at 1.6 hours (1 hour and 36 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 91,200 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone (202) 272–8377.

Dated: December 27, 2011.

Constance Carter,

Deputy Chief, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–33624 Filed 12–30–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–MB–2011–N245; FXMB12320100000P2–123–FF01M01000]

Golden Eagles; Programmatic Take Permit Application; Draft Environmental Assessment; West Butte Wind Project, Crook and Deschutes Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We have received an application under the Bald and Golden Eagle Protection Act (BGEPA) from West Butte Wind Power, LLC, for a programmatic permit for the take of golden eagles. If issued, the permit would be the first programmatic permit issued under our new permitting regulations. We invite public comment on a draft environmental assessment (DEA), which evaluates alternatives for this permit application.

DATES: To ensure consideration, please send your written comments by February 2, 2011.

ADDRESSES: You may download a copy of the DEA on the Internet at *http://www.fws.gov/pacific/migratorybirds/nepa.html.* Alternatively, you may use one of the methods below to request hard copies or a CD–ROM of the documents. Please specify the ''DEA for the West Butte Wind Project'' on all correspondence.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email: pacific_birds@fws.gov.* Include ''DEA for the West Butte Wind Project'' in the subject line of the message.
- *U.S. Mail:* Please address written comments to Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 911 NE 11th Ave., Portland, OR 97232.
- *Fax:* Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, (503) 231–2019, Attn.: DEA for the West Butte Wind Project.

FOR FURTHER INFORMATION CONTACT: Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, U.S. Fish and Wildlife Service, (503) 231–2019 (phone); *pacific_birds@fws.gov* (email, include ''DEA for the West Butte Wind Project'' in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service is considering an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a–d; BGEPA) for a programmatic golden eagle (*Aquila chrysaetos*) take permit from West Butte Wind Power, LLC. The company plans to develop the West Butte wind-power project in central Oregon, and there is a risk of eagle fatalities as a result of the operation of this facility. The application includes an avian and bat protection plan combined with an eagle conservation plan that describes actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles. The eagle conservation plan was developed in collaboration with the Service.

The Draft Environmental Assessment (DEA) analyzes the alternatives associated with this permit application in light of our BGEPA permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26. If the results of this analysis lead us to issue this permit, it will be the first programmatic permit issued under these new regulations, as well as the first eagle take permit issued to a wind-energy company.

Background

BGEPA allows us to authorize bald eagle and golden eagle programmatic take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified). Such take must be incidental to actions that are otherwise lawful. BGEPA's implementing regulations define ''take'' as ''to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb individuals, their nests and eggs'' (50 CFR 22.3); and ''disturb'' is further defined as ''to agitate or bother a bald or golden eagle to a degree that causes * * * injury to an eagle, * * * a decrease in its productivity, * * * or nest abandonment'' (50 CFR 22.3). The West Butte Wind Project potentially will result in one or more recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

To obtain a programmatic permit under BGEPA and 50 CFR 22.26, the applicant must (1) avoid and minimize take to the maximum extent achievable; (2) conduct adequate monitoring to determine effects; (3) offset through compensatory mitigation any remaining take, such that the net effect on the eagle population is, at a minimum, no change for eagle management populations that cannot sustain additional mortality; and (4) ensure that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Applicant's Proposal

The 104-megawatt (MW) project is to be built in Crook and Deschutes Counties, Oregon. As a result of monitoring studies conducted on the proposed project site, the applicant considers the use of the site by eagles to be low, and has requested in their application a permit for the legal take of ''1 to 2 Golden Eagles over the 20 to 30 year life of the project.''

The applicant developed an eagle conservation plan, following recommendations provided by the Service (Draft Eagle Conservation Plan Guidance, January 2011, *http://www.fws.gov/windenergy/docs/ECP_draft_guidance_2_10_final_clean_omb.pdf*). As recommended in the Service's guidance, the applicant's plan outlines avoidance and minimization measures and advanced conservation practices, assesses risk from pre-construction monitoring data, makes commitments for mitigating eagle mortalities, and commits to post-construction monitoring. This plan was

submitted as part of the permit application, and if we issue the permit following the National Environmental Policy Act (NEPA) process, then the conservation commitments would become conditions of the permit.

The Service independently evaluated the risk of eagle fatalities from the construction of this project and compared that risk to the conservation measures, largely mitigation actions, to which the applicant has committed. This is an essential step in the Service's evaluation of an application for a permit for programmatic take of eagles, since issuing criteria require permitted take to be in compliance with the BGEPA's preservation standard. The Service has interpreted this standard to require maintenance of stable or increasing breeding populations of eagles (74 FR 46836; September 11, 2009). The evaluation of risk and offsetting conservation measures, and the implications for direct, indirect, and cumulative effects under three alternatives, are discussed in detail in the DEA.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit application and comments submitted thereon to determine whether the application meets the permitting requirements under BGEPA, applicable regulations, and NEPA requirements. Upon completion of that evaluation, we will select our course of action.

Public Comments

We invite public comment on the proposed DEA. If you wish, you may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You can ask us in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 668a of the Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Dated: December 19, 2011.

Richard Hannan,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2011–33630 Filed 12–30–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000 L51100000.GE0000.LVEMG11CG200]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Intercontinental Potash Corporation (ICP) (USA) Ochoa Mine Project, Lea County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, (NEPA) and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Carlsbad Field Office, Carlsbad, NM intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until February 2, 2012. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nm/st/en/fo/Carlsbad_Field_Office.html*. To be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit written comments on issues related to the ICP Ochoa Mine Project by any of the following methods:

- *Email: David_Alderman@blm.gov*
- *Fax:* (575) 885–9264
- *Mail:* Bureau of Land Management, Carlsbad Field Office, Attention: Ochoa Mine EIS Project Manager, 620 E. Greene St., Carlsbad, NM 88220.

Documents pertinent to this proposal may be examined at the Carlsbad Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact David Alderman, Planning and Environmental Coordinator; telephone (575) 234–6232; address, Carlsbad Field Office 620 E. Greene St., Carlsbad, NM 88220; email *David_Alderman@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877–8339 to contact the 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: Intercontinental Potash Corp. (USA) (ICP) holds BLM prospecting permits and has applied for preference right leases. ICP plans to develop an underground mine to extract polyhalite ore. These prospecting permits are located about 40 miles southeast of Carlsbad, New Mexico, and 20 miles west of Jal, New Mexico. The proposed project would occur on portions of the following townships and ranges:

New Mexico Prime Meridian

T. 22 S., R. 33 E.,
T. 22 S., R. 35 E.,
T. 23 S., R. 32 E.,
T. 23 S., R. 33 E.,
T. 23 S., R. 34 E.,
T. 23 S., R. 37 E.,
T. 24 S., R. 32 E.,
T. 24 S., R. 33 E.,
T. 24 S., R. 34 E.,
T. 24 S., R. 35 E.,
T. 24 S., R. 36 E.,
T. 24 S., R. 37 E.,
T. 25 S., R. 37 E.,

The areas described, including Federal, State, and nonpublic lands, total 276,480 acres. ICP holds 17 State leases, totaling 25,889 acres in addition to the 26 prospecting permits totaling 77,884 acres. ICP has submitted a proposed Mine Plan of Operations to the BLM for the Ochoa Mine Project, to produce the fertilizer sulfate of potash, K_2SO_4, from polyhalite ore. ICP's proposed Mine Plan of Operations includes an underground mine accessed by a shaft and a ramp, and processing facilities, including the ore process plant, dry stack tailings pile, evaporation ponds, water wells, pipelines, power lines, and a railroad load-out facility. The polyhalite will be continuously mined using the conventional room and pillar retreat method. In order to mine in proximity to active oil and gas wells, ICP has elected to follow the rules and regulations of a Category IV gassy mine. Sulfate of potash production involves two separate operations. The first operation is to mine raw polyhalite

approximately 1,500 feet underground in the Rustler Formation. Once mined, the polyhalite is hoisted to the surface, crushed, calcined, leached, and granulated to produce sulfate of potash, the saleable product. The final product will be moved via truck to a load-out facility near Jal, where it will be loaded on trains and shipped.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

- Water availability;
- Impacts from subsidence;
- Impacts to oil and gas exploration and operation in the project area;
- Impacts to air quality; and
- Impacts to wildlife and range.

The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7

Jesse Juen,

Acting State Director.

[FR Doc. 2011–33664 Filed 12–29–11; 11:15 am]

BILLING CODE 4310–OX–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000 PH0000 LXAMANMS0000]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held January 19, 2012, beginning at 9 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

ADDRESSES: The meeting will be in the BLM's Butte Field Office, 106 N. Parkmont, in Butte, MT.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon several topics, including the BLM's Sage Grouse Conservation Strategy, a report from the RAC's recreation fee subgroup, and reports from the Butte, Missoula and Dillon field offices.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, (406) 533–7617, *dabrams@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the 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.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2011–33629 Filed 12–30–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–1211–9076; 0004–SYP]

Charter Renewal for the National Park System Advisory Board

AGENCY: Department of the Interior, National Park Service.

ACTION: Charter Renewal.

SUMMARY: The Secretary of the Interior intends to renew the charter for the National Park System Advisory Board, in accordance with section 14(b) of the Federal Advisory Committee Act. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT: Shirley Sears Smith, (202) 354–3955.

SUPPLEMENTARY INFORMATION: The Board was established initially by section 3 of the Act of August 21, 1935 (49 Stat. 667; 16 U.S.C. 463), and has been in existence almost continuously since then. Pursuant to Public Law 111–8, the legislative authorization for the Board expired January 1, 2010. However, due to the importance of the issues on which the Board advises, the Secretary of the Interior exercised the authority contained in Section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to re-establish and continue the Board as a discretionary committee from January 1, 2010, until such time as it may be legislatively reauthorized. If the Board is reauthorized legislatively within 2 years of the date of the renewal charter, the Board will revert to a legislative Board.

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it is necessary to re-establish the Board to ensure its work is not disrupted. The Board's twelve members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The renewal of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration.

Certification: I hereby certify that the renewal of the National Park System Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.,* and

other statutes relating to the administration of the National Park System.

Dated: December 27, 2011.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2011–33628 Filed 12–30–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan and Environmental Impact Statement for Lincoln Home National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service announces the availability of the Abbreviated Final General Management Plan and Environmental Impact Statement for Lincoln Home National Historic Site, Illinois.

DATES: The Abbreviated Final General Management Plan and Environmental Impact Statement (GMP/EIS) will remain available for public review for 30 days following the publishing of the notice of its availability in the ''**Federal Register**'' by the U.S. Environmental Protection Agency.

ADDRESSES: Send requests for copies to the Superintendent, Lincoln Home National Historic Site, 413 South Eighth Street, Springfield, IL 62701–1905.

You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov*); click on the link to Lincoln Home National Historic Site.

SUPPLEMENTARY INFORMATION: We, the National Park Service, prepared a draft GMP/EIS for the park pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The draft was made available for public review for 60 days (June–August 2010) during which time we distributed over 1020 summaries of the draft GMP/EIS. In addition to the distribution, the draft GMP/EIS was also made available at the park, on the Internet, and at area libraries. A total of 39 comments were received; 35 at the public meetings, and 4 in writing. A total of 45 participants attended 4 public meetings. The consensus from the public comment period was that we are pursuing the correct path for the park in Alternative 2, the preferred alternative. Comments from individuals and public agencies did not require us to add other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. As a result of the lack of substantive comments, we are issuing an abbreviated final GMP/EIS.

FOR FURTHER INFORMATION CONTACT: The Superintendent, Lincoln Home National Historic Site, 413 South Eighth Street, Springfield, IL, 62701–1905, telephone (217) 391–3222.

Dated: November 23, 2011.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2011–33620 Filed 12–30–11; 8:45 am]

BILLING CODE 4312–AT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Information Collection Plan for GovBenefits Online

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Administration and Management (OASAM) sponsored information collection request (ICR) titled, ''Information Collection Plan for GovBenefits Online,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before February 2, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of the Assistant Secretary for Administration and Management (OASAM), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Respondents answer a series of questions to the extent necessary for locating relevant information on Federal benefits. Responses are used by the respondent to expedite the identification and retrieval for sought after information and resources pertaining to the benefits sponsored by the Federal government.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1290–0003. The current OMB approval is scheduled to expire on January 31, 2012; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on October 5, 2011 (76 FR 61739).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1290–0003. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management (OASAM).

Title of Collection: Information Collection Plan for GovBenefits Online.

OMB Control Number: 1290–0003.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 6,345,715.

Total Estimated Number of Responses: 6,345,715.

Total Estimated Annual Burden Hours: 571,114.

Total Estimated Annual Other Costs Burden: $0.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33621 Filed 12–30–11; 8:45 am]

BILLING CODE 4510–23–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2012–1 CRB Business Establishments II]

Determination of Rates and Terms for Business Establishment Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of the proceeding to determine the reasonable rates and terms for the making of an ephemeral recording of a sound recording for a later transmission by entities that transmit performances of a sound recording to business establishments. The Judges also are announcing the date by which a party who wishes to participate in this rate proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 2, 2012.

ADDRESSES: An original, five copies and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate and the filing fee must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate and the filing fee must be brought between 8:30 a.m. and 5 p.m. to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate and the filing fee must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site, located at 2nd and D Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This Notice is issued pursuant to 17 U.S.C. 804(b)(2), which requires the commencement of proceedings ''to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).'' Section 112(e)(1) of the Copyright Act, title 17 of the United States Code, authorizes entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral phonorecord of a sound recording for purposes of a later transmission. In accordance with section 804(b)(2) as amended by the Copyright Royalty and Distribution Reform Act of 2004, the first proceeding was commenced in 2007, 72 FR 584 (January 5, 2007); on March 27, 2008, the Copyright Royalty Judges published regulations that set the rates and terms for the license period 2009–2013. Section 804(b)(2) also requires that such proceedings ''shall be repeated in each subsequent fifth calendar year.'' Thus, in accordance with section 804(b)(2) of the Copyright Act, the Judges announce the commencement of the proceeding to set rates and terms for the 2014–2018 license period. Section 803(b)(1)(A)(i)(II) directs the Judges to publish in the **Federal Register** a notice commencing this proceeding by no later than January 5, 2012. Today's notice fulfills this requirement.

Petitions To Participate

Petitions to Participate must be filed in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Petitions to Participate must be accompanied by a $150 filing fee. Parties must pay the filing fee with a check or money order made payable to the ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless a party is an individual who represents himself or herself.

Dated: December 28, 2011.

Stanley C. Wisniewski,

U.S. Copyright Royalty Judge.

[FR Doc. 2011–33632 Filed 12–30–11; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–213, 72–39; License No. DPR–61; NRC–2011–0158]

In the Matter of Connecticut Yankee Atomic Power Company; Northeast Utilities; NSTAR (Haddam Neck Plant); Order Approving Application Regarding Proposed Merger

I

Connecticut Yankee Atomic Power Company (Connecticut Yankee or the licensee) is the holder of Facility Operating License No. DPR–61, which authorizes possession, use, and operation of the Independent Spent Fuel Storage Installation at the Haddam Neck Plant. The facility is located at the licensee's site in Haddam, Connecticut.

II

By application dated December 6, 2010, as supplemented on March 16, May 16, June 8, August 16, August 24, and August 25, 2011 (together, the ''application''), Connecticut Yankee notified the Nuclear Regulatory Commission (NRC or the Commission) of the pending merger of Northeast Utilities and NSTAR (each current

indirect minority co-owners of 49 percent and 14 percent, respectively, of Connecticut Yankee) and requested that, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, the NRC consent to the indirect transfer of control of License No. DPR–61 for the Haddam Neck Plant, to the extent effected by the pending merger of Northeast Utilities and NSTAR.

The increase in ownership by Northeast Utilities of Connecticut Yankee would be the result of several transactions to be executed pursuant to a Merger Agreement, dated October 16, 2010, as amended on November 1, 2010, among Northeast Utilities, NSTAR and certain subsidiaries of Northeast Utilities. The transactions involve mergers of NSTAR and special-purpose subsidiaries of Northeast Utilities, which will result in NSTAR merging into a subsidiary of Northeast Utilities and becoming a wholly-owned subsidiary of Northeast Utilities. This subsidiary will be renamed ''NSTAR LLC.'' The corporate organizational and ownership structure of all the other subsidiaries of Northeast Utilities and NSTAR will not be affected by the merger—those subsidiaries that are currently owned by Northeast Utilities will continue to be owned by Northeast Utilities and in the same ownership percentage after the merger, and those that are currently owned by NSTAR will be owned by the renamed entity, NSTAR LLC, and in the same ownership percentage after the merger as before the merger.

Following the proposed merger, Northeast Utilities, the surviving company, will have an indirect ownership of 63 percent of Connecticut Yankee through its subsidiaries, The Connecticut Light and Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company, and NSTAR Electric Company. Connecticut Yankee will continue to operate the facility and hold the license.

No physical changes to the Haddam Neck Plant facility or operational changes are being proposed in the application.

Approval of the transfer of the license is requested by the applicant pursuant to 10 CFR 50.80. Notice of the request for license transfer, opportunity to comment, and opportunity to request a hearing was published in the **Federal Register** on July 14, 2011 (76 FR 41530). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations contained in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject license, to the extent which will result from the proposed merger of Northeast Utilities and NSTAR, will not affect the technical or financial qualifications of the licensee and is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the NRC, pursuant thereto, subject to the condition set forth below.

The findings set forth above are supported by the NRC staff's safety evaluation (SE) dated December 20, 2011.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the AEA, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer related to the proposed merger of Northeast Utilities and NSTAR, as described herein, is approved, subject to the following condition:

Within thirty (30) days following consummation of the proposed merger, Northeast Utilities, via its post-merger subsidiaries, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company, who together will exercise majority control, will call for votes directing that Connecticut Yankee approve a negation action plan consistent with the requirements of 10 CFR 50.38 and implement said plan within 30 days of the vote, and directing that records of the votes, reflecting the vote of each representative and the stock holder company represented, be forwarded to the NRC within seven (7) days of the vote, and be made available to the public.

It is further ordered that Connecticut Yankee shall inform the Director of the Office of Nuclear Material Safety and Safeguards, in writing, of the date of closing of the merger between Northeast Utilities and NSTAR at least one business day before the closing. Should the transfer of the license not be completed within one year of this Order's date of issuance, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 6, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103490133), as supplemented by letters dated on March 16 (ML110770022), May 16 (ML11139A088), June 8 (ML11166A124), August 16 (ML11235A723), August 24 (ML11243A087), and August 25, 2011 (ML112490526), and the SE dated December 20, 2011 (ML113270127), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O–1 F21 (First Floor), Rockville, Maryland, and accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-(800) 397–4209 or (301) 415–4737, or by email at *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of December, 2011.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2011–33647 Filed 12–30–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–029, 72–31; NRC–2011–0159; License No. DPR–3]

In the Matter of Yankee Atomic Electric Company; Northeast Utilities; NSTAR (Yankee Nuclear Power Station); Order Approving Application Regarding Proposed Merger

I

Yankee Atomic Electric Company (Yankee Atomic or the licensee) is the holder of Facility Operating License No. DPR–3, which authorizes possession, use, and operation of the Independent Spent Fuel Storage Installation at the Yankee Nuclear Power Station. The facility is located at the licensee's site in Rowe, Massachusetts.

II

By application dated December 6, 2010, as supplemented on March 16, May 16, June 8, August 16, August 24, and August 25, 2011 (together, the

''application''), Yankee Atomic notified the Nuclear Regulatory Commission (NRC or the Commission) of the pending merger of Northeast Utilities and NSTAR (each current indirect minority co-owners of 38.5 percent and 14 percent, respectively, of Yankee Atomic) and requested that, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the Code of Federal Regulations (10 CFR) 50.80, the NRC consent to the indirect transfer of control of License No. DPR–3 for the Yankee Nuclear Power Station, to the extent effected by the pending merger of Northeast Utilities and NSTAR.

The increase in ownership by Northeast Utilities of Yankee Atomic would be the result of several transactions to be executed pursuant to a Merger Agreement, dated October 16, 2010, as amended on November 1, 2010, among Northeast Utilities, NSTAR and certain subsidiaries of Northeast Utilities. The transactions involve mergers of NSTAR and special-purpose subsidiaries of Northeast Utilities, which will result in NSTAR merging into a subsidiary of Northeast Utilities and becoming a wholly-owned subsidiary of Northeast Utilities. This subsidiary will be renamed ''NSTAR LLC.'' The corporate organizational and ownership structure of all the other subsidiaries of Northeast Utilities and NSTAR will not be affected by the merger—those subsidiaries that are currently owned by Northeast Utilities will continue to be owned by Northeast Utilities and in the same ownership percentage after the merger, and those that are currently owned by NSTAR will be owned by the renamed entity, NSTAR LLC, and in the same ownership percentage after the merger as before the merger.

Following the proposed merger, Northeast Utilities, the surviving company, will have an indirect ownership of 52.5 percent of Yankee Atomic through its subsidiaries, The Connecticut Light and Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company, and NSTAR Electric Company. Yankee Atomic will continue to operate the facility and hold the license.

No physical changes to the Yankee Nuclear Power Station facility or operational changes are being proposed in the application.

Approval of the transfer of the license is requested by the applicant pursuant to 10 CFR 50.80. Notice of the request for license transfer, opportunity to comment, and opportunity to request a hearing was published in the **Federal Register** on July 14, 2011 (76 FR 41532). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations contained in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject license, to the extent which will result from the proposed merger of Northeast Utilities and NSTAR, will not affect the technical or financial qualifications of the licensee and is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the NRC, pursuant thereto, subject to the condition set forth below.

The findings set forth above are supported by the NRC staff's safety evaluation (SE) dated December 20, 2011.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the AEA, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfer related to the proposed merger of Northeast Utilities and NSTAR, as described herein, is approved, subject to the following condition:

Within thirty (30) days following consummation of the proposed merger, Northeast Utilities, via its post-merger subsidiaries, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company, who together will exercise majority control, will call for votes directing that Yankee Atomic approve a negation action plan consistent with the requirements of 10 CFR 50.38 and implement said plan within 30 days of the vote, and directing that records of the votes, reflecting the vote of each representative and the stock holder company represented, be forwarded to the NRC within seven (7) days of the vote, and be made available to the public.

It is further ordered that Yankee Atomic shall inform the Director of the Office of Nuclear Material Safety and Safeguards, in writing, of the date of closing of the merger between Northeast Utilities and NSTAR at least one business day before the closing. Should the transfer of the license not be completed within one year of this Order's date of issuance, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 6, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103490133), as supplemented by letters dated on March 16 (ML110770022), May 16 (ML11139A088), June 8 (ML11166A124), August 16 (ML11235A723), August 24 (ML11243A087), and August 25, 2011 (ML112490526), and the SE dated December 20, 2011 (ML113270127), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O–1 F21 (First Floor), Rockville, Maryland, and accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-(800) 397–4209 or (301) 415–4737, or by email at *pdr.resource@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 20th day of December, 2011.

Daniel H. Dorman,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2011–33648 Filed 12–30–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2011–0287]

Exelon Generation Company, LLC, Oyster Creek Nuclear Generating Station; Exemption

1.0 Background

The Exelon Generation Company, LLC (the licensee) is the holder of Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station (OCNGS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility consists of a boiling-water reactor located in Ocean County, New Jersey.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix E, Section IV.F.2.c requires that ''Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.'' By letter dated September 30, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML112730283), the licensee requested a one-time exemption from this requirement that would allow the licensee to delay conduct of certain offsite portions of a biennial emergency preparedness (EP) exercise from September 27, 2011, to June 2012. The licensee's request states that Hurricane Irene passed through New Jersey on August 28, 2011, causing widespread damage and flooding in the surrounding area, and that the event required the response of the New Jersey State Office of Emergency Management (OEM), the Ocean County OEM, numerous other state departments, and the Division of State Police.

Because of its ongoing response to and recovery from Hurricane Irene, the New Jersey OEM and Ocean County OEM requested that OCNGS reschedule specific functions of the offsite portion of the biennial EP exercise scheduled for September 27, 2011. The licensee states in their request that the New Jersey OEM has indicated that it is not feasible to reschedule the specific offsite functions that remain to be exercised prior to the end of calendar year (CY) 2011.

In a letter to the Federal Emergency Management Agency (FEMA) dated August 29, 2011, (ADAMS Accession No. ML112800560), the New Jersey State OEM requested that FEMA postpone the exercise until 2012, citing the ongoing response to the Hurricane Irene aftermath. By letter dated August 31, 2011 (Attachment 3 to ADAMS Accession No. ML112730283), FEMA responded favorably to the New Jersey OEM request by agreeing to postpone the offsite portions of the biennial exercise until 2012.

The onsite portion and some aspects of the offsite portions of the exercise were conducted on September 27, 2011. These portions were inspected by the NRC and evaluated by FEMA. The NRC's inspection of the September 27, 2011, exercise, documented in Inspection Report 05000219/2011502 dated November 9, 2011 (ADAMS Accession No. ML113130149), identified no findings.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, appendix E, when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

This exemption would allow the licensee and offsite response organizations to accommodate Hurricane Irene's impacts upon their resources by postponing the select functions of the offsite portion of the exercise from the previously scheduled date of September 27, 2011, until June 2012.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, appendix E. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, appendix E, section IV.F.2.c is to ensure that licensees test and maintain interfaces among themselves and affected State and local authorities during the intervals between biennial EP exercises by conducting emergency preparedness activities and interactions. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the remaining offsite portions of the OCNGS full-participation exercise by June 2012, rather than CY 2011, places the exercise outside of the required biennium. Since the last biennial EP exercise on October 6, 2009, the licensee has conducted 16 training drills/exercises/demonstrations and 32 training sessions that have involved interface with State and local authorities. These drills and training sessions did not exercise all of the proposed rescheduled offsite functions, but they do support the licensee's assertion that it has a continuing level of engagement with the State and local authorities to maintain interfaces. The NRC staff considers the intent of this requirement is met by having conducted these series of drills and training sessions.

Based on the above, no new accident precursors are created by allowing the licensee to postpone the selected offsite portions of the exercise from CY 2011 until 2012. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent with Common Defense and Security

The proposed exemption would allow rescheduling of the specific offsite portions of the biennial EP exercise from the previously scheduled date of September 27, 2011, until June 2012. This change to the EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. Special circumstances per 10 CFR 50.12 that apply to this exemption request are 10 CFR 50.12(a)(2)(ii) and (v). Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when: ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' Section IV.F.2.c of 10 CFR part 50, appendix E requires licensees to exercise offsite plans biennially with full or partial participation by each offsite authority having a role under the plan. The underlying purposes of 10 CFR part 50, appendix E, section IV.F.2.c requiring licensees to exercise offsite plans with offsite authority participation is to test and maintain interfaces among affected State and local authorities and the licensee. At the previous biennial EP exercise conducted on October 6, 2009, FEMA identified one planning deficiency when several municipalities did not receive notice of a Protective Action Decision (letter dated November 3, 2009, ADAMS Accession No. ML093070475). Per FEMA letters dated February 24, 2010, and June 22, 2010 (ADAMS Accession Nos. ML102590007 and ML110341597, respectively), FEMA informed the New Jersey State OEM and the NRC that the deficiency had been successfully corrected by demonstration at a remedial drill conducted on January 28, 2010. Since the licensee has conducted 16 training drills/exercises/demonstrations and 32 training sessions that have involved interface with State and local authorities in 2010 and 2011,

and has supported the FEMA evaluation of the State and local authorities at the biennial exercise in 2009 and at the remedial drill in 2010, the NRC staff considers that these measures are adequate to test and maintain interfaces with affected State and local authorities during this period, satisfying the underlying purpose of the rule.

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Due to the scheduled biennial EP exercise on September 27, 2011, the 16 training drills/exercises/demonstrations conducted in 2010 and 2011, and the licensee's support of the FEMA evaluation of some aspects of the offsite portion of the September 27, 2011 exercise, the NRC staff considers the licensee to have made good faith efforts to comply with the regulation. Also, the requested exemption to conduct the onsite EP exercise in 2012 instead of 2011 would grant only temporary relief from the applicable regulation. Therefore, since the underlying purpose of 10 CFR part 50, appendix E, section IV.F.2.c is achieved, the licensee has made a good faith effort to comply with the regulation, and the exemption would grant only temporary relief from the applicable regulation, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and (v) exist for the granting of an exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission, hereby grants Exelon Generation Company, LLC an exemption from the requirements of 10 CFR part 50, appendix E, section IV.F.2.c to conduct the offsite portion of the OCNGS biennial EP exercise required for 2011, permitting that part of the exercise to be conducted in coordination with NRC Region I and OCNGS schedules by the end of June 2012.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 79227, December 21, 2011).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2011.

For The Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–33683 Filed 12–30–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0289]

Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment and request a hearing, order.

DATES: Comments must be filed by February 2, 2012. A request for a hearing must be filed by March 5, 2012. Any potential party as defined in Title 10 of the Code of Federal Regulations (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by January 13, 2012.

ADDRESSES: Please include Docket ID NRC–2011–0289 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0289. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0289.

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a

determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the

participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. 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.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket No. 50–373, LaSalle County Station (LSCS), Unit 1, LaSalle County, Illinois

Date of amendment request: October 12, 2011.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise Technical Specifications (TS) Section 2.1.1, ''Reactor Core SLs [Safety Limits],'' to reflect an increase of the two recirculation loop minimum critical power ratio (MCPR) SL from ≥ 1.11 to

≥ 1.13 and an increase in the single recirculation loop MCPR SL from ≥ 1.12 to ≥ 1.15. The change is required to support the LSCS, Cycle 15, operation. Cycle 15 will be the first cycle of operation with a mixed core containing the following fuel types: fresh Global Nuclear Fuel (GNF) GNF2 fuel, and reloaded Areva ATRIUM–10 fuel.

Basis for proposed no significant hazards consideration determination: In support of the no significant hazards consideration determination, an evaluation of each of the criteria set forth in 10 CFR 50.92, ''Issuance of amendment'' is provided below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Minimum Critical Power Ratio Safety Limit (MCPR SL) is defined in the TS Bases Section B 2.1.1 as that limit ''that, in the event of an AOO [Anticipated Operational Occurrence] from the limiting condition of operation, at least 99.9% of the fuel rods in the core would be expected to avoid boiling transition.'' The MCPR SL satisfies the requirements of General Design Criterion 10 of Appendix A to 10 CFR Part 50 regarding acceptable fuel design limits. The MCPR SL is reevaluated for each reload using NRC-approved methodologies. The analyses for LSCS, Unit 1, Cycle 15 have concluded that a two-loop MCPR SL of ≥ 1.13, based on the application of Global Nuclear Fuel's (GNF's) NRC-approved MCPR SL methodology, will ensure that this acceptance criterion is met. For single-loop operation, a MCPR SL of ≥ 1.15 also ensures that this acceptance criterion is met. The MCPR operating limits are presented and controlled in accordance with the LSCS, Unit 1 Core Operating Limits Report (COLR).

The requested Technical Specification changes do not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms.

Therefore, the changes to the Minimum Critical Power Ratio safety limit do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The GNF2 fuel to be used in Cycle 15 is of a design compatible with the co-resident Areva ATRIUM–10 fuel. Therefore, the introduction of GNF2 fuel into the Cycle 15 core will not create the possibility of a new or different kind of accident. The proposed change does not involve any new modes of operation, any changes to setpoints, or any plant modifications. The proposed revised MCPR SLs have accounted for the mixed fuel core and have been shown to be acceptable for Cycle 15 operation. Compliance with the criterion for incipient boiling transition continues to be ensured. The core operating limits will continue to be developed using NRC approved methods which also account for the mixed fuel core design. The proposed MCPR SLs or methods for establishing the core operating limits do not result in the creation of any new precursors to an accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The MCPR SLs have been evaluated in accordance with GNF's NRC-approved cycle-specific limit methodology to ensure that during normal operation and during AOO's at least 99.9% of the fuel rods in the core are not expected to experience transition boiling. The proposed revised MCPR SLs have accounted for the mixed fuel core and have been shown to be acceptable for Cycle 15 operation. Compliance with the criterion for incipient boiling transition continues to be ensured. On this basis, the implementation of the change to the MCPR SLs does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Jacob. I. Zimmerman.

Exelon Generation Company, LLC (EGC), Docket No. 50–265, Quad Cities Nuclear Power Station (QCNPS), Unit 2, Rock Island County, Illinois

Date of amendment request: November 22, 2011.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the QCNPS, Unit 2 safety limit minimum critical power ratio (SLMCPR) in TS Section 2.1.1, ''Reactor Core SLs.'' Specifically, the QCNPS Unit 2 two recirculation loop SLMCPR and single recirculation loop SLMCPR are changed to support the upcoming Cycle 22 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Safety Limit Minimum Critical Power Ratio (SLMCPR) is defined in the TS Bases Section B 2.1.1 as that limit ''that, in the event of an AOO [Anticipated Operational Occurrence] from the limiting condition of operation, at least 99.9% of the fuel rods in the core would be expected to avoid boiling transition.'' The SLMCPR satisfies the requirements of General Design Criterion 10 of Appendix A to 10 CFR Part 50 regarding acceptable fuel design limits. The SLMCPR is reevaluated for each reload using NRC-approved methodologies. The analyses for QCNPS, Unit 2, Cycle 22, have concluded that a two-loop SLMCPR of ≥ 1.12; and a single-loop SLMCPR of ≥ 1.14, as determined by the application of the NRC-approved Westinghouse Electric Company SLMCPR methodology, will ensure that this acceptance criterion is met. The MCPR operating limits are presented and controlled in accordance with the QCNPS, Unit 2 Core Operating Limits Report (COLR).

The requested Technical Specification changes do not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms.

Therefore, the changes to the SLMCPRs do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The proposed changes do not involve any plant configuration modifications or changes to allowable modes of operation. The proposed SLMCPR values do not result in the creation of any new precursors to an accident. The proposed change to revise the QCNPS Unit 2 SLMCPR requirements assures that safety criteria are maintained for QCNPS Unit 2, Cycle 22.

In addition, the QCNPS, Unit 2, Cycle 22 is the fourth Unit 2 cycle with reload quantities of SVEA–96 Optimal fuel, and is a 100% SVEA–96 Optimal core. SVEA–96 Optima2 reload fuel was previously successfully loaded in QCNPS Unit 2 Cycle 19, Cycle 20, and Cycle 21. The NRC-approved Westinghouse SLMCPR methodology was used to determine the SLMCPRs for these previous cycles. This

same methodology was used to determine the SLMCPRs for Cycle 22.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SLMCPR provides a margin of safety by ensuring that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and AOOs if the SLMCPR limit is not violated. The proposed change will ensure the current level of fuel protection is maintained by continuing to ensure that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and AOOs if the proposed SLMCPR limits are not violated. The proposed SLMCPR values were developed using an NRC-approved methodology. Additionally, operational limits will be established based on the proposed SLMCPR values to ensure that the SLMCPR is not violated. This will ensure that the fuel design safety criterion (i.e., that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated) is met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above evaluation, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear,. 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Jacob I. Zimmerman.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.

Exelon Generation Company, LLC, Docket No. 50–373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 20th day of December 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–32999 Filed 12–30–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0276]

Union Electric Company; Notice of Receipt and Availability of Application for Renewal of Callaway Plant, Unit 1 Facility Operating License No. NPF–30 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated December 19, 2011, from Union Electric Company, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and in Title 10 of the Code of Federal Regulations Part 54 (10 CFR part 54), to renew the operating license for Callaway Plant, Unit 1 (Callaway). Callaway is a pressurized water reactor designed by Westinghouse. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for Callaway (NPF–30) expires on October 18, 2024. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike, Rockville, Maryland 20852 or through the NRC's Agencywide Documents Access and Management System (ADAMS)

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Accession Number ML113530367. Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1 (800) 397–4209 or at (301) 415–4737, or by email to *pdr@nrc.gov.*

A copy of the license renewal application for Callaway is also available to local residents near the site at the Callaway Public Library, 710 Court St., Fulton, MO 65203.

Dated at Rockville, Maryland, this 23rd day of December 2011.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–33684 Filed 12–30–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0291]

Receipt of Request for Action

Notice is hereby given that by petition dated April 13, 2011, Paul Gunter and Kevin Kamps of Beyond Nuclear requested that the U.S. Nuclear Regulatory Commission (NRC) take action to immediately suspend the operating licenses of General Electric boiling water reactors with Mark I containments. More than 8,000 copetitioners submitted emails stating that they shared the concerns raised by Beyond Nuclear. Beyond Nuclear and the copetitioners will be referred to collectively as the ''petitioners.'' In their petition, the petitioners request:

enforcement action to ensure that the public health and safety is not unduly being jeopardized by the unsafe operations at twenty one (21) General Electric [GE] Boiling Water Reactors [BWRs] Mark I units that rely upon a fundamentally flawed combination of free standing steel primary containments for their pressure suppression containment system, the installation of the ''hardened vent system,'' or not, and an additional three (3) Mark I units for a total of twenty four (24) units which rely upon used radioactive fuel storage pools (also known as ''spent fuel pools'' elevated to the top [of] the reactor building outside and above the rated containment structure without safety-related back-up electric power (Class 1 E) systems to cool high-density storage of thermally hot and highly radioactive nuclear waste in the event of loss of grid power.

This request is being reviewed pursuant to the NRC's regulation at Title 10 of the Code of Federal Regulations (10 CFR) 2.206. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. An NRC Petition Review Board (PRB) held public meetings with the petitioners on June 8, 2011, and October 7, 2011, during which the petitioners supplemented and clarified the requested actions and bases for their petition. The results of those discussions were considered in the PRB's determination regarding the petitioners' request for immediate action and in establishing the schedule for the review of the petition.

By letter dated December 13, 2011, the Director of the NRC's Office of Nuclear Reactor Regulation denied the petitioners' request to immediately suspend the operating licenses of General Electric boiling water reactors with Mark I containments. Although the Director denied the petitioners' request for immediate action, the Director nonetheless accepted their petition for review in part. The Director's findings regarding each of the requested actions and bases for the petition can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession No. ML11339A078, ''Table Summarizing Each Issue for 2.206 Criteria,'' included in his December 13, 2011 letter. ADAMS may be accessed through the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of the petition and the transcripts from the June 8, 2011 and October 7, 2011 public meetings can be found in ADAMS at Accession Nos. ML11104A058 (petition), ML11167A114 (June 8, 2011 meeting) and ML11292A162 (October 7, 2011 meeting). Copies of these documents are also available for inspection at the Commission's Public Document Room (PDR). The PDR is located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Any additional publicly available documents created or received at the NRC will be accessible electronically through ADAMS. Persons who do not have access to ADAMS or who have difficulty accessing documents in ADAMS should contact the NRC's PDR Reference staff by telephone at 1–(800) 397–4209 or (301) 415–4737, or by email to *PDR.Resource@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of December 2011.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–33649 Filed 12–30–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–2 and CP2012–6; Order No. 1071]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 36 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* January 6, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or (202) 789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 36 to the competitive product list.[1] Priority mail contracts enable the Postal Service to provide Priority Mail service to an individual customer at customized rates.[2] The Postal Service asserts that

[1] Request of the United States Postal Service to Add Priority Mail Contact 36 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 20, 2011 (Request).

[2] Decision of the Governors of the United States Postal Service on Establishment of Rates and

Continued

Priority Mail Contract 36 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–2.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–6.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 09–6, authorizing certain Priority Mail contracts, and a certification of the Governors' vote;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list that would add Priority Mail Contract 36 under Domestic Negotiated Service Agreements;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day the Commission issues all necessary regulatory approval. *Id.* at 3. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 4. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 2–3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filing

The Commission establishes Docket Nos. MC2012–2 and CP2012–6 to consider the Request pertaining to the proposed Priority Mail Contract 36 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 6, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–2 and CP2012–6 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 6, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–33671 Filed 12–30–11; 8:45 am]

BILLING CODE 7710–FW–P

Classes Not of General Applicability for Priority Mail Contract Group, Docket No. MC2009–25, issued April 27, 2009, at 1 (Governors' Decision No. 09–6).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public telephone meeting on Friday, January 6, 2012, beginning at 1 p.m. Eastern Standard Time. The meeting will be audio webcast on the Commission's Web site at *http://www.sec.gov.*

On December 15, 2011, the Commission published notice of the Committee meeting (Release No. 33–9285), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes consideration of a recommendation to the Commission on relaxing current restrictions on general solicitation and advertising in exempt offerings of securities.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 29, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–33775 Filed 12–29–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 5, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, January 5, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and

Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 29, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33776 Filed 12–29–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66059; File No. SR–NYSE–2011–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending for an Additional 12 Months the Pilot Program That Provides an Exception to NYSE Rule 2B by Permitting the Exchange's Equity Ownership Interest in BIDS Holdings L.P.

December 27, 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 December 16, 2011, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 Exchange proposes to extend for an additional 12 months the January 22, 2012 expiration date of the pilot program that provides an exception to NYSE Rule 2B by permitting the Exchange's equity ownership interest in BIDS Holdings L.P. (''BIDS''). 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 22, 2009, the Securities and Exchange Commission (''SEC'' or ''Commission'') approved the governance structure proposed by the Exchange with respect to the New York Block Exchange (''NYBX''), an electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS.[3] The governance structure that was approved is reflected in the Limited Liability Company Agreement of New York Block Exchange LLC (the ''Company''), the entity that owns and operates NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS. BIDS is the parent company of BIDS Trading, L.P. (''BIDS Trading''), which became a member of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.[4] First, the Exchange's indirect ownership interest in BIDS Trading violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,[5] which violates the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval was that the proposed exception from NYSE Rule 2B to permit NYSE's indirect ownership/interest in BIDS Trading and BIDS Trading's affiliation with the Company (which is an affiliate of NYSE) would be for a pilot period of 12 months.[6]

In discussing the pilot basis of the exception to NYSE Rule 2B, the Approval Order noted that the pilot period ''will provide NYSE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted.'' [7] The original 12-month pilot period expired on January 22, 2010 and was extended for two additional 12 month periods to January 22, 2012.[8] While the Exchange believes that the experience to date operating under the exception to Rule 2B fully justifies making the exception permanent, the Exchange now seeks to extend the ending date for the pilot program for another 12 months to January 22, 2013

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR–NYSE–2008–120) (''Approval Order'').

[4] NYSE Rule 2B provides, in relevant part, that: ''[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. * * * The term affiliate shall have the meaning specified in Rule 12b–2 under the Act.''

[5] Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company based on their common control by BIDS. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

[6] *See* Approval Order, 74 FR at 5018.

[7] *Id.* at 5019.

[8] The original twelve month period was first extended by a rule filing made by the Exchange on January 11, 2010 and noticed in a release by the Commission dated January 22, 2010. *See* Securities Exchange Act Release No. 61409 (January 22, 2010), 75 FR 4889 (January 29, 2010) (File No. SR–NYSE–2010–04). The Exchange filed the proposed rule change for the second extension with the Commission on December 9, 2010, which was noticed in a release by the Commission dated December 14, 2010. See Securities Exchange Act Release No. 34–63545 (December 14, 2010), 75 FR 80088 (December 21, 2010) (File No. SR–NYSE–2010–82).

to allow additional time, if necessary, for the Commission to obtain and review the information it needs in order to make its determination regarding any adverse consequences of the exception and whether a permanent exception is warranted. During the proposed extension of the pilot program period, the Exchange's current indirect ownership interest in BIDS Trading [9] and BIDS Trading's affiliation with the Company would continue to be permitted.

If the Commission should determine prior to the end of the extended pilot period that a permanent exception to NYSE Rule 2B is warranted, the Exchange would have the option of submitting a proposed rule change to accomplish this and simultaneously terminate the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [10] of the Act,[11] in general, and furthers the objectives of Section 6(b)(1) [12] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5) [13] of the Act, 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In the Approval Order, the Commission determined that the proposed exception from NYSE Rule 2B to permit NYSE's indirect ownership interest in BIDS Trading and BIDS Trading's affiliation with the Company was consistent with the Act, including Section 6(b)(5) thereof.[14] As the basis for its determination, the Commission cited the specific limitations and conditions listed in the Approval Order to which its approval of the exception to NYSE Rule 2B was subject,[15] stating: ''These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. * * * These conditions appear reasonably designed to promote robust and independent regulation of BIDS. * * * The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange's commercial interest in BIDS and its regulatory responsibilities with respect to BIDS.'' [16] Because these same limitations and conditions will continue to be applicable during the additional extension of the pilot period, other than the ending date of the pilot period and the aforementioned small increase in the ceiling on the Exchange's equity interest in BIDS, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act during that extension.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

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–NYSE–2011–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–67. 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

[9] Another condition for the exception to NYSE Rule 2B specified in the Approval Order was that the Exchange's equity interest in BIDS must remain less than 9%, absent prior Commission approval of any increase. *See id.* at 5018. Subsequently, the Commission approved a proposal by the Exchange to slightly increase the ceiling on its equity ownership in BIDS to less than 10%, and that will be the applicable limitation during the extension of the pilot period. *See* Securities Exchange Act Release No. 61257 (December 30, 2009), 75 FR 500 (January 5, 2010) (order approving SR–NYSE–2009–116).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78.

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Approval Order, 74 FR at 5018–5019.

[15] *Id.* at 5018.

[16] *Id.* at 5019.

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 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.

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 Number SR–NYSE–2011–67 and should be submitted on or before January 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–33625 Filed 12–30–11; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act (PRA) of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: (202) 395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: (410) 965–6400, Email address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 5, 2012. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

1. *Application for Parent's Insurance Benefits—20 CFR 404.370–404.374, 20 CFR 404.601–404.603—0960–0012.* Section 202(h) of the Social Security Act establishes the conditions of eligibility a claimant must meet to receive monthly benefits as a parent of a deceased worker. SSA uses information from form SSA–7–F6 to determine whether the claimant meets the eligibility and application criteria. The respondents are applicants for, and recipients of, Social Security Old Age, Survivors, and Disability Insurance benefits.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Modernized Claims System (MCS)	153	1	15	38
MCS/Signature Proxy	158	1	14	37
Paper SSA–7–F6	4	1	15	1
Total	315			76

2. *Statement of Living Arrangements, In-Kind Support and Maintenance—20 CFR 416.1130–416.1148—0960–0174.* A recipient's need is the basis for determining Supplemental Security Income (SSI) payment amounts. Need is measured, in part, by the amount of income an individual receives. Income includes in-kind support and maintenance in the form of food and shelter provided by other persons. SSA uses information from form SSA–8006–F4 to determine if in-kind support and maintenance exists for SSI applicants and recipients. This information also assists SSA in determining the income value of in-kind support and maintenance SSI applicants and recipients receive. The respondents are individuals who apply for SSI, or who complete an SSI eligibility redetermination.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8006–F4	173,380	1	7	20,228

3. *Application for Supplemental Security Income—20 CFR 416.305–416.335, Subpart C—0960–0444.* SSA collects information on the SSA–8001–BK to determine an applicant's eligibility for SSI and the SSI payment amounts. SSA employees also collect this information during interviews with members of the public who wish to file for SSI. SSA uses the information for two purposes: (1) To formally deny SSI for non-medical reasons when

[20] 17 CFR 200.30–3(a)(12).

information the applicant provides results in ineligibility; or (2) to establish a disability claim, but defer the complete development of non-medical issues until SSA approves the disability. The respondents are applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Modernized SSI Claims System (MSSICS)	1,006,400	1	15	251,600
MSSICS/Signature Proxy	326,400	1	14	76,160
Paper SSA–8001–BK	27,200	1	18	8,160
Total	1,360,000			335,920

4. *Statement of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481.* SSA uses forms SSA–2854 and SSA–2855 to gather information to verify if a loan is bona fide for SSI recipients. The SSA–2854 asks the lender for details on the transaction, and form SSA–2855 asks the borrower the same basic questions independently. Agency personnel then compare the two statements, gather evidence if needed, and make a decision on the validity of the bona fide status of the loan.

For SSI purposes, we consider a loan bona fide if it meets these requirements:

- Must be between a borrower and lender with the understanding that the borrower has an obligation to repay the money;
- Must be in effect at the time the cash goes to the borrower, that is, the agreement cannot come after the cash is paid; and
- Must be enforceable under State law, often there are additional requirements from the State.

In addition to these elements: (1) There must be an understanding between borrower and lender that the borrower is obligated to repay the money; (2) the loan agreement must be in effect at the time the borrower receives the cash proceeds; and, (3) the transaction must be enforceable under State law. State requirements generally demand the presence of other conditions before the agreement is a bona fide loan.

SSA collects this information at the time of initial application for SSI or at any point when an individual alleges being party to an informal loan while receiving SSI. SSA collects information on the informal loan through both interviews and mailed forms. The agency's field personnel conduct the interviews and mail the form(s) for completion, as needed. The respondents are SSI recipients and applicants, and individuals who lend money to them.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2854	20,000	1	10	3,333
SSA–2855	20,000	1	10	3,333
Total	40,000			6,666

5. *Certification of Low Birth Weight for SSI Eligibility—20 CFR 416.931, 416.926a(m), and 416.924—0960–0720.* Hospitals and claimants use form SSA–3380 to provide medical information to local field offices (FO) and State Disability Determination Services (DDSs) on behalf of infants with low birth weight. FOs use the form as a protective filing statement and the medical information to make presumptive disability findings, which allow expedited payment to eligible claimants. DDSs use the medical information to determine disability and continuing disability. The respondents are hospitals and claimants who have information identifying low birth weight babies and their medical conditions.

Type of Request: Extension of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3380	24,000	1	15	6,000

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than February 2, 2012. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

1. *Incoming and Outgoing Intergovernmental Personnel Act Assignment Agreement—5 CFR 334—0960–NEW.* The Intergovernmental Personnel Act (IPA) mobility program provides for the temporary assignment of civilian personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations. The Office of Personnel Management

(OPM) created a generic form, the OF–69, for agencies to use as a template when collecting information for the IPA assignment. The OF–69 collects specific information about the agreement including the name, Social Security number, job title, salary, classification, and address of the employee enrolled in the program, as well as the type of assignment, reimbursement arrangement, and explanation of how the assignment will benefit both SSA and the non-federal organization involved in the exchange. OPM directs agencies to use their own forms for recording these agreements. Therefore, SSA modified the OF–69 to meet our needs, creating the SSA–187 for incoming employees and the SSA–188 for outgoing employees. Respondents are the individuals we describe above who participate in the IPA exchange with SSA.

Type of Request: Existing collection in use without an OMB number.

Respondent type	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Non-Federal employee	10	1	30	5
Non-Federal employer signers	20	1	5	2
Total	30			7

2. *Public Information Campaign—0960–0544.* Periodically, SSA sends various public information materials, including public service announcements, news releases, and educational tapes, to public broadcasting systems so they can inform the public about various programs and activities SSA conducts. SSA frequently sends follow-up business reply cards for these public information materials to obtain suggestions for improving them. The respondents are broadcast television sources.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Reply Cards	1,000	2	2,000	1	33

3. *Credit Card Payment Form—0960–0648.* SSA uses the SSA–1414 to process: (1) Credit card payments from former employees and vendors with outstanding debts to the agency; (2) advance payments for reimbursable agreements; and (3) credit card payments for all Freedom of Information Act (FOIA) requests requiring payment. The respondents are former employees and vendors who have outstanding debts to the agency, entities who have reimbursable agreements with SSA, and individuals who request information through FOIA.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1414	6,000	1	2	200

4. *Medical Source Statement of Ability To Do Work-Related Activities (Physical and Mental)—20 CFR 404.1512–404.1513, 404.912–404.913, 404.1517, 416.917–0960 0662.* In some instances, when a claimant appeals a denied disability claim and the claimant's medical sources cannot or will not give the agency sufficient evidence to determine whether the claimant is disabled, SSA may ask the claimant to have a consultative examination at the agency's expense. The medical providers who perform these consultative examinations provide a statement on forms HA–1151 and HA–1152 about the claimant's disability and ability to perform work-related activities. SSA uses the information to assess the work-related physical and mental capabilities of claimants who appeal SSA's previous determination on their issue of disability. The respondents are medical sources who provide reports based either on existing medical evidence or on consultative examinations.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–1151	5,000	24	120,000	15	30,000
HA–1152	5,000	24	120,000	15	30,000
Total	10,000		240,000		60,000

Dated: December 28, 2011.

Naomi Sipple,

Management Analyst, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2011–33627 Filed 12–30–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 28, 2011, and comments were due by November 28, 2011. No comments were received.

DATES: Comments must be submitted on or before February 2, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Administration, Office of Sealift Support, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2646 or email: *patricia.thomas@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities.

OMB Control Number: 2133–0504.

Type of Request: Extension of currently approved collection.

Affected Public: Maritime training institutions such as the U.S. Merchant Marine Academy, State Maritime Academies and non-profit maritime institutions.

Forms: None.

Abstract: The Maritime Administration requires approved maritime training institutions seeking excess or surplus government property to provide a statement of need/justification prior to acquiring the property.

Annual Estimated Burden Hours: 40 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention Maritime Administration Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

Comments Are Invited On: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on December 27, 2011.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–33654 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. Marad–2011–0165]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Cmdr Michael DeRosa, Maritime Administration, U.S. Merchant Marine Academy, 300 Steamboat Road, New York, NY 11024. Telephone: (516) 726–5642; or email: *DeRosaM@USMMA.EDU.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: U.S. Merchant Marine Academy Candidate Application for Admission.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0010.

Form Numbers: KP 2–65.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Application for Admission). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

Need and Use of the Information: The information is necessary to select the best qualified candidates for the U.S. Merchant Marine Academy.

Description of Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Annual Responses: 2,500.

Annual Burden: 12,500 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www,regulations.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator, Dated: December 27, 2011.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–33655 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0166]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KISKEEDEE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 2, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0166. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KISKEEDEE is:

Intended Commercial Use of Vessel: ''Sailing instruction and pleasure cruises.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2011–0166 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: December 27, 2011.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–33658 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0167]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEA QUEST; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 2, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0167. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA QUEST is:

Intended Commercial Use of Vessel: ''Short term charters, sport fishing and pleasure cruising.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2011–0167 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 27, 2011.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–33657 Filed 12–30–11; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL REGISTER

Vol. 77 Tuesday,
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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 238 and 239
Passenger Train Emergency Systems II; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 238 and 239

[Docket No. FRA–2009–0119, Notice No. 1]

RIN 2130–AC22

Passenger Train Emergency Systems II

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) is intended to further the safety of passenger train occupants through both enhancements and additions to FRA's existing requirements for emergency systems on passenger trains. In this NPRM, FRA is proposing to add requirements for interior vestibule doors and enhance emergency egress and rescue access signage requirements. FRA is also proposing to establish requirements for low-location emergency exit path markings to assist occupants in reaching and operating primary emergency exits, particularly under conditions of darkness or smoke. Further, FRA is proposing to add minimum emergency lighting standards for all existing passenger cars so that emergency lighting systems are provided in all passenger cars, and FRA is proposing to enhance requirements for the survivability of emergency lighting systems in new passenger cars. Finally, FRA is clarifying existing requirements for participation in debriefing and critique sessions following emergency situations and full-scale simulations.

DATES: (1) Written comments must be received by March 5, 2012. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to February 2, 2012, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2006–25273 may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Brenda J. Moscoso, Office of Railroad Safety, Director, Safety Analysis, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone (202) 493–6282); or Michael Masci, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC (telephone (202) 493–6037).

Table of Contents for Supplementary Information

I. Executive Summary

On May 20, 2003, FRA presented, and the Railroad Safety Advisory Committee (RSAC) accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. The RSAC established the Passenger Safety Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. The Working Group met 14 times between September 9, 2003 and September 16, 2010. The Working Group successfully reached consensus on the following issues related to passenger train emergency systems: doors, emergency lighting, markings and instructions for selected emergency systems, photoluminescent materials, and participation of personnel at debriefing and critique sessions after emergencies. It also recommended consolidation of all requirements related to doors that are currently contained in parts 238 and 239. The full RSAC voted to recommend the consensus issues to FRA on September 20, 2008. This NPRM is based on the RSAC recommendations.

This NPRM proposes requirements related to the following subject areas: doors, emergency lighting, emergency markings and instruction for emergency egress and rescue access, emergency communication, low-location emergency exit path markings, and debriefing and critique of emergency situations and simulations. The following is a brief overview of the proposal organized by the subject area:

Doors

- The proposal related to vestibule doors (and certain other interior doors), would require such doors in new passenger cars to be fitted with a removable panel or window for use in accessing and exiting the passenger compartment from the vestibule in the event that the vestibule door is inoperable. Additionally, FRA is proposing distinct requirements for bi-

parting doors, including provisions for a manual override and retention mechanisms. For security reasons, an exception is included to allow railroads discretion when deciding whether or not to include an emergency panel in doors leading to a cab compartment. The proposal also sets forth requirements for the inspection, testing, reporting, and repairing of vestibule door safety mechanisms.

Emergency Lighting

• The proposed rule would require: minimum illumination levels within passenger cars; standards for the number and placement of power sources that power the emergency lighting system; and, establish requirements for testing lighting fixtures and power sources that are related to the emergency lighting system.

• Currently, emergency lighting power sources include batteries located under the passenger car, which are not reliable following a collision or derailment due to their location. The proposal is intended to ensure that these essential backup power sources are able to function as intended by requiring that they be located in the passenger compartment where they are better protected.

Emergency Egress and Rescue Access Markings & Instructions

• Emergency communication systems: this proposal contains more specific requirements for the luminescent material used to mark intercoms. Currently, the location of each intercom is required to be clearly marked with luminescent material, and legible and understandable operating instructions for operating the intercom must be posted at or near each such intercom to facilitate passenger use. Public address and intercom systems would be required to have back-up power to remain operational for at least 90 minutes when the primary power source fails.

• Emergency Roof Access: this proposal contains more specific requirements for providing markings of, and instructions for, emergency roof access locations. Currently, each emergency roof access location is required to be conspicuously marked with retroreflective material of contrasting color, and legible and understandable instructions must be provided near the emergency roof access.

• Emergency Signage: this proposal would enhance current signage requirements by specifying requirements for signage recognition, design requirements, location, size, color and contrast, and materials. This additional detail would help ensure that emergency egress points can be easily identified and operated by passengers and train crew members needing to evacuate a passenger car during an emergency.

Low-Location Emergency Exit Path Marking (LLEEPM)

• This proposal would establish minimum requirements for photoluminescent and electrically-powered LLEEPM to provide visual guidance for passengers and train crewmembers when the emergency lighting system has failed or when smoke conditions obscure overhead emergency lighting. The rule would also require railroads to conduct periodic inspections and tests to verify that all LLEPM system components, including power sources, function as intended.

Photoluminescent Materials

• The proposal related to signage standards, including the use of high-performance photoluminescent (HPPL) material and policies and procedures for ensuring proper placement and testing of photoluminescent materials to ensure maximum illumination in an emergency situation will ensure train occupants can identify emergency exits and the path to the nearest exit in the dark. Existing signage inside some passenger compartment areas within a passenger car has been ineffective due to their inability to absorb sufficient levels of ambient or electrical light. The requirements in this proposal would improve illumination of signage and marking in the passenger compartment, and thus increase the discernability of the exit signs and markings in the dark.

Debriefing and Critique

FRA is proposing a modification to the existing debrief and critique requirement to clarify that passenger train personnel who have first-hand knowledge of an emergency are intended to participate in debriefing and critique sessions after the emergency occurs.

FRA has assessed the cost to railroads that are expected to result from the implementation of this rule as proposed. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $21.8 million with a present value (PV, 7 percent) of $13.4 million. The proposed rulemaking is expected to improve railroad safety by promoting the safe evacuation of passengers and crewmembers in the event of an emergency.

20-YEAR COST FOR PROPOSED RULE

Door/Removable Panels or Windows, and Bi-Parting Doors	$4,399,223
Emergency Lighting	2,450,213
Emergency Egress and Rescue Access Marking and Instructions	4,730,631
Low-Location Emergency Exit Path Markings	1,377,615
Debriefing and Critique	N/A
Inspection, Testing, and Recordkeeping	405,296
Total	13,362,979

Dollars are discounted at a present value rate of 7 percent.

The primary benefits include a heightened safety environment in egress from a passenger train after an accident. The requirements will enable passenger car occupants to more readily identify, reach, and operate emergency exits and emergency responders to more readily identify and operate rescue access points. This corresponds to a reduction of casualties and fatalities in the aftermath of collisions, derailments, and other emergency situations. FRA believes the value of the anticipated safety benefits would justify the cost of implementing the rule as proposed.

II. Statutory and Regulatory Background

In September of 1994, the Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that

DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Pub. L. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act (codified at 49 U.S.C. 20133).

III. Railroad Safety Advisory Committee Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO);
American Association of State Highway and Transportation Officials (AASHTO);
American Chemistry Council;
American Petroleum Institute;
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration (FTA); *
Fertilizer Institute;
High Speed Ground Transportation Association (HSGTA);
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA); *
League of Railway Industry Women; *
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women; *
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB); *
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Communicaciones y Transporte; *
Sheet Metal Workers International Association (SMWIA);
Tourist Railway Association Inc.;
Transport Canada; *
Transport Workers Union of America (TWU);
Transportation Communications International Union/BRC (TCIU/BRC);
Transportation Security Administration; * and
United Transportation Union (UTU).

* Indicates associate membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

IV. History

On May 4, 1998, pursuant to § 215 of the Act, FRA issued a Passenger Train Emergency Preparedness (PTEP) final rule. *See* 63 FR 24629. The rule contains minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of passenger rail service. Elements of the required emergency preparedness plan include: communication; employee training and qualification; joint operations; tunnel safety; liaison with emergency responders; on-board emergency equipment; and passenger safety information. This rule also established specific requirements for passenger train emergency systems. The requirements include: conspicuous marking of all emergency window exits with luminescent material on the interior and all windows intended for rescue access by emergency responders be marked on the exterior with retroreflective material and that instructions be provided for their use; all door exits intended for egress be lighted or marked; and all door exits intended for rescue access by emergency responders be marked and that instructions be provided for their use. In addition, the rule contains specific requirements for debriefing and critique sessions following emergency situations and full-scale simulations.

On May 12, 1999, FRA issued the Passenger Equipment Safety Standards (PESS) final rule. *See* 64 FR 25540. This rule established comprehensive safety standards for railroad passenger equipment. The standards included requirements for the size, and operation of exterior side doors used for emergency egress or access for all passenger cars and for emergency lighting for new passenger cars. After publication of the PESS final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule. These petitions generally related to the following subject areas: structural design; location of emergency exit

windows; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. To address the petitions, FRA grouped issues together and published three sets of amendments to the final rule in 2000 and 2002 in the **Federal Register**. *See* 65 FR 41284; 67 FR 19970; and 67 FR 42892.

On February 1, 2008, FRA published a final rule on Passenger Train Emergency Systems (PTES) addressing: emergency communication, emergency egress, and rescue access. This rule expanded the applicability of requirements for public address systems to all passenger cars, for intercom systems, and for emergency responder roof access to all new passenger cars. It also enhanced existing requirements for emergency window exits and established requirements for rescue access windows used by emergency responders. *See* 73 FR 6370.

During the development of the PESS rule and the PTES rule, FRA identified the following issues for possible future rulemaking: doors; emergency lighting; emergency signage and markings for egress, access, and emergency communication; and low-location emergency exit path markings. FRA determined that these issues would benefit from additional research, the gathering of additional operating experience, or the development of industry standards, or all three. FRA believes that these issues have sufficiently developed and is addressing these issues in this proposal.

On May 20, 2003, FRA presented, and the RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. The RSAC established the Working Group to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, include the following:

AAR, including members from BNSF Railway Company, CSX Transportation, Inc., and Union Pacific Railroad Company;
AAPRCO;
AASHTO;
Amtrak;
APTA, including members from: Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology Inc., Long Island Rail Road (LIRR), Metro-North Commuter Railroad Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA);
BLET;
BRS;
FTA;
HSGTA;
IBEW;
NARP;
NTSB;
RSI;
SMWIA;
STA;
TCIU/BRC;
TWU; and
UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. The Working Group has held meetings on the following dates and locations:

September 9–10, 2003, in Washington, DC;
November 6, 2003, in Philadelphia, PA;
May 11, 2004, in Schaumburg, IL;
October 26–27, 2004 in Linthicum/Baltimore, MD;
March 9–10, 2005, in Ft. Lauderdale, FL;
September 7, 2005 in Chicago, IL;
March 21–22, 2006 in Ft. Lauderdale, FL;
September 12–13, 2006 in Orlando, FL;
April 17–18, 2007 in Orlando, FL;
December 11, 2007 in Ft. Lauderdale, FL;
June 18, 2008 in Baltimore, MD;
November 13, 2008 in Washington, DC;
June 8, 2009 in Washington, DC; and
September 16, 2010 in Chicago, IL.

At the meetings in Chicago and Ft. Lauderdale in 2005, FRA met with representatives of Metra and the South Florida Regional Transportation Authority (Tri-Rail), respectively, and toured their passenger equipment. The visits, which included demonstrations of emergency system features, were open to all members of the Working Group, and FRA believes they have added to the collective understanding of the Group in identifying and addressing passenger train emergency system issues.

Due to the variety of issues involved, at its November 2003 meeting, the Working Group established four task forces: Emergency Preparedness, Vehicle/Track Interaction, Crashworthiness/Glazing, and Mechanical. Each task force is a smaller group that develops recommendations on specific issues within each group's particular area of expertise. Members of the task forces include various representatives from the respective organizations that were part of the larger Working Group. Members of the Emergency Preparedness Task Force (Task Force), in addition to FRA, include (or have included) the following:

Amtrak;
APTA, including members from Bombardier, Ellcon National, Go Transit, Interfleet Technology, Inc, Jacobs Civil Engineering, Jessup Manufacturing Company, Kawasaki Rail Car, Inc., LIRR, LTK, Luminator, Maryland Transit Administration, Massachusetts Bay Transportation Authority (MBTA), Metrolink, Metro-North, Northern Indiana Commuter Transit District (NICTD), SEPTA, San Diego Northern Commuter Railroad (Coaster), Permalight, Po's Ability USA, Inc., Prolink, Transit Design Group (TDG),Transit Safety Management (TSM), Translite, STV Inc., and Visual Marking Systems, Inc.;
BLET;
California Department of Transportation (Caltrans);
FTA;
NARP;
RSI, including Globe Transportation Graphics;
TWU; and
UTU.

While they are not voting members of the Task Force, representatives from TSA, of the U.S. Department of Homeland Security (DHS), attended certain of the meetings and contributed to the discussions of the Task Force. In addition, staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations and by setting up various lighting, marking, and signage demonstrations.

The task force held 17 meetings on the following dates and locations:

February 25–26, 2004, in Los Angeles, CA;
April 14–15, 2004, in Cambridge, MA;
July 7–8, 2004, in Washington, DC;
September 13–14, 2004, in New York, NY;
December 1–2, 2004, in San Diego, CA;
February 16–17, 2005, in Philadelphia, PA;
April 19–20, 2005, in Cambridge, MA;
August 2–3, 2005, in Cambridge, MA;
December 13–14, 2005, in Baltimore, MD;
August 10, 2006, in Grapevine, TX;
October 25–26, 2006, in Philadelphia, PA;
December 6–7, 2006, in Washington, DC;

March 28–29, 2007, in Los Angeles, CA; June 13–14, 2007, in San Francisco, CA; October 17–18, 2007, in Arlington, VA; May 13–14, 2008, in Arlington, VA; and March 31, 2009, in Washington, DC.

At meetings in Los Angeles, Cambridge, Washington, New York, San Diego, Philadelphia, and San Francisco, FRA met with representatives of Metrolink, MBTA, Amtrak, LIRR, Coaster, SEPTA, and Caltrans, respectively, and toured their passenger equipment. The visits were open to all members of the various task forces and included demonstration of emergency system features. As in the case of the Working Group visits, FRA believes they have added to the collective understanding of RSAC members in identifying and addressing passenger train safety issues for not only this rulemaking, but for other RSAC initiatives as well. After reaching consensus on a variety of issues, and receiving formal recommendations from the RSAC, FRA issued the PTES rule. As noted above, the final rule was published on February 1, 2008, and it addressed requirements for emergency window exits, rescue access windows, emergency communication, and roof access locations.

V. Proceedings to Date

Like the first PTES rule, the NPRM in This rulemaking proceeding, Passenger Train Emergency Systems II (PTES II), was developed to address a number of the concerns raised, and issues discussed, during the various Task Force and Working Group meetings. The issues include: doors, emergency lighting, emergency marking and instruction for egress and access, emergency communication, low-location emergency exit path markings, and debriefing and critique of emergency situations and simulations. The Working Group reached full consensus on all the regulatory provisions contained in the NPRM at its meeting in December 2007. The Working Group presented its consensus recommendations to the full RSAC for concurrence at its meeting on February 20, 2008. All of the members of the full RSAC in attendance at its February 2008 meeting accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendations became the full RSAC's recommendations to FRA. FRA subsequently met with the Task Force twice after that to make some non-substantive technical clarifications and review technical research findings related to potential enhancements of emergency systems. A Tier II Sub-Task Force also met to discuss the proposed requirements affecting Tier II equipment, *i.e.,* passenger equipment operating at speeds in excess of 125 mph but not exceeding 150 mph. It did not recommend any changes to the proposed rule text. After reviewing the full RSAC's recommendations, FRA agrees that the recommendations provide a sound basis for a proposed rule and hereby adopts the recommendations with generally minor changes for purposes of clarity and **Federal Register** formatting.

VI. Technical Background and Overview of Issues Addressed in this Proposal

Experience with passenger train accidents and simulations, and technological advances in emergency systems provide the main impetus for these proposed enhancements and additions to FRA's existing requirements related to passenger train emergency systems, as highlighted below.

A. Doors

In February 1996, as a result of a near head-on collision between a Maryland Mass Transit Administration MARC Train Service (MARC) train and an Amtrak train in Silver Spring, Maryland, and subsequent fire, eight passengers and three crewmembers died in one car. This incident raised concerns that at least some of the passengers in the MARC train tried unsuccessfully to exit via the exterior side doors in the rear vestibule of the lead, passenger-occupied cab car. Following its post-collision investigation, the NTSB expressed concern regarding passengers' ability to exit through interior and exterior passageway doors. During the accident, the front end of the cab car that led the MARC train suffered extensive structural damage and fire destroyed the controls for the left- and right-side rear exterior doors. The left-side exterior door's interior emergency release handle was also damaged by the fire and could not be pulled down to operate the door. The right-side door's interior emergency release handle was in a secured cabinet in the lavatory and it failed to open the door when later tested by the NTSB. The NTSB did note in its investigation report of the Silver Spring train collision that ''[e]xcept for those passengers who died of blunt trauma injuries, others may have survived the accident, albeit with thermal injuries, had proper and immediate egress from the car been available.'' NTSB/RAR–97/02 at page 63. The NTSB explained in its explicit findings on the collision that ''the emergency egress of passengers was impeded because the passenger cars lacked readily accessible and identifiable quick-release mechanisms for the exterior doors, removable windows or kick panels in the side doors, and adequate emergency instruction signage.'' *Id.* at 73.

Specifically, the NTSB recommended that FRA ''[r]equire all passenger cars to have either removable windows, kick panels, or other suitable means for emergency exiting through the interior and exterior passageway doors where the door could impede passengers exiting in an emergency and take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards.'' R–97–15. In addition, the Task Force identified concerns related to door egress from a car that is not upright. Emergency egress simulations organized by the Volpe Center confirmed this. Such simulations at the FRA-funded ''roll-over rig,'' located at the Washington Metropolitan Area Transit Authority's training facility, demonstrated that egress from a passenger rail car that is not upright can be very challenging. The simulations have demonstrated that emergency egress from a car that is on its side could present a significant challenge related to the operation of the pocket doors. If the pocket for a door is situated on the side of the car that is above the door when the car comes to rest on its side, gravity would work against opening the door and maintaining it in place for occupants to egress. Although passenger rail cars with single-panel vestibule doors are usually designed such that on the two ends of a car the pockets are on opposite sides of the panel, emergency situations may affect either end of the car rendering one or more of the vestibule and end-frame doors unavailable for emergency egress. In addition, doors could be rendered inoperable due to structural deformation of the doors or their frames and surrounding structures following a collision or derailment, blocking the egress pathways.

As with other items identified for future consideration during the PESS rulemaking proceedings, the Task Force gave thoughtful consideration to the issue of vestibule and end-frame door egress. With assistance from the Task Force, FRA explored the feasibility of designing removable panels or windows in interior and exterior passenger car doors that could be used for emergency egress, and funded research to develop and evaluate various designs. Interior door egress was examined first. In some passenger cars, exterior side or end-

frame doors, or both, are located in vestibule areas that are separated from the seating area(s) by an interior vestibule door. Structural deformation or malfunctioning of vestibule doors would inhibit or unduly delay access to the vestibules from the passenger compartments. End-frame door egress was examined next. Ultimately, no design was identified that would address three overriding concerns related to end-frame doors: (1) Unintentional removal of the door, which would result in a safety hazard for occupants attempting emergency egress from the train; (2) crashworthiness of the door containing the panel or window; and, (3) prevention of fluids, such as fuel, from entering the car during an accident. Therefore, the Task Force developed a recommendation that was limited to interior vestibule doors. The Task Force generally recommended requiring a removable panel or window in each vestibule door, and a retention mechanism for new passenger cars. In such cases, occupants could use a removable panel or window in the door to gain access from the seating area to the exterior doors in the vestibule. Alternatively, this panel or window could also facilitate passage in the opposite direction from the vestibule area to the seating area. Given the unique circumstances surrounding passenger train accidents, the Task Force considered it prudent to recommend that access be available from both areas.

The Task Force specifically evaluated kick-panels and ultimately decided that such panels could be partially or fully removed unintentionally creating a safety hazard, particularly for small children who could get caught in the opening and become injured by the door sliding into its pocket. For security reasons, the Task Force also recommended an exception to the removable panel or window requirement for a vestibule door that leads directly into a cab compartment. The Task Force believed that each railroad is best situated to determine whether equipping such a vestibule door with a removable panel or window would be appropriate for its specific equipment and operation.

FRA believes that its proposal in this rulemaking to require vestibule doors to be equipped with a removable panel or window would, in the event that vestibule doors are not operable, provide a means for occupants in the passenger seating area to reach the vestibules where exterior door are located. Once located near an exterior door, emergency responders will be able to reach the occupants. FRA further believes that its proposal would satisfy the safety concerns expressed in the NTSB's recommendation without raising other safety concerns both during normal operations and in accident situations.

The Task Force considered requiring that existing equipment be retrofitted to comply with the proposed vestibule door requirement. Because of limitations posed by the design of existing doors, the Task Force decided not to recommend that the equipment be retrofitted. Vestibule doors are designed with a horizontal structural member, located approximately at the vertical center of the door, which provides rigidity. The design would significantly limit both the size and location of a properly functioning removable panel or window. Although there are existing windows in the upper half of certain vestibule doors, the windows are not sufficiently large for adults to pass through and would be difficult to access in many situations. In addition, the existing door pockets would require modification. Removable windows would likely be designed similarly to emergency windows that are equipped with a handle to facilitate the removal of the gasket that holds the emergency window in place. The doors would need to be modified to accommodate the protrusions in the door that would be created by adding the handle. As noted above, the Task Force also examined the emergency egress issue as it relates to exterior end-frame doors. After much deliberation, the Task Force recommended not to proceed with a removable window or panel requirement for end-frame doors at this time, due to remaining concerns related to the crashworthiness of the exterior end-frame doors. The Task Force did, however, extend the proposed removable window or panel requirement to ''any other interior door used for passage through a passenger car'' to further expand options for emergency egress.

B. Identification of Emergency Systems

Passenger train evacuation can be complicated by various circumstances, such as: an overturned rail car(s); rail car(s) being located in a narrow bridge or tunnel; and the presence of smoke or darkness. Such circumstances necessitate enhanced systems for use in emergency evacuations. The PESS rule highlighted a systems approach to effective passenger train evacuation that takes into consideration the interrelationship between features such as the number of door and window exits in a passenger car, lighted signs that indicate and facilitate the use of the door and window exits, and floor exit path marking (such as that required by the Federal Aviation Administration (FAA) for passenger aircraft), in addition to the general emergency lighting level in a car. 64 FR 25598. In particular, the PESS final rule stated that FRA was investigating emergency lighting requirements, as part of a systems approach to effective passenger train evacuation. FRA also stated that it would examine the APTA standard on emergency lighting to determine whether the standard satisfactorily addresses matters related to emergency signage, exit path marking, and egress capacity. *See* 64 FR 25598.

As FRA was issuing comprehensive Federal requirements for passenger train safety in the late 1990s, APTA was also developing and authorizing complementary passenger rail equipment safety standards applicable to equipment operated by its commuter and intercity passenger railroad members. APTA developed a three-standard, systems-based approach to facilitate the safe evacuation of a passenger car in an emergency under various circumstances. These three standards, (the most recent revised versions were approved by APTA in 2007) which address emergency lighting, signage, and low-location exit path markings, were designed to work together to provide a means for passengers and crew to identify, reach, and operate passenger car emergency exits.

The most recent revised versions of the APTA standards approved by APTA and all authorized on October 7, 2007, are listed below and copies are included in the docket.

- APTA SS–E–013–99, Rev. 1 Standard for Emergency Lighting System Design for Passenger Cars.
- APTA SS–PS–002–98, Rev. 3 Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.
- APTA SS–PS–004–99, Rev. 2 Standard for Low Location Exit Path Marking.

The APTA approach recognizes that, in the majority of emergencies, the safest place for passengers and crew is on the train. Should evacuation from a particular rail car be required, the safest course of action for passengers and crew is normally to move into an adjacent car. This evacuation strategy avoids or minimizes the hazards inherent with evacuating passengers onto the railroad right-of-way. It is only in unavoidable or extreme life-threatening situations that it would be necessary for passengers

and crew leaves the train to reach a place of safety.

The Task Force was charged with reviewing the three APTA standards and recommending revisions that would enhance the existing emergency lighting requirements contained in § 238.115 and the egress and rescue access marking requirements contained in §§ 238.113 and 238.114. In addition, the Task Force was charged with adding a new requirement for low location exit path marking. After careful review, the Task Force recommended that the three APTA standards be revised to address relevant evolving technology, and that the standards be incorporated by reference in their entirety into the Federal regulations. With assistance from the Task Force, APTA revised the three APTA standards to enable FRA to incorporate them by reference and take advantage of certain technological advances which allowed for certain other desired enhancements. In addition, the Task Force recommended applying the requirements of the emergency lighting, emergency signage, and low-location exit path marking APTA standards (as revised in 2007), which apply to both new and existing equipment. Incorporation by reference of these APTA standards into part 238 would extend their applicability to all commuter and intercity passenger railroads and make them enforceable by FRA.

C. Emergency Lighting

Section 238.115 contains emergency lighting requirements applicable for new passenger cars. As noted in the PESS final rule, experience gained from emergency response to several passenger train accidents indicated that emergency lighting systems either did not work or failed after a short time, greatly hindering rescue operations. *See* 64 FR 25596. Emergency lighting system failures, or low levels of illumination during these accidents, or both, have been cited as a cause for confusion and contributing to the injuries and casualties. For example, according to the NTSB accident report, two passengers in a coach car of the MARC train involved in the 1996 Silver Spring, Maryland, accident stated that emergency lighting was not available following the accident, and that, along with one passenger's injuries and another's loss of eyeglasses, made it more difficult to move in the darkness. *See* R–97–17. The coach car's tilted position also contributed to their disorientation and hindered mobility. Post accident investigation by the NTSB revealed that the main car battery powering the emergency lighting had been damaged as a result of the derailment.

The NTSB expressed concern regarding emergency lighting survivability because the location of the battery supplying power to the emergency lighting system below the car made it susceptible to damage from the rail, the car's trucks, and the ground surface in the event of a derailment. The NTSB concluded that ''[a] need exists for Federal standards requiring passenger cars be equipped with reliable emergency lighting fixtures with a self-contained independent power source when the main power supply has been disrupted to ensure passengers can safely egress.'' The NTSB issued recommendation R–97–17 to FRA, as follows:

> Require all passenger cars to contain reliable emergency lighting fixtures that are each fitted with a self-contained independent power source and incorporate the requirements into minimum passenger car safety standards.

In addition, on May 16, 1994, in Selma, NC, an Amtrak train derailed after colliding with an intermodal trailer from a freight train on an adjacent track. This accident resulted in 1 fatality and 121 injuries. According to the NTSB accident report, three of the injured passengers reported difficulty exiting the passenger cars because they could not identify the emergency exit windows in the darkness. NTSB/RAR–95/02. When they were finally able to escape through the doors leading outside, they said that they were not sure how far they were above a surface, which may not have been solid ground, because they could not see below the steps of the car. The NTSB found that fixed emergency lighting systems were not operating inside several passenger cars because the batteries and the wiring connecting the batteries to the lights were damaged as a result of the derailment.

In the 1999 PESS final rule, FRA established performance criteria for emergency lighting, including minimum illumination levels for certain locations in new passenger car door locations, aisles, and passageways, because it would enable the occupants of the passenger cars to discern their immediate surroundings (situational awareness) and thereby minimize or avoid panic in an emergency. Establishing an illumination requirement at floor level adjacent to doors, was intended to permit passenger car occupants to see and negotiate thresholds and steps that are typically located near doors. The illumination requirement 25 inches above the floor for aisles and passageways was intended to permit passenger car occupants to see and make their way past obstacles as they exit a train in an emergency. FRA also pointed out that the existing requirement contained in § 238.115 provides greater flexibility to railroads related to the placement of lighting fixtures for new equipment. FRA also required that the emergency lighting system remain operational on each car for 90 minutes, consistent with FAA requirements for passenger aircraft emergency lighting.

With respect to existing equipment, FRA noted that it desired achievable emergency lighting enhancements and that it would evaluate an APTA emergency lighting standard when completed. The Task Force developed a revised APTA emergency lighting standard that would enhance the existing FRA emergency lighting requirements in § 238.115 by: (1) applying the requirements to existing equipment; and, (2) improving the back-up power supply survivability requirement (with application to both new and existing cars). The APTA emergency lighting standard specifies the same minimum illumination levels and duration that are required by § 238.115 for doors, aisleways, and passageways in new equipment. In addition, the APTA standard requires that additional locations be provided with emergency lighting, such as stairways and toilet rooms.

The Task Force recommended revisions to the APTA emergency lighting standard to address older equipment not currently covered by the emergency lighting requirements contained in § 238.115. The revised APTA standard now specifies minimum emergency lighting performance criteria for all passenger cars (new and existing). The levels of illumination and duration required for equipment ordered before September 8, 2000, and placed in service before September 9, 2002, are half the levels that are required for newer equipment. This takes into consideration the more limited capabilities of older electrical lighting systems. The APTA emergency lighting standard provides that these illumination and duration requirements be implemented by January 1, 2015, or when the equipment is transferred, leased, or conveyed to another railroad for more than 6 months of operation, whichever occurs first. Some railroads indicated their intention to retire certain equipment by 2015. The Task Force agreed it would not be cost-justified to retrofit such equipment.

In addition, the APTA emergency lighting standard requires that

emergency lighting systems installed on each passenger car ordered on or after April 7, 2008, or placed in service for the first time on or after January 1, 2012, meet minimum illumination levels by means of an independent power source(s) that is located in or within one half of a car length of each light fixture it powers, and that operates when normal power is unavailable. As previously noted, these illumination levels are the same as the ones already specified in § 238.115 for doors, aisleways, and passageways. The independent power source requirement is not currently contained in § 238.115, and is being proposed in this rulemaking proceeding. The Task Force evaluated the feasibility of equipping each emergency lighting fixture with self-contained power sources, as a back-up power source, independent of the main car battery. After deliberation, the Task Force concluded that maintenance would be very costly due to the high number of power sources. The Task Force examined other methods for addressing the issue of emergency lighting system reliability and assisted APTA in revising the APTA emergency lighting standard to better address those situations in which an emergency lighting system may be most beneficial. For example, in the event of a derailment resulting in a car rollover, the importance of situational awareness is heightened. Occupants are likely not in the same location as they were before the incident and, in conditions of darkness, are likely unaware as to where in the car they are located in relation to the nearest exit. APTA added four requirements that address NTSB's recommendation to FRA regarding emergency lighting survivability for new passenger cars, as described below.

First, the APTA emergency lighting standard was revised to require an independent power source within the car body located no more than a half-car length away from the fixture it powers. For most passenger car designs, this translates into a minimum of two batteries, one in each end of the car. In the Silver Spring accident, passenger cars incurred collision and derailment damage to underfloor battery boxes, causing the wet cell batteries contained in those boxes to leak electrolyte. Because of the damage and leakage, the batteries failed to provide power to the emergency lighting on board the passenger cars. Placing the batteries within the car body will reduce the risk of damage to the battery during a collision, and increase the likelihood that the batteries will be capable of providing power to the emergency lighting.

Second, each of these independent power sources is required to have an automatic self-diagnostic module to perform a discharge test to ensure timely detection and notification of a malfunction. Third, emergency lighting systems in new cars are required to be capable of operating in all equipment orientations to address accident situations resulting in the rollover of a car. During an accident, passenger cars may tilt, causing wet cell batteries contained in those cars to leak electrolyte and, as a consequence, fail to provide power to the emergency lighting on board the passenger cars. Wet cell batteries will likely leak when tilted in a rollover, because wet cell batteries are designed with a vent on top that allows liquid to escape when tipped over. Alternatively, a sealed battery is capable of functioning as intended regardless of the battery's orientation. When a sealed battery is tilted during an accident, it will not fail to provide power to emergency lighting merely as a result of the batteries being tilted. Finally, the APTA standards provides that emergency lighting systems must be designed so that at least 50 percent of the light fixtures operate notwithstanding the failure of any single fixture or power source.

In support of revising the APTA emergency lighting standard, the Volpe Center researched various alternative, cost-effective technologies for addressing the reliability of emergency lighting systems. The Volpe Center found that the development of emergency-lighting systems that can function reliably for a decade or more with minimal maintenance and that can withstand passenger train collision/derailment forces has been greatly facilitated by two recent technologies:

- Solid-State Lighting (SSL)—most commonly known as light emitting diodes (LEDs)
- Supercapacitors—devices that store about 100 times as much electrical charge per unit volume as previous types of capacitors.

Solid-state lighting includes conventional LEDs and other emerging technologies to produce illumination without the use of incandescent filaments or excited gases in glass containers. Compared with older lighting technologies, the solid-state lighting devices are much smaller, are able to withstand hundreds or thousands of times as much shock forces, and have service lives ten to one hundred times greater. Their light output per unit of electric power consumed is currently equivalent to fluorescent lighting, and continues to improve. Prototypes of new LED and other SSL devices use only half as much energy to produce a given amount of light as the best fluorescent lamps. The light output of current white LEDs ranges from 20 to 60 lumens per Watt, which means that a large area can be illuminated to a required minimum value (one lumen per square foot) with only one Watt of power. Furthermore, use of LEDs avoids the disposal costs of mercury-containing lamps. For these reasons, railroads have already started specifying the use of LED devices for new passenger car lighting, and to some extent have already used LEDs for retrofitting existing car lighting.

Capacitors are devices that store energy in an electrical field (as opposed to a battery, in which the energy is stored chemically). Chemicals that store and release energy in amounts that are useful in batteries are inherently corrosive, which limits battery life to about a thousand charge-discharge cycles, or about seven years in applications where the battery is rarely discharged. By avoiding use of corrosive chemicals, capacitors are far more durable; but until recently, they could not store enough energy to be useful in emergency lighting. New supercapacitors are rated for 500,000 charge-discharge cycles, and their service lives are expected to extend to at least ten years. Currently, commercial supercapacitors are available that store as much as 5 Watt-hours of energy. Combined with very efficient LEDs or other SSL devices, they allow the manufacture of emergency lighting systems using self-contained power with the ability to withstand collision forces of much greater magnitude than emergency lighting systems currently in use. As discussed in sections D, E, and F below, the brightness of newer photoluminescent materials which can be used for emergency egress signs and exit path marking can be a cost-effective means of addressing concerns regarding the survivability of emergency lighting systems, particularly for older equipment in operation, until it is retired from service.

D. Marking and Instructions for Emergency Egress and Rescue Access

To initially address emergency egress and rescue access, as well as other issues related to the 1996 Silver Spring accident cited earlier, FRA issued Emergency Order No. 20 (EO 20). 61 FR 6876. In addition to other requirements, EO 20 required commuter and intercity passenger railroads to mark the location, and provide instructions for the use, of emergency window exits by no later

than April 20, 1996. In an effort to respond to this requirement as effectively as possible in the short timeframe provided, affected railroads began to install photo-luminescent emergency exit markings to mark doors intended for emergency egress and emergency window exits with photoluminescent materials that were available at the time for this purpose.

On May 4, 1998, FRA issued the PTEP final rule that requires door exits that are intended for emergency egress to be lighted or conspicuously marked with luminescent material, and that instructions for their use be provided. The rule also requires that emergency window exits be conspicuously marked with luminescent material, and that instructions for their use be provided. *See* 63 FR 24630. Doors and windows intended for emergency access by emergency responders for extrication of passengers must also be marked with retroreflective material, and instructions for their use must be posted. Notably, the rule did not specify specific criteria for minimum luminance levels or letter size or sign color but stated that the marking of the door and window exits must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation can determine where the closest and most accessible route out of the car is located. *See* 63 FR 24669. Many railroads installed signs made of zinc-sulfide, which were capable of providing luminance only for a period of less than 10 minutes in many cases. Subsequently, photoluminescent sign technology evolved, and other materials began to be used, such as strontium-aluminate, which is capable of providing high levels of luminance for much longer periods.

The original APTA emergency signage standard was revised in 1999 to require the installation of emergency exit signs with specific minimum ''higher performance'' photoluminescent material, in terms of brightness and duration, as well as larger minimum letter sizes, color contrast, etc., for emergency exit signs. The second revision, authorized in 2002, included a reorganization of certain sections, citation of ASTM International (ASTM) retroreflectivity standards, as well as the revision of annex guidance to evaluate the performance characteristics of the emergency exit signs. FRA considered incorporating elements of the APTA standard into the PTES final rule in 2008 so that emergency exit signs and intercom markings in passenger cars would be required to be made of photoluminescent material with higher levels of brightness for longer duration. However, the Task Force recommended that certain requirements in the APTA emergency signage standard be revised to address technical issues with the performance characteristics of certain types of photoluminescent materials already installed in existing passenger rail cars, as well as other necessary clarifications addressing sign size, color, and contrast, etc., before the standard is incorporated by reference by FRA. *See* 63 FR 6886.

APTA revised its emergency signage standard to incorporate the Task Force recommendations. The recommendations were based on Volpe Center research findings and technological advances in photoluminescence (as discussed in Section F below). Substantively, the revised APTA standard requires that each passenger rail car have interior emergency signage to assist passengers and train crewmembers in more readily locating, reaching, and operating emergency exits in order to safely evacuate from the rail car or train; and exterior signage to assist emergency responders in more readily locating, reaching operating emergency access points, during an emergency situation that warrants immediate passenger rail car or train evacuation. To ensure visibility to passengers, signs that are required to mark the location of vestibule door markings must meet the brightness and duration performance criteria requirements for photoluminescent material, as specified in the APTA standard.

Although the APTA emergency signage standard does not address emergency communication system signage, the Task Force also recommended applying certain criteria for photoluminescent marking specified in that standard to intercom systems, as further described in Section G below. The APTA standard also includes specifications for retroreflective marking and material, which are consistent with FRA requirements for rescue access point marking for doors, windows, and roof access locations. The APTA standard is more detailed than the relevant existing FRA requirements contained in part. For example, the APTA standard requires specific minimum letter sizes for doors and emergency window exits and includes specific criteria for color, color contrast, etc.

The revised APTA emergency signage standard requires periodic testing of certain system components and contains procedures to ensure compliance. APTA designed its emergency signage standard to offer flexibility in application, as well as to achieve the desired goal of facilitating passenger and crew egress from potentially life-threatening situations in passenger rail cars. Individual railroads have the responsibility to design, install, and maintain an emergency signage system that is compatible with their internal safety policies for emergency evacuation, while complying with the performance criteria specified in this standard.

The Task Force recommended that FRA adopt the specific retroreflective material criteria contained in the 2007 APTA emergency signage standard related to rescue access windows and doors intended for access by emergency responders, into the new section 238.114 in the 2008 rule which added a requirement for installation of a minimum number and the location of rescue access windows on all passenger cars. Thus, in the 2008 rule, FRA added a definition of ''retroreflective material'' that incorporates by reference criteria form ASTM's Standard D 4956–07 for Type 1 Sheeting, which is consistent with the APTA emergency signage standard. Accordingly, FRA requests comment regarding the need to keep the definition in the rule given the incorporation of the APTA emergency signage standard. FRA also made other revisions related to rescue access marking, consistent with the other rescue access marking requirements specified in the APTA. *See* 73 FR 6389.

E. Low-Location Emergency Exit Path Marking

A review of past passenger rail accidents involving passenger and train crew emergency evacuation has indicated that, in certain cases, both passengers and emergency responders lacked sufficient information necessary for expedient emergency egress and responder access due to the absence of identifiable markings. A lack of adequate markings indicating the location of emergency exits, in conjunction with lighting system failures, or low levels of illumination, or both, during conditions of darkness when these accidents occurred caused confusion and contributed to injuries and casualties. In addition, the presence of fire or smoke may substantially increase the difficulty of evacuating passenger train occupants.

To avoid the many hazards associated with evacuation onto the right-of-way, the preferred means of egress from a passenger car that is not located at a station is via the end door(s) to the next car. Under conditions of darkness, or when illumination from emergency lighting fixtures located at or near the ceiling are obscured by smoke, such

markings (including exit signs) remain discernible. Particularly in the smoke situation, the most viable escape path is the more visible path, which is likely to be at or near the floor where occupants are forced to lower themselves towards (where the pathway markings are located) to avoid inhaling the smoke.

The 1999 APTA standard for low-location emergency exit path marking (LLEPM) required high performance photoluminesent (HPPL) material to be installed on all new passenger rail cars. Such markings are intended to maintain a visible pathway for passengers to use to locate and reach emergency exits under conditions of darkness even if the emergency lighting system fails, and include aisleways, stairways, and passageways, which identify the path to the primary exit for a duration of 90 minutes for both existing and new cars, using either HPPL or an independent power source for a duration of 90 minutes. Certain revisions were made to the original LLEPM standard which primarily consisted of additional definitions, reorganization of certain sections and revision, and the addition of annexes used to evaluate the performance of HPPL material used for LLEPM.

In December of 2006, with participation of the Emergency Preparedness Task Force, the Volpe Center conducted a series of emergency egress simulations at the Washington Metropolitan Area Transportation Authority training facility, which demonstrated that egress from a rail passenger car can be very challenging. Initially, a single-level passenger with some photoluminescent emergency exit sign materials commonly found in passenger rail cars and some HPPL sign and LLEPM materials were placed in a car that was darkened to demonstrate the difference in performance between the two types. ''High performance'' is defined as material that exhibits significantly enhanced surface brightness for a much longer time period compared with zinc sulfide photoluminescent material. Section F below provides further information relating to photoluminescent material performance characteristics. Next, the car was filled with theatrical smoke, which quickly rose and filled most of the car, making all photoluminescent signs indiscernible (including HPPL markings), except for door exit location and LLEPM markings located near the floor. Members of the Task Force participating in the simulation attempted to exit the car via an end door by moving along the aisle in a crouching position and using an HPPL LLEPM system as guidance. The LLEPM system was covered in one end (half) of the car to demonstrate the noticeable effectiveness of the LLEPM system that remained visible in the other end (half) of the car, in terms of brightness and duration. Next, the darkened car was tilted to a 15 degree angle. This car orientation was used to demonstrate firsthand the potential difficulties associated with trying to maintain one's balance and walk through the car to a door exit.

The low-location exit path marking (LLEPM) system complements the emergency signage system by identifying all primary door exits with HPPL and the emergency lighting system by providing a visible path to emergency exits that is not dependent on a power sources outside of the passenger compartment, ensuring that all primary emergency exits in a passenger car can be identified from every seat in the car. The Task Force reviewed the 2002 APTA LLEPM standard and recommended that certain revisions be made to address the same type of issues related to photoluminescent material, as for the emergency signage standard, as well as other technical revisions, for consistency with the emergency signage standard, and to enable the FRA to incorporate the standard by reference.

F. Photoluminescent Marking Materials

As mentioned above, as result of the NTSB's investigation of the February 1996 Silver Spring accident, the NTSB expressed concern that at least some of the passengers in the MARC train were unable to locate, reach, or operate doors and emergency window exits due to the failure of emergency lighting. Shortly after, FRA issued EO 20 requiring commuter and intercity passenger railroads to mark emergency window exits with luminescent material. *See* 61 FR 6876. The most conspicuous and visible markings related to emergency egress are either internally illuminated (illuminated by a self-contained source), or made of HPPL materials.

Since the issuance of EO 20, Volpe Center research has provided extensive information to FRA and the Task Force for different types of photoluminescent materials and their performance characteristics, when installed in passenger rail cars. The luminescence (brightness) levels for many of the emergency exit signs and LLEPM marking, using zinc sulfide material, originally installed in response to EO 20, are very low and the duration is very short originally and thus do not perform as well as the newer HPPL materials, using strontium aluminate, which are capable of a much higher initial brightness and longer duration time. In addition, Volpe Center research shows that placement of the photoluminescent sign and marking materials relative to sources of illumination is key to proper performance in terms of brightness and duration. Other factors that affect the ability of occupants to see signs and marking and read signs include: the size of the letters, distance from the sign or marking, and the visual acuity of the person seeing the sign and marking.

Separately, and in conjunction with industry representatives, the Volpe Center conducted illumination and luminance tests in various in-service passenger cars of different design and age and demonstrated that some of the photoluminescent markings were not as luminescent (*i.e.,* bright) as they were intended to be. Signs and LLEPM markings certified to be capable of achieving certain luminance levels were found not to meet those criteria due to inadequate charging light levels. The presence of shadows cast by nearby structures and fixtures, the location of light fixtures relative to emergency exit sign and LLEPM markings, the condition of light diffusers, and the type of lamps used to provide the illumination were all causes for why either the zinc sulfide or the HPPL products were unable to charge sufficiently and thus achieve expected luminance levels.

The Task Force considered the use of HPPL material to be an important improvement over the previous, less strenuous, requirements for duration and luminance of photoluminescence materials and also a cost-effective means of addressing concerns regarding the survivability of emergency lighting systems, particularly for older equipment in service. Adoption of the APTA LLEPM standard by FRA by incorporation by reference into part 238 also addresses the NTSB Silver Spring recommendation to require that the path to the emergency exits be marked in all passenger cars.

To develop a more effective photoluminescent standard that would address the Volpe Center findings, the Task Force developed HPPL material specifications with Volpe Center technical assistance that APTA included in its 2007 revision of both the emergency signage standard and the LLEPM standard. FRA notes that the Task Force proposed revisions to the emergency signage and LLEPM standards to: (1) Allow flexibility for use of different types of charging light sources, (2) require that new HPPL signs meet the same luminance requirements with lower charging light levels, (3) allow alternative testing criteria using

meters that do not measure off-axis illuminance accurately, (4) grandfather signs that are likely to perform as intended for 60 minutes, and (5) in small areas, to allow lower levels of luminance or use of larger signs to compensate for even lower light levels. APTA revised the two APTA standards which now establish more stringent minimum requirements for the HPPL material performance criteria to provide visual guidance for passengers and train crewmembers to locate, reach, and operate door exits and emergency window exits, especially during conditions of darkness when the emergency lighting system has failed, (or when smoke conditions obscure overhead emergency lighting).

G. Emergency Communication System Marking

The NTSB accident investigation report for the February 9, 1996 collision near Secaucus, New Jersey, that involved two New Jersey Transit Rail Operations (NJTR) trains and resulted in three fatalities and numerous injuries, illustrates the importance of emergency communication systems to prevent panic and further injuries. According to the NTSB report (NTSB/RAR–97/01, at p. 27):

> [a]lthough the train crews said that they went from car to car instructing passengers to remain seated, passengers said that they were not told about the severity of the situation and were concerned about a possible fire or being struck by an oncoming train. They therefore left the train and wandered around the tracks waiting for guidance, potentially posing a greater hazard because of the leaking fuel from train 1107.
>
> No crewmember used the public address system to communicate with passengers. By using the public address system, all passengers would have received the same message in less time than it would have taken the NJT employees to walk from car to car.

The NTSB report also stated:

> Information about the possibility of a fire or a collision with an oncoming train could have been provided to passengers over the public address system to address their concerns and prevent them from leaving the train. The Safety Board concludes that the lack of public announcements addressing the passengers' concerns caused them to act independently, evacuate the train, and wander along the tracks, thus potentially contributing to the dangerous conditions at the collision site.

To address the NTSB report, FRA issued the PESS final rule in 1999, which established requirements for two-way emergency communication systems and markings for Tier II passenger equipment. *See* 64 FR 25540, 25641 (May 12, 1999). Public address (PA) systems allow the train crew to keep their passengers informed in an emergency situation and provide instructions to them in a timely manner. The train crew can provide instructions to passengers to not take an action that could place them or other passengers in any greater danger, such as instructing them, as appropriate, to remain on the train and not endanger themselves by unnecessarily evacuating the train on their own. Conversely, passengers could use the intercom feature of a two-way communication system to report security issues as well as other life-threatening situations. When head-end power is lost, having markings that remain conspicuous allow passengers to locate and use the intercom to communicate with the train crew. During the development of the 2008 PTES final rule, some railroad representatives on the Task Force noted that although instructions were posted at the intercom locations on their passenger cars, luminescent markings to mark the intercom location were not used. The Task Force therefore recommended that luminescent markings be required for that purpose. It should be noted that FRA proposed to adopt such a requirement in the PTES final rule, and invited comment on whether the luminescent material should be HPPL material, as discussed below. *See* 71 FR 50293. As noted above, in the discussion concerning emergency window exit signage, the APTA emergency signage standard contains specific criteria for luminescent markings. The Task Force focused on revisions to this APTA standard in order to recommend whether to incorporate some or all of its contents into part 238 by reference and thereby require that luminescent markings for intercoms comply with the standard as it relates to luminescent markings. APTA PRESS had also indicated that they intended to revise APTA SS–PS–001–98, ''Standard for Passenger Railroad Emergency Communications,'' to include more specific requirements for marking emergency communication systems. However, no comments were received, and the PTES final rule required luminescent marking of each intercom location to ensure that the intercom can be easily identified for use in the event that both normal and emergency lighting are not functioning. The posted operating instructions, however, are not required to be luminescent. Some Task Force members indicated that the instructions may be easier to read when not luminescent.

As noted previously, the Task Force discussed at length issues associated with the development of HPPL material component requirements. Due to the APTA revision of the performance criteria for HPPL material, the Task Force recommended that the intercom system comply with the brightness and duration of HPPL material performance criteria in the emergency lighting standard. Accordingly, FRA believes that applying the luminescent marking requirements in the revised APTA emergency signage standard to intercom systems would further address the NTSB report emergency communication concerns.

H. Debriefing and Critique Session Following Emergency Situations and Full-Scale Simulations

As an illustration of the importance of train crew participation in a debrief and critique session, FRA notes that on May 25, 2006, a power outage disrupted all rail traffic on the Northeast Corridor between Washington and New York during the morning rush hour, stranding approximately 112 trains with tens of thousands of passengers on board. Currently, part 239 requires that train crew members participate in the required debriefing and critique session of such incidents. However, the managers of the train crew of at least one train participated in the debriefing and critique session, rather than the train crew. The Task Force recognized the importance of the participation of train crew and other employees who actually have first-hand knowledge of the emergency in the debriefing and critique sessions. Accordingly, the Task Force reviewed the existing debriefing and critique requirements in section 239.105 and recommended that clarifications be made to ensure that to the extent practicable, all onboard crewmembers, control center personnel, and any other employees actually involved in emergency situations and full-scale simulations, be included in the debriefing and critique sessions. In addition, flexibility was provided to railroads by permitting participation in the required debriefing and critique sessions of the employees, either in person or by the use of alternative methods. As such, FRA proposes to clarify § 239.105 to reflect this necessary participation.

VII. Section-by-Section Analysis

This section-by-section analysis explains the provisions proposed. Several of the issues and provisions involving this proposed rule have been discussed and addressed in detail in the preamble, above. Accordingly, these

preamble discussions should be considered in conjunction with those below and will be referenced as appropriate.

A. Proposed Amendments to Part 238, Subparts B, C, and E

Section 238.5 Definitions

In this section, FRA is proposing a set of new definitions to be introduced into the regulation, as well as the revision of certain existing definitions. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the rule, in an attempt to minimize the potential for misinterpretation of the rule.

''APTA'' would mean The American Public Transportation Association.

FRA proposes the definition in this section to reflect the present name of APTA, ''American Public Transportation Association.'' This section's reference to APTA as the ''American Public Transit Association,'' has become outdated.

''End-frame door'' would mean an end-facing door normally located between or adjacent to the collision posts or similar end-frame structural elements. This term refers to exterior doors only. This term would be added for use in the definition of a vestibule door to make clear that an end-frame door is not a vestibule door.

FRA proposes to revise the definition of ''vestibule'' to clarify that a ''vestibule'' is located adjacent to a side door exit. The definition would make clear that certain interior doors would be considered vestibule doors, and thus, would be subject to the proposed requirements for removable panels or windows. In conjunction with another defined term in this proposal, ''vestibule door,'' this definition is intended to make clear that certain areas in a passenger car that are used for passing from a seating area to a side door exit are vestibules. Interior areas of a passenger car that normally do not contain seating and are used for passing from, but are not adjacent to, a side door are not vestibules. Therefore, doors located in such areas would not be subject to requirements for vestibule doors unless otherwise specified (*see* § 238.112(f)). Passageways located away from side door exits would not be considered vestibules.

''Vestibule door'' would mean a door separating a seating area from a vestibule. End-frame doors and doors separating sleeping compartments or similar private compartments from a passageway would not be vestibule doors. This term is referenced in § 238.112(f) as one type of door that would be required to have removable panels or windows for emergency egress use in new passenger cars. Note that § 238.112 also applies to other interior doors intended for passage through a passenger car, namely, the interior doors that, while not located adjacent to a side door, are located near one or both ends of a car (sometimes just the ''blind end'' of the car) and provide passage to the next car, such as the door(s) at the end(s) of the Metra Gallery Cars and Amtrak Amfleet I and II Cars, as well as the door located on the upper level of the Amtrak Superliner Cars.

Section 238.112 Doors

This proposed section would consolidate certain existing door requirements that apply to both Tier I and Tier II passenger cars, add new requirements related to removable panels or windows in vestibule doors, and clarify that an exterior side door is required ''in each side'' of a passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Existing door requirements are currently located in §§ 238.235 for Tier I equipment and 238.439 for Tier II equipment. Section 239.107 also contains interior and exterior marking and instruction requirements, respectively, for all doors intended for emergency egress and all doors intended for emergency access by emergency responders. All door requirements that apply both to Tier I and Tier II passenger cars would be moved to this new § 238.112. The new vestibule door requirements would enhance passenger safety by requiring an additional means of access to the vestibule area from the passenger seating area, and vice versa.

Proposed paragraphs (a) through (c) would contain the requirements currently located in paragraphs § 238.235(a) through (c). A minor modification is proposed to paragraph (b) to make clear that of the minimum two exterior side doors required in each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, one must be located in each side of the car. Moreover, paragraph (b) makes clear that a set of dual-leafed doors is considered a single door for purposes of this paragraph.

Proposed paragraphs (d) and (e) contain the requirements for interior and exterior door exit markings and instructions, respectively, which are currently contained in §§ 238.235(d) and 239.107(a). Both paragraphs would reference the requirements in new § 238.125.

Proposed paragraph (f) requires a removable panel or removable window in each vestibule door, as well as in any other interior door intended for passage through a passenger car. A vestibule door, or its pocket, may become deformed or otherwise inoperable during an emergency. The additional means of egress would be used in the event that a vestibule door cannot be opened, or it becomes difficult to retain the door in an open position, to allow for passage from the seating area to the exterior doors in the vestibule. The latter circumstance is of particular concern when a passenger car is on its side where the pocket for the door would now be located above the door, making it difficult to keep the door in the open position. In the case of other interior doors intended for passage through a passenger car (*see* discussion above related to the definition of vestibule door in the section-by-section analysis of § 238.5), the removable panel or window would facilitate passage to the next car. Distinct requirements would apply to bi-parting doors. Such doors, because each leaf is too narrow, cannot reasonably contain removable panels or windows that would allow occupants to pass through. To allow sufficient time for railroads and manufacturers of passenger cars to implement these requirements without costly modifications to existing car orders, the requirements in this paragraph would apply to equipment ordered on or after the effective date of the final rule or placed in service for the first time on or after a date 4 years later. Railroad representatives indicated that a 4-year time period was consistent with the time between the placement of an order and delivery of the ordered equipment.

Proposed paragraph (f)(1) makes clear that doors providing access to a control compartment would be exempt from this requirement. The doors to such compartments are usually locked, particularly in newer cars that have door lock override mechanisms, to prevent unauthorized access to the control compartment. Railroads may, at their discretion, include removable panels or other additional means of egress in these doors, but they would not be required to do so. This paragraph also requires a manual override device for the vestibule door if the door is powered, to ensure occupants can open the door in the even power is lost.

Proposed paragraph (f)(2)(i) requires that each removable panel or window be designed to permit rapid and easy removal from both the vestibule and passenger seating area without the use of a tool or other implement. Access

from both areas is consistent with the preferred means of car evacuation, which is to the next car and not onto the right-of-way. The designs for removable windows or panels would likely be very similar to the removable gasket design and other designs generally used for dual-function windows, which serve both as emergency window exits and rescue access windows and therefore can be opened and removed from inside or outside of the car. This requirement is intended to be consistent with the ease of operability requirement currently applicable to emergency window exits in § 238.113, which dual-function windows must meet. For example, the design presented by Kawasaki for a removable panel in a vestibule door, described in the February 1, 2008 final rule, would satisfy the requirements for ease of operability being proposed. *See* 73 FR 6370. Proposed paragraph (f)(2)(ii) requires that removal of the panel or window create an unobstructed opening with minimum dimensions of 21 inches horizontally by 28 inches vertically. The Task Force consulted with passenger car and door manufacturers to ensure that the dimensions being proposed could be met without sacrificing the basic structural design and integrity properties of vestibule doors, including firmness, balance, and stability. Manufacturers agreed that the maximum width that could be reasonably achieved is 21 inches. The proposed 28-inch vertical dimension allows for the door to have a vertically-centered horizontal structural member as well as retain a window in the upper half, which is common to many existing door designs and a feature that railroads are interested in retaining.

Proposed paragraph (f)(2)(iii) would require that the removable panel or window be located so that the lowest point of the opening is no higher than 18 inches from the floor. This requirement is intended to provide ease of use for pass through after removal of the panel or window. The opening should be located close to the floor so that car occupants could crawl through without undue difficulty or undue delay.

Proposed paragraphs (f)(3) would contain distinct requirements for bi-parting doors. Each powered, bi-parting vestibule door would have to be equipped with a manual override device and a mechanism to retain each door leaf in the open position. Examples of a retention mechanism include a ratchet and pawl system that allows movement in one direction but locks it in the other, and a sprag. The retention mechanism would be used to hold the door panels, which can be relatively heavy, in place once they are opened. The override mechanism would provide a means to operate the doors in the event that power is lost. It would have to be located adjacent to the door leaf it controls and be designed and maintained so that a person could readily access and operate it from both the vestibule and the seating area, without the use of any tool or other implement. Access from both areas is consistent with the preferred means of car evacuation, which is to the next car, and not onto the right-of-way.

Proposed paragraph (f)(4) specifically contains requirements related to the capabilities of manual override devices. A manual override device is intended to allow a passenger to unlock a car door during an emergency that has been locked by the railroad for operational purposes. Without the manual override device, a key or other tool or implement is typically needed to unlock the door. By making the door easier to unlock, the manual override device will expedite passenger egress during an emergency.

Proposed paragraph (f)(5) contains requirements for marking and operating instructions for removal panels and windows as well as bi-parting door override devices and retention mechanisms. To ensure that each removable panel or removable window can be identified in the dark, these would have to be conspicuously and legibly marked with high-performance photoluminescent material on both the vestibule and the passenger seating area sides of the door. Use of such material is consistent with requirements for emergency window exit and door exit signage. Legible and understandable operating instructions for each removable panel or window would also have to be provided on both the vestibule and seating area side of the door. The same marking and instruction requirements would apply to bi-parting door manual override devices and retention mechanisms.

FRA believes that it is important to inspect, maintain, and repair manual door override devices and door retention mechanisms to ensure that they function properly in the event of an emergency. FRA believes that testing of a representative sample of manual override devices and door retention mechanisms no less frequently than once every 184 days to verify that they are operating properly would be reasonable and appropriate for safety. This frequency is consistent with existing requirements contained in § 238.113 for the testing of emergency window exits. However, because emergency window exits are subject to different service conditions than removable panels and windows located on vestibule doors, separate tests would be needed. Following each test, FRA also believes that inoperative manual override devices should be repaired before the cars they are in reenter service. FRA requests comments regarding the proper timing of the testing and repair of manual override door devices and retention devices as proposed in paragraph (f)(6).

Section 238.113 Emergency Window Exits

This section would be amended to require markings and instructions for emergency window exits to comply with the APTA marking standards that FRA is proposing to incorporate by reference in this rulemaking in § 238.125. The inspection requirement related to marking of emergency window exits currently contained in § 239.107(b) would also be added to this section. FRA believes these changes will enhance the reliability of markings for locating and instructions for operating emergency window exits.

Existing requirements in parts 223 and 239 for the marking of emergency exits, as well as existing requirements in part 238 for the marking of emergency communications transmission points, specify the use of luminescent materials. (Door exits intended for emergency egress may also be lighted, in accordance with § 239.107(a)(1).) Part 238 defines ''luminescent material'' as material that absorbs light energy when ambient levels of light are high and emits this stored energy when ambient levels of light are low, making the material appear to glow in the dark. *See* 49 CFR § 238.5. Paragraph (d) would continue to require that luminescent material be used to mark emergency window exits. However, as further discussed below, FRA is proposing to incorporate, by reference, in § 238.125 APTA Standard SS–PS–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.'' The APTA standard would establish specific criteria for luminescent material, including how bright the material must be and how long it must stay luminescent. The APTA standard also contains specific design requirements to facilitate recognition and reliability, including letter size and color contrast requirements as well as requirements for door locator signs to facilitate identification of door locations that may not be easily seen by seated passengers.

FRA is proposing to move the existing emergency window exit testing requirements contained in § 239.107(b)

to a new paragraph (e) in this section. Generally, emergency window exits are intended to supplement door exits, which are normally the preferred means of egress in an emergency situation. Emergency windows provide an alternative means of emergency egress should doors be rendered inoperable or inaccessible. They also provide an additional means of egress in life-threatening situations requiring very rapid exit, such as a fire on board or submergence of the car in a body of water. The requirement to periodically test a representative sample of emergency window exits arose from EO No. 20 and is being carried forward from § 239.107 into this new proposed paragraph.

Section 238.114 Rescue Access Windows

This section would be amended to add the APTA marking standards that are being proposed for incorporation by reference in this rulemaking in § 238.125 to the existing rescue access windows requirements. Proposed paragraph (d) continues to require that retroreflective material be used to mark rescue access windows. However, as further discussed below, FRA is proposing to incorporate by reference an APTA standard into § 238.125 that would establish specific criteria to maintain optimum retroreflective properties of the base material.

As noted above in the discussion of emergency window exits, § 238.125 proposes to incorporate by reference APTA Standard SS–PS–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.'' The APTA standard contains detailed criteria for marking rescue access windows, including the use of retroreflective material. FRA invited comment on whether the criteria in the APTA standard or in other existing standards for marking rescue access windows were appropriate for use in the PTES final rule. *See* 71 FR 50292. While no written comments were received on this issue, both the Task Force and the Working Group for the first PTES rulemaking recommended that FRA add the criteria to the final rule. In order to maintain the optimum retroreflective properties of the base material, any retroreflective markings that have ink or pigment applied should utilize a translucent or semi-translucent ink, as per the manufacturer's instructions. A clear coat that protects against ultra-violet light may be added to prevent fading. Retroreflectivity requirements shall be met if protective coatings or other materials for the enhancement of sign durability are used.

FRA believes that adopting the APTA standard will increase the quality and reliability of the retroreflective materials used in rescue access windows and doors. This section was originally prompted in part by the April 23, 2002 collision involving a Metrolink passenger train near Placentia, CA, and the ensuing NTSB Safety Recommendation (R–03–21) to FRA, which illustrated the potential importance of having rescue access windows on each level of a passenger car. The general intent of the provision is to provide a means for emergency responders to quickly identify and effectively operate rescue access windows in order to gain access directly into every passenger compartment on every level of a passenger car, in the event that a stairway or interior door is compromised and exterior doors are blocked. The enhanced quality and reliability of the retroreflective material are intended to ensure the markings and instructions remain conspicuous and legible taking into consideration the environment in which passenger trains operate.

Section 238.115 Emergency Lighting

To enhance the performance of emergency lighting in passenger cars, FRA proposes to expand the application of this section to all passenger cars, and modify the emergency lighting requirements by incorporating by reference APTA Standard SS–E–013–99, Rev. 1 (October 7, 2007) Standard for Emergency Lighting Design for Passenger Cars, or an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21. This section currently contains requirements for emergency lighting in passenger cars ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Incorporating this APTA standard for all passenger cars would enhance the existing standards for new passenger cars and establish standards for passenger cars both ordered before September 8, 2000, and placed in service before September 9, 2002. Part 238 requires minimum illumination levels at doors, aisles, and passageways. In addition to those locations, the APTA emergency lighting standard requires minimum levels of emergency illumination for stairways, crew areas of multiple-unit (MU) locomotives and cab cars, toilets, and other areas.

The existing requirements in part 238 related to emergency lighting require a ''back-up power system'' capable of operating in all equipment orientations within 45 degrees of vertical, as well as after the initial shock of certain collision or derailment scenarios. The car's main car battery is considered an acceptable ''back-up power system.'' A main car battery is limited in its ability to provide power in equipment orientations greater than 45 degrees of vertical. Additionally, because it is common for such batteries to be at least partially located below the car body, it would not be unusual for the main car battery to be damaged in the event of a derailment and render the emergency lighting system inoperable as occurred in the MARC train cab car that was involved in the 1996 accident in Silver Spring. For equipment ordered on or after April 7, 2008 or first placed in service on or after January 1, 2012, the 2007 APTA lighting standard requires an independent power source to be located within the car body and placed no more than a half-car length away from the fixture it powers in the event the main car battery is not able to power the system. This system must also be capable of operating in all equipment orientations. The APTA emergency lighting standard contains additional design and performance criteria for batteries that are used as independent power sources. It also contains rigorous requirements for periodic testing of batteries used as independent power sources.

Existing § 238.307 requires railroads to perform periodic mechanical inspections of passenger equipment, including passenger cars. The periodic mechanical inspection requires the inspection of interior and exterior mechanical components not less frequently than every 184 days. As part of this inspection the railroad is required to verify that all emergency lighting systems are in place and operational as specified in § 238.115. The APTA emergency lighting standard contains more detailed periodic inspection and maintenance related to emergency lighting. The APTA standard requires that periodic tests to confirm the minimum illumination levels and duration be conducted no less frequently than every eight years. A representative sample of cars or areas must be tested. However, if the first two cars or areas exceed the minimum illumination levels by a factor of 4 or greater, no further testing is required. Importantly, the APTA standard also requires railroads to replace each sealed battery that is used as an independent power source for an emergency light circuit at two-year intervals, unless equipped with controllers that

automatically prevent unnecessary battery discharge or other measures are taken to prevent routine discharge (*e.g.,* maintaining equipment on wayside power or HEP). If so equipped, the APTA standard requires that the battery-replacement interval shall be according to manufacturer's specifications, or if not specified, at least every five years. For emergency lighting systems that use capacitors as independent power sources, a functional test of the devices shall be conducted as part of the periodic inspection. Due to their long life, the two-year replacement requirement does not apply to capacitor-based energy storage devices. However, a functional test of the devices shall be conducted as part of the periodic inspection. The APTA standard also requires initial verification tests on at least one representative car or area of a car for each emergency lighting system layout to ensure compliance with the minimum duration and illumination levels. The Task Force, APTA, and its member railroads, have invested considerable time and effort in developing industry standards that address emergency lighting in passenger cars. FRA has reviewed the industry standards it proposes to incorporate by reference in this rule and has determined that the standards contain the proper specifications for emergency lighting in passenger cars. FRA believes that compliance with the APTA standard requirements identified in this section will help ensure effective operation of emergency lighting in new passenger cars. Establishment of requirements for older existing equipment will help ensure emergency lighting systems are capable of providing sufficient illumination for passengers to retain situational awareness in the event normal lighting is not available, particularly in the event of an emergency situation. FRA expects that almost all affected railroads are already in compliance with the APTA standard requirements. Some railroads, including railroads that are not members of APTA, are not currently in compliance with the APTA standard requirements. To allow railroads that are not currently in compliance with the APTA standard requirements enough time to comply with the requirements, FRA will delay implementation of the requirements for one year from the effective date of the final rule in this proceeding.

Section 238.121 Emergency Communications

To clarify existing paragraph (a)(2), FRA proposes to insert the word ''after'' directly before the date ''April 1, 2010.'' The previous omission of the word ''after'' in the existing paragraph was a typographical error. The existing language is intended to identify cars ordered on or after April 1, 2010, and not only cars ordered on April 1, 2010. As such, the clarification would not result in substantive change to the existing requirements contained in this section.

Proposed paragraph (b)(2) applies the requirements for luminescent materials proposed to be incorporated in § 238.125 for emergency signage markings, to the existing requirements for luminescent material at intercom locations in existing paragraph (b)(2). Existing paragraph (b)(2) requires that the location of each intercom intended for passenger use be clearly marked with luminescent material and that legible and understandable operating instructions be posted at or near each such intercom to facilitate passenger use. The Task Force recommended an effective date of April 1, 2010, for this requirement. However, to allow for sufficient implementation time, FRA is not using this date. This proposed paragraph would become effective on the date the rule becomes effective. This proposed paragraph also makes clear that photoluminescent markings that were installed in accordance with the February 1, 2008 PTES rule are, and would remain, in compliance for the first 2 years following the effective date of the rule, as recommended by the Task Force.

Proposed paragraph (c) continues to require that PA and intercom systems on all new Tier I passenger cars and all Tier II passenger trains have back-up power for a minimum period of 90 minutes. An example of a back-up power source is the main battery in a passenger car. The only change FRA is proposing is to clarify the applicability of this paragraph, which was originally added by the February 1, 2008 PTES final rule without any express applicability dates. FRA intended that the back-up power requirements have the same applicability dates as those for intercom systems in the February 1, 2008 final rule. That is, paragraph (c) applies to each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and to all Tier II passenger cars. While FRA believes that the application of paragraph (c) is understood from a reading of this section as a whole, adding these dates will remove any confusion that may arise.

Section 238.123 Emergency Roof Access

This proposal would amend paragraph (e) to include the APTA standard for marking emergency roof access and providing retroreflective material and instructions that is being proposed for inclusion in this rulemaking in § 238.125. Existing paragraph (e) contains requirements for marking, and providing instructions for, emergency roof access locations. Currently, each emergency roof access location is required to be conspicuously marked with retroreflective material of contrasting color, and legible and understandable instructions must be provided near the emergency roof access location. The retroreflective material is intended to enable emergency responders to quickly identify the access locations by shining a light on the roof, and the instructions are intended to facilitate the proper use of the emergency roof access by emergency responders. To maximize the potential use of the required retroreflective material and instruction for emergency roof access, this rulemaking would apply the proposed requirements of § 238.125, which incorporates APTA's standard for retroreflective material by reference. APTA and its member railroads have invested considerable time and effort in developing industry standards that address retroreflective material in passenger cars. FRA has reviewed the industry standards it proposes to incorporate in this rule and has determined that the standards contain the proper specifications for retroreflective material in passenger cars. FRA believes that compliance with the APTA standard identified in this section will ensure that the retroreflective material markings for emergency roof access are conspicuous and instructions are legible and thus facilitate emergency responder access to passenger cars.

Section 238.125 Marking and Instructions for Emergency Egress and Rescue Access

To enhance the performance of emergency signage and markings for egress and access in passenger cars, FRA proposes to modify the emergency signage and markings for egress and access requirements by incorporating by reference APTA Standard SS–PS–002–98, Rev. 3 (authorized on October 7, 2007), Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment. This proposal would also permit use of an alternative standard providing at least an equivalent level of

safety if approved by FRA pursuant to § 238.21.

Generally, the APTA signage standard requires that each passenger rail car have interior emergency signage to assist passengers and train crewmembers in locating and operating emergency exits in order to safely evacuate from the rail car or train, and exterior signage to assist emergency responders in locating and operating emergency access points, during an emergency situation that warrants passenger rail car or train evacuation. Passenger railroads recognize that, in the majority of emergency situations, the safest place for passengers and crew is on the train. Should evacuation from a particular car be required, the safest course of action for passengers and crew is normally to move into an adjacent car. This avoids or minimizes the hazards inherent with evacuating passengers onto the railroad right-of-way. The standard was designed to offer flexibility in application, as well as to achieve the desired goal of facilitating passenger and crew egress from potentially life threatening situations in passenger rail cars. Individual railroads have the responsibility to design, install and maintain an emergency signage system that is compatible with their internal safety policies for emergency evacuation, while complying with the performance criteria specified in this APTA standard. The APTA signage standard requirements would improve upon the existing standards by increasing the overall efficacy of the signage providing evacuation guidance for passengers and train crew members and rescue access guidance for emergency responders. The existing Federal requirements related to signage require that the signage be legible and conspicuous. The APTA standard specifies requirements related to signage including: recognition, design requirements, location, size, color and contrast, materials, and others. Incorporation of more detailed APTA signage standard requirements would help ensure that emergency egress points are easily identified and operated by passengers and train crew members to evacuate a passenger car during an emergency.

Existing § 238.307 requires railroads to perform periodic mechanical inspections of passenger equipment, including passenger cars. The periodic mechanical inspection requires the inspection of interior and exterior mechanical components not less frequently than every 184 days. As part of this inspection the railroad is required to verify that all safety-related signage is in place and legible. *See* §§ 238.305(c)(7) and 238.307(c)(12) . The APTA standard specifies more detailed periodic inspection and maintenance related to signage. Notably, as with the LLEPM standard, the signage standard requires railroads to verify that all emergency signage system components function as intended. Section 10.2.1.2 of the APTA Signage Standard addresses photoluminescent (including HPPL) systems, and requires railroads to:

- Conduct tests and inspections in conformance with the requirements of APTA SS—I & M—005–98, Rev. 2, Standard for Passenger Compartment Periodic Inspection and Maintenance;
- Conduct periodic tests and inspections to verify that all emergency signage system components, including power sources, function as intended;
- Test a representative sample of passenger rail cars/areas, in accordance with Sections 10.2.1.1 and 10.2.1.2 (of the APTA Signage Standard) using procedures in Annex F of the Standard or another statistically valid documented sampling method; and
- Conduct periodic illuminance tests to confirm that photoluminescent components receive adequate charging light no less frequently than once every 8 years, with the first test conducted no later than 8 years after the car was placed in service for the first time:
- HPPL signs/markings placed in areas designed or maintained with normal light levels of less than 5 fc.; and
- Grandfathered PL materials, where the sign/marking in placed in an area designed or maintained with normal light levels of less than 10 fc. If all of the illuminance levels in the first two randomly selected representative sample cars/areas exceed the minimum required to charge the photoluminescent components required by this Standard by at least a factor of 2, no further testing is required for the cars/areas represented by the sample car/area tested for the periodic inspection cycle.

The Task Force, APTA, and its member railroads have invested considerable time and effort in developing industry standards that address emergency signage and markings for egress and access in passenger cars. FRA has reviewed the industry standard it proposes to incorporate by reference and has determined that the standard contains the proper specifications for emergency signage and markings for egress and access that will allow passenger car occupants to identify and operate emergency exits and emergency responders to identify and operate rescue access points. FRA believes that compliance with the APTA standard identified in this section will ensure effective use of emergency signage and markings for egress and access in passenger cars. FRA expects that almost all affected railroads are already in compliance with the APTA standard requirements. Some railroads, including railroads that are not members of APTA, are not currently in compliance with the APTA standard requirements. To allow railroads that are not currently in compliance with the APTA standard requirements enough time to comply with the requirements, FRA will delay implementation of the requirements for one year from the effective date of the final rule in this proceeding.

Section 238.127 Low-Location Emergency Exit Path Marking

To facilitate passenger car evacuation, particularly under conditions of darkness and smoke, FRA proposes to incorporate by reference APTA's low-location emergency exit path marking standard: APTA SS–PS–004–99, Rev. 2 (authorized on October 7, 2007), Standard for Low-Location Exit Path Marking. This proposal would also permit use of an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21.

Generally, the APTA standard was developed to establish minimum requirements for low-location exit path marking (LLEPM) in both existing and new passenger cars to provide visual guidance for passengers and train crewmembers to identify, reach, and operate primary exits during conditions of darkness when the emergency lighting system has failed or when smoke conditions obscure overhead emergency lighting. This standard requires that each passenger rail car have an LLEPM system, visible in the area from the floor to a horizontal plane 4 feet (1.22 m) above the aisle of the rail car to direct passengers to exit the affected car to the adjacent car (or, at the option of the railroad, off the train). This LLEPM system, located in or near the rail car floor, is intended to assist passengers and train crewmembers in identifying the path to exit the rail car in an emergency under conditions of darkness and especially smoke.

The APTA LLEPM standard would complement the existing emergency signage requirements by increasing the overall efficacy of such systems to enable passengers and train crew members to locate, reach, and operate emergency exits under a greater range of emergency situations, particularly life-threatening circumstances involving smoke. Existing Federal requirements require that the signage be legible and

conspicuous. Much like the APTA signage standard, the APTA LLEPM standard specifies requirements related to the selection of the physical characteristics, informational content, and placement of LLEPM systems for installation within passenger railcars to provide consistent identification of both primary and secondary exits, under certain conditions, and the path(s) to follow to reach such exits.

Existing § 238.307 requires railroads to perform periodic mechanical inspections of passenger equipment, including passenger cars. The periodic mechanical inspection requires the inspection of interior and exterior mechanical components not less frequently than every 184 days. As part of this inspection the railroad is required to verify that all vestibule steps are illuminated. *See* § 238.305(c)(9). The APTA LLEPM standard specifies additional periodic inspection and maintenance related to LLEPM signage and markings. Notably, the periodic inspection requirement in the APTA LLEPM standard requires railroads to conduct periodic inspections and tests to verify that all LLEPM system components, including power sources, function as intended. Like the APTA signage standard, it requires railroads to test a representative sample of passenger rail cars or areas using a statistically-valid, documented sampling method.

The Task Force, APTA, and its member railroads have invested considerable time and effort in developing industry standards that address low-location emergency exit path markings in passenger cars. FRA has reviewed the industry standard it proposes to incorporate in this rule and has determined that the standard contains the proper specifications for low-location emergency exit path markings. FRA believes that compliance with the APTA standard identified in this section will help ensure that passenger car occupants are able to identify, reach, and operate primary egress points during an emergency. FRA expects that almost all affected railroads are already in compliance with the APTA standard requirements. Some railroads, including railroads that are not members of APTA, are not currently in compliance with the APTA standard requirements. To allow railroads that are not currently in compliance with the APTA standard requirements enough time to comply with the requirements, FRA will delay implementation of the requirements for one year from the effective date of the final rule in this proceeding.

Section 238.235 Doors

FRA proposes to remove § 238.235. The existing door requirements in this section would be moved to § 238.112. The substantive requirements would remain the same, and would be moved only for user convenience. Proposed § 238.112 would consolidate into one section, all existing door requirements from §§ 238.235, 238.439, and 239.107 that apply, as specified, to all passenger cars. Because all of the requirements in § 238.235 would be moved to § 238.112, no requirements would remain in § 238.235.

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

FRA proposes clarifying existing paragraph (a), and adding new paragraphs (c)(11) and (13) to address the inspection of removable panels and windows in vestibule doors and certain other interior doors, as well as the inspection of low-location emergency exit path markings. Paragraph (c)(11) would contain requirements for ensuring that low-location emergency exit path markings required by § 238.127 are in place and conspicuous.

Proposed paragraph (a) would correct an erroneous cross-reference. The existing paragraph contains an erroneous cross-reference to paragraph (d) of this section, which was caused by a previous redesignation of the original paragraph (d). *See* 65 FR 41284, 41308; July 3, 2000. Paragraph (a) currently identifies equipment that requires an interior calendar day inspection and references paragraph (d) as the providing exceptions to the requirement. However, current paragraph (d) does not address when the inspection is required, whereas current paragraph (e) does. FRA is proposing to correct the cross reference by changing the cross-reference within paragraph (a), from (d) to (e).

Paragraph (c)(13) proposes requirements for ensuring that removable panels and windows in vestibule doors and other interior doors used for passage through a passenger car are properly in place and secured, based on a visual inspection performed during the interior calendar day mechanical inspection. This paragraph also affords flexibility for handling noncompliant equipment, provided that the railroad has developed and follows written procedures for mitigating the hazard(s) caused by the noncomplying condition and the train crew is given written notification of the defect and a record of the time and date the defect was discovered is maintained. Thus, a passenger car with an inoperative or nonfunctioning removable panel or window is permitted to remain in passenger service until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncompliant condition is discovered. At that time, the removable panel or window would have to be repaired, or the car would have to be removed from service.

This existing section currently contains the requirements related to the performance of interior calendar day mechanical inspections of passenger cars (*e.g.,* passenger coaches, MU locomotives, and cab cars) each calendar day that the equipment is used in service. Paragraph (c) identifies the various components that require visual inspection as part of the interior calendar day mechanical inspection. Inspection, testing, and maintenance of emergency systems will help ensure that these systems are either available for use in the event of an emergency, or that the train crew is aware that they are not available. This will allow for more effective and safe resolution of emergency situations. The proposed modification would also allow flexibility for operating equipment in passenger service with certain noncompliant conditions. The operational flexibility will give railroads sufficient time to repair the equipment without undue disruption to normal operations.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

FRA proposes the modification of this section to add requirements for inspecting and repairing removable panels, removable windows, manual override devices, and door retention mechanisms, in accordance with § 238.112, as well as low-location emergency exit path markings required by § 238.127. FRA is also proposing to relocate the existing requirement for inspecting and repairing emergency window exits in § 239.107 to this section. In this regard, FRA would continue to require that records of emergency window exit inspection, testing, and maintenance be retained for two calendar years after the end of the calendar year to which they relate, as currently required by § 239.107(c). FRA

is concerned in particular that sufficient records be kept of periodic emergency window exit testing, which FRA is proposing to move from § 239.107(b) to § 238.113(e). Inspection, testing, and maintenance of emergency systems will help ensure that these systems are available for use in the event of an emergency. This will allow for more effective and safe resolution of emergency situations.

Section 238.311 Single Car Test

FRA proposes amending this section to reflect the present name of APTA, ''American Public Transportation Association''; and its present address at 1666 K Street NW., Washington, DC 20006. This section's reference to APTA as the ''American Public Transit Association,'' located at 1201 New York Avenue NW., Washington, DC 20005, has become outdated. No substantive change to the requirement of this section is intended. The APTA standard referenced in this section remains the same.

Section 238.439 Doors

This section currently contains the requirements for doors on Tier II passenger cars. As noted, FRA is generally proposing to consolidate the requirements of this section, along with those in its Tier I counterpart (§ 238.235), into a single section applicable to both Tier I and Tier II equipment: § 238.112, Specifically, FRA is proposing to remove current paragraphs (a), (b), (e), and (g), which would then be addressed by the requirements of new § 238.112. The remaining paragraphs (c), (d), and (f) would then be redesignated as paragraphs (a) through (c), and current paragraph (f) would also be revised. Current paragraphs (c) and (d) have no counterpart in the Tier I equipment requirements and would remain in this section. Paragraph (c) currently requires the status of powered, exterior side doors to be displayed to the crew in the operating cab and, if door interlocks are used, the sensors to detect train motion must nominally be set to operate at not more than 3 mph. Paragraph (d) currently requires that powered, exterior side doors be connected to an emergency back-up power system. Both would remain as redesignated paragraphs (a) and (b).

Paragraph (f) currently requires passenger compartment end doors to be equipped with a kick-out panel, pop-out window, or other means of egress in the event the doors will not open, or be so designed as to pose a negligible probability of becoming inoperable in the event of car body distortion following a collision or derailment. This paragraph does not apply to such doors providing access to the exterior of a trainset, however, as in the case of an end door in the last car of a train. Paragraph (f) would be redesignated as paragraph (c) and revised to limit its applicability to Tier II passenger cars both ordered prior to the effective date of the final rule in this rulemaking proceeding and placed in service within four years after the effective date of the same final rule. Accordingly, this proposal would effectively limit the current requirement to existing Tier II passenger cars; all new Tier II passenger cars would be subject to the more stringent requirement in § 238.112 related to equipping cars with a kick-out panel, pop-out window, or other similar means of egress. To date, no such arrangement has been placed in a Tier II passenger car, on the basis that the doors pose a negligible probability of failure following a collision or derailment. As proposed, § 238.112 would require that such features be installed in new passenger cars without providing for a showing as to how the doors perform in the event of a collision or derailment.

Section 238.441 Emergency Roof Access

This rulemaking proposes to amend existing paragraphs (a) and (c) to include the APTA emergency signage standard requirements for retroreflective material and instruction, proposed in this rulemaking in § 238.125. Existing paragraphs (a) and (c) contain requirements for marking, and providing instructions for, emergency roof access locations in passenger cars ordered prior to April 1, 2009, and placed in service prior to April 1, 2011, and all power cars. Each emergency roof access location is required to be conspicuously marked with retroreflective material of contrasting color, and legible and understandable instructions must be provided near the emergency roof access location. The retroreflective material is intended to enable emergency responders to quickly identify the access location(s) by shining a light on the roof, and the instructions are intended to facilitate the proper use of the emergency roof access feature(s) by emergency responders. To enhance the potential use of the required retroreflective material, markings, and instructions for emergency roof access, this rulemaking would apply the requirements of § 238.125, which would incorporate by reference the APTA standard for retroreflective material. APTA and its member railroads have invested considerable time and effort in developing industry standards that address retroreflective material for passenger cars. FRA has reviewed the industry standards it proposes to incorporate in this rule and has determined that the standards specify the proper retroreflective material for passenger cars. FRA believes that compliance with the APTA standard identified in this section will help ensure that retroreflective material and instructions for emergency roof exits will enable emergency responders to gain access to occupants in passenger cars.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix A to part 238 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to part 238. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

B. Proposed Amendments to Part 239, Subpart B

Section 239.105 Debriefing and Critique

This section would clarify the existing debriefing and critique requirements by expressly requiring train crew participation in debrief and critique sessions. Currently, a debriefing and critique session is required after each passenger train emergency situation or full-scale simulation to determine the effectiveness of the railroad's emergency preparedness plan, and the railroad is required to improve or amend its plan, or both, as appropriate, in accordance with the information developed. The debriefing and critique is intended to be an opportunity to evaluate the effectiveness of the emergency preparedness plan. Employees directly involved in the emergency situation or full-scale simulation, have valuable first-hand knowledge of the event. Participation by these employees in the debriefing and critique is necessary to adequately evaluate the effectiveness of the emergency preparedness plan. FRA

proposes to clarify the language of the existing requirement to reflect this necessary participation. As such, the proposed language would specify that to the extent practicable, all on-board personnel, control center personnel, and any other employees involved in the emergency situation or full-scale simulation shall participate in the session. The section would also be clarified with respect to the flexibility for employees to participate in the debrief and critique sessions in person, offsite via teleconference, or in writing, by a statement responding to question provided prior to the session, and by responding to any follow-up questions.

Section 239.107 Emergency Exits

FRA is proposing to remove § 239.107 and move the existing requirements that are contained in this section into proposed §§ 238.112 and 238.307. Existing requirements that are contained in § 239.107 and are related to doors would be moved to proposed § 238.112. Existing requirements that are contained in § 239.107 and are related to windows would be moved to proposed § 238.307. FRA believes that the consolidation of these requirements will make the regulation more user-friendly, which will help facilitate compliance with its requirements. FRA does not intend to make substantive changes to the requirements contained in this section in moving them to new sections. Of course, FRA does note that it is proposing to amend the requirements for emergency exits as discussed in this rule.

Appendix A to Part 239—Schedule of Civil Penalties

Appendix A to part 239 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to part 239. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

VIII. Regulatory Impact and Notices

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

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this proposed rule. As part of the regulatory evaluation, FRA has assessed quantitative estimates of the cost streams expected to result from the implementation of this proposed rule. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $21.8 million with a present value (PV, 7 percent) of $13.4 million.

FRA considered the industry costs associated with complying with the three APTA standards, installation of removable panels or windows in single-panel vestibule door of new passenger cars, requirements for bi-parting vestibule doors as well as inspection, testing, and maintenance. The range of total cost estimates depends mostly on whether voluntary implementation of the APTA standards; SS–E–013–99, Rev. 1 Standard for Emergency Lighting System Design for Passenger Cars; SS–PS–004–99, Rev. 2 Standard for Low-Location Exit Path Marking; and SS–PS–002–98, Rev. 3 Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment, in this proposed rule are considered as a cost of the rulemaking. Many railroads have already implemented these APTA standards in advance of this NPRM. .

FRA believes that $13.4 million is the most appropriate estimate of regulatory cost. For more details on the costing, please see the Regulatory Evaluation found in the docket. The requirements that are expected to impose the largest burdens relate to emergency lighting, door/removable panels or windows (or bi-parting doors), and emergency egress and rescue access marking and instructions. The table below presents the estimated costs associated with the proposed rulemaking.

20-Year Cost for Proposed Rule

Door/Removable Panels or Windows, and Bi-Parting Doors	$4,399,223
Emergency Lighting	2,450,213
Emergency Egress and Rescue Access Marking and Instructions	4,730,631
Low-Location Emergency Exit Path Markings	1,377,615
Debriefing and Critique	N/A
Inspection, Testing, and Recordkeeping (APTA Standards)	405,296
Total	13,362,979

Future costs are discounted to present value using a 7 percent discount rate.

As part of the Regulatory Evaluation, FRA has explained what the likely benefits for this proposed rule would be, and provided a break-even analysis. The proposed rulemaking is expected to improve railroad safety by promoting the safe evacuation of passengers and crewmembers in the event of an emergency. The primary benefits include a heightened safety environment in egress from a passenger train after an accident. This corresponds to a reduction of casualties and fatalities in the aftermath of an accident or other emergency situations. FRA believes the value of the anticipated safety benefits would justify the cost of implementing the proposed rule.

B. Initial Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determine and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposed requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential

economic impact on small entities that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination.

The proposed rule would apply to commuter and intercity passenger railroads. Based on information currently available, FRA estimates that less than 2 percent of the total railroad installation costs associated with implementing the proposed rule would be borne by small entities. Based on analysis that uses generally conservative assumptions, FRA estimates that the cost for the proposed rule will range between $21.8 million and $40.8 million for the railroad industry. There are two passenger railroads that would be considered small for purposes of this analysis and together they comprise less than 7 percent of the railroads impacted directly by this proposed regulation. Both of these railroads would have to make some investment to meet the proposed requirements. These small railroads have much smaller fleets that the average passenger railroad, allowing them to meet the proposed requirements at lower overall costs. Thus, although a substantial number of small entities in this sector would likely be impacted, the economic impact on them would likely not be significant. This IRFA is not intended to be a stand-alone document. In order to get a better understanding of the total costs for the railroad industry, which forms the basis for the estimates in this IRFA, or more cost detail on any specific requirement, please see the Regulatory Evaluation that FRA has placed in the docket for this rulemaking.

In accordance with the Regulatory Flexibility Act, an IFRA must contain:

(1) A description of the reasons why the action by the agency is being considered.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

(3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.

(4) A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record.

(5) An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

Experience with passenger train accidents and simulations, and technological advances in emergency systems provide the main impetus for these proposed enhancements and additions to FRA's existing requirements related to passenger train emergency systems. Incorporation by references of these APTA standards into Part 238 would extend their applicability to all commuter and intercity passenger railroads and make them enforceable by FRA.

As FRA was issuing comprehensive Federal standards for passenger train safety in the late 1990s, APTA was also developing and authorizing complementary industry standards applicable to its commuter and intercity passenger railroad members. By design, three of these APTA standards taken together represent an effective systems approach to enable passengers and train crewmembers to locate, reach, and operate emergency exits, thereby facilitating safe evacuation in an emergency. The APTA standards address emergency lighting, signage for emergency egress and access, and low-location exit path markings. While the three APTA standards contain specific requirements, they allow for flexibility in the application of those requirements. The Emergency Preparedness Task Force was charged with reviewing the standards. After careful review, the Task Force recommended revising the standards to address relevant evolving technology, and incorporating them by reference in their entirety into the Federal regulations.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The purpose of this rulemaking is to further the safety of passenger train occupants through both enhancements and additions to FRA's existing requirements for emergency systems on passenger trains. As discussed in the Regulatory Evaluation, FRA is proposing incorporate three APTA standards covering emergency lighting; emergency egress and rescue access signage; and low-location emergency exit path markings for all passenger cars. For new passenger cars, FRA is also proposing requiring vestibule doors and other interior doors intended for passage through a passenger car to be equipped with removable panels or windows or bi-parting doors. The substance of this proposed regulation was developed by the RSAC's Passenger Safety Working Group. In addition, FRA is clarifying requirements for debriefing and critique following emergency situations and simulations.

In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act (codified at 49 U.S.C. 20133).

3. A Description of, and Where Feasible, an Estimate of Small Entities to Which the Proposed Rule Would Apply

The ''universe'' of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This proposed rule would directly affect commuter and intercity passenger railroads. It would indirectly impact manufacturers of passenger cars, emergency egress and rescue access related marking, and low-location emergency exit path marking .

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

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. 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 this rulemaking.

Railroads

There are only two intercity passenger railroads, Amtrak and the Alaska Railroad. Neither is considered to be a small entity. Amtrak is a Class I railroad and the Alaska Railroad is a Class II railroad. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000.

The level of costs incurred by each organization should generally vary in proportion to either the size of their passenger car fleet. For instance, railroads with fewer passenger cars would have lower overall costs associated with implementing the proposed standards. There are currently 28 commuter railroad operations in the U.S. Most commuter railroads are part of larger transportation organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two commuter railroads do not fall in this category and are considered small entities. The impact of the two small railroads is discussed in the following section.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

For a thorough presentation of cost estimates, please refer to the Regulatory Evaluation, which has been placed in the docket for this rulemaking.

FRA notes that the requirements contained in this proposed rule were developed in consultation with an RSAC Working Group and task force that included representatives from Amtrak, individual commuter railroads, individual passenger car manufacturers, sign manufacturers and suppliers, and APTA, which represents the interests of commuter railroads and passenger car manufacturers in regulatory matters.

The first small entity that would be impacted by this proposal is a commuter train operation that is an express service to and from a sporting event. It is owned by a Class III freight railroad that owns and operates the 6 bi-level passenger cars used for this commuter operation. The impacts on this entity could include upgrades related to achieving compliance with the 2007 APTA standards for emergency lighting, emergency signage, and low-location exit path markings. The initial costs associated with completing these upgrades for the railroad is estimated to range between $14,482 and $28,694 depending on the existing level of compliance and could be spread over 2 to 3 years. Since this railroad provides service under contract to a State institution, it could be able to pass some or all of the compliance cost on to that institution. Thus, the small entity itself would not be significantly impacted.

The second small entity is a commuter railroad that is owned by a Class III railroad. This entity is fully compliant with existing passenger railroad regulations. Out of its entire fleet of 9 cars, FRA estimates that 4 cars may need emergency lighting upgrades to comply with the emergency lighting requirement. The costs associated with the upgrades of these four cars are estimated to be $18,758, which could be spread over 2 to 3 years.

The proposed rule would require railroads to test a representative sample of passenger railcars in accordance with the APTA LLEPM standard, using the procedures in Annex F or another statistically valid documented sampling method. The estimated cost of an inspection/record keeping is $1,500 per car over the 20-year period analyzed. This cost was included in the total costs for each of the small entities above. By following the proposed regulation, only a small percentage of the fleet would need to be tested. Due to the size of the fleet of each of these small entities, it is estimated only one car would be tested in each of the fleets. The record keeping burden to the railroad industry is estimated to be approximately 5 additional minutes per new car introduced to the fleet. FRA assumed that a ''Maintenance of Equipment & Stores'' [1] personnel would have the professional skills to prepare the records. Neither of these railroads is operating newly build cars. They both operate cars purchased from other passenger railroads.

FRA believes that the two small entities directly impacted would not be impacted significantly. One of the entities probably would be able to pass these costs onto a public entity that contracts to use the small entity's equipment for fall sporting events. The other entity would likely only need to upgrade the emergency lighting in four cars, and the FRA does not believe that will be a significant financial impact on their operations.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant federal rules that may duplicate, overlap or conflict with the proposed rule.

FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a determination.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours
238.112—Doors (New) —Conspicuously marking/posting instructions on emergency egress doors.	28	45,804 markings/Instructions.	15 minutes	11,451

[1] Surface Transportation Board (STB) Data Statement No. A–300 for Year 2009 indicates that ''Maintenance of Equipment & Stores'' personnel earn, on average, a ''straight time rate'' of $25.25 per hour.

CFR Section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours
—Marking/posting instructions on emergency responder access doors.	28	30,536 markings	15 minutes	7,634
—Marking/posting instructions on removable panel in car vestibule doors.	28	1,340 panel markings.	15 minutes	335
238.113—Emergency window exits				
—Markings (Current requirement)	28	662 markings	60 min./90 min./120 min.	964
238.114—Rescue access windows				
—Markings/instructions on each access window (Current Requirement).	28	1,092 markings	45 minutes	819
238.121—Emergency Communications: Intercom System				
—Posting legible/understandable operating instructions at/near each intercom (Current requirement).	28	116 marked intercoms.	5 minutes	10
238.123—Emergency roof access				
—Marking/instructions of each emergency roof access (Current requirement).	28	232 marked locations.	30 minutes	116
238.303—Exterior calendar day mechanical inspection of passenger equipment				
—Replacement markings of rescue access related exterior markings, signs, instructions (Current requirement).	28	150 marking	20 minutes	50
238.303—Records of non-complying conditions (Current requirement).	28	150 records	2 minutes	5
238.305—Interior calendar day inspection of passenger cars				
—Non-complying end/side doors: Written notification to crew of condition + notice on door.	28	260 written notifications + 260 notices.	1 minute	9
—Non-complying public address/intercom systems: Written notification to crews.	28	300 written notifications.	1 minute	5
—Records of public address/intercom system non-complying conditions (Current requirements).	28	300 records	2 minutes	10
—*New requirement*				
—Written procedure for mitigating hazards of non-complying conditions relating to removable panels/windows in vestibule doors.	28	28 written Procedures.	40 hours	1,120
—Written notification to train crew of non-complying condition relating to panels/windows in vestibule doors.	28	458 notices	2 minutes	15
238.307—Periodic mechanical inspection of passenger cars				
—Records of the inspection, testing, and maintenance of emergency window exits (New requirement).	28	7,634 car inspections/Records.	5 minutes	636
—Emergency roof markings and Instructions—replacements (Current requirement).	28	32 markings	20 minutes	11
238.311—Single car test (Current Requirements)				
—Copies of APTA Standard SS–M–005–98 to Railroad Head Training Person.	28	28 copies	15 minutes	7
—Copies to Other Railroad Personnel	28	336 copies	2 minutes	11

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Office of Safety, Information Clearance Officer, at (202) 493–6292, or Ms. Kimberly Toone, Office of Information Technology, at (202) 493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 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, the agency consults with 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.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any direct compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, State and local officials were involved in developing this proposed rule. The RSAC, which recommended the proposals addressed in this NPRM, has as permanent members two organizations directly representing State and local interests, AASHTO and ASRSM.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act at 45 U.S.C. 22–34, repealed and recodified at 49 U.S.C. 20701–20703. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106. Moreover, the former LIA has been interpreted by the Supreme Court as preempting the field concerning locomotive safety. *See Napier* v. *Atlantic Coast Line R.R.,* 272 U.S. 605 (1926).

E. Environmental Impact

FRA has evaluated this proposed regulation 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 proposed regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows: (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation are excluded.

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 regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

F. 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 1 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 $143,100,000 to account for inflation. This proposed rule would not result in the expenditure of more than $143,100,000 by the public sector in any one year, and thus preparation of such a statement is not required.

G. Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.dot.gov/privacy.html.*

List of Subjects

49 CFR Part 238

Passenger equipment, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Passenger equipment, Railroad safety.

For the reasons discussed in the preamble, FRA proposes to amend parts 238 and 239 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 238—[AMENDED]

1. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 238.5 is amended by adding definitions of ''End-frame door'' and ''Vestibule door,'' and by revising the definitions of ''APTA'' and ''Vestibule'' in alphabetical order to read as follows:

§ 238.5 Definitions.

* * * * *

APTA means The American Public Transportation Association.

* * * * *

End-frame door means an end-facing door normally located between, or adjacent to, the collision posts or similar end-frame structural elements.

* * * * *

Vestibule means an area of a passenger car that normally does not contain seating, is located adjacent to a side exit door, and is used in passing from a seating area to a side exit door.

Vestibule door means a door separating a seating area from a vestibule. End-frame doors and doors separating sleeping compartments or similar private compartments from a passageway are not vestibule doors.

* * * * *

3. Section 238.112 is added to read as follows:

§ 238.112 Doors.

Except as provided in § 238.439—

(a) Each powered, exterior side door in a vestibule that is partitioned from the passenger compartment of a passenger car shall have a manual override device that is:

(1) Capable of releasing the door to permit it to be opened without power from inside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement. If the door is dual-leafed, only one of the door leaves is required to respond to the manual override device.

(b) Each Tier I passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, and all Tier II passenger cars shall have a minimum of two exterior side doors, one in each side of the car. Each such door shall provide a minimum clear opening with dimensions of 30 inches horizontally by 74 inches vertically. A set of dual-leafed doors is considered a single door for purposes of this paragraph. Each powered, exterior side door on each such passenger car shall have a manual override device that is:

(1) Capable of releasing the door to permit it to be opened without power from both inside and outside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may access the override device from both inside and outside the car without requiring the use of a tool or other implement.

Note: The Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway clearance (*See* 49 CFR part 38).

(c) A manual override device used to open a powered, exterior door may be protected with a cover or a screen capable of removal without requiring the use of a tool or other implement.

(d) All doors intended for emergency egress shall be conspicuously and legibly marked on the inside of the car, and legible and understandable instructions shall be provided for their use, as specified in § 238.125.

(e) All doors intended for access by emergency responders shall be marked on the exterior of the car with retroreflective material, and legible and understandable instructions shall be posted at or near each such door, as specified in § 238.125.

(f) *Vestibule doors and other interior doors intended for passage through a passenger car.* The requirements of this paragraph apply only to passenger cars ordered on or after (DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**), or placed in service for the first time on or after (1520 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**).

(1) *General.* Except for a door providing access to a control compartment and a bi-parting door, which is subject to the requirements in paragraph (f)(3) of this section, each vestibule door and any other interior door intended for passage through a passenger car shall be equipped with a removable panel or removable window in the event the door will not open in an emergency, or the car is on its side and the door is difficult to open. If the door is powered, it shall have a manual override device that conforms with the requirements of paragraphs (f)(4) through (f)(6) of this section.

(2) *Removable panels and windows.*

(i) *Ease of operability.* Each removable panel or window shall be designed to permit rapid and easy removal from both the vestibule and the passenger seating area during an emergency situation without requiring the use of a tool or other implement.

(ii) *Dimensions.* Removal of the panel or window shall create an unobstructed opening in the door with minimum dimensions of 21 inches horizontally by 28 inches vertically.

(iii) *Location.* Each removable panel or removable window shall be located so that the lowest point of the opening created by removing the panel or window is no higher than 18 inches from the floor.

(3) *Bi-parting doors.* Each powered, bi-parting vestibule door and any other interior, powered bi-parting door intended for passage through a passenger car shall be equipped with a manual override device and mechanism to retain each door leaf in the open position (*e.g.,* ratchet and pawl, or sprag). Each manual override device shall conform with the requirements of paragraphs (f)(4), (f)(5)(ii), and (f)(6) of this section.

(4) *Manual override devices.* Each manual override device shall be:

(i) Capable of releasing the door or door leaf, if door is bi-parting, to permit it to be opened without power;

(ii) Located adjacent to the door or door leaf, if door is bi-parting, it controls; and

(iii) Designed and maintained so that a person may readily access and operate the override device from both the vestibule and the passenger seating area without the use of any tool or other implement.

(5) *Marking and instructions.*

(i) Each removable panel or window in a vestibule door shall be conspicuously and legibly marked with luminescent material on both the vestibule side of the door and the passenger seating area side of the door, to facilitate passenger egress in an emergency situation, as specified in section 5.4.2 of APTA Standard SS–PS–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' October 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21. Legible and understandable operating instructions shall be posted on both the vestibule and the passenger seating area sides of the door at each such panel or window.

(ii) Each manual door override device and each retention mechanism shall be conspicuously and legibly marked with luminescent material. Legible and understandable operating instructions for each manual override device and each retention mechanism shall be

posted at or near each such device or mechanism.

(6) *Testing.* At an interval not to exceed 184 days, as part of the periodic mechanical inspection, a railroad shall test a representative sample of the removable panels, removable windows, manual override devices, and door retention mechanisms on its cars to determine that they operate as intended. The sampling method must conform to a formalized statistical test method.

4. Section 238.113 is amended by revising paragraph (d) and adding new paragraph (e) to read as follows:

§ 238.113 Emergency window exits.

* * * * *

(d) *Marking and instructions.*

(1) Each emergency window exit shall be conspicuously and legibly marked with luminescent material on the inside of each car to facilitate egress, as specified in § 238.125.

(2) Legible and understandable operating instructions, including instructions for removing the window, shall be posted at or near each such window exit, as specified in § 238.125. If window removal may be hindered by the presence of a seatback, headrest, luggage rack, or other fixture, the instructions shall state the method for allowing rapid and easy removal of the window, taking into account the fixture(s), and this portion of the instructions may be in written or pictorial format.

(e) At an interval not to exceed 184 days, as part of the periodic mechanical inspection, a railroad shall test a representative sample of emergency window exits on its cars to determine that they operate as intended. The sampling method must conform to a formalized statistical test method.

5. Section 238.114 is amended by revising paragraph (d) to read as follows:

§ 238.114 Rescue access windows.

* * * * *

(d) *Marking and instructions.*

(1) Each rescue access window shall be marked with retroreflective material on the exterior of each car as specified in § 238.125. A unique and easily recognizable symbol, sign, or other conspicuous marking shall also be used to identify each such window.

(2) Legible and understandable window-access instructions, including instructions for removing the window, shall be posted at or near each rescue access window as specified in § 238.125.

6. Section 238.115 is revised to read as follows:

§ 238.115 Emergency lighting.

After [DATE ONE YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], emergency lighting shall be provided in each passenger car in accordance with the minimum requirements specified in APTA Standard SS–E–013–99, Rev. 1, ''Standard for Emergency Lighting System Design for Passenger Cars,'' October 2007, or an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21.

7. Section 238.121 is amended by revising the first sentence of paragraph (a)(2), paragraph (b)(2), and the introductory text of paragraph (c) to read as follows:

§ 238.121 Emergency communications.

(a) * * *

(2) *New Tier I and all Tier II passenger cars.* Each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and all Tier II passenger cars shall be equipped with a PA system that provides a means for a train crewmember to communicate by voice to passengers of his or her train in an emergency situation. * * *

(b) * * *

(2) *Marking and instructions.* The following requirements apply to each Tier I passenger car on or after April 1, 2010, and to all Tier II passenger cars. Legible and understandable operating instructions shall be posted at or near each such intercom, and the location of each intercom intended for passenger use shall be conspicuously marked with luminescent material that either:

(i) Meets the minimum requirements as specified in § 238.125, or an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21; or

(ii) For material installed prior to [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], meets the requirements specified in paragraph (b)(2) of this section in effect on April 1, 2008 (*see* 49 CFR parts 200–299, revised as of October 1, 2008).

(c) *Back-up power.* PA and intercom systems in Tier I passenger cars ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and in all Tier II passenger cars shall have a back-up power system capable of—

* * * * *

8. Section 238.123 is amended by revising paragraph (e) to read as follows:

§ 238.123 Emergency roof access.

* * * * *

(e) *Marking and instructions.* As specified in § 238.125—

(1) Each emergency roof access location shall be conspicuously marked with retroreflective material of contrasting color; and

(2) Legible and understandable instructions shall be posted at or near each emergency roof access location.

9. Section 238.125 is added to read as follows:

§ 238.125 Marking and instructions for emergency egress and rescue access.

After [DATE ONE YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], emergency signage and markings shall be provided for each passenger car in accordance with the minimum requirements specified in APTA Standard SS–PS–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' October 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21.

10. Section 238.127 is added to read as follows:

§ 238.127 Low-location emergency exit path marking.

After [DATE ONE YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], low-location emergency exit path marking shall be provided in each passenger car in accordance with the minimum requirements specified in APTA Standard SS–PS–004–99, Rev. 2. ''Standard for Low-Location Exit Path Marking,'' October, 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21.

§ 238.235 [Removed and reserved]

11. Section 238.235 is removed and reserved.

12. Section 238.305 is amended by revising paragraph (a), revising the introductory text of paragraph (c), adding paragraphs (c)(11) and (c)(13), and revising the introductory text of paragraph (d) to read as follows:

§ 238.305 Interior calendar day mechanical inspection of passenger cars.

(a) Except as provided in paragraph (e) of this section, each passenger car shall receive an interior mechanical inspection at least once each calendar day that it is placed in service.

* * * * *

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective when discovered in service, except as

provided in paragraphs (c)(8) through (c)(13) and paragraph (d) of this section.

* * * * *

(11) Low-location emergency exit path markings required by § 238.127 are in place and conspicuous.

* * * * *

(13) Removable panels and windows in vestibule doors and other interior doors used for passage through a passenger car are properly in place and secured, based on a visual inspection. A noncomplying passenger car may remain in passenger service until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncomplying condition is discovered, where it shall be repaired or removed from service; provided—

(i) The railroad has developed and follows written procedures for mitigating the hazard(s) caused by the noncomplying condition. The railroad's procedures shall include consideration of the type of door in which the removable panel or window is located, the manner in which the door is normally opened, and the risk of personal injury resulting from a missing, broken, or improperly secured removal panel or window; and

(ii) The train crew is provided written notification of the noncomplying condition.

(d) Any passenger car found not to be in compliance with the requirements contained in paragraphs (c)(5) through (c)(11) of this section at the time of its interior calendar day mechanical inspection may remain in passenger service until the car's next interior calendar day mechanical inspection where it must be repaired or removed from passenger service; provided, all of the specific conditions contained in paragraphs (c)(8) through (c)(10) of this section are met and all of the following requirements are met:

* * * * *

13. Section 238.307 is amended by revising paragraphs (c)(4), (c)(5), and (e)(1) to read as follows:

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

* * * * *

(c) * * *

(4) A representative sample of the following emergency systems properly operate: removable panels, removable windows, manual override devices, and door retention mechanisms, in accordance with § 238.112; and emergency window exits, in accordance with § 238.113. This portion of the periodic mechanical inspection may be conducted independently of the other requirements in this paragraph (c). Each railroad shall retain records of the inspection, testing, and maintenance of the emergency window exits for two calendar years after the end of the calendar year to which they relate.

(5) With regard to the following emergency systems:

(i) Emergency lighting systems required under § 238.115 are in place and operational; and

(ii) Low-location emergency exit path markings required under § 238.127 are operational.

* * * * *

(e) * * *

(1) A record shall be maintained of each periodic mechanical inspection required to be performed by this section. This record shall be maintained in writing or electronically, provided FRA has access to the record upon request. The record shall be maintained either in the railroad's files, the cab of the locomotive, or a designated location in the passenger car. Except as provided in paragraph (c)(4) of this section, the record shall be retained until the next periodic mechanical inspection of the same type is performed and shall contain the following information:

* * * * *

14. Section 238.311 is amended by revising paragraph (a) to read as follows:

§ 238.311 Single car test.

(a) Except for self-propelled passenger cars, single car tests of all passenger cars and all unpowered vehicles used in passenger trains shall be performed in accordance with either APTA Standard SS–M–005–98, ''Code of Tests for Passenger Car Equipment Using Single Car Testing Device,'' published March, 1998; or an alternative procedure approved by FRA pursuant to Sec. 238.21. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Washington, DC 20006. You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

15. Section 238.439 is amended by removing paragraphs (a), (b), (e), and (g), redesignating paragraphs (c), (d), and (f) as paragraphs (a) through (c), revising redesignated paragraph (c), and adding introductory text to read as follows:

§ 238.439 Doors.

In addition to the requirements of § 238.112—

* * * * *

(c) For a passenger car ordered prior to (60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**), and placed in service prior to (1520 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**), a passenger compartment end door (other than a door providing access to the exterior of the trainset) shall be equipped with a kick-out panel, pop-out window, or other similar means of egress in the event the door will not open, or shall be so designed as to pose a negligible probability of becoming inoperable in the event of car body distortion following a collision or derailment.

16. Section 238.441 is amended by revising paragraphs (a) and (c) to read as follows:

§ 238.441 Emergency roof access.

(a) *Existing passenger cars and power cars.* Each passenger car and power car ordered prior to April 1, 2009 and placed in service for the first time prior to April 1, 2011, shall have a minimum of one roof hatch emergency access location with a minimum opening of 26 inches by 24 inches, or at least one structural weak point in the roof providing a minimum opening of the same dimensions, to provide access for properly equipped emergency response personnel. Each emergency roof access location shall be conspicuously marked, and legible and understandable operating instructions shall be posted at or near each such location. Such marking shall also conform to the requirements specified in § 238.125.

* * * * *

(c) *New power cars.* Each power car ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, shall have a minimum of one emergency roof access location, with a minimum opening of 26 inches longitudinally by 24 inches

laterally, and comply with the emergency roof access requirements specified in § 238.123(b) and (d). Each emergency roof access location shall be conspicuously marked with retroreflective material of contrasting color meeting the minimum requirements specified in § 238.125, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21. Legible and understandable instructions shall be posted at or near each such location.

PART 239—[AMENDED]

17. Section 239.105 is amended by revising paragraph (a) to read as follows:

§ 239.105 Debriefing and critique.

(a) *General.* Except as provided in paragraph (b) of this section, each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or full-scale simulation to determine the effectiveness of its emergency preparedness plan, and shall improve or amend its plan, or both, as appropriate, in accordance with the information developed. The debriefing and critique session shall be conducted within 60 days of the date of the passenger train emergency situation or full-scale simulation. To the extent practicable, all on-board personnel, control center personnel, and any other employees involved in the emergency situation or full-scale simulation shall participate in the session either:

(1) In person;

(2) Offsite via teleconference; or

(3) In writing, by a statement responding to questions provided prior to the session, and by responding to any follow-up questions.

* * * * *

§ 239.107 [Removed and reserved]

18. Section 239.107 is removed and reserved.

Issued in Washington, DC, on December 19, 2011.

Joseph C. Szabo,

Administrator.

[FR Doc. 2011–33103 Filed 12–30–11; 8:45 am]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076; Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–55; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–55. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–55 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–55

Item	Subject	FAR case	Analyst
I	Preventing Abuse of Interagency Contracts	2008–032	Sakalos.
II	Transition to the System for Award Management (SAM)	2011–021	Loeb.
III	Brand-Name Specifications	2005–037	Clark.
IV	Time-and-Materials and Labor-Hour Contracts for Commercial Items	2009–043	Sakalos.
V	Public Access to the Federal Awardee Performance and Integrity Information System	2010–016	Loeb.
VI	Updated Financial Accounting Standards Board Accounting References	2010–005	Chambers.
VII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–55 amends the FAR as specified below:

Item I—Preventing Abuse of Interagency Contracts (FAR Case 2008–032)

This rule adopts as final, with changes, an interim rule that implemented section 865, Preventing Abuse of Interagency Contracts, of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). This final rule further amends FAR subpart 17.5 to make it clear that this rule only applies to interagency acquisitions when an agency needing supplies or services obtains them using another agency's contract; or when an agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order. A business case analysis must be developed for the establishment and renewal of governmentwide acquisition contracts as well as for multi-agency contracts. Additionally, FAR 35.017 clarifies determination requirements when using a Federally Funded Research and Development Center. This rule does not impose any information collection requirements on small business. There is no significant impact on small businesses because this rule is only applicable to internal operating procedures of the Government.

Item II—Transition to the System for Award Management (SAM) (FAR Case 2011–021)

The Integrated Acquisition Environment (IAE) systems are being transitioned to a new System for Award Management (SAM) architecture. This effort will transition the Central Contractor Registration (CCR) database, the Excluded Parties Listing System (EPLS), and the Online Representations and Certifications Application (ORCA) to SAM. The FAR change will indicate that these IAE systems and the Disaster Response Registry will now be accessed through *http://www.acquisition.gov.* This rule will not significantly affect small business, as the only impact on the public will be the Web site address that offerors/contractors will need to use.

Item III—Brand-Name Specifications (FAR Case 2005–037)

This final rule adopts, with changes, the interim rule that amended the FAR to fully implement Office of Management and Budget memoranda and policies on the use of brand-name specifications. The final rule clarifies that when applicable, the documentation or justification and posting requirements for brand name items only apply to the portion of the acquisition that requires the brand name item. The final rule also adds a requirement to screen the brand name documentation or justification for contractor proprietary data. Further, the final rule requires the contracting officer to post the justifications for an order peculiar to one manufacturer under indefinite-delivery contracts. The rule will benefit small business entities by providing the opportunity for review of brand-name justification and approval documents for contracts and orders awarded noncompetitively, thereby increasing the opportunity for competition for future awards.

Item IV—Time-and-Materials and Labor-Hour Contracts for Commercial Items (FAR Case 2009–043)

This final rule amends the FAR to implement recommendations from the Government Accountability Office to: (1) Ensure that time-and-materials (T&M) and labor-hour (LH) contracts are used to acquire commercial services only when no other contract type is suitable, and (2) instill discipline in the determination of contract type with a view toward managing the risk to the Government. The requirement for a determination and findings when no other contract type is suitable is added to FAR 8.404, Use of Federal Supply Schedules. FAR 8.404 has also been

amended to address increases in the order ceiling price of T&M and LH contracts, to more closely conform to the language at FAR 12.207. In addition, FAR 16.201 is modified and FAR 16.600 is added to clarify that T&M and LH contracts are not types of fixed-price contracts. This rule will not have a significant economic impact on a substantial number of small entities.

Item V—Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010–016)

This rule adopts as final, with changes, an interim rule. The interim rule implemented section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted July 29, 2010. Section 3010 requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, shall be made publicly available. The interim rule notified contractors of this new statutory requirement for public access to FAPIIS.

In response to public comments, the final rule allows a 14-calendar-day delay before making the data available to the public. Contractors have 7 calendar days within those 14 calendar days to assert a disclosure exemption under the Freedom of Information Act. In addition, the FAPIIS system has been modified to allow more space for contractor comments. The rule does not impose any new requirements on small businesses.

Item VI—Updated Financial Accounting Standards Board Accounting References (FAR Case 2010–005)

This final rule amends the FAR sections 31.205–11, 31.205–36, 52.204–10, 52.212–5, and 52.213–4 to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's Accounting Standards Codification of Generally Accepted Accounting Principles (''Codification of GAAP''). These revisions have no effect other than to simply replace the superseded references with updated references.

Item VII—Technical Amendments

Editorial changes are made at FAR 4.603, 8.402, 8.405–5, 8.703, 15.402, 15.403–1, 19.102, 19.402, 22.404–1, 22.1304, 22.1306, 23.205, 23.401, 28.203–3, 42.203, 52.202–1, 52.212–3, 52.219–22, and 52.228–11.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–55 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–55 is effective January 3, 2012, except for Items I, II, III, IV, and VI which are effective February 2, 2012.

Dated: December 21, 2011.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: December 22, 2011.

Mindy S. Connolly,

Chief Acquisition Officer, U.S. General Services Administration.

Dated: December 20, 2011.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2011–33405 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 8, 9, 17, 18, 35, and 41

[FAC 2005–55; FAR Case 2008–032; Item I; Docket 2010–0107, Sequence 1]

RIN 9000–AL69

Federal Acquisition Regulation; Preventing Abuse of Interagency Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, to prevent abuse of interagency contracts.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2008–032.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 77733 on December 13, 2010, to implement paragraphs (b) and (d) of section 865 of the Duncan Hunter National Defense Authorization Act (NDAA). The rule is designed to ensure that the benefits of interagency acquisitions are consistently achieved.

The FAR changes are applicable to all interagency acquisitions issued under the Economy Act (31 U.S.C. 1535) as well as other authorities, in recognition that an increasing number of interagency acquisitions are conducted using authorities other than the Economy Act. This rule strengthens FAR subpart 17.5, Interagency Acquisitions by—

- Broadening the scope of coverage to address all interagency acquisitions that result in a contract action, but does not apply to Federal Supply Schedule (FSS) orders under $500,000;
- Requiring agencies to support the decision to use an interagency acquisition with a determination that such action is the ''best procurement approach;'' and
- Directing that assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency documenting the roles and responsibilities of the respective parties.

Five respondents submitted comments on the interim rule. Two of the respondents from the same organization provided duplicate comments.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

As a result of public comments, changes were made to the interim rule to—

1. Make it clear that FAR subpart 17.5 applies to interagency acquisitions

when an agency needing supplies or services obtains them using another agency's contract; or when an agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order. The subpart does not apply to interagency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction;

2. Revise FAR 35.017 to permit that when a nonsponsoring agency requests, under the authority of the Economy Act, the use of a Federally Funded Research and Development Center (FFRDC), the nonsponsoring agency may incorporate the determination required by FAR 17.502–1(a) into the determination and finding justification required by FAR 17.502–2(c);

3. Expand the requirement for business-case analysis when creating multi-agency contracts (MACs) to include governmentwide acquisition contracts (GWACs). Therefore, the procedures for establishing MACs and GWACs have been relocated from FAR 17.502–2(d) to 17.502–1(c) and hyperlinked to the Office of Federal Procurement Policy (OFPP) Business Case guidance.

B. Analysis of Public Comments

Respondents submitted comments covering the following seven categories:

- Best procurement approach determination.
- ''Direct acquisition'' definition.
- Written agreement for direct acquisition.
- Citing correct statutory authority for an interagency agreement.
- Content of determination and findings.
- Federal Supply Schedule orders and open market procurements.
- Business-case analysis.

1. Best Procurement Approach Determination

Comment: One respondent asked if a class/commodity determination could be used for those products/services that might be ordered repeatedly from the FSS. Otherwise, according to the respondent, a determination for each procurement will be necessary.

Response: The best procurement approach determination, as described at FAR 17.502–1(a), is required by section 865 of the NDAA for Fiscal Year 2009 for any FSS order exceeding $500,000. The law does not provide for class or commodity determinations.

Comment: Some respondents expressed concern that an additional determination is required when agencies are using Schedules. The amended FAR 8.404(2) has added a requirement for FSS orders over $500,000 to make a determination that use of FSS is the best procurement approach. However, FAR 8.002 establishes use of FSS as part of the ''Priorities for Use of Government Supply Sources.'' It is not clear why an additional determination is required when agencies are using the Schedules as intended and as established by the FAR.

Response: The determination is required because it is mandated by section 865 of the NDAA for Fiscal Year 2009 and applies to FSS orders over $500,000. Federal Supply Schedules are already priority sources, although not mandatory.

Comment: One respondent asked for additional guidance for lower prices when determining the best procurement approach at FAR 17.502–1(a)(2)(ii)(B). The reference to lower prices does not provide adequate guidance to contracting officers. Also, according to the respondent, an additional factor that should be listed under FAR 17.502–1(a)(2) is the cycle time to award.

Response: Lower price is one of the factors to be considered in determining the appropriate contract vehicle. Once this analysis is performed, other factors should be considered while following the ordering procedures as prescribed in FAR subparts 8.4 and 16.5. The determination criteria outlined at FAR 17.502–1(a)(2) is not an all inclusive list and does not preclude the use of other factors.

2. ''Direct Acquisition'' Definition

Comment: One respondent suggested adding to the current definition of ''direct acquisition'' the following sentence: ''A direct acquisition is also a type of interagency agreement where the servicing agency performs work using their own resources.''

One respondent suggested adding the phrase ''or through performance that uses the servicing agency's resources'' in the text of FAR 17.501(a), after the phrase, ''such as task and delivery-order contracts.'' Further, the respondent recommended, at FAR 17.502–1, adding a subsection (a)(3) to require that, prior to placing an order with another agency, the requesting agency shall make a determination that the servicing agency is able to provide the required supplies or services.

Response: A ''direct acquisition,'' as defined in FAR 2.101(b)(2), is a type of interagency acquisition, not a type of interagency agreement. An interagency agreement establishes general terms and conditions governing the relationship between servicing agencies and requesting agencies as set forth in FAR 17.502–1(b)(1)(i). Interagency acquisitions may be a product of interagency agreements; the two are not the same. An interagency agreement whereby a servicing agency performs work using its own resources is not considered an interagency acquisition under the FAR.

The second respondent's comment relies on the addition of interagency agreements in the definition of direct acquisition, which the Councils did not adopt.

To provide additional clarity that the FAR only covers interagency transactions that result in a contract action, the rule was revised at FAR 17.500 and 17.502–2.

3. Written Agreement for Direct Acquisition

Comment: One respondent stated that the current text at FAR 17.502–1(b)(2) should be deleted and replaced with the requirement for a written agreement because section 865 of the NDAA for Fiscal Year 2009 applies to all interagency agreements.

Response: The written agreement assigns responsibility for contract administration and management between the requesting agency and the servicing agency. The FAR does not require an additional written agreement for a direct acquisition because the basic contract outlines administration and management responsibilities; therefore, the requesting agency should follow ordering procedures/instructions per the contract vehicle.

4. Citing Correct Statutory Authority for an Interagency Agreement

Comment: One respondent recommended that FAR 17.502–2(b) be revised by dividing into two parts and adding new text as follows: ''(2) Agencies are responsible for determining whether statutory authority other than Economy Act applies to a particular interagency agreement.'' The respondent believed that because interagency agreements result in the transfer of funds from one agency to another, agencies must choose the correct authorizing statute for a particular interagency transaction.

Response: The statutory authority should be cited in the interagency agreement. Additional guidelines for preparing interagency agreements, including statutory authorities, are available at FAR 17.502–1(b).

5. Content of Determination and Findings for Economy Act Acquisitions

Comment: One respondent suggested adding a new subsection at FAR 17.502–2(c), to read as follows: ''(3) The D&F should provide factual information to support the determinations of (c)(2).'' According to the respondent, without a requirement for factual information, the requesting agency's determination can be added as a mere unsupported statement.

Response: Findings are statements of fact or rationale essential to support the determination and are already required in any determination and findings (D&F), as defined at FAR 1.701.

Note that the FAR does not require a formal D&F for determinations of best procurement approach. They are prepared in accordance with FAR 17.501–1(a).

6. Federal Supply Schedule Orders and Open Market Procurements

Comment: One respondent expressed concern that the new rule requiring a best procurement approach determination for FSS orders exceeding $500,000, combined with the lack of corresponding determination for open market commercial item procurements, creates a presumption of favoring duplicative, open market procurements. According to the respondent, the rule also creates an incentive to split FSS orders to avoid exceeding the $500,000 threshold for a determination.

One respondent suggested that to provide clarity and ensure a level playing field in the acquisition planning process, the FAR should be amended to require a best procurement approach determination for open market procurements as well as FSS orders and other interagency transactions. Further, according to the respondent, FAR 7.105(b), Contents of written acquisition plans, should be amended to include the requirement for a best procurement approach determination for all transactions requiring an acquisition plan, including open market procurements.

Response: The best procurement approach determination is required for FSS orders greater than $500,000 by section 865 of the NDAA for Fiscal Year 2009. This statute does not encourage the splitting of orders exceeding the $500,000 threshold. FSS contracts are already priority sources, although not mandatory. The statute seeks to prevent abuse and implement controls for the interagency acquisitions process and is not intended to create barriers to the use of the FSS.

Per FAR 7.102, agencies are required to perform acquisition planning and conduct market research for all acquisitions to ensure that the acquisition represents the best interests of the Government. If the result of acquisition planning is to use either a direct acquisition or an assisted acquisition, then the contracting officer is required to prepare a best procurement approach determination.

As for the comment of creating a presumption of favoring duplicative, open market procurements, FAR case 2009–024, Prioritizing Sources of Supplies and Services for Use by the Government, which was published as a proposed rule on June 14, 2011 (76 FR 34634), will address the priority and consideration of open market sources as part of acquisition planning. The recommendation for developing a best procurement approach determination for open market procurements is outside the scope of this case.

7. Business-Case Analysis

Comment: One respondent suggested that FAR 17.502–2(d) should require that the business-case analysis address whether any other interagency contract vehicles, like the Multiple-Award Schedule program, meet the servicing agency's needs.

Response: Business-case analysis is required by this statute for multi-agency contracts under the Economy Act. The requirement for the servicing agency to consider other existing contract vehicles is already covered under business-case analysis requirements for MACs and GWACs, which has been relocated to FAR 17.502–1(c).

C. Other Changes

During deliberations, the Councils determined that revisions to FAR 35.017–3 were necessary to clarify and streamline instructions for the placement of orders with FFRDCs. The FAR text at 35.017–3 has been revised to permit nonsponsoring agencies desiring to place orders against an FFRDC contract the option of incorporating the best procurement approach determination required by FAR 17.502–1(a) into the D&F required by FAR 17.502–2(c), subject to approval by the sponsoring agency.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any requirements on small entities.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 4, 7, 8, 9, 17, 18, 35, and 41

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 2, 4, 7, 8, 9, 17, 18, 35, and 41, which was published in the **Federal Register** at 75 FR 77733, December 13, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 17 and 35 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 17—SPECIAL CONTRACTING METHODS

■ 2. Amend section 17.500 by removing from paragraph (a) ''paragraph (b)'' and adding ''paragraph (c)'' in its place; revising paragraph (b); and adding paragraph (c) to read as follows:

17.500 Scope of subpart.

* * * * *

(b) This subpart applies to interagency acquisitions, see 2.101 for definition, when—

(1) An agency needing supplies or services obtains them using another agency's contract; or

(2) An agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order.

(c) This subpart does not apply to—

(1) Interagency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction; or

(2) Orders of $500,000 or less issued against Federal Supply Schedules.

■ 3. Amend section 17.502–1 by revising the introductory text of paragraph (a)(2); removing from paragraph (a)(2)(ii)(A) ''already''; and adding paragraph (c) to read as follows:

17.502–1 General.

(a) * * *

(2) *Direct acquisitions.* Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach and shall obtain the concurrence of the requesting agency's responsible contracting office. At a minimum, the determination shall include an analysis, including factors such as:

* * * * *

(c) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts.* In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) business case guidance, available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf.* The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, *e.g.,* will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

■ 4. Amend section 17.502–2 by—

■ a. Revising paragraphs (a) and (c);

■ b. Removing paragraph (d);

■ c. Redesignating paragraph (e) as paragraph (d); and

■ d. Revising the newly redesignated paragraph (d)(4) to read as follows:

17.502–2 The Economy Act.

(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services from another agency. The FAR applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transaction does not result in a contract or an order, then the FAR does not apply. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

* * * * *

(c) *Requirements for determinations and findings.* (1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall—

(i) State that use of an interagency acquisition is in the best interest of the Government;

(ii) State that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source; and

(iii) Include a statement that at least one of the following circumstances applies:

(A) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.

(B) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(C) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(2) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

(3) The requesting agency shall furnish a copy of the D&F to the servicing agency with the request for order.

(d) * * *

(4) In no event shall the servicing agency require, or the requesting agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

17.503 [Amended]

■ 5. Amend section 17.503 by removing from paragraph (b)(4) ''(see 17.502–2(e))'' and adding ''(see 17.502–2(d))'' in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

■ 6. Amend section 35.017–3 by revising paragraph (b) to read as follows:

35.017–3 Using an FFRDC.

* * * * *

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection.

(1) The nonsponsoring agency shall prepare a determination in accordance with 17.502–1(a) and provide the documentation required by 17.503(e) to the sponsoring agency.

(2) When a D&F is required pursuant to 17.502–2(c), the nonsponsoring agency may incorporate the determination required by 17.502–1(a) into the D&F and provide the documentation required by 17.503(e) to the sponsoring agency.

(3) When permitted by the sponsor, a Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with part 6.

[FR Doc. 2011–33409 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 9, 13, 18, 25, 26, and 52

[FAC 2005–55; FAR Case 2011–021; Item II; Docket 2011–0021, Sequence 1]

RIN 9000–AM14

Federal Acquisition Regulation; Transition to the System for Award Management (SAM)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update certain definitions and clauses pertaining to three procurement systems included in the Integrated Acquisition Environment—the Central Contractor Registration database, the Excluded Parties List System, and the Online Representations and Certifications Application. These three Integrated Acquisition Environment systems and the Disaster Response Registry will now be accessed through a single Web site.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2011–021.

SUPPLEMENTARY INFORMATION:

I. Background

The Integrated Acquisition Environment (IAE) is an electronic-Government initiative. The IAE is aggregating disparate Federal acquisition content, which is currently housed in numerous online systems, by providing one Web site for regulations, systems, resources, opportunities, and training. The Web site at *https://www.acquisition.gov* was designed to create an easily navigable resource that is both more efficient and transparent.

The transition of the IAE to the new System for Award Management (SAM) architecture has begun. This effort will transition the Central Contractor Registration (CCR) database, the Excluded Parties List System (EPLS), and the Online Representations and Certifications Application (ORCA) to the new architecture. This case provides the first step in updating the FAR for these changes, and it updates the Web addresses present in the FAR for these systems as being accessible through *https://www.acquisition.gov.* This rule also amends the FAR to provide for accessing the Disaster Response Registry through *https://www.acquisition.gov.* As the transition to SAM progresses, future FAR cases are anticipated to change the current names of the systems to SAM, as well as to begin the transition of the remaining IAE systems.

II. FAR Changes

This case makes the following administrative changes to the FAR:

- Deletes the definition at 2.101 for ''business partner network,'' which is no longer necessary in the SAM architecture.
- Deletes reference to ''business partner network'' at 4.1100, Scope, which is no longer necessary in the SAM architecture.
- Revises the relevant database references shown throughout the FAR, to show the new Web site address at *https://www.acquisition.gov.* Databases include the CCR, EPLS, ORCA, and Disaster Response Registry.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 4, 7, 9, 13, 18, 25, 26, and 52

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, 9, 13, 18, 25, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, 9, 13, 18, 25, 26, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b)(2) by removing the definition ''Business Partner Network (BPN)'' and revising the definitions ''Disaster Response Registry'' and ''Online Representations and Certifications Application (ORCA)'' to read as follows:

2.101 Definitions.

* * * * *

Disaster Response Registry means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is accessed via *https://www.acquisition.gov* and alternately through the FEMA Web site at *http://www.fema.gov/business/index.shtm.* (See 26.205.)

* * * * *

Online Representations and Certifications Application (ORCA) means the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. Access ORCA via *https://www.acquisition.gov.*

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.1100 [Amended]

■ 3. Amend section 4.1100 by removing from the introductory text ‘‘, a part of the Business Partner Network (BPN)’’.

4.1103 [Amended]

4. Amend section 4.1103 by removing from paragraph (a)(2)(i) ‘‘*http://www.ccr.gov*’’ and adding ‘‘*https://www.acquisition.gov*’’ in its place.

4.1104 [Amended]

■ 5. Amend section 4.1104 by removing ‘‘at *www.ccr.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place.

4.1201 [Amended]

■ 6. Amend section 4.1201 by removing from paragraph (a) ‘‘*http://orca.bpn.gov*’’ and adding ‘‘ORCA accessed via *https://www.acquisition.gov*’’ in its place.

PART 7—ACQUISITION PLANNING

7.103 [Amended]

■ 7. Amend section 7.103 by removing from paragraph (y) ‘‘at *www.ccr.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.404 [Amended]

■ 8. Amend section 9.404 by removing from paragraph (d) ‘‘at *http://epls.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.102 [Amended]

■ 9. Amend section 13.102 by removing from paragraph (a) ‘‘at *http://www.ccr.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 10. Revise section 18.102 to read as follows:

18.102 Central contractor registration.

Contractors are not required to be registered in the Central Contractor Registration (CCR) database for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See 4.1102). However, contractors are required to register with CCR in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry via *https://www.acquisition.gov* to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 25—FOREIGN ACQUISITION

25.703–3 [Amended]

■ 11. Amend section 25.703–3 in paragraph (a) by removing ‘‘at *https://www.epls.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.205 [Amended]

■ 12. Amend section 26.205 by removing from paragraph (a) ‘‘at *www.ccr.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place; and by removing from paragraph (b) ‘‘on the CCR Web page’’ and adding ‘‘, which can be accessed via *https://www.acquisition.gov.*’’ in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 52.204–7 by revising the date of the clause; and removing from paragraph (h) ‘‘the Internet at *http://www.ccr.gov*’’ and adding ‘‘CCR accessed through *https://www.acquisition.gov*’’ in its place. The revised text reads as follows:

52.204–7 Central Contractor Registration.

* * * * *

Central Contractor Registration (FEB 2012)

* * * * *

■ 14. Amend section 52.204–8 by revising the date of the provision; and removing from paragraph (d) ‘‘at *http://orca.bpn.gov*’’ and adding ‘‘accessed through *https://www.acquisition.gov*’’ in its place. The revised text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (FEB 2012)

* * * * *

■ 15. Amend section 52.204–10 by revising the date of the clause; and removing from paragraph (c)(2) ‘‘at *http://www.ccr.gov*’’ and adding ‘‘in the Central Contractor Registration (CCR) database via *https://www.acquisition.gov*’’ in its place. The revised text reads as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

* * * * *

Reporting Executive Compensation and First-tier Subcontract Awards (FEB 2012)

* * * * *

■ 16. Amend section 52.209–7 by revising the date of the provision; and removing from paragraph (d) ‘‘at *http://www.ccr.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’. The revised text reads as follows:

52.209–7 Information Regarding Responsibility Matters.

* * * * *

Information Regarding Responsibility Matters (FEB 2012)

* * * * *

■ 17. Amend section 52.209–9 by revising the date of the clause; and removing from paragraph (a) ‘‘at *http://www.ccr.gov*’’ and adding ‘‘via *https://www.acquisition.gov*’’ in its place. The revised text reads as follows:

52.209–9 Updates of Publicly Available Information Regarding Responsibility Matters.

* * * * *

Updates of Publicly Available Information Regarding Responsibility Matters (FEB 2012)

* * * * *

■ 18. Amend section 52.212–1 by revising the date of the provision; and removing from paragraph (k) ‘‘the Internet at *http://www.ccr.gov*’’ and adding ‘‘the CCR database accessed through *https://www.acquisition.gov*’’ in its place. The revised text reads as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (FEB 2012)

* * * * *

■ 19. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing from the introductory paragraph ‘‘at *http://orca.bpn.gov*’’ and adding ‘‘via *https://www.acquisition.gov;*’’ in its place; and

■ c. Removing from paragraph (b)(2) ‘‘at http://orca.bpn.gov’’ and adding ‘‘accessed through *https://www.acquisition.gov*’’ in its place; and removing from the last paragraph the word ‘‘posted’’ and adding ‘‘posted electronically’’ in its place. The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (FEB 2012)

* * * * *

■ 20. Amend section 52.212–4 by revising the date of the clause; and removing from paragraph (t)(4) ''via the Internet at *http://www.ccr.gov*'' and adding ''via CCR accessed through *https://www.acquisition.gov*'' in its place. The revised text reads as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (FEB 2012)

* * * * *

[FR Doc. 2011–33414 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 8, 11, 13, 16, 18, and 36

[FAC 2005–55; FAR Case 2005–037; Item III; Docket 2006–0020, Sequence 26]

RIN 9000–AK55

Federal Acquisition Regulation; Brand-Name Specifications

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Management and Budget memoranda on brand-name specifications.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2005–037.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 57357 on September 28, 2006, to implement Office of Management and Budget (OMB) memoranda and policies on the use of brand-name specifications. Eight respondents submitted 32 comments in response to the interim rule. The public comments were considered in development of this final rule.

Prior to the interim rule, on April 11, 2005, OMB issued a memorandum on the use of brand-name specifications that was designed to reinforce the need to maintain vendor- and technology-neutral contract specifications and provide for maximum competition by limiting the use of brand-name specifications. OMB encouraged agencies to mitigate brand-name usage and publicize the justification for using brand-names in solicitations. OMB issued a second memorandum on April 17, 2006, providing additional implementation guidance for publication of brand-name justifications.

Subsequent to the interim rule, OMB issued two additional memoranda addressing the use of brand-name specifications. One, entitled ''Appropriate Use of Brand Name or Equal Purchase Descriptions,'' dated November 28, 2007, reminded agencies of the need to comply with the requirements included in the interim rule and establish internal controls to monitor compliance. The last memorandum, published December 19, 2007, entitled ''Reminder-Ensuring Competition When Acquiring Information Technology and Using Common Security Configurations,'' summarized the FAR requirements on the use of brand-name purchase descriptions and again asked agencies to establish internal controls. All four of the OMB memoranda were considered in developing this final rule.

However, the need to stabilize the FAR baseline because of changes to be made by other pending FAR cases has delayed publication of this final rule. Publication in the **Federal Register** at 76 FR 14548 on March 16, 2011, of the interim rule for FAR Case 2007–012, Requirements for Acquisitions Pursuant to Multiple-Award Contracts, enabled the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to move ahead with this final rule. Some of the changes made to the interim rule by this final rule are due solely to the revised baseline.

This final rule amends FAR subparts 6.3, 8.4, 13.1, 13.5, and 16.5 to clarify that when applicable, the documentation or justification and posting requirements for brand-name items only apply to the portion of the acquisition that requires the brand-name item. FAR subparts 8.4 and 16.5 are amended to require screening of the brand-name justifications for contractor proprietary data, and FAR subpart 16.5 is amended to require contracting officers to post the justification for an order peculiar to one manufacturer under indefinite-delivery contracts.

II. Discussion and Analysis

The Councils reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. What To Post

Comments: The interim rule specifically requested comments on whether agencies should be required to post brand-name justifications (a) For orders against indefinite-delivery contracts, including Governmentwide Acquisition Contracts (GWACs), (b) for orders against SmartBUY agreements and other strategic sourcing vehicles, and (c) to renew software-license agreements that are required to receive software updates. Several respondents addressed these questions as follows.

Most respondents expressed a strong belief that all Government procurements should be subject to the same brand-name-or-equal rules, at the basic-contract level and at the order level. One respondent stated that a single posting requirement will go a long way toward leveling the playing field. Other respondents believed that it would be unfair to allow agencies to avoid the brand-name justification rule by ordering against indefinite-delivery contracts.

One respondent distinguished between an agency-only indefinite-delivery contract and GWACs, which can be used by multiple agencies. The respondent did not think that an agency should be required to post brand-name justifications for orders under an internal indefinite-delivery contract, because all requirements should have been met at the time of posting the initial requirement for the basic indefinite-delivery contract, even if a competitive solicitation leads to a *de facto* brand-name indefinite-delivery contract. Further, this respondent read the FAR to contain a loophole that allows an ordering agency to avoid the posting requirements, as well as any

requirement to prepare a justification, when placing orders for brand-name products against a GWAC. Other respondents suggested that the FAR should incorporate a requirement for brand-name justification documentation and posting for GWACs only. Some respondents stated that orders issued against indefinite-delivery contracts should be included in the rule to the extent that the original indefinite-delivery action was not supported by a class justification and approval. The existence of the product on an indefinite-delivery contract does not, according to respondents, justify its acquisition if the facts supporting the product selection were not documented in the original indefinite-delivery procurement process.

Respondents were not in agreement as to whether orders under SmartBUY and other strategic-sourcing agreements should be subject to the posting requirement. One respondent believes that, because these are vehicles of choice, the determination to procure a brand-name product is made at the order level and should be supported by a posted justification for the order. Other respondents disagreed, stating that the posting requirement should be satisfied prior to the award of the basic agreement, not for individual orders.

Respondents did not consider that posting should be required for the renewal of software-licensing agreements because only the original equipment manufacturer has the software code to support the equipment and, therefore, there is no ability to compete. Respondents pointed out that FAR 13.106–1(b)(1) mentions license agreements separately from brand-name requirements, which respondents considered to strengthen the argument that software-license renewals should not be subject to the posting requirement.

Response: The justification for use of a brand-name specification and posting of the justification should take place when the requirement for the brand-name item is determined. This will result in different timing for multiple-award contracts from single-award contracts, *e.g.,* requirements contracts. By definition, a requirements contract is with a single source. Therefore, the requirement for the source's brand-name item is determined prior to award of the basic contract, and the justification for purchasing a brand-name item should be completed prior to award of the requirements contract. On the other hand, a multiple-award contract offers buyers products from a variety of sources, some of which may offer particular brand-name products. The existence of a brand-name item on a multiple-award contract does not imply that it is the only such item available for purchase. In this case, the requirement for a single manufacturer's brand-name item is determined at the time of the order, not at the time that the multiple-award contract is placed. Therefore, the justification for the brand-name item would be required when placing the order. For example, if an agency determined that it needed 50 Dell computers to be compatible with the agency's existing Dell capabilities, then it might place an order against a Federal Supply Schedule (FSS) contract for Dell brand-name computers. The agency placing the order would be responsible for justifying the brand-name purchase, because it is at the order level that it is determined that the requirement is for Dell computers, versus other brand-name computers that are also available on FSS contracts.

There is a benefit to posting a purchase description for an order peculiar to one manufacturer because it provides for greater transparency and accountability regarding the use of brand-name specifications. Agencies can no longer avoid the posting requirement for orders simply by placing an order against an indefinite-delivery contract, unless it is a requirements contract with a single source. Orders with a purchase description for an order peculiar to one manufacturer issued against a GWAC or multiple-agency contract now are also included in the posting requirement. Posting is required if a justification covering the requirements in the order had not previously been approved for the original contract in accordance with FAR 6.302–1(c). The posting requirement for orders under indefinite-delivery contracts, GWACs, and multiple-agency contracts is reflected in changes at FAR subpart 16.5.

The exception to the synopsis requirement for orders at FAR 16.505(a)(1) is revised by directing the contracting officer to follow the requirements of FAR 16.505(a)(4) for a proposed order peculiar to one manufacturer. FAR 16.505(a)(4) is added to require the contracting officer to document or prepare a justification when limiting competition for an item peculiar to one manufacturer, unless the justification covering the requirements in the order had been previously approved under the contract or unless the base contract is a single-award contract awarded under full and open competition. Under the final rule, agencies must post the solicitation, and any justification and supporting documentation on the agency Web site used (if any) to solicit offers if the order is $25,000 or more; or provide the justification and supporting documentation along with the solicitation to all awardees under the indefinite-delivery contract. The agency is required to keep a copy of the brand-name justification in the official contract file.

With regard to orders placed pursuant to the SmartBUY program, the Councils concluded that agencies utilizing SmartBUY will be required to comply with the procedures of the SmartBUY blanket purchase agreements (BPAs).

If an acquisition specifies a brand-name item, the justification or documentation shall be posted, as required, with the solicitation or request for quotation (RFQ) (see FAR 5.102(a)(6), 8.405–6 or 16.505). As such, if an acquisition for renewal of a software-license agreement requires a brand-name justification or documentation and a solicitation or RFQ, then the justification or documentation shall be posted, as required, with the solicitation or RFQ. Any exception to this requirement should cite the applicable FAR reference. For example, an order placed under an FSS contract for a software-license renewal that cites logical follow-on as the circumstance (see FAR 8.405–6(a)(1)(i)(C)) for placing the order would not require a brand-name justification. However, if the order exceeds the simplified acquisition threshold, the limited-source justification is required to be posted (see FAR 8.405–6(a)(2)). The parenthetical reference to exclusive licensing agreements at FAR 13.106–1(b)(1), as cited by the respondents, does not provide the applicable FAR reference for an exception to posting the brand-name justification or documentation required for an acquisition for renewal of software-license agreements.

B. Where To Post Justifications

Comment: One respondent stated that ''agencies shall use GSA e-Buy to post RFQs, eliminating FedBid, thus assuring adequate notice and competition.'' Another respondent stated that e-Buy should be used consistently for FSS purchases because ''(u)se of FedBizOpps invites additional interest outside of the FSS community and creates confusion as to whether the acquisition is conducted under FAR parts 8, 13, 15, etc. procedures.''

Response: Agencies are required to post brand-name justifications or documentation to (1) the Governmentwide Point of Entry (GPE) system at *www.fedbizopps.gov* with the solicitation or (2) the e-Buy system at

http://www.ebuy.gsa.gov with the RFQ when using the GSA's FSS. The interim rule applied the posting requirement to acquisitions exceeding $25,000 that use brand-name specifications, including simplified acquisitions, sole-source procurements, and multiple-award FSS orders. If an agency uses a third-party system such as FedBid for posting notices or soliciting offers for orders under the multiple-award FSS, the official posting location is still e-Buy. If publication of the justification or documentation with the solicitation is inappropriate because one of the exceptions in FAR 8.405–6(b)(3)(ii) or 16.505(a)(4)(iii)(C) applies, then agencies should retain a copy of the justification or documentation in the contract file.

C. Posting Increases Acquisition Lead Time

Comment: One respondent noted that requiring posting of a brand-name justification, as well as creating an e-Buy solicitation for orders over $25,000, will add to lead time. The respondent stated that, in many cases, the posting of requirements could necessitate some type of legal or other review of the brand-name justification to ensure against unintentional disclosure of sensitive information. According to the respondent, ''While classified information clearly falls within an exception to the posting rule, the primary concern is with the identification of sensitive information that does not carry a classification. It should not be the Contracting Officer's responsibility to determine the appropriateness of this information for release to the public.'' The respondent recommended that the posting requirement should only be imposed on orders over the simplified acquisition threshold, and then only if the requirements and technical personnel are required to certify that the information regarding the need for the brand-name is appropriate for public release.

Response: The Councils agree that posting of a brand-name justification, as well as creating an e-Buy solicitation for orders over $25,000, may increase the procurement lead time and will have to be factored during acquisition planning. However, these actions foster competition, broaden industry participation and increase transparency of the acquisition process. The Councils note that the $25,000 threshold for posting a brand-name justification was established in the memoranda issued by OMB. FAR 5.102(a)(6) assigns overall responsibility to the contracting officer, as a core member of the acquisition team, for ensuring the brand-name justification, to be included with the solicitation, is properly screened and redacted, as necessary, prior to posting. Moreover, the contracting officer, when deemed necessary, may consult with the appropriate subject matter expert(s) when determining the appropriateness of information for public release.

D. What posting requirements are applicable to BPAs issued under FSS contracts and orders placed under the BPAs?

Comment: Some respondents believed the interim rule resulted in confusion as to the applicability of the requirements to the placement of orders under BPAs versus the placement of BPAs. Respondents stated that some contracting officers may apply the posting language to solicitations for BPAs, while other contracting officers may only apply the brand-name specification posting requirement to RFQs for orders and not to BPAs. Respondents believed that the intent should be clear.

Response: In this final rule, the Councils have clarified FAR subpart 8.4 to require that the documentation or justification for use of a brand-name specification must be completed and approved at the time the requirement for a brand-name item is determined. FAR 8.405–6 is revised to make it clear that the justification for a brand-name item is required at the order level when a justification for the brand item was not completed for the BPA or does not adequately cover the requirements in the order.

E. Interim Rule Prohibits Agency Use of Brand-Name Specifications When Placing Orders

Comment: A respondent stated that the requirement to post a brand-name justification should be applied only at the order level and never to the establishment of a BPA under an FSS contract.

Response: The Councils determined that it is appropriate to post the justification and documentation for brand-names at the time the requirement is established, *i.e.,* when a single-source contract is created or when an order is being placed against a multiple-award contract. Thus, the requirement to post a brand-name justification would not apply to the creation of a BPA unless it was a single-source BPA issued against an FSS contract. See also responses to comments in section II.A. and D.

F. Limiting Consideration to Brand-Names

Comment: A respondent was concerned that the interim rule goes beyond limiting consideration to brand-names and actually prohibits agencies from utilizing brand-name specifications when placing orders. To fix that, the respondent suggested that the FAR must be clearer in separating the initial-needs description from the actual ordering process because, without the ability to name products by brands, contracting officers will be unable to fill specific orders correctly. Also, respondents claimed that the requirement to post brand-name justifications for FSS orders in excess of $25,000 reduces the ability to use streamlined acquisition procedures to place FSS orders.

Response: To implement the OMB memorandum, the interim rule restricted use of oral orders over $25,000 against FSS when purchase descriptions contained brand-name specifications. The Councils recognize that the interim rule required that an RFQ be issued for a proposed order when the purchase description specifies a brand-name requirement. That requirement is consistent with the OMB memoranda and is retained in the final rule to reinforce the need to maintain vendor- and technology-neutral specifications to provide for maximum competition. However, additional clarification is needed, and the Councils have revised FAR 8.405–1(e) to specify that an RFQ is required when a purchase description specifies a brand-name for a proposed order issued under a FSS.

The interim rule does not prohibit the use of brand-name specifications when placing orders. However, the FAR could be clearer, and the Councils have made changes at FAR subparts 8.4 and 16.5, to reflect the documentation or justification and posting requirements that apply to the purchase description for proposed orders when placed against FSS contracts and indefinite-delivery contracts.

G. When a Brand-Name Product Is Included in the Agency's Enterprise Architecture, an Additional Justification Should Not Be Required

Comment: One respondent noted that a Government agency is now required to have an Enterprise Architecture for its information-technology (IT) systems. Once the Enterprise Architecture has been approved, the respondent believed that contracting officers should be able to purchase brand-name IT equipment described and identified within the

Enterprise Architecture without any justification, bypassing the posting requirement. The respondent proposed that, as a minimum, there should be provision for standardized maintenance agreements with a single company.

Response: If an agency's Enterprise Architecture includes brand-name IT equipment, this fact will be a critical element in the brand-name justification. It does not eliminate the requirement for the justification or posting the justification.

H. Posting an RFQ Is Not Always Required When Using a Brand-Name Specification for Orders

Comment: The interim rule, according to respondents, confused limiting consideration to brand-names with selecting a brand-name item. Respondents stated that the OMB memoranda were reasonably focused on the use of brand-name specifications at the requirements and solicitation stages, not at the ordering stage. Respondents believed that it is illogical to require an agency to post an RFQ or brand-name specification justification after a source selection, ''including when the source selection necessarily results in the order of a brand-name good or service.''

Response: The final rule incorporates appropriate language at FAR 16.505 and 8.405–6 to reflect that the justification and posting requirements apply at the time the requirement for the brand-name item is determined. Therefore, posting an RFQ with its associated brand-name justification will not be required at the order level for certain contracts or FSS BPAs (see also response to comments in section II.A.).

I. Ties to Synopsis Exceptions for Open-Market Purchases

Comment: Respondents stated that, for open-market purchases, the requirement to post the brand-name justification is tied to solicitations synopsized through GPE and, therefore, any solicitation not synopsized through GPE by virtue of the exceptions to the notice requirements at 5.202 technically will not need to be published.

Response: The respondents' analysis correctly reflects that, if a solicitation is not synopsized through the GPE based on one of the exceptions at FAR 5.202, the associated brand-name justification or documentation is not required to be published through the GPE.

J. Clarify Thresholds, Cross-References, and Documentation Requirements

Comment: One respondent recommended that FAR 5.102(a)(6) be revised to clarify whether the posting requirement applies when the acquisition in total exceeds $25,000 (regardless of the amount attributed to brand-name specifications) or only when the brand-name component of it exceeds $25,000.

The respondent also recommended that FAR 5.102(a)(6) should have a reference to FAR 8.405–6(d) which requires documentation and justification for restricting competition when ordering under the FSS. The respondent stated that FAR 5.102(a)(6) requires the contracting officer to post the documentation required by FAR 13.106–1(b) when an acquisition contains brand-name specifications. However, there are no documentation requirements at FAR 13.106–1(b).

Response: No change is required at FAR 5.102(a)(6) to clarify the thresholds or to reference to FAR 8.405–6(d). The justification and posting requirements for orders containing brand-name specifications placed under FSS contracts are adequately covered under FAR 8.405–6(b).

The Councils have revised FAR 6.302–1(c), 13.106–1(b), 8.405–6(b)(4), and 13.501(a) to address requirements for documentation, justification, and approval for the portion of the acquisition which is brand-name.

There are adequate documentation requirements at FAR 13.106–1(b). For purchases not exceeding the simplified acquisition threshold, FAR 13.106–1(b) requires that the contracting officer document the circumstances (*e.g.,* brand-name) when it is determined that only one source is reasonably available. For sole-source (including brand-name) acquisitions of commercial items in excess of the simplified acquisition threshold, FAR 13.106–1(b) provides the cross reference to FAR 13.501(a) for the documentation.

Comment: One respondent indicated that FAR 8.405–1(c)(2) seems to contradict the $25,000 posting threshold because the title of FAR 8.405–1(c) is ''Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.'' The respondent believed that the documentation or justification requirements for FSS orders containing brand-name specifications apply to any such order greater than $3,000, when in fact, they apply only to orders exceeding $25,000.

Response: FAR 8.405–1(c) was revised by FAR Case 2007–012. As a result of the case, FAR 8.405–1(c)(2) is now a separate paragraph at FAR 8.405–1(e), and the documentation or justification and posting requirements for FSS orders at the applicable thresholds are located at FAR 8.405–6(b). The documentation requirement starts at $3,000; the posting requirement starts at $25,000.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule addresses internal Federal agency procedures. The rule will benefit small business entities by providing the opportunity for review of brand-name justification and approval documents for contracts and orders awarded noncompetitively or with limited competition, thereby increasing the opportunity for competition for future awards.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 5, 6, 8, 11, 13, 16, 18, and 36

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 5, 6, 8, 11, 13, 16, 18, and 36 which was published in the **Federal Register** at 71 FR 57357,

September 28, 2006, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 5, 6, 8, 11, 13, 16, 18, and 36 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.202 by revising paragraph (a)(6) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(6) The proposed contract action is an order placed under subpart 16.5. When the order contains brand-name specifications, see especially 16.505(a)(4);

* * * * *

PART 6—COMPETITION REQUIREMENTS

■ 3. Amend section 6.302–1 by revising paragraph (c) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(c) *Application for brand-name descriptions.* (1) An acquisition or portion of an acquisition that uses a brand-name description or other purchase description to specify a particular brand-name, product, or feature of a product, peculiar to one manufacturer—

(i) Does not provide for full and open competition, regardless of the number of sources solicited; and

(ii) Shall be justified and approved in accordance with 6.303 and 6.304.

(A) If only a portion of the acquisition is for a brand-name product or item peculiar to one manufacturer, the justification and approval is to cover only the portion of the acquisition which is brand-name or peculiar to one manufacturer. The justification should state it is covering only the portion of the acquisition which is brand-name or peculiar to one manufacturer, and the approval level requirements will then only apply to that portion;

(B) The justification should indicate that the use of such descriptions in the acquisition or portion of an acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company; and

(C) The justification shall be posted with the solicitation (see 5.102(a)(6)).

(2) Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand-name, provide for full and open competition and do not require justifications and approvals to support their use.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 4. Amend section 8.405–1 by revising paragraph (e) to read as follows:

8.405–1 Ordering procedures for supplies, and services not requiring a statement of work.

* * * * *

(e) When an order contains brand-name specifications, the contracting officer shall post the RFQ on e-Buy along with the justification or documentation, as required by 8.405–6. An RFQ is required when a purchase description specifies a brand-name.

* * * * *

■ 5. Amend section 8.405–6 by—

■ a. Removing from paragraph (b)(2)(ii) ''threshold see'' and adding ''threshold, see'' in its place; and

■ b. Adding paragraphs (b)(2)(iii), (b)(3)(i)(C), and (b)(4).

The added and revised text reads as follows:

8.405–6 Limiting sources.

* * * * *

(b) * * *

(2) * * *

(iii) The documentation or justification must be completed and approved at the time the requirement for a brand-name item is determined. In addition, the justification for a brand-name item is required at the order level when a justification for the brand-name item was not completed for the BPA or does not adequately cover the requirements in the order.

(3) * * *

(i) * * *

(C) The documentation in paragraph (b)(2)(i) and the justification in paragraph (c) of this subsection is subject to the screening requirement in paragraph (a)(2)(iii) of this section.

* * * * *

(4) When applicable, the documentation and posting requirements in paragraphs (b)(2) and (3) of this subsection apply only to the portion of the order or BPA that requires a brand-name item. If the justification and approval is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 6. Amend section 11.105 by adding paragraph (c) to read as follows:

11.105 Items peculiar to one manufacturer.

* * * * *

(c) For orders under indefinite-quantity contracts, see 16.505(a)(4).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 7. Amend section 13.106–1 by revising paragraph (b) to read as follows:

13.106–1 Soliciting competition.

* * * * *

(b) *Soliciting from a single source.* (1) *For purchases not exceeding the simplified acquisition threshold.* (i) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.,* urgency, exclusive licensing agreements, brand-name or industrial mobilization).

(ii) Where a single source is identified to provide a portion of a purchase because that portion of the purchase specifies a particular brand-name item, the documentation in paragraph (b)(1)(i) of this section only applies to the portion of the purchase requiring the brand-name item. The documentation should state it is covering only the portion of the acquisition which is brand-name.

(2) *For purchases exceeding the simplified acquisition threshold.* The requirements at 13.501(a) apply to sole-source (including brand-name) acquisitions of commercial items conducted pursuant to subpart 13.5.

(3) See 5.102(a)(6) for the requirement to post the brand-name justification or documentation.

* * * * *

■ 8. Amend section 13.501 by revising the introductory text of paragraph (a)(2) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(2) Justifications and approvals are required under this subpart for sole-source (including brand-name) acquisitions or portions of an acquisition requiring a brand-name. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

* * * * *

PART 16—TYPES OF CONTRACTS

■ 9. Amend section 16.505 by—
■ a. Revising paragraph (a)(1);
■ b. Redesignating paragraphs (a)(4) through (a)(10) as paragraphs (a)(5) through (a)(11), respectively; and
■ c. Adding a new paragraph (a)(4).

The revised and added text reads as follows:

16.505 Ordering.

(a) * * *

(1) In general, the contracting officer does not synopsize orders under indefinite-delivery contracts; except see 16.505(a)(4) and (11), and 16.505(b)(2)(ii)(D).

* * * * *

(4) The following requirements apply when procuring items peculiar to one manufacturer:

(i) The contracting officer must justify restricting consideration to an item peculiar to one manufacturer (*e.g.,* a particular brand-name, product, or a feature of a product that is peculiar to one manufacturer). A brand-name item, even if available on more than one contract, is an item peculiar to one manufacturer. Brand-name specifications shall not be used unless the particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(ii) Requirements for use of items peculiar to one manufacturer shall be justified and approved using the format(s) and requirements from paragraphs (b)(2)(ii)(A), (B), and (C) of this section, modified to show the brand-name justification. A justification is required unless a justification covering the requirements in the order was previously approved for the contract in accordance with 6.302–1(c) or unless the base contract is a single-award contract awarded under full and open competition. Justifications for the use of brand-name specifications must be completed and approved at the time the requirement for a brand-name is determined.

(iii)(A) For an order in excess of $25,000, the contracting officer shall—

(*1*) Post the justification and supporting documentation on the agency Web site used (if any) to solicit offers for orders under the contract; or

(*2*) Provide the justification and supporting documentation along with the solicitation to all contract awardees.

(B) The justifications for brand-name acquisitions may apply to the portion of the acquisition requiring the brand-name item. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(C) The requirements in paragraph (a)(4)(iii)(A) of this section do not apply when disclosure would compromise the national security (*e.g.,* would result in disclosure of classified information) or create other security risks.

(D) The justification is subject to the screening requirement in paragraph (b)(2)(ii)(D)(*4*) of this section.

* * * * *

PART 18—EMERGENCY ACQUISITIONS

18.105 [Amended]

■ 10. Amend section 18.105 by removing ''(see 16.505(a)(7))'' and adding ''(see 16.505(a)(8))'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.600 [Amended]

■ 11. Amend section 36.600 by removing ''(see 16.505(a)(8))'' and adding ''(see 16.505(a)(9))'' in its place.

[FR Doc. 2011–33417 Filed 12–30–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, and 16

[FAC 2005–55; FAR Case 2009–043; Item IV; Docket 2010–0100, Sequence 1]

RIN 9000–AL74

Federal Acquisition Regulation; Time-and-Materials and Labor-Hour Contracts for Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement Government Accountability Office (GAO) recommendations to: ensure that time-and-materials and labor-hour contracts are used to acquire commercial services only when no other contract type is suitable; and instill discipline in the determination of contract type with a view toward managing the risk to the Government.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2009–043.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 59195 on September 27, 2010. The due date for public comments was November 26, 2010.

Eleven comments were received from four respondents. The comments are separated into eight categories, addressed in the following sections.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule.

A. Summary of Significant Changes

Changes were made to the proposed rule as a result of the public comments and the publication of FAR Case 2007–012 in the **Federal Register** at 76 FR 14548 on March 16, 2011. Specifically, all text in the proposed rule under FAR 8.405–2(e) has been relocated to FAR 8.404(h). FAR Case 2007–012 strengthened competition requirements for orders placed under the Federal Supply Schedules. As a result, FAR 8.405–2(e)(2)(ii) has been deleted and references to FAR part 12 at FAR subpart 8.4 have been removed.

Additional changes were made during deliberation of the final rule to require these same safeguards on the use of time-and-materials (T&M) and labor-hour (LH) orders for Blanket Purchase Agreements awarded under the Federal Supply Schedule Program.

B. Analysis of Public Comments

Respondents submitted comments covering the following seven categories: (1) Cross references; (2) Combine guidance from this case with FAR Case 2007–012; (3) Eliminate redundant material; (4) Clarify contract types; (5) Potential for rule to limit the use of T&M contracts; (6) Requirement for determination and findings at the order level; and (7) Address fixed-price level-of-effort (FP LOE) contracts.

1. Cross References

Comment: One respondent stated that there is a contradiction between FAR 12.207 and proposed FAR 16.201, which states that the contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items. The respondent recommended revising FAR 16.201 to reference FAR 12.207(b), which states the conditions for use of T&M or LH contracts to acquire commercial services, which are a subset of commercial items.

Response: A cross-reference to FAR 12.207(b) has been added at FAR 16.201, to reference the exception to the required use of fixed-price contracts for acquisition of commercial items.

Comment: A respondent noted that FAR 8.405–2(e)(2)(ii) would require the contracting officer to follow the competitive procedures at FAR 8.405–2(c), but, in contrast, FAR 12.207(b)(1)(i)(B) provides that procedures for other than full and open competition may be used if the agency receives at least two offers. The respondent believed that it would be consistent with the latter approach to give an agency the discretion to use other than the competitive procedures at FAR 8.405–2(c) if at least two quotes are received for the task order.

Response: FAR Case 2007–012, which was published in the **Federal Register** at 76 FR 14548 on March 16, 2011 (FAC 2005–50), provides an interim rule that sets forth the requirements for the use of limited sources and strengthens competition rules in FAR subpart 8.4. FAR 8.405–2(c) does not preclude the acquisition of commercial services under T&M and LH contracts on other than a competitive basis under 8.405–2(c)(3)(i), provided the procedures outlined in FAR 8.405–6 are followed. The references to FAR part 12 in the proposed rule will be deleted.

Comment: One respondent stated that, with regard to orders placed under the Federal Supply Schedule program and indefinite-delivery contracts, FAR 12.207(c)(2) references both FAR subparts 8.4 and 16.5, while FAR 12.207(c)(3) references only FAR subpart 16.5. The respondent recommended that, for the sake of clarity, either (a) only FAR 12.207 should include all guidance regarding T&M or LH orders or (b) guidance should be included in both FAR subparts 8.4 and 16.5.

Response: It is not necessary to cross-reference to FAR subpart 8.4 at FAR 12.207(c)(3) because the requirement for a determination and findings does not apply to individual orders when the basic contract allows only for T&M or LH orders, which is not the case for Federal Supply Schedule contracts.

2. Combine Guidance From This Case With FAR Case 2007–012

Comment: A respondent noted that DoD, GSA, and NASA will be issuing guidance implementing section 863 of the National Defense Authorization Act for FY 2009 and recommended that any guidance regarding the use of T&M or LH orders be included in that rule, not in this case, FAR Case 2009–043. Such an approach, according to the respondent, would provide for clarity in the process and allow for a comprehensive review by all the stakeholders.

Response: FAR Case 2007–012 implements a statutory requirement. The basis for FAR Case 2009–043 is not statutory; rather, the case was opened in response to a June 2009 GAO report entitled: ''Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program'' (GAO–09–579, June 2009). Given the different purposes of the two cases, combining them would not be practical.

3. Eliminate Redundant Material

Comment: One respondent recommended deletion of the proposed language at FAR 8.405–2(e)(2)(i), which states that a T&M or LH order may only be used when it is not possible to accurately estimate the extent or duration of the work or anticipated costs with any degree of confidence. The respondent stated that the proposed language at FAR 8.405–2(e)(2)(i) is redundant to the proposed language at FAR 8.405–2(e)(4)(ii), which describes the content requirements of a determination and findings that, among other things, it is not possible at the time of placing the order to accurately estimate the extent or duration of the work or anticipate the costs with any reasonable degree of certainty.

Response: The proposed language at FAR 8.405–2(e)(2)(i) (which has been relocated to FAR 8.404(h)(3)(i)) is not redundant with language at FAR 8.405–2(e)(4)(ii) (which has been relocated to 8.404(h)(3)(iii)(B)).

- The proposed language at FAR 8.405–2(e)(2)(i) (relocated to FAR 8.404(h)(3)(i)) describes one of the policy conditions that must be met before a T&M order may be placed.
- The proposed language at FAR 8.405–2(e)(4)(ii) (relocated to FAR 8.404(h)(3)(iii)(B)) describes the circumstances under which the T&M or LH order may be placed, and FAR 8.405–2(e)(3)(i) (relocated to FAR 8.404(h)(3)(ii)(A)) describes an element of the documentation that must be prepared by the contracting officer to support the decision.

Although the two sections share the same idea and similar words, their separate citations serve two distinct purposes.

4. Clarify Contract Types

Comment: Two respondents expressed concern that the proposed language at FAR 16.600, which states that T&M and LH contracts are not fixed-price contracts, may create confusion or be taken out of context because it does not state that T&M and LH contracts are not cost-reimbursement contracts. The respondents believe that this could blur the lines between T&M and LH contracts and cost-reimbursement contracts, creating confusion on how to administer T&M and LH contracts and orders. The respondents recommended revising the FAR to clarify the nature of the T&M and LH contracts as a hybrid contract type that is neither fixed-price nor cost-reimbursement but does include elements of each; or to describe the attributes and cross-reference to the applicable FAR subparts.

Response: T&M and LH contracts are neither fixed-price contracts nor cost-reimbursement contract types. T&M and LH contracts comprise unique contract types and are described in a separate FAR subpart, 16.6.

This rule addresses the use of T&M and LH contracts for the acquisition of commercial services. The revisions made in this rule are intended to clarify the requirement to use fixed-price contract types for the acquisition of commercial items, unless specific requirements and conditions are documented to support the decision to use the T&M and LH contracts to acquire commercial services, a subset of commercial items.

5. Potential for Rule To Limit the Use of T&M Contracts

Comment: One respondent expressed concern that the proposed rule could curtail the use of T&M and LH contracts in circumstances where those contract types would be the most advantageous to the Government.

Response: There are circumstances warranting the use of T&M and LH contracts and orders. This rule is intended to clarify and appropriately limit their use to those circumstances.

6. Requirement for Determination and Findings at the Order Level

Comments: The respondents strongly recommended that the Government reconsider requiring agencies to execute a new determination and findings prior to issuing each T&M or LH order placed under the Federal Supply Schedules program. The respondent noted that Congress has not legislated such an approach. The respondent pointed out that the Federal Acquisition Streamlining Act, as amended, requires issuance of a determination and findings at the contract level, not at the order level.

Response: The Federal Acquisition Streamlining Act does require the issuance of a determination and findings at the contract level, but note that a requirement for a determination and findings at the order level is not precluded by that statute. In situations where the basic contract allows for the issuance of individual orders using more than one contract type, the over-reliance on T&M and LH pricing has resulted in increased risk to the Government (see GAO Report 09–579, June 2009). The GAO has recommended this change to FAR subpart 8.4 explicitly to require the same safeguards for the acquisition of commercial services acquired on a T&M or LH basis as required by FAR 12.207 and FAR 16.601(d) (*i.e.,* require a detailed determination and findings stating that no other contract type is suitable). Further, Federal Supply Schedules generally are long-term contracts, and a determination and findings generated at the initiation of a schedule contract may no longer reflect current market conditions. The intent is to ensure that this contract type is used only when no other contract type is suitable and to instill discipline in the determination of contract type with a view toward managing the risk to the Government.

7. Address Fixed-Price Level-of-Effort Contracts

Comment: One respondent expressed concern that the proposed language at FAR 16.600 stating T&M and LH contracts are not fixed-price contracts does not clarify the issue or address the fact that what is actually happening is the contracting officer is using a FP LOE contract without the appropriate approval. The respondent recommended adding a definition to FAR part 16 that clearly defines a LOE contract and identifies that a LOE contract type is considered to be either T&M/LH, FP LOE, or a cost-plus term. Otherwise, the respondent thinks contracting officers are likely to read the proposed change to FAR part 16 as something they already knew and continue calling LOE contracts firm-fixed price.

Response: T&M and LH contracts are neither fixed-price contracts nor cost-reimbursement contract types. It is for this reason that the FAR addresses T&M and LH contracts in a separate subpart, FAR subpart 16.6. This rule addresses the use of T&M and LH contracts for commercial items; therefore, the respondent's request to define LOE contracts is outside the scope of this case.

C. Other Changes

The Councils have also amended the language proposed for FAR part 8 (now set forth at FAR 8.404(h)(3)(iv)) addressing increases in the ceiling price of T&M contracts to more closely track the language set forth in FAR 12.207(b)(1)(ii)(C). Section 1423 of the Services Acquisition Reform Act of 2003 provides that any change in the ceiling price of a T&M or LH contract is authorized only upon a determination, documented in the contract file, that it is in the best interest of the procuring agency to change such ceiling price.

The Councils have opened FAR Case 2011–025 for the purpose of considering additional guidance addressing the actions required when raising the ceiling price or otherwise changing the scope of work for a T&M or LH contract or order. The case will consider appropriate guidance to address this issue for the respective parts of the FAR addressing T&M or LH contracts or orders, such as FAR 8.404, FAR 12.207, and FAR 16.601.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any requirements on small entities. An Initial Regulatory Flexibility Analysis was not conducted. No comments were received from small entities in response to the proposed rule.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 8, 12, and 16

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 12, and 16 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 12, and 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.404 by adding paragraph (h) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(h) *Type-of-order preference for services.* (1) The ordering activity shall specify the order type (*i.e.,* firm-fixed price, time-and-materials, or labor-hour) for the services offered on the schedule priced at hourly rates.

(2) Agencies shall use fixed-price orders for the acquisition of commercial services to the maximum extent practicable.

(3)(i) A time-and-materials or labor-hour order may be used for the acquisition of commercial services only when it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(ii) Prior to the issuance of a time-and-materials or labor-hour order, the contracting officer shall—

(A) Execute a determination and findings (D&F) for the order, in

accordance with paragraph (h)(3)(iii) of this section that a fixed-price order is not suitable;

(B) Include a ceiling price in the order that the contractor exceeds at its own risk; and

(C) When the total performance period, including options, is more than three years, the D&F prepared in accordance with this paragraph shall be signed by the contracting officer and approved by the head of the contracting activity prior to the execution of the base period.

(iii) The D&F required by paragraph (h)(3)(ii)(A) of this section shall contain sufficient facts and rationale to justify that a fixed-price order is not suitable. At a minimum, the D&F shall—

(A) Include a description of the market research conducted (see 8.404(c) and 10.002(e));

(B) Establish that it is not possible at the time of placing the order to accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence;

(C) Establish that the current requirement has been structured to maximize the use of fixed-price orders (*e.g.,* by limiting the value or length of the time-and-materials/labor-hour order; or, establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements; and

(D) Describe actions to maximize the use of fixed-price orders on future acquisitions for the same requirements.

(iv) The contracting officer shall authorize any subsequent change in the order ceiling price only upon a determination, documented in the order file, that it is in the best interest of the ordering activity to change the ceiling price.

■ 3. Amend section 8.405–2 by redesignating paragraph (e) as paragraph (f); and adding a new paragraph (e) to read as follows:

8.405–2 Ordering procedures for services requiring a statement of work.

* * * * *

(e) *Use of time-and-materials and labor-hour orders for services.* When placing a time-and-materials or labor-hour order for services, see 8.404(h).

* * * * *

■ 4. Amend section 8.405–3 by revising paragraphs (b)(2)(ii) and (c)(3) to read as follows:

8.405–3 Blanket purchase agreements (BPAs).

* * * * *

(b) * * *

(2) * * *

(ii) *Type-of-order preference.* The ordering activity shall specify the order type (*i.e.,* firm-fixed price, time-and-materials, or labor-hour) for the services identified in the statement of work. The contracting officer should establish firm-fixed priced orders to the maximum extent practicable. For time-and-materials and labor-hour orders, the contracting officer shall follow the procedures at 8.404(h).

* * * * *

(c) * * *

(3) *BPAs for hourly-rate services.* If the BPA is for hourly-rate services, the ordering activity shall develop a statement of work for each order covered by the BPA. Ordering activities should place these orders on a firm-fixed price basis to the maximum extent practicable. For time-and-materials and labor-hour orders, the contracting officer shall follow the procedures at 8.404(h). All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 12.207 by removing from paragraph (b)(2)(ii) ''degree of certainty'' and adding ''degree of confidence'' in its place; and adding paragraph (b)(4) to read as follows:

12.207 Contract type.

* * * * *

(b) * * *

(4) See 8.404(h) for the requirement for determination and findings when using Federal Supply Schedules.

* * * * *

PART 16—TYPES OF CONTRACTS

■ 6. Revise section 16.201 to read as follows:

16.201 General.

(a) Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items, except as provided in 12.207(b).

(b) Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

■ 7. Add section 16.600 to read as follows:

16.600 Scope.

Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

[FR Doc. 2011–33418 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 12, 42, and 52

[FAC 2005–55; FAR Case 2010–016; Item V; Docket 2010–0016, Sequence 1]

RIN 9000–AL94

Federal Acquisition Regulation; Public Access to the Federal Awardee Performance and Integrity Information System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Supplemental Appropriations Act, 2010. This section requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, shall be made publicly available. The interim rule notified contractors of this new statutory requirement for public access to FAPIIS.

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2010–016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 4188 on January 24, 2011, to

implement section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212).

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. General Comments

Comments: Several respondents made positive comments about the rule granting public access to the FAPIIS. One respondent stated that this is a most welcome process. One respondent stated that making public the data in FAPIIS will benefit contractors with records of business integrity and performance excellence. Another respondent commented that by making this information public, construction subcontractors will soon be able to evaluate the business ethics and quality of potential contractor clients. According to this respondent, this can reduce risk and save taxpayers millions of dollars.

Response: Noted.

Comments: On the other hand, some of the respondents are concerned about possible risk associated with making FAPIIS data available to the public.

• One respondent noted that the new proposed rule is over-reaching the purpose for which FAPIIS was initiated. According to the respondent, FAPIIS was designed to do one thing and was approved with comments to the effect that Government contractor sensitive information would not be publicized. The Government is now essentially rescinding this, with the exception of not making ''past performance information'' available. Further, the respondent feared that it is only a matter of time before the Government also allows the public access to Government contractor ''past performance information'' and expands FAPIIS in other ways.

• Another respondent pointed out that contractors face a number of risks associated with release of information subject to the Freedom of Information Act (FOIA). In particular, this respondent was concerned that by making FAPIIS public, there is an increased likelihood that contractors could be subject to a False Claims Act litigation on the basis of the certification at FAR 52.209–7(c) (that the information entered into FAPIIS is current, accurate, and complete).

Response: This change in FAPIIS was mandated by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted by Congress.

With regard to possible litigation under the False Claims Act, as with any FAR contract provision or clause, it is the responsibility of the contractor to ensure that the information being certified is current, accurate, and complete.

The Councils recognize the risk to contractors if the data is made public prior to offering the contractor a chance to review. The rule has been revised to provide to contractors a 7-calendar-day review period to identify information posted in FAPIIS that is covered by a disclosure exemption under the FOIA. The information entered into FAPIIS by the contracting officer or suspension and debarment official will be made publicly available within an additional 7-calendar-day period, unless the contractor asserts to the Government official, who posted the item, that it is protected by a disclosure exemption under FOIA. In such case, the information will be removed by the Government official and the issue resolved in accordance with agency FOIA procedures. If the Government official does not remove the item, it will be automatically released to the public site within 14 calendar days after the review period began.

B. Make More Data Public

1. *Narrow definition of ''past performance review''.*

Comment: One respondent noted that Congress did not define ''past performance review'' and requested that the Councils define the term very narrowly, in a way that allows all ''past performance information'' to be made public, except that which proposes a legitimate threat to commercial proprietary or personal privacy interests.

The respondent stated that the Government releases a broad array of past performance information in bid protest decisions, and should do the same with FAPIIS, because this will strengthen efforts to exclude non-responsible contractors.

Response: This FAR case uses the definition of ''past performance'' in FAR part 2 and the discussion of contractor performance information in FAR subpart 42.15, including ''past performance evaluations'' and ''past performance reports'' that are entered into the Past Performance Information Retrieval System (PPIRS) as a result of past performance evaluations. This coverage of past performance was in the FAR when Congress passed Public Law 111–212 and section 3010 specifically excludes ''past performance reviews.''

The FAR Council published a proposed rule, FAR Case 2009–042, Documenting Contractor Performance, in the **Federal Register** at 76 FR 37704 on June 28, 2011, with public comments due on September 29, 2011, that clarified ''past performance information''—see *http://edocket.access.gpo.gov/2011/pdf/2011-16169.pdf.* The language in FAR Case 2009–042 has been updated to reference the part of FAR subpart 42.15 related to ''past performance.''

The Councils also note that the Government Accountability Office allows a party to request redaction of ''past performance information'' prior to the release of a bid protest decision.

2. *Release data entered prior to April 15, 2011.*

Comments: One respondent opposed the new regulation regarding information entered into FAPIIS before April 15, 2011. Specifically, FAR 52.209–9 provides that information posted in FAPIIS prior to April 15, 2011, will not be publicly disclosed, except by request submitted under FOIA. Due to the respondent's concern about the shortcomings of the FOIA process, the respondent requested that all data posted prior to April 15, 2011, be made available to the public without requiring requests through FOIA.

Response: The data posted in FAPIIS prior to April 15, 2011, cannot be made publicly available because the final rule, FAR Case 2008–027, published in the **Federal Register** at 75 FR 14059, effective April 22, 2010, included a statement in paragraph (b)(3) of FAR 52.209–8, Updates of Information Regarding Responsibility Matters, that ''(w)ith the exception of the Contractor, only Government personnel and authorized users performing business on behalf of the Government will be able to view the Contractor's record in the system.'' The paragraph continued with the statement that public requests for system information would be handled under the FOIA procedures. After section 3010 was enacted, the Government began to plan the transition to making the data in FAPIIS available to the public. The Councils concluded that it was not appropriate to make information publicly available that the Government contractually committed that it would only release in accordance with the procedures of FOIA.

The Councils took every feasible action to make the maximum amount of data publicly available, without violating the contractual commitments made by the Government in contracts containing FAR 52.209–8.

C. Protection of Data That Should Not Be Released

1. *Include in the FAR specific prohibition against entry of inappropriate data in FAPIIS.*

Comment: Several respondents were concerned about lack of sufficient guidance in the interim rule on the scope of information to be withheld. Several respondents recommended that the rule should explicitly prohibit the contracting officer from posting information in FAPIIS that is protected by a disclosure exemption under FOIA. According to one respondent, the rule should list the FOIA exemptions, specifically instruct contracting officers to redact information protected by FOIA, and further instruct contracting officers to consult a FOIA expert to resolve questions regarding the applicability of an exemption.

Another respondent requested that the FAR should expressly state that additional information not identified in FAR 9.104–6 cannot be posted in the publicly available iteration of FAPIIS.

Response: The Councils have revised the final rule, at FAR 9.105–2(b)(2)(iv) and 52.209–9(c)(1), to prohibit contracting officers from posting information in FAPIIS that is protected by a disclosure exemption under FOIA. To alleviate errors or oversights, the FAR text points to the FOIA exemptions and allows the agencies' FOIA officers to determine the applicable exemption relevant to their situation. It is not customary practice to list all the FOIA exemptions in the FAR, as they are readily available in the Department of Justice Guide to the Freedom of Information Act (2009 Edition) at *http://www.justice.gov/oip/foia_guide09.htm* or at agencies' FOIA Office Web sites.

2. *Allow contractors to review before making public.*

Comment: Several respondents recommended that the interim rule should be revised to allow contractors to review information that will be posted to FAPIIS for public review prior to its release.

Several respondents stated that privacy rights could be irreparably impaired, and proprietary information could be irreparably lost as a result of release to the public through FAPIIS, even if the data is later removed.

One respondent stated that contractors should be allowed to determine if any of the information might be protected from release under FOIA, thus allowing contractors to request redaction of properly FOIA-protected information.

Another respondent requested time to review the data both to ensure accuracy and completeness, as well as to ensure that it does not violate the requirement to protect proprietary information. This respondent stated that publicly posting proprietary information or inaccurate or incomplete information is not quantifiable and there is no remedy that can adequately address the contractor's losses.

Another respondent noted that the Councils have recognized the importance of allowing contractors the opportunity to respond to information in FAPIIS before the Government acts on that information. FAR 9.104–6 entitles an offeror to present additional information to demonstrate responsibility after a contracting officer identified ''relevant information'' in FAPIIS.

Several respondents requested periods varying from 30 days to 60 days to review the information before it is made public, although the respondent that requested 60 days noted that the FAR currently allows the contractor only 30 days to respond to past performance information in PPIRS.

Another respondent believed that this approach should not require major changes to the system. The respondent suggested that when the information is first entered into FAPIIS, it could be quarantined in the ''non-public'' iteration of FAPIIS, similar to past performance information.

Response: The Councils have revised the final rule, at FAR 9.105–2(b)(2) and 52.209(c), to allow contractors 7 calendar days to review information posted to FAPIIS before that information is made available to the public. A notice is sent to the contractor whenever information is entered into the system about that contractor. If contractors assert to the Government, within 7 calendar days, that information has been posted that is covered by a disclosure exemption under FOIA, the information will be removed while the agency resolves the issue in accordance with agency FOIA procedures.

3. *Allow submission of two versions—redacted for public and unredacted for Government.*

Comment: One respondent recommended that two versions of the information should be submitted—a complete version for the Government, and a redacted version for the public.

Response: The statute requires that all information in FAPIIS, other than information on ''past performance reviews,'' must be made available to the public. Therefore, submission of two different versions would not meet the statutory requirement.

4. *Include systems protections so that past performance data is not inadvertently made public.*

Comment: One respondent recommended that the FAR Council should coordinate with the FAPIIS Program Manager to take all the appropriate steps from a system architecture/controls standpoint to preclude the public disclosure (advertent or inadvertent) of ''past performance information.'' According to the respondent, this should include systemic protections that make it impossible to post ''past performance information'' to the publicly-available iteration of FAPIIS.

Response: The structure of FAPIIS ensures that ''past performance reviews'' (as described in FAR subpart 42.15) will not be inadvertently released. Past performance information is stored in a completely separate module from the other information in FAPIIS. There is no connection between the past performance module and the public Web site for FAPIIS. This assurance was provided by the Contractor Performance Assessment Reporting System/PPIRS Program Manager and the FAPIIS Program Manager.

D. Ensure That Data Is Timely and Accurate

1. *Timeliness.*

Comment: One respondent recommended that the FAR should assign responsibility to a particular Government official to timely remove stale information from FAPIIS.

Response: All information in FAPIIS is marked with the date of the occurrence. In response to search requests, FAPIIS only provides access to information that is dated within five years of the date of the request.

2. *Accuracy.*

Comment: One respondent stated that the FAR should require contracting officers and suspension and debarment officials (SDOs) to validate the accuracy of information before inputting into FAPIIS.

Response: The procedures at FAR 9.406–3(f) and 9.407–3(e) already require that the SDOs are responsible for the accuracy of the documentation entered into FAPIIS regarding an administrative agreement to resolve a debarment or suspension proceeding. The Councils have revised the rule at FAR 9.105–2(b)(2)(ii) and 42.1503(f)(1) to make the contracting officer/agency responsible for the accuracy of agency data entered into FAPIIS.

E. Technical Recommendations

1. *Include FAR 52.209–9 in the list at FAR 52.212–5.*

Comment: Two respondents suggested that FAR 52.209–9, Updates to Publicly Available Information Regarding Responsibility Matters, should be added to the list of clauses incorporated as part of FAR 52.212–5 (at paragraph (b)) for FAR part 12 commercial item acquisitions. Another respondent noted that, if the clause is not included in FAR 52.212–5, it may be inadvertently omitted.

Response: The change has been made in the final rule by listing FAR 52.209–9 under FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

2. *Allow incorporation of clause by reference.*

Comment: A respondent noted that the FAR matrix now requires that both FAR 52.209–9 and its Alternate be incorporated in full text. The respondent commented that both the clause and its alternate should be available for incorporation into contracts by reference.

Response: The change has been incorporated into the FAR provision and clause matrix under FAR subpart 52.3, Provision and Clause Matrix, available for review at *https://www.acquisition.gov/far/current/html/52_300.html#wp1077611.*

3. *Designate contractor point of contact to receive notification of entry into FAPIIS.*

Comment: One respondent stated that FAR 52.209–9(b)(1) does not specify who in the contractor's organization will be notified when new information is posted. The respondent recommended that the FAR should designate the contractor's Central Contractor Registration (CCR) point of contact as the person who will receive all notification related to the Government posting new information on the contractor's record.

Response: If the contractor specifies a past performance point of contact in its CCR record, then the notification goes to the specified point of contact. At the contractor's discretion, this past performance point of contact's email address can be a single individual or a common email address that multiple individuals in the company can access. If the contractor does not specify a past performance point of contact, then the notification is sent to the contractor's Government business point of contact, which is a mandatory field in CCR.

4. *Allow larger field in FAPIIS for contractor comments.*

Comment: One respondent requested a larger field to enter contractor comments.

Response: The field currently allows 1000 characters per entry. As a result of the public comments, the FAPIIS Program Manager doubled the available characters to 2000 and this change is effective now.

F. Requests for Further Rulemaking (Outside the Scope of This Rule)

1. *Make training and guidance subject to rulemaking.*

Comment: Two respondents were concerned about the statements in the preamble to the final FAPIIS rule under FAR Case 2008–027 that policies and guidance would be developed to ensure the timely and accurate input of information into the FAPIIS database. Further, the Councils would work with the FAPIIS Program Manager, the Federal Acquisition Institute, and the Defense Acquisition University to develop guidance for contracting officials and suspension and debarment officials. The respondent was concerned that training, policies, and guidance to contracting officers and SDOs will, in effect, provide further direction regarding what constitutes proper input, accuracy, and timeliness. The respondent believed that this guidance will supplement and clarify FAPIIS data requirements. Therefore, according to the respondent, it should be published in the **Federal Register** so that all impacted parties may provide input.

Another respondent was also concerned that the clear direction to the contracting officer should be included in the FAR, rather than in subsequent training and informal guidance. This respondent stated that the final FAPIIS rule did not go far enough, and recommended additional changes to the FAR to clarify what information is relevant to responsibility determinations and past performance evaluations. The respondent also wanted the FAR to make clear that not all information in FAPIIS will be relevant to a contractor's past performance.

Response: The FAR includes direction to the contracting officer about the FAPIIS requirement and relevancy of that information. The FAPIIS training will not include new policies, but rather procedures on how to comply with existing FAR policies and guidance. The current FAPIIS training overview is available at *http://www.fai.gov/FAPIIS/trailer/module.htm* for the public to view. Follow-on training will also be publicly available later this year.

2. *Provide more regulation on contractor reporting obligations.*

Comment: One respondent had comments that relate to clear definition of ''reportable outcomes.'' This respondent provided a list of items that should be excluded from the database and a list of items that should be reportable.

Another respondent contended that the reporting obligations of the FAPIIS regulations are unclear, addressing the need for guidance relating to clarifying ''the Offeror, and/or any of its principals,'' ''within the last five years,'' ''in connection with a Federal contract or grant,'' ''administrative proceeding,'' and ''consent or compromise.''

Response: This FAR case was established to implement section 3010, which required information in FAPIIS, excluding ''past performance reviews,'' to be publicly available.

Any further definition of reportable outcomes or guidance on reporting requirements would require publication of a new rulemaking for public comment.

3. *Get public comments before adding any new data elements to FAPIIS or change databases that feed into FAPIIS.*

Comment: One respondent wanted to ensure that the Councils will get public comments before adding any new data elements to FAPIIS or changing databases that feed into FAPIIS.

Response: Addition of new data elements to FAPIIS would require further rulemaking for public comment.

4. *Update to FAPIIS.*

Comment: One respondent stated that the Councils should clarify the requirement to update FAPIIS information on a semi-annual basis.

Response: Additional clarification is not necessary. FAR clause 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, tells contractors that they are required to update the information in the FAPIIS on a semi-annual basis, throughout the life of the contract.

G. Deadline

1. *Display pilot run before deadline.*

Comment: One respondent requested to see a pilot run of the FAPIIS format and the program before it is officially ''rolled out.''

Response: The statute did not provide for a delay in implementation; therefore, FAPIIS is now available to the public at *https://fapiis.ppirs.gov.*

2. *Postpone deadline until all issues resolved.*

Comment: Two respondents requested that the deadline of April 15, 2011, be postponed until certain issues can be resolved (see issues identified in section II.F. of this preamble). Both respondents pointed out that Congress did not

mandate that FAPIIS be made available to the public on a particular date. One respondent concluded that it is implicit that Congress intended for the Councils to take the time necessary to ''get it right.''

Response: The statute did not provide for any delay in implementation. In the interest of transparency in Government contracting, the Councils implemented the FAR changes and system changes to provide direction to Government and contractor personnel in a timely manner to align with the statute.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule just notifies the contractors that the public will have access to the database. The rule does not impose any additional burdens on small entities. The interim rule made editorial changes to FAR 52.209–7 and transferred the information collection requirement from FAR 52.209–8 to a new clause at FAR 52.209–9.

In response to public comments, the final rule allows a 14-calendar-day delay before making the data available to the public. Contractors have 7 calendar days within those 14 calendar days to assert a disclosure exemption under the Freedom of Information Act. In addition, the FAPIIS system has been modified to allow more space for contractor comments. The rule does not impose any new requirements on small businesses.

Therefore, a Final Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA did not receive any comments relating to impact on small entities.

V. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1, 9, 12, 42, and 52

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 1, 9, 12, 42, and 52, which was published in the **Federal Register** at 76 FR 4188 on January 24, 2011, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 1, 9, 12, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 9.104–7 by adding paragraph (c) to read as follows:

9.104–7 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters—

(1) In solicitations where the resultant contract value is expected to exceed $500,000; and

(2) In contracts in which the offeror checked ''has'' in paragraph (b) of the provision at 52.209–7.

* * * * *

■ 3. Amend section 9.105–2 by revising paragraph (b)(2)(ii); and adding paragraphs (b)(2)(iii) and (b)(2)(iv) to read as follows:

9.105–2 Determinations and documentation.

* * * * *

(b) * * *

(2) * * *

(ii) The contracting officer is responsible for the timely submission, within 3 working days, and sufficiency, and accuracy of the documentation regarding the nonresponsibility determination.

(iii) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(A) The non-public segment, into which Government officials and contractors post information, which can only be viewed by—

(*1*) Government personnel and authorized users performing business on behalf of the Government; or

(*2*) An offeror or contractor, when viewing data on itself; and

(B) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(*1*) Past performance reviews required by subpart 42.15;

(*2*) Information that was entered prior to April 15, 2011; or

(*3*) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (b)(2)(iv) of this section.

(iv) The contracting officer, or any other Government official, shall not post any information in the non-public segment of FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act. If the contractor asserts within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information Act procedures, prior to reposting the releasable information.

■ 4. Amend section 9.406–3 by adding paragraph (f)(3) to read as follows:

9.406–3 Procedures.

* * * * *

(f) * * *

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

■ 5. Amend section 9.407–3 by adding paragraph (e)(3) to read as follows:

9.407–3 Procedures.

* * * * *

(e) * * *

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending official shall follow the procedures at 9.105–2(b)(2)(iv).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

■ 6. Amend section 12.301 by removing paragraph (d)(4).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 7. Amend section 42.1503 by revising the introductory text of paragraph (f)(1); and adding paragraph (f)(3) to read as follows:

42.1503 Procedures.

* * * * *

(f) * * *

(1) Agencies shall ensure information is accurately reported in the FAPIIS module of PPIRS within 3 calendar days after a contracting officer—

* * * * *

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the contracting officer shall follow the procedures at 9.105–2(b)(2)(iv).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.209–9 by revising the date of the clause and paragraph (b); and adding paragraphs (c) and (d) to read as follows:

52.209–9 Updates of Publicly Available Information Regarding Responsibility Matters.

* * * * *

Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012)

* * * * *

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209–9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.,* for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111–212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

■ 9. Amend section 52.212–5 by revising the date of the clause; and redesignating paragraphs (b)(7) through (b)(50) as (b)(8) through (b)(51), respectively; and adding new (b)(7) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2012)

* * * * *

(b) * * *

(7) 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012) (41 U.S.C. 2313).

* * * * *

[FR Doc. 2011–33420 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2005–55; FAR Case 2010–005; Item VI; Docket 2010–0005, Sequence 1]

RIN 9000–AM00

Federal Acquisition Regulation; Updated Financial Accounting Standards Board Accounting References

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's Accounting Standards Codification of Generally Accepted Accounting Principles.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2010–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 8989 on February 16, 2011, to update the references based upon the Financial Accounting Standards Board's (FASB) Statement Number 168 which stated that the FASB Accounting Standards Codification (ASC) would become the source of authoritative U.S. Generally Accepted Accounting Principles (GAAP) recognized by the FASB to be applied to nongovernmental entities. The revisions are intended to have no effect other than to simply replace the superseded references with

updated references. The Regulatory Secretariat received one response to the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council reviewed the public comment in the development of the final rule. A discussion of the comment follows:

Executive Compensation Reporting

Comment: The respondent inquired if the executive compensation reporting language applied to private companies that through the normal course of business have no interest in disclosing this information to the public/Government.

Response: This comment is outside the scope of this case, which was limited to simply replacing superseded FAR references with updated references. FAR 4.1403 delineates which Government contracts require the reporting of executive compensation (FAR clause 52.204–10).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule makes administrative changes only by merely updating references to authoritative accounting standards owing to the Financial Accounting Standard Board's Accounting Standards Codification of Generally Accepted Accounting Principles.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–11 by revising the introductory text of paragraph (h) to read as follows:

31.205–11 Depreciation.

* * * * *

(h) A ''capital lease,'' as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases, is subject to the requirements of this cost principle. (See 31.205–36 for Operating Leases.) FASB ASC 840 requires that capital leases be treated as purchased assets, *i.e.,* be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

* * * * *

■ 3. Amend section 31.205–36 by revising paragraph (a) to read as follows:

31.205–36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under ''operating leases'' as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases. (See 31.205–11 for Capital Leases.)

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.204–10 by revising the date of the clause, and in paragraph (a), in the definition ''Total compensation'', revising paragraph (2) to read as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

* * * * *

Reporting Executive Compensation and First-Tier Subcontract Awards (FEB 2012)

* * * * *

Total compensation * * *

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

* * * * *

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (FEB 2012)

* * * * *

(b) * * *

(4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (Feb 2012) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

■ 6. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (FEB 2012)

(a) * * *

(2) * * *

(i) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (FEB 2012)

(Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

[FR Doc. 2011–33423 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 15, 19, 22, 23, 28, 42, and 52

[FAC 2005–55; Item VII; Docket 2011–0078; Sequence 4]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street NE., 7th Floor, Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–55, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 4, 8, 15, 19, 22, 23, 28, 42, and 52, this document makes editorial changes to the FAR.

List of Subjects in 48 CFR Parts 4, 8, 15, 19, 22, 23, 28, 42, and 52

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 8, 15, 19, 22, 23, 28, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 8, 15, 19, 22, 23, 28, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.603 [Amended]

■ 2. Amend section 4.603 by removing from paragraph (c) ''*http://csrc.nist.gov/publications/nistpubs/800-87/sp800-87-Final.pdf''* and adding ''*http://www.nist.gov/publication-portal.cfm''* in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.402 [Amended]

■ 3. Amend section 8.402 by—

■ a. Removing from paragraph (c)(1) ''*http://www.gsa.gov/fss''* and adding ''*http://www.gsa.gov/fas''* in its place; and

■ b. Removing from paragraph (e) ''*http://www.fsstraining. gsa.gov''* and adding ''*http://www.gsa.gov/training''* in its place.

8.405–5 [Amended]

■ 4. Amend section 8.405–5 by removing from paragraph (c) ''*http://www.gsa.gov/fss''* and adding ''*http://www.gsa.gov/fas''* in its place.

8.703 [Amended]

■ 5. Amend section 8.703 by removing ''*http://abilityone.gov/index.html''* and adding ''*http://www.abilityone.gov.''* in its place.

PART 15—CONTRACTING BY NEGOTATION

15.402 [Amended]

■ 6. Amend section 15.402 by removing from paragraph (a)(2) ''15.403–4, obtain'' and adding ''15.403–4, shall obtain'' in its place.

■ 7. Amend section 15.403–1 by revising paragraph (c)(1)(ii)(B) to read as follows:

15.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) The determination that the proposed price is based on adequate price competition and is reasonable has been approved at a level above the contracting officer; or

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.102 [Amended]

■ 8. Amend section 19.102 by removing from paragraph (f)(4) ''*http://www.sba.gov/gc''* and adding ''*http://www.sba/content/class-waivers''* in its place.

19.402 [Amended]

■ 9. Amend section 19.402 by removing from paragraph (a)(2) ''*http://www.sba.gov/GC/pcr.html''* and adding ''*http://www.sba.gov/content/procurement-center-representatives''* in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.404–1 [Amended]

■ 10. Amend section 22.404–1 by removing from paragraph (a)(2) ''*http://www.dol.gov/esa''* and adding ''*http://www.wdol.gov''* in its place.

22.1304 [Amended]

■ 11. Amend section 22.1304 by removing from paragraph (a) ''*http://www.vets100.com/login.aspx''* and adding ''*https://webapps.dol.gov/vets100''* in its place.

22.1306 [Amended]

■ 12. Amend section 22.1306 by removing from paragraph (b) ''*http://vets100.vets.dol.gov''* and adding ''*https://webapps.dol.gov/vets100''* in its place.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.205 [Amended]

■ 13. Amend section 23.205 by removing from paragraph (c)(1) ''*http://www.eren.doe.gov/femp/resources/legislation.html''* and adding ''*http://www1.eere.energy.gov/femp/financing/espcs_regulations.html''* in its place.

23.401 [Amended]

■ 14. Amend section 23.401 by removing from paragraph (a)(2) ''*http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm''* and adding ''*http://www.epa.gov/epawaste/conserve/tools/cpg/index.htm''* in its place.

PART 28—BONDS AND INSURANCE

28.203–3 [Amended]

■ 15. Amend section 28.203–3 by removing from paragraph (a)(1) ''*http://www.usdoj.gov/enrd/2001_Title_Standards.html''* and adding ''*http://www.justice.gov/enrd/ENRD_Assets/Title_Standards_2001.pdf''* in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 16. Amend section 42.203 by revising the last sentence to read as follows:

42.203 Contract administration services directory.

* * * For additional information contact—Defense Contract Management

Agency, 3901 A Avenue, Building 10500, Ft. Lee, VA 23801–1809.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.202–1 [Amended]

■ 17. Amend section 52.202–1 by revising the date of the clause to read (Jan 2012)''; and by removing from paragraph (b) ''*http://www.acqnet.gov''* and adding ''*http://www.acquisition.gov/far''* in its place.

52.212–3 [Amended]

■ 18. Amend section 52.212–3 by removing from Alternate II ''(Apr 2011)'' and adding ''(Jan 2012)'' in its place; and by removing from paragraph (iii) ''*http://www.arnet.gov/References/sdbadjustments.htm''* and adding ''*http://www.acquisition.gov/References/sdbadjustments.htm''* in its place.

52.219–22 [Amended]

■ 19. Amend section 52.219–22 by removing from Alternate I ''(Apr 2011)'' and adding ''(Jan 2012)'' in its place; and by removing from paragraph (3) ''*http://www.arnet.gov/References/sdbadjustments.htm''* and adding ''*http://www.acquisition.gov/References/sdbadjustments.htm''* in its place.

52.228–11 [Amended]

■ 20. Amend section 52.228–11 by revising the date of the clause to read (Jan 2012)''; and by removing from paragraph (b)(2)(i) ''*http://www.usdoj.gov/enrd/2001_Title_Standards.html''* and adding ''*http://www.justice.gov/enrd/ENRD_Assets/Title_Standards_2001.pdf''* in its place.

[FR Doc. 2011–33424 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0077, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–55; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–55, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–55, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: January 3, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–55 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–55

Item	Subject	FAR case	Analyst
I	Preventing Abuse of Interagency Contracts	2008–032	Sakalos.
II	Transition to the System for Award Management (SAM)	2011–021	Loeb.
III	Brand-Name Specifications	2005–037	Clark.
IV	Time-and-Materials and Labor-Hour Contracts for Commercial Items	2009–043	Sakalos.
V	Public Access to the Federal Awardee Performance and Integrity Information System	2010–016	Loeb.
VI	Updated Financial Accounting Standards Board Accounting References	2010–005	Chambers.
VII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–55 amends the FAR as specified below:

Item I—Preventing Abuse of Interagency Contracts (FAR Case 2008–032)

This rule adopts as final, with changes, an interim rule that implemented section 865, Preventing Abuse of Interagency Contracts, of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). This final rule further amends FAR subpart 17.5 to make it clear that this rule only applies to interagency acquisitions when an agency needing supplies or services obtains them using another agency's contract; or when an agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order. A business case analysis must be developed for the establishment and renewal of governmentwide acquisition contracts as well as for multi-agency contracts. Additionally, FAR 35.017 clarifies determination requirements when using a Federally Funded Research and Development Center. This rule does not impose any information collection requirements on small businesses. There is no significant impact on small businesses because this rule is only applicable to internal operating procedures of the Government.

Item II—Transition to the System for Award Management (SAM) (FAR Case 2011–021)

The Integrated Acquisition Environment (IAE) systems are being transitioned to a new System for Award Management (SAM) architecture. This effort will transition the Central Contractor Registration (CCR) database, the Excluded Parties Listing System (EPLS), and the Online Representations and Certifications Application (ORCA) to SAM. The FAR change will indicate that these IAE systems and the Disaster Response Registry will now be accessed through *http://www.acquisition.gov.* This rule will not significantly affect small business, as the only impact on the public will be the Web site address

that offerors/contractors will need to use.

Item III—Brand-Name Specifications (FAR Case 2005–037)

This final rule adopts, with changes, the interim rule that amended the FAR to fully implement Office of Management and Budget memoranda and policies on the use of brand-name specifications. The final rule clarifies that when applicable, the documentation or justification and posting requirements for brand name items only apply to the portion of the acquisition that requires the brand name item. The final rule also adds a requirement to screen the brand name documentation or justification for contractor proprietary data. Further, the final rule requires the contracting officer to post the justifications for an order peculiar to one manufacturer under indefinite-delivery contracts. The rule will benefit small business entities by providing the opportunity for review of brand-name justification and approval documents for contracts and orders awarded noncompetitively, thereby increasing the opportunity for competition for future awards.

Item IV—Time-and-Materials and Labor-Hour Contracts for Commercial Items (FAR Case 2009–043)

This final rule amends the FAR to implement recommendations from the Government Accountability Office to: (1) Ensure that time-and-materials (T&M) and labor-hour (LH) contracts are used to acquire commercial services only when no other contract type is suitable, and (2) instill discipline in the determination of contract type with a view toward managing the risk to the Government. The requirement for a determination and findings when no other contract type is suitable is added to FAR 8.404, Use of Federal Supply Schedules. FAR 8.404 has also been amended to address increases in the order ceiling price of T&M and LH contracts, to more closely conform to the language at FAR 12.207. In addition, FAR 16.201 is modified and FAR 16.600 is added to clarify that T&M and LH contracts are not types of fixed-price contracts. This rule will not have a significant economic impact on a substantial number of small entities.

Item V—Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010–016)

This rule adopts as final, with changes, an interim rule. The interim rule implemented section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted July 29, 2010. Section 3010 requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, shall be made publicly available. The interim rule notified contractors of this new statutory requirement for public access to FAPIIS.

In response to public comments, the final rule allows a 14-calendar-day delay before making the data available to the public. Contractors have 7 calendar days within those 14 calendar days to assert a disclosure exemption under the Freedom of Information Act. In addition, the FAPIIS system has been modified to allow more space for contractor comments. The rule does not impose any new requirements on small businesses.

Item VI—Updated Financial Accounting Standards Board Accounting References (FAR Case 2010–005)

This final rule amends the FAR sections 31.205–11, 31.205–36, 52.204–10, 52.212–5, and 52.213–4 to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's Accounting Standards Codification of Generally Accepted Accounting Principles (''Codification of GAAP''). These revisions have no effect other than to simply replace the superseded references with updated references.

Item VII—Technical Amendments

Editorial changes are made at FAR 4.603, 8.402, 8.405–5, 8.703, 15.402, 15.403–1, 19.102, 19.402, 22.404–1, 22.1304, 22.1306, 23.205, 23.401, 28.203–3, 42.203, 52.202–1, 52.212–3, 52.219–22, and 52.228–11.

Dated: December 21, 2011.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2011–33425 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 77 Tuesday,
No. 1 January 3, 2012

Part IV

The President

Federal Register
Vol. 77, No. 1
Tuesday, January 3, 2012

Presidential Documents

Title 3—

The President

Proclamation 8768 of December 28, 2011

National Mentoring Month, 2012

By the President of the United States of America

A Proclamation

Every day, mentors help young Americans face the challenges of growing into adulthood. By setting a positive example and sharing their time, knowledge, and experience, mentors play an essential role in preparing our Nation's youth for a bright future. During National Mentoring Month, we celebrate the contributions of all those who cultivate a supportive environment for the next generation, and we recommit to expanding mentorship opportunities across our country.

At school and at home, in the library and on the field, mentors lift our youth toward their goals and ambitions. As a teacher, a relative, or a trusted friend, a mentor's steady and dependable support can inspire a child to strive for success and instill in them the confidence to achieve their full potential. Mentorship strengthens our American family, and by teaching enduring values like diligence and self-discipline, we make a powerful and lasting investment in our youth, our communities, and our Nation.

Across the Federal Government, we are working to ensure more young people have the opportunity to connect with a mentor. Last January, we partnered with businesses across America to launch the Corporate Mentoring Challenge, which calls on corporations to begin or expand mentoring programs that pair children with positive role models, foster leadership skills, and put them on the path to success in school and beyond. As part of our steadfast commitment to support our service members and their loved ones, we are funding new mentorship opportunities for children from military families. And we are continuing to engage faith and community groups to help recruit mentors who can guide our youth in education, employment, and engaged citizenship. For information and resources about mentoring opportunities, I encourage all Americans to visit: www.Serve.gov/Mentor.

By lending a hand and serving as a mentor, countless individuals have empowered young Americans with the confidence, inspiration, and tools to lead rich and fulfilling lives. This month, I encourage adults to make an investment in our Nation's future by helping a child discover the best in themselves.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2012 as National Mentoring Month. I call upon public officials, business and community leaders, educators, and Americans across the country to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of December, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–33796
Filed 12–30–11; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8769 of December 28, 2011

National Stalking Awareness Month, 2012

By the President of the United States of America

A Proclamation

In our schools and in our neighborhoods, at home and in workplaces across our Nation, stalking endangers the physical and emotional well-being of millions of American men and women every year. Too often, stalking goes unreported and unaddressed, and we must take action against this unacceptable abuse. This month, we stand with all those who have been affected by stalking and strengthen our resolve to prevent this crime before it occurs.

Stalkers inspire fear through intimidation, explicit or implied threats, and nonconsensual communication—often by telephone, text message, or email—that can cause severe emotional and physical distress. Many victims suffer anxiety attacks, feelings of anger or helplessness, and depression. Fearing for their safety, some are forced to relocate or change jobs to protect themselves. And, tragically, stalking can be a precursor to more violent offenses, including sexual assault and homicide. The consequences of this crime are real, and they take a profound and ongoing toll on men, women, teens, and children across our country.

Despite the dangerous reality of stalking, public awareness and legal responses to this crime remain limited. New data show that one in six women and one in 19 men have experienced stalking that caused them to be very fearful or feel that they or someone close to them were in immediate physical danger. Among men and women alike, victims are most commonly stalked by current or former intimate partners, and young adults are at the highest risk for stalking victimization. Though stalking can occur in any community, shame, fear of retribution, or concerns that they will not be supported lead many victims to forego reporting the crime to the police. As we strive to reverse this trend, we must do more to promote public awareness and support for survivors of stalking.

My Administration is working to advance protection and services for stalking victims, empower survivors to break the cycle of abuse, and bring an end to violence against women and men. With unprecedented coordination between Federal agencies, we are promoting new tools to decrease the incidence of domestic violence, sexual assault, dating violence, and stalking, and we are taking action to ensure perpetrators are held accountable. To reinforce these efforts, advocates, law enforcement officials, and others who work with victims must continue to improve their capacity to respond with swift and comprehensive action. From raising awareness to pursuing criminal justice, all of us have a role to play in stopping this senseless and harmful behavior.

This month, let us come together to prevent abuse, violence, and harassment in all their forms and renew our commitment to bring care and support to those in need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2012 as National Stalking Awareness Month. I call on all Americans to learn to recognize the signs of stalking, acknowledge stalking as a serious crime,

and urge those impacted not to be afraid to speak out or ask for help. Let us also resolve to support victims and survivors, and to create communities that are secure and supportive for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of December, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

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.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 2055/P.L. 112–74
Consolidated Appropriations Act, 2012 (Dec. 23, 2011; 125 Stat. 786)

H.R. 2867/P.L. 112–75
United States Commission on International Religious Freedom Reform and Reauthorization Act of 2011 (Dec. 23, 2011; 125 Stat. 1272)

H.R. 3421/P.L. 112–76
Fallen Heroes of 9/11 Act (Dec. 23, 2011; 125 Stat. 1275)

H.R. 3672/P.L. 112–77
Disaster Relief Appropriations Act, 2012 (Dec. 23, 2011; 125 Stat. 1277)

H.R. 3765/P.L. 112–78
Temporary Payroll Tax Cut Continuation Act of 2011 (Dec. 23, 2011; 125 Stat. 1280)

S. 278/P.L. 112–79
Sugar Loaf Fire Protection District Land Exchange Act of 2011 (Dec. 23, 2011; 125 Stat. 1294)

S. 384/P.L. 112–80
To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 23, 2011; 125 Stat. 1297)

Last List December 22, 2011

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2012

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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