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WHEN: Tuesday, February 7, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

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Part VI

The President

Proclamation 8772—National Slavery and Human Trafficking Prevention Month, 2012

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Presidential Documents

Title 3—

The President

Proclamation 8772 of December 30, 2011

National Slavery and Human Trafficking Prevention Month, 2012

By the President of the United States of America

A Proclamation

Nearly a century and a half ago, President Abraham Lincoln issued the Emancipation Proclamation—a document that reaffirmed the noble goals of equality and freedom for all that lie at the heart of what it means to live in America. In the years since, we have tirelessly pursued the realization and protection of these essential principles. Yet, despite our successes, thousands of individuals living in the United States and still more abroad suffer in silence under the intolerable yoke of modern slavery. During National Slavery and Human Trafficking Prevention Month, we stand with all those who are held in compelled service; we recognize the people, organizations, and government entities that are working to combat human trafficking; and we recommit to bringing an end to this inexcusable human rights abuse.

Human trafficking endangers the lives of millions of people around the world, and it is a crime that knows no borders. Trafficking networks operate both domestically and transnationally, and although abuses disproportionally affect women and girls, the victims of this ongoing global tragedy are men, women, and children of all ages. Around the world, we are monitoring the progress of governments in combating trafficking while supporting programs aimed at its eradication. From forced labor and debt bondage to forced commercial sexual exploitation and involuntary domestic servitude, human trafficking leaves no country untouched. With this knowledge, we rededicate ourselves to forging robust international partnerships that strengthen global anti-trafficking efforts, and to confronting traffickers here at home.

My Administration continues to implement our comprehensive strategy to combat human trafficking in America. By coordinating our response across Federal agencies, we are working to protect victims of human trafficking with effective services and support, prosecute traffickers through consistent enforcement, and prevent human rights abuses by furthering public awareness and addressing the root causes of modern slavery. The steadfast defense of human rights is an essential part of our national identity, and as long as individuals suffer the violence of slavery and human trafficking, we must continue the fight.

With the start of each year, we commemorate the anniversaries of the Emancipation Proclamation, which became effective on January 1, 1863, and the 13th Amendment to abolish slavery, which was signed by President Abraham Lincoln and submitted to the States for ratification on February 1, 1865. These documents stand as testaments to the gains we have made in pursuit of freedom and justice for all, and they remind us of the work that remains to be done. This month, I urge all Americans to educate themselves about all forms of modern slavery and the signs and consequences of human trafficking. Together, and in cooperation with our partners around the world, we can work to end this terrible injustice and protect the rights to life and liberty entrusted to us by our forebears and owed to our children.

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 Slavery and Human Trafficking Prevention Month, culminating in the annual celebration of National Freedom Day on February 1. I call upon the people of the United States to recognize the vital role we can play in ending modern slavery and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2012–188
Filed 1–5–12; 11:15 am]
Billing code 3295–F2–P

Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1382; Directorate Identifier 2011–SW–053–AD; Amendment 39–16900; AD 2011–26–10]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Enstrom Helicopter Corporation (Enstrom) Model F–28C, F–28C–2, F–28F, 280C, 280F, 280FX TH–28, 480, and 480B helicopters with certain trim relays to require modifying and testing the lateral and longitudinal cyclic trim actuator assemblies. This AD was prompted by four failures in the cyclic trim system on certain Enstrom model helicopters that resulted in reduced controllability of the helicopter. These actions are intended to prevent failure of the cyclic trim system and subsequent loss of control of the helicopter.

DATES: This AD becomes effective January 23, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of January 23, 2012.

We must receive comments on this AD by March 6, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

For service information identified in this AD, contact Enstrom Helicopter Corporation, 2209 22nd St., Menominee, Michigan, 49858–0490; telephone: (906) 863–1200; email: *customerservice@enstromhelicopter.com;* Web site: *http://www.enstromhelicopter.com/enstrom_new/enstrom_support_tec.html.* You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Gregory J. Michalik, Enstrom Program Manager, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone (847) 294–7135; fax (847) 294–7834; email: *gregory.michalik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We are adopting a new AD for the Enstrom Model F–28C, F–28C–2, F–28F, 280C, 280F, 280FX, TH–28, 480, and 480B helicopters with a trim relay, part-number (P/N) KUP14D55–472, M83536/10–015M, or M83536/10–024M. This AD does not apply to the specified helicopters with a reversible trim motor, P/N 28–16621 (Ford Motor Company C1AZ–14553A) or P/N AD1R–10 (Signal Electric). This AD requires modifying the lateral and longitudinal trim actuator assemblies by replacing the actuator and limit switch bracket to provide a positive stop for the trim actuator. In the event of a trim actuator runaway, the new bracket will stop the actuator, causing the circuit breaker to trip before any significant loss of control occurs. After the trim actuator assemblies are modified, this AD requires performing operational (ground) and flight tests to determine that the trim relay is working correctly. This AD was prompted by reports of 4 failures in the cyclic trim system in the field, 2 that occurred on the Enstrom Model 480B helicopter and 2 that occurred on the Enstrom Model F28 helicopter. These failures resulted in reduced controllability of the helicopter. We are issuing this AD to prevent failure of the cyclic trim system and subsequent loss of control of the helicopter.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information

We reviewed Enstrom Service Directive Bulletin (SDB) No. 0110, Revision 3, dated July 6, 2011 (SDB 0110), for Model F–28C, F–28C–2, F–28F, 280C, 280F, and 280FX helicopters; and Enstrom SDB No. T–039, Revision 3, dated July 6, 2011 (SDB T–039), for Model TH–28, 480, and 480B helicopters. SDB 0110 specifies, for helicopters with a trim relay, P/N KUP14D55–472, M83536/10–015M, or M83536/10–024M, procedures for modifying the lateral and longitudinal trim actuator assembly using the cyclic trim assembly kit (modification kit), P/N 28–01063–1, and specifies performing an operational check and flight test to determine the trim is operating correctly after the modification. SDB T–039 specifies, for helicopters with a trim relay, P/N M83536/10–024M, procedures for modifying the lateral and longitudinal trim actuator assembly using the modification kit, P/N 4230045–1, and specifies performing an operational check and flight test to determine the trim is operating correctly after the modification. The SDBs state that the modification kits contain the upgraded bracket.

AD Requirements

This AD requires, within 5 hours time-in-service (TIS) or at the next annual or 100 hour time-in-service inspection, whichever occurs first, the following actions:

- For the Enstrom Model F–28C, F–28C–2, F–28F, 280C, 280F, and 280FX helicopters with a trim relay, P/N KUP14D55–472, M83536/10–015M, or M83536/10–024M, modify the lateral and longitudinal trim actuator assembly using the modification kit, P/N 28–01063–1.
- For the Enstrom Model TH–28, 480, and 480B helicopter with a trim relay, P/N M83536/10–024M, modify the lateral and longitudinal trim actuator assembly using the modification kit, P/N 4230045–1.
- For all affected helicopters, after accomplishing the modification of the lateral and longitudinal trim actuator assemblies and before further flight, perform an operational test and flight test to determine the trim is operating correctly.

The actions required by this AD are to be accomplished by following specified portions of the SDBs described previously.

Differences Between This AD and the Service Information

The SDBs specify, before further flight, to insert a special addendum into the Emergency Procedures section of the Flight Manual, and this AD does not require this action.

Costs of Compliance

We estimate that this AD will affect 207 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. For Model 480, 480B, and TH–28, modifying the actuator assembly will require 4 work hours at a cost of $85 per hour and parts will cost $327; the cost per helicopter will be $667. For Model 280C, 280F, 280FX, F–28C, F–28C–2, and F–28F, modifying the actuator assembly will require 4 work hours at a cost of $85 per hour; parts will cost $383; and the cost per helicopter will be $723.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished within 5 hours time-in-service, a very short time period based on the average flight-hour utilization rate of these helicopters.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

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, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

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:

2011–26–10 Enstrom Helicopter Corporation: Amendment 39–16900; Docket No. FAA–2011–1382; Directorate Identifier 2011–SW–053–AD.

(a) Applicability

This AD applies to the Enstrom Model F–28C, F–28C–2, F–28F, 280C, 280F, 280FX, TH–28, 480, and 480B helicopters with a trim relay, part-number (P/N) KUP14D55–472, M83536/10–015M, or M83536/10–024M, certificated in any category.

Note 1: This AD does not apply to the specified helicopters with a reversible trim motor, P/N 28–16621 (Ford Motor Company C1AZ–14553A) or P/N AD1R–10 (Signal Electric).

(b) Unsafe Condition

This AD defines the unsafe condition as a failure in the cyclic trim system. This condition could result in reduced controllability of the helicopter and subsequent loss of control of the helicopter.

(c) Effective Date

This airworthiness directive (AD) becomes effective January 23, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 5 hours time-in-service (TIS) or at the next annual or 100 TIS inspection, whichever comes first:

(1) For the Enstrom Model F–28C, F–28C–2, F–28F, 280C, 280F, and 280FX helicopters, modify the lateral and longitudinal trim actuator assemblies using the cyclic trim assembly kit (modification kit), P/N 28–01063–1, in accordance with the instructions in paragraph 6.1 of the Enstrom Service Directive Bulletin (SDB) No. 0110, Revision 3, dated July 6, 2011 (SDB No. 0110 R3), except when the instructions specify using ''Aeroshell 22 grease'' or ''VC–3 Vibra-tite thread locker,'' you may use an equivalent product.

(2) For the Enstrom Model TH–28, 480, and 480B helicopters, modify the lateral and longitudinal trim actuator assemblies using the modification kit, P/N 4230045–1, in accordance with the instructions in paragraph 6.1 of the Enstrom SDB No. T–039, Revision 3, dated July 6, 2011 (SDB No. T–039 R3), except when the instructions specify using ''Aeroshell 22 grease'' or ''VC–3 Vibra-tite thread locker,'' you may use an equivalent product, and you are not required to contact Enstrom Customer Service.

(3) After modifying the lateral and longitudinal trim actuator assemblies in accordance with paragraphs (e)(1) or (e)(2) of this AD, before further flight, operationally test the trim limits in accordance with paragraph 6.2. of the SDB for your model helicopter, and determine during a flight test whether there is appropriate trim authority in accordance with paragraph 6.3. of the SDB for your model helicopter.

(f) Special Flight Permits

A one-time special-flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 provided the helicopter is operated with the trim system circuit breaker pulled.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gregory J. Michalik, Enstrom Program Manager, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone (847) 294–7135; fax (847) 294–7834; email: *gregory.michalik@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6710: Main Rotor Control.

(i) Material Incorporated by Reference

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

(2) Enstrom Service Directive Bulletin No. 0110, Revision 3, dated July 6, 2011, for the Model F–28C, F–28C–2, F–28F, 280C, 280F; and

(3) 280FX or Enstrom Service Directive Bulletin No. T–039, Revision 3, dated July 6, 2011, for the Model TH–28, 480, and 480B.

(4) For service information identified in this AD, contact Enstrom Helicopter Corporation, 2209 22nd St., Menominee, Michigan 49858–0490; telephone: (906) 863–1200; email: *customerservice@enstrom helicopter.com;* Web site: *http://www.enstromhelicopter.com/enstrom_new/enstrom_support_tec.html.*

(5) You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137 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.*

Issued in Fort Worth, Texas, on December 14, 2011.

M. Monica Merritt,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–32895 Filed 1–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD; Amendment 39–16904; AD 2011–27–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Model 737 airplanes. This AD was prompted by a report of extensive corrosion of a ballscrew used in the drive mechanism of the horizontal stabilizer trim actuator (HSTA). This AD requires repetitive inspections, lubrications, and repetitive overhauls of the ball nut and ballscrew and attachment (Gimbal) fittings for the trim actuator of the horizontal stabilizer; various modification(s); and corrective actions if necessary; as applicable. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: This AD is effective February 10, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 10, 2012.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

For Skytronics service information identified in this AD, contact Skytronics Inc., (cage 16553), P.O. Box 807, El Segundo, California 90245; telephone (310) 322–6284; fax (310) 322–6160; Internet *http://www.skytronicsinc.com.*

For Linear Motion service information identified in this AD, contact Linear Motion LLC, 628 North Hamilton Street, Saginaw, Michigan 48602; telephone (989) 759–8300; Internet *http://www.thomsonaerospace.com.*

For Umbra Cuscinetti service information identified in this AD, contact Umbra Cuscinetti S.p.A., Technical Publications Department; Via Piave 12, Foligno (PG) 06034, Italy; telephone +39 (0742) 348300; fax +39 (0742) 348277; email *tech.pubs@umbracus.com.*

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

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

FOR FURTHER INFORMATION CONTACT:

Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6490; fax: (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. The supplemental NPRM was published in the **Federal Register** on April 19, 2011 (76 FR 21815). The original NPRM was published in the **Federal Register** on April 28, 2008 (73 FR 22840). The supplemental NPRM proposed to require repetitive inspections, lubrications, and repetitive repairs/overhauls of the ball nut and ballscrew and attachment (Gimbal) fittings for the trim actuator of the horizontal stabilizer; various installation(s); and corrective actions if necessary; as applicable.

Comments

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

Supportive Comments

Boeing concurred with the content of the supplemental NPRM (76 FR 21815, April 19, 2011). Continental Airlines is complying with the actions and supported the supplemental NPRM.

Requests To Change Certain Compliance Times

US Airways and Southwest Airlines asked that the compliance time required by paragraph (g)(1) of the supplemental NPRM (76 FR 21815, April 19, 2011) be extended. US Airways stated that the compliance time for the modification is defined in Table 1 of paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; that compliance time is within 24,000 flight hours since delivery or 24,000 flight hours since last overhaul, whichever comes first. US Airways added that this compliance time would put all airplanes having HSTAs with more than 24,000 flight hours since delivery immediately out of compliance. US Airways adds that this compliance time, coupled with the compliance time in the supplemental NPRM, would give operators only 12 months to modify all affected airplanes. US Airways noted that the compliance time specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, specifies ''whichever occurs later.'' Southwest also stated that this compliance time would put its airplanes out of compliance because all its HSTAs have more than 24,000 flight hours since new.

Senem Sevinic stated that the compliance times given in the referenced service information seem quite complicated, and asked that we specify the compliance times in the supplemental NPRM (76 FR 21815, April 19, 2011).

We acknowledge the requests from US Airways and Southwest and provide the following information. We specified grace periods (i.e., compliance times after the effective date of the AD) in paragraph (g)(1)(ii) of the supplemental NPRM (76 FR 21815, April 19, 2011). However, we have extended the compliance time required by paragraph (g)(1)(ii)(C) of this AD to 24 months because this extension will provide an acceptable level of safety. We do not agree with the request to specify the compliance times in paragraph (g)(1)(i) of this AD; those compliance times adequately identify the time necessary to complete each task required by this AD. We have not changed the AD in this regard.

Request To Clarify Certain Actions

Delta asked that the ''repair/overhaul'' phrase specified in paragraph (g)(1)(ii)(B) of the supplemental NPRM (76 FR 21815, April 19, 2011) be changed to ''overhaul'' to match the language specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010. Delta stated that paragraph (g)(1)(ii)(B) of the supplemental NPRM can lead to uncertainty with respect to the necessary time to accomplish a repair. Delta noted that the compliance time for repair/overhaul required by this paragraph is ''within 12 months of the effective date of this AD;'' however, Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, specifies repair prior to further flight if damage is found. Delta also noted that Table 1 of paragraph 1.E., ''Compliance,'' of that service bulletin does not include the word ''repair'' when referring to the overhaul actions, and adds that the only compliance time specified for the repair is ''before further flight.''

We agree that some clarification is necessary. Therefore, we have changed the ''repair/overhaul'' phrase specified in the preamble and paragraphs (g), (g)(1), and (g)(1)(ii)(B) of this AD to specify ''overhaul,'' for the reasons provided by the commenter.

Delta and US Airways asked that paragraph (g)(1)(ii)(C) of the supplemental NPRM (76 FR 21815, April 19, 2011) be changed to clarify the phrase ''for the installation'' to identify the individual installation and its applicability, or, in the case of multiple installations, to identify each individual installation and its applicability. Delta stated that the installation could be a single installation or multiple installations, and noted that the phrase could be referring to the ball nut tube retainer installation. US Airways infers that we are identifying many references in the service information about removing certain parts and installing improved parts. US Airways suggested using the word ''modification'' since using ''installation'' could be confusing, and noted that ''installation'' could refer to installation of modifications or installation of the HSTA.

We agree that clarification is necessary for the reasons provided by the commenters. Therefore, in paragraph (g)(1)(ii)(C) of this AD we have changed the phrase ''For the installation(s)'' to ''For the modification(s).'' In addition, we have changed ''installation(s)'' to ''modification(s)'' in the Summary section and paragraphs (g) and (g)(1) of this AD.

Request To Change the Maintenance Planning Document (MPD) Task Cards

Southwest asked that the work instructions in the MPD task cards be expanded to match the procedures for the detailed inspections specified in the service information specified in paragraph (g) of the supplemental NPRM (76 FR 21815, April 19, 2011). Southwest added that this would allow for one set of instructions to accomplish the inspections and would eliminate the human error factor involved with more than one set of inspection requirements since the task cards do not match the service information. Senem Sevinic asked that a note be added to the

supplemental NPRM that specifies which MPD tasks meet which steps in Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, because it is difficult to follow both the steps in this service information and the MPD tasks.

We disagree with adding a note to this AD. The actions required by this AD, and referred to in Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, address a specific safety issue. Accomplishing the tasks in the MPD task cards does not satisfy the actions specified in this service information; however, accomplishing the actions specified in this service information does satisfy certain MPD tasks. Because the MPD is a Boeing document and is not maintained by the FAA, operators may request any change to a task related to an MRB item through the Industry Steering Committee, which would ensure that approved changes are made to the applicable MPD task. We have not changed the AD in this regard.

Request To Clarify Parts Installation Paragraph

US Airways asked that we clarify the requirements in paragraph (i) of the supplemental NPRM (76 FR 21815, April 19, 2011) (the parts installation paragraph). US Airways reiterated the language used in this paragraph and asked if an operator may install a serviceable unit (i.e., inspected and lubricated) after the effective date of the AD, or if we are requiring only replacement units that are inspected and lubricated, and have zero time since overhaul and post-modification.

We infer that the commenter is asking if unmodified ballscrew assemblies may be used on replacement HSTAs, provided that they are inspected and lubricated as required. For clarification, the ballscrew assembly in the drive mechanism of the HSTA may not be installed unless it has been inspected, and modified, as applicable, to ensure that HSTAs used as replacements are not exposed to the unsafe condition addressed in this AD. No change to the AD is necessary in this regard.

Change to Final Rule

Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; and Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; refer to accomplishing certain actions as given in certain component maintenance manuals (CMMs). This AD includes a new Note 1 (and renumbers subsequent notes) identifying those CMMs as additional sources of guidance. The note also clarifies a typographical error in Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010, which referred to ''CMM 27–45–12,'' and should have referred to ''CMM 27–45–11'' as an additional source of guidance.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 1,641 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action [1]	Work hours [1]	Average labor rate per hour	Parts	Cost per product [1]	Number of U.S.-registered airplanes	Fleet cost [1]
Detailed inspections	2 or 4	$85	None	$170 or $340, per inspection cycle.	1,641	Between $278,970, and $557,940 per inspection cycle.
Lubrications	1 or 3	85	None	$85 or $255, per lubrication cycle.	1,641	Between $139,485, and $418,455 per lubrication cycle.
Overhauls	40	85	None	$3,400 per overhaul	1,641	$5,579,400 per overhaul cycle.
Modifications (Installations).	Between 1 and 3	85	$2,200	Between $2,285 and $2,455.	1,352	Between $3,089,320 and $3,319,160.

[1] Depending on airplane configuration.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this AD is to be conducted as new ''stand alone'' actions. However, in actual practice, the lubrications, detailed inspections, and overhauls are currently being done as part of normal airplane maintenance. The repair (if necessary) can be done coincidentally or in combination with the normally scheduled HSTA and ballscrew overhaul. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

We estimate the following costs to do any necessary repairs/replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Remove/replace HSTA	Between 3 and 8 work hours × $85 per hour = between $255 and $680.	$0	Between $255 and $680.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–27–03 The Boeing Company: Amendment 39–16904; Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD.

(a) Effective Date

This AD is effective February 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Model 737 airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls.

(e) Unsafe Condition

This AD results from a report of extensive corrosion of a ballscrew used in the drive mechanism of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control 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) Inspections, Lubrications, Overhauls, Modification(s), and Applicable Corrective Actions

At the applicable compliance time and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable (depending on airplane configuration): Do the inspections, lubrications, overhauls, modification(s), and applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable; except as provided by paragraphs (g)(1) and (g)(2) of this AD.

Note 1: Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; and Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; refer to the following component maintenance manuals (CMMs) as additional sources of guidance for accomplishing the applicable specified actions: Boeing CMM 27–45–11, dated November 1, 2011; Boeing CMM 27–45–12, dated November 1, 2011; Skytronics CMM 27–40–03, Revision 1, dated September 1, 2006; Umbra Cuscinetti CMM 27–41–01, Revision 5, dated September 27, 2005; and Linear Motion CMM 27–41–01, Revision 8, dated May 21, 2008; as applicable.

Note 2: Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010, refers to Umbra Cuscinetti Service Bulletin 07322–27–01, dated December 21, 2004; Linear Motion Service Bulletin 7901708, Revision A, and Revision B, both dated July 26, 2005; Boeing 737 Service Bulletin 27–1046, Revision 1, dated April 5, 1974; and SKYTRONICS Service Bulletin 93004, dated September 1, 2005; as additional sources of guidance for accomplishing the applicable specified actions.

Note 3: Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, refers to Umbra Cuscinetti Service Bulletin 07322–27–01, dated December 21, 2004, as an additional source of guidance for accomplishing the applicable specified actions.

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable; specifies an initial compliance time for accomplishing the initial inspection, lubrication, overhaul, or modification, this AD requires doing the applicable initial action(s) at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the applicable compliance time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable.

(ii) Within the applicable compliance time specified in paragraph (g)(1)(ii)(A), (g)(1)(ii)(B), or (g)(1)(ii)(C) of this AD.

(A) For the initial detailed inspection and lubrication: Within 6 months after the effective date of this AD.

(B) For the initial overhaul: Within 12 months after the effective date of this AD.

(C) For the modification(s): Within 24 months after the effective date of this AD.

(2) Where Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010, specifies a compliance time of ''* * * within 25,000 Flight Hours since the latest horizontal stabilizer trim actuator (HSTA) Overhaul from the date of Revision 1 of this Service Bulletin * * *,'' this AD requires compliance within 25,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer.

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

Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007; or Boeing Alert Service Bulletin 737–27A1278, dated May 24, 2007; as applicable; are considered acceptable for compliance with the corresponding actions specified in this AD.

(i) Parts Installation

As of the effective date of this AD, no person may install a ballscrew assembly in the drive mechanism of the HSTA on any airplane, unless it has been inspected and modified, as applicable, in accordance with paragraph (g) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(1) 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.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(k) Related Information

(1) For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6490; fax: (425) 917–6590.

(2) Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) For Skytronics service information identified in this AD, contact Skytronics Inc., (cage 16553), P.O. Box 807, El Segundo, California 90245; phone: (310) 322–6284; fax: (310) 322–6160; Internet: *http://www.skytronicsinc.com.*

(4) For Linear Motion service information identified in this AD, contact Linear Motion LLC, 628 North Hamilton Street, Saginaw, Michigan 48602; phone: (989) 759–8300; Internet: *http://www.thomsonaerospace.com.*

(5) For Umbra Cuscinetti service information identified in this AD, contact Umbra Cuscinetti S.p.A., Technical Publications Department; Via. Piave 12, Foligno (PG) 06034, Italy; phone: +39 (0742) 348300; fax: +39 (0742) 348277; email: *tech.pubs@umbracus.com.*

(l) 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) Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010.

(ii) Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.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 14, 2011.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33351 Filed 1–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. FDA–2008–N–0326]

New Animal Drugs; Cephalosporin Drugs; Extralabel Animal Drug Use; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency) is issuing an order prohibiting certain extralabel uses of cephalosporin antimicrobial drugs in certain food-producing animals. We are issuing this order based on evidence that certain extralabel uses of these drugs in these animals will likely cause an adverse event in humans and, therefore, present a risk to the public health.

DATES: This rule becomes effective April 5, 2012. Submit either electronic or written comments on this document by March 6, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2008–N–0326, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2008–N–0326 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, 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: Eric Nelson, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–9201, *email: eric.nelson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. History

In the **Federal Register** of July 3, 2008 (73 FR 38110), FDA published an order prohibiting the extralabel use of cephalosporin antimicrobial drugs in food-producing animals, with a 60-day comment period and a 90-day effective date for the final order. The order, which was to take effect as a final rule on October 1, 2008, would have resulted in a change to part 530 (21 CFR part 530) in § 530.41 to list cephalosporins as prohibited from extralabel use in food-producing animals as provided for in § 530.25(f).

In response to publication of this order, the Agency received requests for a 60-day extension of the comment period. The requests conveyed concern that the original 60-day comment period would not allow the requesters sufficient time to examine the available evidence, consider the impact of the order, and provide constructive comment.

FDA considered the requests and, in the **Federal Register** of August 18, 2008 (73 FR 48127), extended the comment period for the order for 60 days, until November 1, 2008. Accordingly, FDA also delayed the effective date of the final rule 60 days, until November 30, 2008.

The Agency received many substantive comments on the July 3, 2008, order of prohibition. Therefore, to allow more time to fully consider the comments, FDA decided to revoke the order so that it would not take effect November 30, 2008. Accordingly, in the **Federal Register** of November 26, 2008 (73 FR 71923), FDA withdrew the final rule and indicated that if, after considering the comments and other relevant information the Agency decided to issue another order of prohibition addressing this matter, FDA would follow the procedures in § 530.25 that provide for a public comment period prior to implementing the new order.

B. Comments on the July 3, 2008, Order of Prohibition

The Agency received comments from approximately 170 organizations and individuals on the July 3, 2008, order of prohibition. Comments were received from a trade organization representing new animal drug manufacturers, several trade organizations representing food animal producers, several professional associations representing veterinarians, a consumer protection organization, several new animal drug manufacturers, and many individuals including food animal veterinarians, farmers, and ranchers. Only two of the commenters supported the July 3, 2008, order of prohibition as written. All others felt that the prohibition should be revised in some manner before enactment or that it was unnecessary and should not be enacted in any form. These comments can be summarized into two general categories:

(1) The scope of the order was too broad in that it unnecessarily prohibited certain extralabel uses that do not significantly contribute to the problem of cephalosporin resistance. Many of these commenters were concerned about the unintended negative consequences on animal health that would result from such action; and

(2) FDA failed to meet the legal standard for issuing a prohibition order. Some of these comments alleged that FDA appeared to have applied the ''precautionary principle'' rather than basing its decision on sound scientific evidence.

Although FDA does not agree with comments alleging that the Agency did not meet the legal standard for issuing an order of prohibition, the Agency does agree with comments that the scope of the original order of prohibition could have been more targeted. After considering the comments and information submitted in response to the July 2008 order of prohibition, FDA has re-examined the basis for the original order. Based on this re-examination, FDA has determined that there is sufficient basis for prohibiting certain extralabel uses of cephalosporin drugs in food-producing major animal species. Specifically, as explained in detail later in this document, FDA is prohibiting the extralabel use of cephalosporin antimicrobial drugs (not including cephapirin) in cattle, swine, chickens, and turkeys: (1) For disease prevention purposes; (2) at unapproved doses, frequencies, durations, or routes of administration; and (3) if the drug is not approved for that species and production class.

Thus, with the exception of extralabel uses of cephapirin, the final effect of this order will be to prohibit many extralabel uses of cephalosporin drugs in food-producing major animal species (cattle, swine, chickens, and turkeys) including:

(1) Use for disease prevention purposes;

(2) Use at unapproved dose levels, frequencies, durations, or routes of administration (*e.g.,* Biobullets in cattle and injection or dipping of poultry eggs); and

(3) Use of products not approved in the major food species (*e.g.,* use of human or companion animal cephalosporin drugs).

The extralabel uses that are not prohibited by this order include:

(1) Use of approved cephapirin products in food-producing animals;

(2) Use to treat or control an extralabel disease indication as long as such use adheres to a labeled dosage regimen (*i.e.,* dose, route, frequency, and duration of administration) approved for that species and production class; and

(3) Use in food-producing minor species.

The Agency is prohibiting these extralabel uses in food-producing major species because we believe such uses in these animals will likely cause an adverse event in humans and, therefore, present a risk to the public health. FDA may further restrict extralabel use of cephalosporin antimicrobial drugs in animals in the future if it has evidence that demonstrates that such use has caused or likely will cause an adverse event.

II. Basis for Prohibiting the Extralabel Use of Cephalosporins With Certain Exceptions

A. AMDUCA and Cephalosporins

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) (Public Law 103–396) was signed into law October 22, 1994. It amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to permit licensed veterinarians to prescribe extralabel uses of approved human and animal drugs in animals. In the **Federal Register** of November 7, 1996 (61 FR 57732), FDA published the implementing regulations (codified at part 530) for AMDUCA that include, among other things, a definition for the term ''extralabel use'' as well as provisions for prohibiting extralabel uses.

Section 530.3 states that *extralabel use* means actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling. This includes, but is not limited to:

(1) Use in species not listed in the labeling;

(2) Use for indications (disease or other conditions) not listed in the labeling;

(3) Use at dose levels, frequencies, or routes of administration other than those stated in the labeling; and

(4) Deviation from the labeled withdrawal time based on these different uses.

The sections in FDA's implementing regulations governing the prohibition of extralabel use of drugs in animals include §§ 530.21, 530.25, and 530.30. These sections describe the basis for issuing an order prohibiting an extralabel drug use in animals and the procedure to be followed in issuing such an order. FDA may issue a prohibition order if it finds that extralabel use of a drug in animals presents a risk to the public health. Under § 530.3(e), this means that FDA has evidence demonstrating that the use of the drug has caused, or likely will cause, an adverse event. Furthermore, as discussed in section III.B of this document, the regulations permit a prohibition order to be either a general ban on the extralabel use of the drug or

class of drugs, or a ban limited to one or more of the uses described in the definition of *extralabel use* cited previously.

Section 530.25 provides for a public comment period of not less than 60 days. It also provides that the order of prohibition become effective 90 days after the date of publication, unless FDA revokes or modifies the order, or extends the period of public comment. The list of drugs prohibited from extralabel use is found in § 530.41.

At this time, FDA is concerned that certain extralabel uses of cephalosporins in food-producing major species are likely to lead to the emergence and dissemination of cephalosporin-resistant strains of foodborne bacterial pathogens. If these drug-resistant bacterial strains infect humans, it is likely that cephalosporins will no longer be effective for treating disease in those people. The Agency is particularly concerned about the extralabel use of cephalosporin drugs that are not approved for use in food-producing major species because very little is known about their microbiological or toxicological effects when used in food-producing animals. Therefore, FDA is issuing an order prohibiting, with limited exceptions, the extralabel use of cephalosporins in food-producing major species because, as discussed in this document, the Agency has determined that such extralabel use likely will cause an adverse event and, therefore, presents a risk to the public health.

B. Importance of Cephalosporins in Veterinary and Human Medicine

Cephalosporins are members of the beta-lactam (β-lactam) class of antimicrobials. Members of the cephalosporin class have a β-lactam ring fused to a sulfur-containing ring-expanded system (Ref. 1). These antimicrobials work by targeting synthesis of the bacterial cell wall, resulting in increased permeability and eventual hydrolysis of the cell.

Introduced into clinical use in 1964, cephalosporins are widely used antimicrobial agents in human medicine. Beta-lactams make up 40 percent of total prescriptions in the outpatient setting, and cephalosporins contribute 14 percent of the total outpatient antibiotic prescriptions. This use accounts for over 50 million prescriptions per year (Ref. 2). In the inpatient setting, cephalosporins are most commonly used to treat pneumonia. Older cephalosporins are widely used as therapy for skin and soft tissue infections caused by *Staphylococcus aureus* and *Streptococcus pyogenes,* as well as treatment of upper respiratory tract infections, intra-abdominal infections, pelvic inflammatory disease, and diabetic foot infections. Approved indications for newer cephalosporins include the treatment of lower respiratory tract infections, acute bacterial otitis media, skin and skin structure infections, urinary tract infections (complicated and uncomplicated), uncomplicated gonorrhea, pneumonia (moderate to severe), empiric therapy for febrile neutropenic patients, complicated intra-abdominal infections, pelvic inflammatory disease, septicemia, bone and joint infections, meningitis, and surgical prophylaxis. Indicated pathogens include, but are not limited to, *Acinetobacter calcoaceticus, Bacteroides fragilis, Enterobacter agglomerans, Escherichia coli, Haemophilus influenzae* (including β-lactamase producing strains), *Klebsiella oxytoca, Klebsiella pneumoniae, Moraxella catarrhalis, Morganella morganii, Proteus mirabilis, Pseudomonas aeruginosa, Serratia marcescens, Staphylococcus aureus, Streptococcus pneumoniae,* and *Streptococcus pyogenes* (Ref. 3). Newer cephalosporins (for example, third generation cephalosporins such as ceftriaxone) are used in the hospital setting to treat seriously ill patients with life-threatening disease, many of which are due to organisms that reside in the gastrointestinal tract. These newer cephalosporins are the antibiotics of choice in the treatment of serious *Salmonella* and *Shigella* infections, particularly in children where fluoroquinolones may be avoided due to potential for toxicity (Ref. 4).

Two cephalosporin drugs are currently approved for use in food-producing animal species: Ceftiofur and cephapirin. Injectable ceftiofur products are approved for the treatment and control of certain diseases, including: (1) The treatment of respiratory disease in cattle, swine, sheep, and goats; (2) the treatment of acute bovine interdigital necrobacillosis (foot rot) and acute bovine metritis; (3) the control of bovine respiratory disease; and (4) the control of early mortality associated with *E. coli* infections in day-old chicks and poults. In addition, ceftiofur is approved as an intramammary infusion for the treatment of clinical mastitis in lactating dairy cattle associated with coagulase-negative staphylococci, *Streptococcus dysgalactiae,* and *E. coli.* Cephapirin is only approved as an intramammary infusion for the treatment of lactating cows having bovine mastitis caused by susceptible strains of *Streptococcus agalactiae* and *Staphylococcus aureus.*

C. Mechanism of Cephalosporin Resistance

In general, there are three major mechanisms by which bacteria become resistant to antimicrobial agents: (1) Alteration of the antimicrobial target, (2) efflux of the antimicrobial or changes in permeability of the bacterial cell, and (3) inactivation of the antimicrobial agent itself. Gram-negative bacterial resistance to cephalosporins occurs mainly through inactivation of the cephalosporin by β-lactamases. These enzymes can be both innate and acquired (Ref. 5).

Among bacteria of human health concern, the two most important classes of β-lactamase enzymes are the AmpC cephalosporinases and the extended-spectrum β-lactamases (ESBL). CMY–2 (a type of AmpC) enzymes are found on the chromosome of most *Enterobacteriaceae,* and are also currently found on promiscuous plasmids in *Salmonella, E. coli,* and other members of the *Enterobacteriaceae.* These enzymes provide resistance to first, second, and third generation cephalosporins. CMY–2 is currently the predominant β-lactamase associated with *Salmonella* collected from animals and humans in the United States displaying resistance to ceftiofur and decreased susceptibility or resistance to ceftriaxone (Refs. 6–8), both third generation cephalosporins.

''Fourth generation'' cephalosporins are active *in vitro* against bacteria producing AmpC type β-lactamases, but there is some disagreement as to the clinical significance of that activity. Recently, three *E. coli* producing variant CMY–2 β-lactamases were isolated from patients in Pennsylvania. Two of the three patients from whom these isolates were obtained had undergone treatment with cefepime, a fourth generation cephalosporin, within the 2 months preceding isolation of the organisms. These isolates were shown to have reduced susceptibility to fourth generation cephalosporins, suggesting that CMY–2 has the potential to evolve to provide resistance to fourth generation cephalosporins when exposed to selective pressure (Ref. 9).

ESBLs present in bacteria of human health concern include members of the TEM, SHV, and CTX–M families. These enzymes are plasmid-mediated and have the potential to provide resistance to all cephalosporins. Different ESBLs hydrolyze different cephalosporins at different efficiencies and rates, thus leading to varying patterns of *in vitro* susceptibility. In 2010, the CLSI revised

the cephalosporin resistance breakpoints to more accurately reflect *in vivo* susceptibility. Prior to this time, a particular ESBL strain that might not raise the minimum inhibitory concentration (MIC) for a given cephalosporin to a level above the breakpoint for resistance would commonly prove to be resistant *in vivo* (Ref. 5). Therefore, there were specific guidelines for screening bacterial isolates for the presence of ESBLs when MICs fell in the susceptible range. Any bacterial isolate which produced either an AmpC enzyme or an ESBL was reported to clinicians as resistant to all cephalosporins even though susceptibility testing may have shown *in vitro* susceptibility to some of the cephalosporins (Ref. 10).

In a review of the CTX–M family of ESBLs, Livermore, *et al.* (Ref. 11) noted that until the late 1990s, European surveys found the TEM and SHV families of ESBLs almost exclusively. CTX–M enzymes were recorded rarely, although large outbreaks caused by *Salmonella* serovar Typhimurium with CTX–M–4 and CTX–M–5 were reported in Latvia, Russia, and Belarus in the mid-1990s. However, CTX–M enzymes are now the predominant ESBLs in many European countries, and *E. coli* has joined *Klebsiella pneumoniae* as a major host. CTX–M enzymes are supplanting TEM and SHV in East Asia as well as in Europe. Only in the United States do TEM and SHV still predominate, although CTX–M enzymes are now rising in prevalence (Refs. 12–19). Once mobilized, CTX–M enzymes can be hosted by many different genetic elements, but are most often found on large multi-drug resistance plasmids. Therefore, FDA is concerned that if CTM–X becomes prevalent in the United States, as has occurred in other countries, cephalosporin resistance may escalate.

Serious infections caused by cephalosporin-resistant bacteria may be empirically treated with ineffective antibacterial regimens, significantly increasing the likelihood of death. Urinary tract infections caused by community-acquired cephalosporin-resistant *E. coli* may be associated with bloodstream infections, and these infections may also be resistant to most or all antibiotics commonly used to treat such infections. Empirical treatment of such infections is often with a fluoroquinolone, amoxicillin-clavulanate, or a cephalosporin; however, these *E. coli* are likely to be resistant to all of these agents, making treatment of these infections more difficult (Ref. 11).

D. Cephalosporin-Resistant Zoonotic Foodborne Bacteria

In regard to antimicrobial drug use in animals, the Agency considers the most significant risk to the public health associated with antimicrobial resistance to be human exposure to food containing antimicrobial-resistant bacteria resulting from the exposure of food-producing animals to antimicrobials, including cephalosporins. Resistance to certain cephalosporins is of particular public health concern in light of the evidence of cross-resistance among drugs in the cephalosporin class. Importantly, resistance to ceftiofur compromises the efficacy of ceftriaxone, a first-line therapy for treating salmonellosis in humans. A recent review of β-lactam resistance in bacteria of animal origin states that an emerging issue of concern is the increase in reports of CMY–2 and CTX–M β-lactamases (Ref. 6), which confer cephalosporin resistance and are transmissible between enteric bacteria. Acquired resistance to β-lactams in animal and human isolates has been observed in surveillance programs such as the U.S. National Antimicrobial Resistance Monitoring System (NARMS) and the Canadian Integrated Program for Antimicrobial Resistance Surveillance (CIPARS).

Because food-producing animals are a known source of resistant *Salmonella* infections in humans (Ref. 20), the NARMS program has monitored ceftiofur resistance among *Salmonella* isolates from food-producing animals at slaughter since 1997. In 1997, no *Salmonella* isolates from cattle or swine were resistant to ceftiofur, while ceftiofur resistance among isolates from chickens and turkeys was 0.5 percent and 3.7 percent, respectively. By 2009, the prevalence of ceftiofur resistance among *Salmonella* slaughter isolates increased to 14.5 percent for cattle, 4.2 percent for swine, 12.7 percent for chickens, and 12.4 percent for turkeys (Ref. 21).

Among food animal *Salmonella* isolates in NARMS, ceftiofur resistance has been identified in more than 20 different serotypes, and it has increased substantially in several serotypes commonly found in humans (Ref. 22). Ceftiofur resistance among all *Salmonella* Typhimurium isolates from chickens was 0.0 percent in 1997 and 33.3 percent in 2009. Among all *Salmonella* Typhimurium isolates from cattle, ceftiofur resistance was 3.0 percent in 1998 and 27.8 percent in 2009. Ceftiofur resistance rose from 12.5 percent in 1998 to 58.8 percent in 2009 among *Salmonella* Newport isolates from cattle. There was no ceftiofur resistance among *Salmonella* Heidelberg isolates from poultry in 1997, but resistance rose to 17.6 percent in chicken isolates and 33.3 percent in turkey isolates in 2009 (Refs. 22, 23).

The NARMS program has also monitored ceftiofur resistance among *Salmonella* isolates from humans since 1996. Ceftiofur resistance among non-Typhi *Salmonella* isolates from humans rose from 0.2 percent in 1996 to 3.4 percent in 2009. Resistance to ceftiofur also rose in several *Salmonella* serotypes commonly isolated from humans. In 1996, ceftiofur resistance among *Salmonella* isolates from humans was 0.0 percent, 0.0 percent, and 1.4 percent for serotypes Typhimurium, Newport, and Heidelberg, respectively. In 2009, ceftiofur resistance among isolates from these serotypes was 6.5 percent, 6.4 percent, and 20.9 percent, respectively (Refs. 23, 24).

The CIPARS program revealed an increase in Quebec of resistance to cephalosporins among *Salmonella* Heidelberg isolates from humans reaching a level of 36 percent of isolates in 2004. This increase was accompanied temporally by an increase in ceftiofur resistance in *Salmonella* Heidelberg isolates from retail chicken, which rose to 62 percent in 2004. Hatcheries in Quebec voluntarily stopped the use of ceftiofur in eggs and day-old chicks in February 2005. This action was followed temporally by a dramatic decline in the prevalence of ceftiofur resistance in *Salmonella* Heidelberg isolates from humans and retail chicken in Quebec, which by 2008 had declined to 12 percent and 18 percent, respectively. These trends in *Salmonella* Heidelberg were accompanied by similar trends in ceftiofur resistance in *E. coli* isolates from retail chicken (Ref. 25).

Ceftiofur is not used in human medicine in the United States, but after the 2010 CLSI change in the cephalosporin breakpoint, resistance to this agent largely coincides with resistance to ceftriaxone, a third generation cephalosporin that is a critically important antimicrobial approved for use in humans (Ref. 23). As discussed earlier, this resistance trait conferred by the CMY–2 enzyme. CMY–2 provides resistance to first, second, and third generation cephalosporins. In addition to conferring ceftiofur and ceftriaxone resistance, CMY–2 also imparts resistance to several other β-lactams, including ampicillin and amoxicillin/clavulanate (Ref. 26). The prevalence and spread of CMY–2 is reflected in the surveillance data on ceftriaxone and ceftiofur susceptibility

(Ref. 27) and supports the finding that cephalosporin use in food-producing animals is likely contributing to an increase in cephalosporin-resistant human pathogens.

E. Extralabel Uses of Greatest Concern

1. Dairy Cattle

The U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) conducts both ante-mortem and post-mortem inspection of livestock and poultry presented for slaughter at each official establishment. As part of ante-mortem inspection, FSIS personnel inspect animals to determine whether they exhibit behaviors or conditions that are indicative of illegal chemical use. If such behaviors or symptoms are exhibited, the animals are tagged and further examined at post-mortem inspection. During post-mortem inspection, FSIS veterinarians examine carcasses and their organs to determine whether the animals they came from had pathological diseases or other conditions that could have warranted the use of drugs or other chemicals and whether there are any indications of illegal chemical use. In addition, FSIS conducts laboratory analysis of sample tissues that have been taken from carcasses that have pathologies or other conditions indicative of chemical use to determine whether they contain violative chemical residues. FSIS transmits to FDA information about the violative chemical residue found, including the name of the official establishment where the livestock or poultry was presented for slaughter.

During the 1-year period ending June 25, 2009, FSIS reported 113 instances of violative ceftiofur residues in dairy cows and an additional 22 instances of violative ceftiofur residues in other food-producing animals, including beef cattle and veal calves. The FSIS reports include quantitative drug residue levels for each violation. In most instances, the violative residue levels of ceftiofur detected in dairy cows were significantly above the allowable tolerance of 0.4 ppm (kidney) in tested tissues and are summarized as follows:

- Up to 2x above the tolerance = 12 violations
- Between 2x and 5x above the tolerance = 17 violations
- Between 5x and 10x above the tolerance = 16 violations
- Between 10x and 20x above the tolerance = 30 violations
- Over 20x above the tolerance = 38 violations

An examination of 25 recent inspections of farms responsible for violative ceftiofur residues identified a number of factors that resulted in the misuse of ceftiofur animal drug products. These factors include, but were not limited to, the following: (1) Poor or nonexistent animal treatment records for adequately monitoring treated animals; (2) inadequate animal identification systems for monitoring treated animals; (3) animal owners' lack of knowledge regarding withdrawal times associated with the animal drug product; (4) the animal drug product was administered by a route not included in the approved labeling; (5) the animal drug product was administered at a dose higher than stated in the approved labeling; and (6) the animal drug product was administered to a type of animal (*e.g.,* veal calves) not listed in the approved labeling. Most of the violations involved culled dairy cows. More than half of the violations involved ceftiofur residue levels more than 10 times the established tolerance level.

Based on investigations conducted by FDA, the majority of residue violations were the result of poor recordkeeping and other management practices. Among the provisions required for extralabel drug use in animals under 21 CFR part 530, the client (the owner of the animal or animals or other caretaker) must agree to follow the instructions of the veterinarian, the veterinarian must institute procedures to assure that the identity of the treated animal or animals is carefully maintained, and the veterinarian must take appropriate measures to assure that assigned timeframes for withdrawal are met and no illegal drug residues occur in any food-producing animal subjected to extralabel treatment.

Adhering to the ELU requirements is particularly important for extralabel drug use in dairy cattle because treatment often occurs in sick adult dairy cows close to the time of potential slaughter and introduction into the food supply. Evidence of this practice is the fact that 67 percent of all tissue residue violations reported by FSIS at slaughter are attributed to adult dairy cattle. In comparison, antimicrobial drug treatment in swine and beef cattle more often occurs earlier in the life of the animal, typically at some transition point that is well before slaughter. This aspect of dairy husbandry is not only a concern regarding violative drug residues, it is also a concern in the context of antimicrobial resistance. Recent evidence suggests that administration of ceftiofur crystalline-free acid (CCFA) in cattle will cause a transient increase in the population of ceftiofur-resistant isolates in gut bacteria that lasts approximately two weeks before a return to more normal susceptibility patterns (Ref. 28). Because of this, the Agency is concerned that improper extralabel use of ceftiofur in culled dairy cows just prior to slaughter could result in increased levels of cephalosporin resistance in carcass bacteria.

Ceftiofur use in dairy herds has been shown to increase herd prevalence of ceftriaxone resistant *E. coli* over that in herds without ceftiofur use. Herds reporting ceftiofur use were 25 times more likely to have cows from which ceftriaxone resistant *E. coli* were isolated than those that did not use ceftiofur (Ref. 29). In addition, a ceftiofur-resistant fecal *E. coli* isolate expressing CTX-M-type extended-spectrum β-lactamase was recovered from a sick dairy calf that was treated in an extralabel manner for diarrhea with ceftiofur (Ref 17). *Escherichia coli* are considered good indicators of the selective pressure imposed by antimicrobial use in food-producing animals and, as such, may reflect what might occur in *Salmonella* spp. under the same conditions (Ref. 30). *Salmonella* Newport has been shown to be the predominant serotype among cases of clinical salmonellosis in dairy cattle, followed by *S.* Typhimurium, including the *S.* Typhimurium variant, 4,5,12:i:- (Refs. 31, 32). Over 68 percent of all isolates were resistant to five or more antimicrobials in these studies. In one study, 97 percent of *S.* Newport isolates were multi-drug resistant (MDR), exhibiting an MDR-AmpC phenotype (Ref. 31). The proportion of multi-drug resistance was significantly higher ($p < 0.0001$) among *S.* Newport and *S.* Typhimurium, both serotypes of human importance, than among all other serotypes. MDR-AmpC *S.* Newport resistant to third generation cephalosporins has also been shown to persist in the dairy environment and can be shed from individual cows for up to 190 days (Ref. 33). Studies have also shown that recent antimicrobial treatment, including ceftiofur, can increase the probability of isolating *Salmonella* in calves, heifers, and cows (Refs. 34, 35).

It is estimated that just over one million cases of human salmonellosis occur every year in the United States (Ref 36). *Salmonella* serovars Typhimurium and Newport are often multi-drug resistant and appear to be associated with more severe human disease than other serovars (Refs. 37, 38). These infections can lead to treatment failures, greater hospitalization or death rates, and higher costs than infections with susceptible strains. Consumption of

dairy products, as well as dairy farm contact, represents important risk factors for human *S.* Newport MDR-AmpC infection (Ref. 39). Additionally, a number of outbreaks of *S.* Newport MDR-AmpC have been linked to dairy product consumption (Refs. 40, 41). NARMS data indicate that in 2006, 42.6 percent of diagnostic *Salmonella* isolates from cattle were ceftiofur resistant. *S.* Typhimurium and *S.* Newport were the second and third most frequently isolated serovars from human infections in that year, and *S.* Newport was the third most frequently isolated serovar from cattle. Thirty-four percent of *S.* Newport isolated from humans and 32 percent of *S.* Newport isolated from cattle were resistant to ceftiofur, making this serovar the leading source of ceftiofur-resistant isolates for both hosts.

2. Poultry

FDA conducted inspections at U.S. poultry hatcheries in 2001 and examined records relating to the hatcheries' antimicrobial use during the 30-day period prior to inspection. FDA found that six of the eight hatcheries inspected that used ceftiofur during that period were doing so in an extralabel manner (Ref. 42). For example, ceftiofur was being administered at unapproved dosing levels or via unapproved methods of administration. In particular, ceftiofur was being administered via egg injection, rather than by the approved method of administering the drug to day-old chicks. The Agency is concerned that this extralabel use, particularly when employed in conjunction with automated technology, could result in levels of cephalosporin exposure in food-producing animals that are significantly higher than exposure levels from the approved uses. As a result, FDA believes human exposure to food containing cephalosporin-resistant bacteria would be significantly higher as well. Therefore, considering the large amount of food produced by the poultry industry each year, the Agency believes such extralabel use presents a risk to the public health.

3. Other Extralabel Uses That Increase Drug Exposure

One of the goals of this order of prohibition is to reduce the amount of cephalosporins used in food-producing animals for uses that have not been evaluated for safety and approved by FDA. This is particularly important for uses that result in significant increases in cephalosporin drug exposure such as the injection of chick eggs previously noted. Other extralabel uses that significantly increase drug exposure include certain deviations from an approved dosage regimen. This would include higher doses and longer durations of administration than approved and extralabel routes of administration that facilitate mass dosing of large numbers of animals, such as through drinking water. A similar concern is the use of a cephalosporin drugs to prevent an extralabel disease or condition, particularly when such use involves entire flocks or herds of animals. FDA believes that exposing large numbers of animals to cephalosporin drugs when such use has been neither evaluated nor approved by FDA presents a risk to the public health.

4. Biobullets

The Agency received 35 comments on the July 3, 2008, order of prohibition that documented the extralabel use of ceftiofur in a compounded new animal drug product known as Biobullets. According to the manufacturer's Web site, Biobullets deliver a solid pellet of ceftiofur sodium (NADA 140–338) encased in a biodegradable bullet propelled by an air rifle into the muscle of cattle. Such use clearly represents an extralabel use because ceftiofur sodium is only approved for injection in liquid form by hypodermic needle. Since the rate and extent of dissolution and distribution of ceftiofur sodium in solid form delivered as an implant has not been established, the microbiological and toxicological profile of this extralabel use is unknown; thus, the safety of human food derived from animals treated in this manner is also unknown. Furthermore, based on these comments, and on past regulatory actions regarding Biobullets (Ref. 43), FDA continues to have concerns that the manufacture, distribution, and use of this product may violate the compounding and valid veterinary-client-patient-relationship provisions of AMDUCA and 21 CFR part 530.

5. Human Cephalosporins

Another concern is the extralabel use in food-producing animals of cephalosporin drugs that are only approved for use in humans. The use of these human drug products in food-producing animals presents a risk to public health because, like Biobullets, the microbiological and toxicological profile of this extralabel use is unknown; thus, the safety of human food derived from animals treated with these drugs is also unknown. Also, since none of these drugs are approved for use in food-producing animals, there are no approved labels to guide the use of these drugs regarding, for example, dosing regimen or withdrawal period.

FDA has evidence of the extralabel use of human cephalosporins (cephalexin) by veterinarians for the treatment of cattle. This evidence was obtained during inspections of farms and veterinary hospitals by FDA investigators. Furthermore, one of the comments on the July 3, 2008, order of prohibition reported that cephalosporin drugs that are either being researched or approved for human use are being administered to food-producing animals, including via drinking water.

III. Response to Comments

A. Revised Scope of the Order

Many of the comments received on the July 3, 2008, order of prohibition said the scope of the original order was too broad in that it unnecessarily prohibited certain extralabel uses that do not significantly contribute to the development of antimicrobial resistance.

As is recognized for the use of antimicrobial drugs in general, the use of cephalosporins provides selection pressure that favors expansion of resistant variants of bacteria. Given the importance of the cephalosporin class of drugs for treating disease in humans, FDA believes that preserving the effectiveness of such drugs is critical. Therefore, as stated in the July 2008 order of prohibition, FDA believes that it is necessary to take action to limit the extent to which extralabel use of cephalosporins in food-producing animals may be contributing to the emergence and dissemination of resistant variants. However, as noted earlier, FDA also agrees with many of the comments received on the July 3, 2008, order of prohibition that said the scope of the original order was too broad in that it unnecessarily prohibited certain extralabel uses that are not likely to cause an adverse event and present a risk to the public health. As discussed below, based on the comments and additional information submitted in response to the July 3 order, the Agency has reconsidered its position on the following three specific areas: extralabel use of cephapirin, extralabel use for unapproved indications, and extralabel use in food-producing minor species.

1. Cephapirin

FDA considered the possibility of limiting the order of prohibition to certain generations of cephalosporins, or to certain individual cephalosporin drugs. FDA recognized that not all cephalosporin drugs necessarily posed the same level of risk. But given the

potential for confusion regarding the classification of individual cephalosporin drugs into various generations, FDA concluded in the July 3, 2008, final rule, that it would be problematic to define the scope of the prohibition based on cephalosporin ''generation.'' Although FDA continues to believe that a ''generation-based'' prohibition would be problematic, the Agency has given further consideration to excluding certain cephalosporin drugs from the order of prohibition. Therefore, based on the comments received on the July 3, 2008, order of prohibition, the Agency now believes that it is not necessary to prohibit the extralabel use of approved cephapirin drug products in food-producing animals.

Several factors contribute to cephapirin drug products being of a lesser concern for promoting antimicrobial resistance in bacteria of significant public health concern. First, there are currently no cephapirin drug products approved for use in humans and, since cephapirin has such a narrow spectrum of activity compared to newer cephalosporins like ceftiofur, it is less likely to cause cross-resistance to drugs in other cephalosporin classes (Refs. 26, 28). Furthermore, target organisms for approved uses of cephapirin include those not normally considered to cause serious human infections through the foodborne route.

Second, cephapirin is currently only approved for use in food-producing animals as intramammary infusion drug products for dairy cattle. These products are formulated and dispensed in a manner that limits their suitability for other uses or routes of administration, thus restricting their potential for extralabel use significantly.

Therefore, because the impact of cephapirin on antimicrobial resistance among bacteria of public health concern is substantially less than other, newer cephalosporins, and its unique dosage form restricts the extent of its extralabel use significantly, the Agency believes that it is appropriate to exclude cephapirin drug products from the prohibition order.

2. Extralabel Indications for Use

People often think of extralabel use only in terms of unapproved indications for use, that is, diseases or conditions not included in the approved labeling. However, as noted earlier, the definition of ''*extralabel* use'' includes several aspects of drug use not described in the approved labeling including, but not limited to:

(1) Use in species not listed in the labeling;

(2) Use for indications (disease or other conditions) not listed in the labeling;

(3) Use at dose levels, frequencies, or routes of administration other than those stated in the labeling; and

(4) Deviation from the labeled withdrawal time based on these different uses.

For example, if a veterinarian uses a drug for an approved therapeutic indication, but administers it at twice the labeled dose, such use would represent an extralabel use. Alternatively, if a veterinarian uses a drug for an approved therapeutic indication, and administers the drug at the approved dosage regimen for that indication, but there is a failure to observe the labeled withdrawal time before the treated animal is sent to slaughter, such use would also represent an extralabel use. It is important to understand that there are many ways to use an approved drug in an extralabel fashion.

As noted earlier, a prohibition order can be either a general ban on all extralabel use of a drug or class of drugs, or a lesser ban limited to one or more of the individual extralabel uses. Many commenters were concerned that a blanket prohibition of all extralabel use of cephalosporins would have a negative impact on animal health and welfare because, by prohibiting all extralabel use, therapeutic use for unapproved indications would also be prohibited, thereby eliminating effective treatment options for many life-threatening diseases for which there are limited or no approved therapies. However, while the vast majority of the comments objected to a blanket prohibition, few expressed an objection to prohibiting extralabel dosage regimens. Only those comments regarding intramammary use of cephalosporins expressed a need for extralabel dosage regimens. In fact, several comments explicitly suggested FDA narrow the order to only allow extralabel use for unapproved therapeutic indications, but still prohibit most other extralabel use, including modifications to approved dosage regimens.

An important tenet of the Agency's microbial food safety assessment for antimicrobial drugs in food-producing animals is its focus on conditions of use. When the microbial food safety hazard associated with the use of an antimicrobial drug in food-producing animals is evaluated as part of the new animal drug approval process, the evaluation takes into consideration the proposed conditions of use, including:

(1) Dosage regimen (dose level, frequency of administration, duration, and route of administration), and

(2) Indications for use (purpose of treatment, species, class or age of the target animal, and the number of animals likely to be treated).

As such, it is the approved conditions of use that help mitigate antimicrobial resistance risks associated with a particular drug's use by controlling the overall drug exposure in treated animals. Although all aspects of the conditions of use contribute to some extent to drug exposure, FDA believes, after re-examining the basis for this order of prohibition, that extralabel uses of cephalosporins that involve modifications of the approved dosage regimen are likely to pose the greatest risk of increasing the extent to which animals are exposed to the drug. Such extralabel uses allow for greater exposure of individual animals through modification of dose levels, duration of administration, and/or frequency of administration. Furthermore, using the drug by unapproved routes of administration (*e.g.,* via drinking water) can also increase exposure levels by facilitating administration of the drug to a significantly larger number of animals.

It is in this context that FDA concluded that extralabel uses that conform to the approved dosage regimen, but involve use for unapproved therapeutic indications, pose a significantly lower risk with respect to increasing overall drug exposure than uses at unapproved dose levels, unapproved duration and/or frequency of administration, or unapproved routes of administration. Accordingly, the Agency also concluded that an exception to the order of prohibition could be made on this basis. However, FDA also took into account the extralabel uses of cephalosporin drugs in food-producing animals of greatest concern (see discussion in section II.E of this document regarding prevention use) and concluded that this exception to the prohibition should only be for the treatment and control of disease.

Therefore, the Agency thinks it is appropriate to narrow the scope of the prohibition order somewhat by only allowing extralabel use in food-producing major species for treatment or control of unapproved disease indications, but continuing to prohibit most other extralabel use in these species including unapproved dosage regimens and use to prevent extralabel disease indications.

For the reasons described previously, FDA does not at this time believe that extralabel use in food-producing major

species to treat or control an unapproved disease indication presents a risk to the public health as long as the drug is used at a labeled dose, frequency, duration, and route of administration approved for that species and production class.

3. Food-Producing Minor Species

In accordance with the act, minor species means animals other than cattle, swine, chickens, turkeys, horses, dogs, cats, and humans. Many comments requested that food-producing minor species, particularly small ruminants, be excluded from the order of prohibition. Most of these comments cited the limited availability of approved animal drug products for these species and several comments also noted that small ruminants represent only very limited uses of cephalosporin drug products compared to cattle, swine, and poultry. Based on these comments, the Agency reconsidered the decision to include food-producing minor species in the prohibition on the extralabel use of cephalosporin drugs in food-producing animals.

As noted earlier, in regard to the use of antimicrobial drugs in animals, the Agency considers the most significant risk to the public health associated with antimicrobial resistance to be human exposure to food containing antimicrobial-resistant bacteria resulting from the exposure of food-producing animals to antimicrobials. However, when considering the foodborne pathway, the potential for human exposure to antimicrobial-resistant pathogens is significantly less for food derived from minor species than it is for food derived from the food-producing major species. The exposure potential is less in part because the amount of food derived from cattle, swine, and poultry is much greater than the amount of food derived from sheep, goats, and aquaculture, the minor species from which the most food is derived. Furthermore, the amount of food derived from any of the other food-producing minor species, such as deer, bison, elk, rabbit, duck, goose, quail, pheasant, partridge, pigeon, ostrich, or emu is considerably less than the amount of food derived from sheep, goats, and aquaculture. In addition, cephalosporins are approved for use in sheep and goats, thereby reducing the potential for extralabel use in these species, and there is little or no practical use for cephalosporin drugs in aquaculture.

Therefore, for the reasons described previously, FDA does not at this time believe that extralabel use in food-producing minor species presents a risk to the public health.

Please note that all the provisions of AMDUCA remain applicable to the exceptions noted above. This includes provisions making it unlawful for the permitted extralabel use of a cephalosporin drug to result in a residue above an established tolerance or safe level. See 21 U.S.C. 360b(a)(4)(B) and FDA regulations at 21 CFR 530.11.

B. Legal Standard

Several comments questioned the legal standard applied by FDA in implementing the order of prohibition. Some comments referred to the Agency's approach as involving the ''precautionary principle,'' an apparent reference to a principle used in the European Union in some environmental and regulatory decision-making. Two comments suggested that, in order to support an order of prohibition, it would be necessary for FDA to demonstrate ''either a demonstrative negative impact on human health or an imminent danger to human health.'' Some comments suggested that FDA must perform a risk assessment that would characterize the hazard, evaluate the risk, and ascertain the impact of any risk management recommendations associated with the order.

One comment suggested that a link between the use of cephalosporins in the treatment of animals and the development of bacterial resistance in humans would not meet the criterion of the AMDUCA implementing regulation that the extralabel use of cephalosporins has caused or will likely cause an adverse event. That comment appears to make a technical argument that an adverse event in the context of the regulation can only be an adverse event in animals, as opposed to humans. (The commenter acknowledged that the lack of drug efficacy when used for a labeled pathogen in target animals would be considered an adverse event.)

AMDUCA was enacted in 1994, and its provisions became effective upon FDA's issuance of final regulations implementing those provisions in 1996. Prior to the passage of AMDUCA, Federal law prohibited the use of a new animal drug in a manner other than in accordance with the approved label directions, *i.e.,* extralabel use. Recognizing the reality that veterinarians are often confronted with situations in which there are no approved drugs for the species of animal that they are treating, or for particular diseases or conditions afflicting those animals, Congress enacted AMDUCA to allow licensed veterinarians to prescribe extralabel uses of approved animal drugs and approved human drugs for animals without violating the law.

The provisions of AMDUCA relating to extralabel use in animals of approved new animal drugs and approved human drugs, sections 512(a)(4) and 512(a)(5) of the FD&C Act, respectively, provide that such extralabel use must be in compliance with conditions specified in implementing regulations promulgated by FDA. (21 U.S.C. 360b(a)(4) and 360b(a)(5)). Section 512(a)(4) further provides that if FDA finds, after extending an opportunity for public comment, that the extralabel use of a new animal drug ''presents a risk to the public health * * * [FDA] may, by order, prohibit any such use.'' (Section 512(a)(4)(D) (21 U.S.C. 360b(a)(4)(D)).

Although the express language relating to prohibiting extralabel use appears in the provisions of AMDUCA that deal with extralabel use of approved new animal drugs, in its implementing regulations at part 530, FDA has interpreted the statute as applying the same standard to extralabel use of approved human drugs in food-producing animals. FDA's implementing regulations state that a prohibition may occur if FDA determines that ''[t]he extralabel use of the drug or class of drugs presents a risk to the public health.'' 21 CFR 530.21(a)(2). See also 21 CFR 530.25(a)(2). The regulations permit a prohibition to be either a general ban on the extralabel use of the drug or class of drugs, or a ban limited to particular species, indications for use, dosage forms, routes of administration, or a combination of those factors. 21 CFR 530.21(b).

The regulations further define the phrase ''use of a drug presents a risk to the public health'' to mean that ''FDA has evidence that demonstrates that the use of the drug has caused or likely will cause an adverse event.'' 21 CFR 530.3(e). FDA has thus, by regulation, imposed upon itself the requirement that it have some evidence that demonstrates either that a drug has caused an adverse event or that it likely will cause an adverse event. FDA believes that, when the issue is, as with cephalosporins, a question of the development of antibacterial resistance in animals that may affect human health, an order of prohibition may be based on evidence that such development of antibacterial resistance—which could lead to serious adverse events in humans—is ''likely'' as a result of the extralabel animal drug use. The regulation is clear that there need not be evidence that such an event has actually occurred.

FDA rejects the apparent suggestion of one commenter, noted above, that an order of prohibition cannot be based on an adverse event in humans. Such a reading would be squarely inconsistent with the statutory provisions authorizing FDA to ban extralabel uses that present a risk to the public health. FDA addressed this issue in the preamble to the final AMDUCA implementing regulations, clarifying that ''[t]he agency did not intend for the term 'adverse event' to be interpreted as related only to animal 'adverse drug reactions.' '' (61 FR 57732 at 57737, November 7, 1996). Also, as made clear by the preamble, ''* * * the primary focus will be on human health.'' (61 FR at 57732 at 57737).

FDA also rejects the assertion by some commenters that FDA relied on the ''precautionary principle.'' As previously noted, the standard in the regulation does require the existence of evidence. In the preamble to the final rule, FDA addressed the question of what type of evidence would be necessary by saying that the risk determinations that would lead to prohibition of an extralabel use ''typically will involve documented scientific information. However, the Agency believes that it is not limited to making risk determinations based solely on documented scientific information, but may use other suitable information as appropriate.'' (61 FR 57732 and 57738; November 7, 1996). In other sections of this preamble, FDA provides a detailed description of the evidence supporting its conclusion that the extralabel use that is being prohibited by this revised order does in fact present a risk to the public health, including a likelihood that the use would, if not prohibited, ultimately lead to adverse events in humans resulting from the development of resistance to antibiotic drugs needed to treat human infections.

IV. Conclusions

Based on information regarding cephalosporin resistance as discussed previously, FDA continues to believe, as it did in July of 2008, that it is likely that the extralabel use of cephalosporins in certain food-producing animal species is contributing to the emergence of cephalosporin-resistant zoonotic foodborne bacteria. Therefore, FDA has determined in accordance with the relevant provisions of 21 CFR part 530 that, with some exceptions, such extralabel use likely will cause an adverse event and, as such, presents a risk to the public health. As also noted earlier, FDA agrees with many of the comments received on the July 3, 2008, order of prohibition that said the scope of the original order was too broad and, in response, has narrowed the scope of this order accordingly. Specifically, this order prohibits all extralabel use of cephalosporin drugs in food-producing animals except for the following uses, provided they comply with AMDUCA and FDA's regulations implementing AMDUCA at 21 CFR part 530:

(1) *Cephapirin:* Extralabel uses of approved cephapirin products are excluded from the prohibition.

(2) *Extralabel Indications for Use:* Extralabel uses to treat or control an extralabel disease indication in food-producing major species when used at a labeled dose, frequency, duration, and route of administration approved for that species and production class, are excluded from the prohibition.

(3) *Food-Producing Minor Species:* Extralabel uses in food-producing minor species are excluded from the prohibition.

To restate in more practical terms, after this order becomes effective, the following extralabel use restrictions will apply to all cephalosporin drug products, except approved cephapirin products, when used in food-producing animals:

Major Species: Extralabel use of a cephalosporin drug product is permitted in food-producing major species to treat or control an extralabel disease indication, but only when it is approved and labeled for use in that particular species and production class, and only when the product is administered at dose levels, frequencies, durations, and routes of administration stated on the approved labeling for that particular species and production class. However, extralabel use for disease prevention purposes is prohibited.

Minor Species: All extralabel use of a cephalosporin drug product is permitted in food-producing minor species provided such use complies with the requirements of AMDUCA and 21 CFR part 530.

V. Comments

FDA is providing 60 days from the date of this publication for the public to comment on this document. For the effective date of the order, see the **DATES** section of this document, unless the Agency revokes or modifies the order, or extends the comment period. 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.

VI. Order of Prohibition

Therefore, I hereby issue the following order under 21 CFR 530.21 and 530.25. FDA finds that certain extralabel use of the cephalosporin class of antimicrobial drugs in food-producing animals likely will cause an adverse event, which constitutes a finding that extralabel use of these drugs presents a risk to the public health. Therefore, the Agency is prohibiting the extralabel use of the cephalosporin class of antimicrobial drugs as follows:

Cephalosporins (not including cephapirin) are prohibited from extralabel use in cattle, swine, chickens, or turkeys as follows: (1) For disease prevention purposes; (2) at unapproved doses, frequencies, durations, or routes of administration; and (3) if the drug is not approved for that species and production class.

VII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**). You may view them between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.

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List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

■ 1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

■ 2. In § 530.41, add paragraph (a)(13) to read as follows:

§ 530.41 Drugs prohibited for extralabel use in animals.

(a) * * *

(13) Cephalosporins (not including cephapirin) in cattle, swine, chickens, or turkeys:

(i) For disease prevention purposes;

(ii) At unapproved doses, frequencies, durations, or routes of administration; or

(iii) If the drug is not approved for that species and production class.

* * * * *

Dated: November 23, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–35 Filed 1–4–12; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2010–OS–0043; RIN 0790–AI62]

32 CFR Part 222

DoD Mandatory Declassification Review (MDR) Program; Correction

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: On December 27, 2011 (76 FR 80744–80747), Department of Defense published a final rule titled DoD Mandatory Declassification Review (MDR) Program, which assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders. This rule corrects a paragraph identification error in the regulations.

DATES: This correction is effective January 26, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, (571) 372–0485.

SUPPLEMENTARY INFORMATION: On December 27, 2011, Department of Defense published a final rule titled DoD Mandatory Declassification Review (MDR) Program. Subsequent to the publication of that final rule, Department of Defense discovered that paragraph § 222.5(f) in the third column of page 80746 should have read § 222.5(j).

Correction

In the final rule (FR Doc. 2011–33104) published on December 27, 2011 (76 FR 80744–80747), make the following correction:

§ 222.5 [Corrected]

On page 80746, in § 222.5, in the third column, in the first line of the third paragraph, ''(f) *MDR Appeals.''* should read ''(j) *MDR Appeals.''*.

Dated: December 30, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–33857 Filed 1–5–12; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0547; FRL–9480–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

Correction

In rule document 2011–33660 appearing on pages 214–217 in the issue of Wednesday, January 4, 2012, make the following corrections:

(1) On page 214, in the second column, in the DATES section, in the second line, ''February 3, 2011'' should read ''February 3, 2012''.

(2) On page 217, in the first column, in the last paragraph, in the fifth line, ''March 7, 2011'' should read ''March 5, 2012''.

[FR Doc. C1–2011–33660 Filed 1–5–12; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0944; FRL–9330–4]

Bacillus Amyloliquefaciens Strain D747; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus amyloliquefaciens* strain D747 (formerly known as *Bacillus subtilis* variant *amyloliquefaciens* strain D747) in or on all food commodities when used in accordance with good agricultural practices. Certis USA LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus amyloliquefaciens* strain D747 (formerly known as *Bacillus subtilis* variant *amyloliquefaciens* strain D747).

DATES: This regulation is effective January 6, 2012. Objections and requests for hearings must be received on or before March 6, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0944. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not made available via the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; email address: *cerrelli.susanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0944 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 6, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0944, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of February 4, 2011 (76 FR 6465) (FRL–8858–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F7760) by Certis USA LLC, 9145 Guilford Road, Suite 175, Columbia, MD 21046. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* variant *amyloliquefaciens* strain D747 (now recognized as *Bacillus amyloliquefaciens* strain D747). This notice referenced a summary of the petition prepared by the petitioner, Certis USA LLC, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit VII.C.

Based upon review of the data supporting the petition, EPA has modified the nomenclature of the active ingredient, which was recently reclassified as *Bacillus amyloliquefaciens* strain D747 (Refs. 1, 2, and 3). The reason for this change is explained in Unit III. A.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview of Bacillus Amyloliquefaciens Strain D747

Bacillus amyloliquefaciens strain D747 was previously identified as *Bacillus subtilis* variant *amyloliquefaciens* strain D747 in the petition submitted to exempt the bacterium from the requirement of a tolerance when used as a microbial pesticide in or on all food commodities. *Bacillus subtilis* and *Bacillus amyloliquefaciens* were considered subtypes or variants of the same species. Now, however, *Bacillus amyloliquefaciens* is taxonomically designated as a separate species. The

taxonomic designation used in this final rule is correct.

Certis USA, LLC, has proposed to register *Bacillus amyloliquefaciens* strain D747 for control of fungi and bacteria in greenhouses, nurseries, and shadehouses, and on outdoor agricultural crops, ornamentals, and turfgrass. *Bacillus amyloliquefaciens* strain D747 is the active ingredient in the two end-use products (EP) CX–9030 (EPA File Symbol 70051–RNI) and CX–9032 (EPA File Symbol 70051–RNT).

B. Microbial Pesticide Toxicology Data Requirements

All mammalian toxicology data requirements supporting the petition to exempt from the requirement of a tolerance residues of *Bacillus amyloliquefaciens strain D747* in or on all food commodities have been fulfilled with acceptable studies. The acute oral, injection and pulmonary toxicity/pathogenicity studies show that *Bacillus amyloliquefaciens strain D747* is not toxic, infective, or pathogenic at the doses tested.

1. *Acute oral toxicity/pathogenicity (Office of Chemical Safety and Pollution Prevention (OCSPP) Guideline 885.3050; Master Record Identification Number (MRID) No. 481657–04). Bacillus amyloliquefaciens* strain D747 was administered once orally to 14 rats of both sexes (5-weeks old) at a single dosage of 10^8 colony-forming units (CFU) per animal. No deaths occurred, and no abnormalities (clinical signs, body weight) were observed, during the study or at necropsy. The test microbe was detected at $10^3 - 10^5$ CFU/g in feces 1 day after administration of the test material, but was not detected on day 14. The examination for internal persistence did not detect the test microbe in any organs or tissues, such as the kidney, brain, liver, lung, spleen, stomach, small intestine (duodenum), large intestine (cecum), mesenteric lymph nodes, or blood, throughout the experimental period. Fecal clearance occurred by day 14, and no viable organisms were recovered from blood or other organs or tissues. The results of this acceptable study demonstrated that *Bacillus amyloliquefaciens* strain D747 was not infective, pathogenic, or toxic to rats when orally dosed with 1.0×10^8 CFU/animal.

2. *Acute pulmonary toxicity/pathogenicity (OCSPP Guideline 885.3150; MRID No.481657–06).* Twenty male and female rats were given a single dose of 1.0×10^7 spores *Bacillus amyloliquefaciens* strain D747 via a tracheal route of administration. No mortalities or clinical effects were observed in the test animals throughout the duration of the study. Clearance of the test material was steady, although residual viable cells remained in the lungs and trachea at the end of the 60 day study. This result was typical of spore forming bacteria because bacterial spores take longer to be cleared by healthy immune systems than the vegetative form of bacteria. This acceptable study demonstrated that *Bacillus amyloliquefaciens* strain D747 was not toxic and/or pathogenic to rats when dosed intratracheally at 1.0×10^7 (CFU)/animal.

3. *Acute injection toxicity/pathogenicity (intravenous)—rat (OCSPP Guideline 885.3200; MRID No. 481657–05).* An acceptable acute injection toxicity and pathogenicity study demonstrated that *Bacillus amyloliquefaciens* strain D747 was not toxic, infective, or pathogenic to rats that were injected with approximately 1.0×10^7 CFU/animal.

4. *Bacillus amyloliquefaciens* strain D747 was administered intravenously to groups of 17 male and female rats at a dose of 1.0×10^7 spores per animal. There were no mortalities, no clinical effects from intravenous administration, and steady weight gain of treated rats throughout the study duration. Clearance was steady though residual viable cells remained in the liver and spleen at day 60 on study termination, typical of spore forming bacteria administered to rats. There was no evidence of an increase in viable counts over time that would be indicative of a chronic infection. Since a pattern of clearance was shown, it is assumed that the remaining viable cells were spores that take longer to be cleared by healthy immune systems.

5. *Acute dermal toxicity (OCSPP Guideline 870.1200; MRID No. 481657–08).* An acceptable 14-day acute dermal toxicity study demonstrated that that the CX–9030 product, which contains *Bacillus amyloliquefaciens* strain D747, was not toxic in rats dosed at 5,050 mg/kg. [median lethal dose, (LD_{50}) > 5,050 mg/kg. EPA Toxicity Category IV.]

6. *Acute dermal irritation (OCSPP Guideline 870.2500; MRID No.: 481655–11).* An acceptable dermal irritation study demonstrated that no evidence of irritation occurred from dermal administration of 500 mg of CX–9030 to rabbits during the 4-hour exposure and the 72-hour observation period. The dermal irritation score for *Bacillus amyloliquefaciens* strain D747 CX–9030 was 0.00 (EPA Toxicity Category IV).

7. *Acute dermal irritation (OCSPP Guideline 870.2500; MRID No.: 481655–06).* A second acceptable dermal irritation study also demonstrated that CX–9032 product containing *Bacillus amyloliquefaciens* strain D747 was non-irritating. No evidence of irritation was observed for 72 hours following the 4 hour dermal administration of 0.5 mL undiluted CX–9032 to the shaved skin rabbits. The dermal irritation score for *Bacillus amyloliquefaciens* strain D747 CX–9032 was 0.00 (EPA Toxicity Category IV).

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Dietary exposure to this microbial pesticide may occur, but the complete absence of any acute oral toxicity, infectivity, and/or pathogenicity effects, as discussed in Unit III.B., supports the conclusion that this active ingredient is not toxic at high exposure levels, and, therefore, establishment of a tolerance exemption for residues of *Bacillus amyloliquefaciens* strain D747 is appropriate.

1. *Food.* Based on the results from the toxicity studies presented in Unit III.B., no toxicity, infectivity, pathogenicity or other adverse effects from dietary exposure to *Bacillus amyloliquefaciens* strain D747 from the proposed pesticidal uses of *Bacillus amyloliquefaciens* strain D747 are expected. *Bacillus* species, including *Bacillus amyloliquefaciens,* are commonly found in agricultural settings, and occur naturally on fresh produce with no known adverse effects. The Manual of Clinical Microbiology (9th edition) mentions that dried food, such as spices, milk powder, and grains, often contains large amounts of *Bacillus* spores (Ref. 3). *Bacillus amyloliquefaciens* is not known to produce mammalian toxins, and no foodborne illnesses associated with *Bacillus amyloliquefaciens* have been reported.

2. *Drinking water exposure. Bacillus amyloliquefaciens* is naturally present in soils (Ref. 2); therefore, *Bacillus amyloliquefaciens* may occur in surface water and possibly groundwater. According to the World Health Organization, *Bacillus* species are often detected in drinking water even after going through acceptable water treatment processes, largely because the spores are resistant to these disinfection

processes (Ref. 4). Should this microbial pesticide be present, no adverse effects are expected from exposure to *Bacillus amyloliquefaciens* through drinking water, based on the results of toxicity studies described in Unit III.B.

B. Other Non-Occupational Exposure

The use sites for these products include residential gardens, as well as agricultural sites. Based on the results of the acute toxicity tests described in Unit III.B., the Agency believes that the potential aggregate, non-occupational risks from exposure to *Bacillus amyloliquefaciens* strain D747, when used as a microbial pesticide, are negligible.

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

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

EPA has not found the microbial active ingredient to share a common mechanism of toxicity with any other substances, and *Bacillus amyloliquefaciens* strain D747 does not appear to produce any toxic metabolites. For the purposes of this tolerance action, therefore, EPA has assumed that *Bacillus amyloliquefaciens* strain D747 does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different safety factor when reliable data available to EPA support the choice of a different factor.

Based on the acute toxicity and pathogenicity data/information summarized in Unit III, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Bacillus amyloliquefaciens* strain D747. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the data and other information (e.g., lack of toxicity noted for oral, dermal, and inhalation routes of exposure) available on *Bacillus amyloliquefaciens* strain D747 do not demonstrate toxic, pathogenic, and/or infective potential to sensitive populations from exposure to this microbial pest control agent. There are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety is not necessary.

VII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

The Codex has not established a MRL for *Bacillus amyloliquefaciens* strain D747.

C. Response to Comments

Two comments were submitted. An anonymous comment was submitted expressing opposition to granting an exemption from the requirement of a tolerance to the applicant. (EPA–HQ–OPP–2010–0012–0019). The commenter submitted a number of comments in the same communication that suggested that this and other active ingredients should not be granted exemptions. The commenter expressed concern about toxic chemical residues on produce and on earth, and suggested that the ''Dept. of Health'' should analyze the health effects of toxic chemicals. In the United States, EPA is responsible for regulating pesticides under FIFRA and the FQPA, and has analyzed the toxicity of this microbial active ingredient. As described in Unit III.B., the results of the acute oral, injection and pulmonary toxicity/pathogenicity studies demonstrated that *Bacillus amyloliquefaciens strain D747* is not toxic, infective or pathogenic at the doses tested.

Another commenter also expressed opposition to granting a tolerance or an exemption from the requirement of a tolerance for this and other chemicals that were listed in the same registration notice. (EPA–HQ–OPP–2010–0905–0003). This commenter stated that the food supply must be rigorously tested, that studies must be subjected to independent peer review, and that only long term studies can provide data on the health impact to these chemicals. Consistent with section 408(b)(2)(D) of FFDCA, the testing data that were provided and evaluated by EPA for *Bacillus amyloliquefaciens strain D747,* as described in Unit III.B., support granting this exemption.

VIII. Conclusions

Therefore, an exemption is established for residues of *Bacillus amyloliquefaciens* strain D747.

IX. References

1. Priest, F.G., M. Goodfellow, L.A. Shute, and R.C.W. Berkeley. 1987. *Bacillus amyloliquefaciens* sp. nov., nom. rev. *International Journal of Systematic Bacteriology,* 37: 69–71.
2. Logan, N.A., and P. de Vos. 2009. Genus I. Bacillus, Pp. 21–128 In: P. de Vos, G.M. Garrity, D. Jones, N.R. Krieg, W. Ludwig, F.A. Rainey, K.H. Schleifer, and W. Whitman (Eds.) *Bergey's Manual of Systematic Bacteriology,* Volume 3, 2nd Ed. Springer, New York.

3. Murray, P.R, *et al., Manual of Clinical Microbiology.* Washington, DC: ASM Press; 9th edition, 2007.
4. World Health Organization, Guidelines for Drinking-water Quality. (2011) 4th Ed.

X. Statutory and Executive Order Reviews

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

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

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

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 15, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.308 is added to subpart D to read as follows:

§ 180.308 Bacillus amyloliquefaciens strain D747; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide, *Bacillus amyloliquefaciens* strain D747 in or on all food commodities when used in accordance with good agricultural practices.

[FR Doc. 2011–33846 Filed 1–5–12; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 539, and 552

[GSAR Amendment 2011–03; GSAR Case 2011–G503; (Change 52); Docket 2011–0012, Sequence 1]

RIN 3090–AJ15

General Services Administration Acquisition Regulation; Implementation of Information Technology Security Provision

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

ACTION: Final rule.

SUMMARY: GSA has adopted as final, with changes, an interim rule amending the General Services Administration Acquisition Regulation (GSAR) to implement policy and guidelines to strengthen the security requirements for contracts and orders that include information technology (IT) supplies, services and systems.

DATES: *Effective Date:* January 6, 2012.

Applicability Date: This amendment applies to contracts and orders awarded after January 6, 2012 that include information technology (IT) supplies, services and systems with security requirements.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lague, Procurement Analyst, at (202) 694–8149, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite GSAR Amendment 2011–03, GSAR Case 2011–G503.

SUPPLEMENTARY INFORMATION:

I. Background

The GSA Office of the Inspector General (OIG) conducted an audit of GSA's information and information technology systems to verify that GSA has met the requirements of the Federal Information Security Management Act of 2002 (FISMA). The OIG made a recommendation to strengthen the security requirements in contracts and orders for information technology supplies, services and systems. GSA agreed with the OIG recommendation and published an interim rule in the **Federal Register** at 76 FR 34886 on June 15, 2011, with a request for comments. As a result, this final rule implements the interim rule with only minor changes.

II. GSAR Changes

The changes to GSAR Parts 539 and 552 will remain as implemented by the interim rule.

The final rule contains the following changes to GSAR Parts 501 and 552:

—Part 501.106, OMB Approval under the Paperwork Reduction Act, the collection control number is being added for 552.239–71, Security Requirements for Unclassified Information Technology Resources.

—Based on public comment, GSAR Part 552.239–71(k) is revised.

III. Discussion of Comments

Two public comments from one respondent were received in response to the interim rule.

1. *Comment:* The first comment recommended that a specific reference to Federal Information Processing Standards (FIPS) 199 and 200 should be referenced within GSAR Part 539.

Response: Within GSAR section 539.7001(d) and GSAR clause 552.239–71(b), there is a reference and link to the ''CIO IT Security Procedural Guide 09–48, ''Security Language for Information Technology Acquisitions Efforts.'' '' This document contains security requirements for protecting the government's data and systems; this includes the requirements of FIPS 199 and 200. Therefore, the paragraph is not changed.

2. *Comment:* Suggested minor changes to 552.239–71(k). The suggestion changed the language to read as follows: ''* * * Access shall be provided to the extent required, in the Government's judgment, to conduct an inspection, evaluation, investigation or audit * * *''.

Response: The language in 552.239–71(k) will be changed to reflect the proposed change.

IV. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 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.

V. Regulatory Flexibility Act

This final rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because the rule requires contractors, within 30 days after contract award to submit an IT Security Plan to the contracting officer and contracting officer's representative that describes the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under the contract. The rule will also require that contractors submit written proof of IT security authorization six months after award, and verify that the IT Security Plan remains valid annually. Where this information is not already available, this may mean small businesses will need to become familiar with the requirements, research the requirements, develop the documents, submit the information, and create the infrastructure to track, monitor and report compliance with the requirements. However, GSA expects that the impact will be minimal, because the clause includes requirements that IT service contractors should be familiar with through other agency clauses, existing GSA IT security requirements, and Federal laws and guidance. Small businesses are active providers of IT services.

The Regulatory Secretariat has submitted a copy of the Final Regulatory Flexibility Analysis (FRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat.

The analysis is summarized as follows:

This rule will require that contractors submit an IT Security Plan that complies with applicable Federal laws including, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and GSA policies and procedures.

GSA will use this information to verify that the contractor is securing GSA's information technology data and systems from unauthorized use, as well as use the information to assess compliance and measure progress in carrying out the requirements for IT security.

The requirements for submission of the plan will be inserted in solicitations that include information technology supplies, services or systems in which the contractor will have physical or electronic access to government information that directly supports the mission of GSA. As such it is believed that contract actions awarded to small business will be identified in FPDS under the Product Service Code D—ADP and Telecommunication Services. The requirements of the plan apply to all work performed under the contract: Whether performed by the prime contractor or subcontractor.

Based on the average of fiscal year 2009 and 2010 Federal Procurement Data System retrieved, it is estimated that 80 small businesses will be affected annually.

GSA did not identify any significant alternatives that would accomplish the objectives of the rule. Collection of information on a basis other than by individual contractors is not practical. The contractor is the only one who has the records necessary for the collection.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 3090–0294, titled: Implementation of Information Technology Security Provision.

Section 501.106, OMB Approval under the Paperwork Reduction Act, the chart will be revised to include the OMB approval of the collection requirement from 552.239–71, Security Requirements for Unclassified Information Technology Resources. The collection request was defined in the interim rule; however no OMB control number was available at time of the interim rule publication. The information collection request was posted in the **Federal Register** at 76 FR 781010, December 15, 2011, and is currently requesting comments. Any comments received will be addressed in a subsequent **Federal Register** document.

List of Subjects in 48 CFR Parts 501, 539, and 552

Government procurement.

Dated: December 23, 2011.

Joseph A. Neurauter,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

Accordingly, the interim rule amending 48 CFR parts 539 and 552, which was published in the **Federal Register** at 76 FR 34886 on June 15, 2011, is adopted as final with the following changes and part 501 is amended as follows:

■ 1. The authority citation for 48 CFR parts 501 and 552 continues to read as follows:

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

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

■ 2. Amend section 501.106 by adding the GSAR Reference number ''552.239–

71'', in numerical sequence, and its corresponding OMB Control No. ''3090–0294''.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 552.239–71 by revising the date of the clause and paragraph (k) to read as follows:

552.239–71 Security Requirements for Unclassified Information Technology Resources.

* * * * *

Security Requirements for Unclassified Information Technology Resources [JAN 2012]

* * * * *

(k) *GSA access.* The Contractor shall afford GSA access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, IT systems and devices, and personnel used in performance of the contract, regardless of the location. Access shall be provided to the extent required, in GSA's judgment, to conduct an inspection, evaluation, investigation or audit, including vulnerability testing to safeguard against threats and hazards to the integrity, availability and confidentiality of GSA data or to the function of information technology systems operated on behalf of GSA, and to preserve evidence of computer crime. This information shall be available to GSA upon request.

* * * * *

[FR Doc. 2011–33543 Filed 1–5–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0185]

RIN 2127–AK89

Federal Motor Vehicle Safety Standards; Matters Incorporated by Reference

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; technical amendments.

SUMMARY: This final rule updates and consolidates all of the references to the many standards and practices that are incorporated by reference into the Federal motor vehicle safety standards (FMVSSs). Although this part already contains a section regarding publications incorporated by reference, the list in that section is incomplete and has not been updated regularly. Instead, in many cases, materials have been incorporated piecemeal into individual FMVSSs. This final rule moves those scattered references into the centralized list so that it contains all of the references. Additionally, this final rule removes one obsolete FMVSS, No. 208a, as well as various obsolete provisions in other FMVSSs. Those provisions are applicable to vehicles and equipment manufactured before dates that have already passed and are no longer needed in the Code of Federal Regulations (CFR).

DATES: The effective date of this final rule is February 6, 2012, except for the amendments to 49 CFR 571.108, which are effective December 1, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 6, 2012. The incorporation by reference of certain publications listed in 49 CFR 571.108 is approved by the Director of the Federal Register as of December 1, 2012.

Petitions for reconsideration must be received by February 21, 2012.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: You may contact William H. Shakely of the NHTSA Office of Chief Counsel, NCC–110, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992; Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Discussion

Pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51, when NHTSA wishes to incorporate the standards and practices of other standardizing bodies into its FMVSSs, it may incorporate those materials by reference instead of reproducing them verbatim in the FMVSS. It must, however, obtain the approval of the Director of the Federal Register for each such incorporation. This final rule updates and consolidates all of the references to the many standards and practices that are incorporated by reference into the FMVSSs in Part 571. Although this part already contains a section devoted to materials incorporated by reference, § 571.5, *Matter Incorporated by Reference,* the list is incomplete in that section and has not been updated regularly. Instead, in many cases, materials have been incorporated piecemeal into individual FMVSSs throughout Part 571.

This final rule moves those scattered references into the centralized list and moves the individual ''incorporation by reference'' paragraphs contained in some of the sections of Part 571 into § 571.5 so that all of the incorporations appear in one location in that part. Additionally, we are revising other paragraphs in the sections of Part 571 in order to include citations to § 571.5 when incorporated materials are referenced and to correct grammatical errors. This rule does not substantively alter or remove from Part 571 any of the existing incorporations by reference, except for those publications that are only referenced in the obsolete standard and provisions that, as discussed below, are being removed from the CFR. However, this rule does make minor textual changes to the citations to the publications incorporated by reference.

Specifically, this rule standardizes the format used to reference the various materials incorporated by reference and makes minor corrections to reflect the accurate titles of these materials. Additionally this rule incorporates the most recently reapproved versions of several ASTM International standards.[1] These versions are identical to the versions of the standards currently incorporated by reference. This rule also amends the title of the American Association of Textile Chemists and Colorists (AATCC) ''Geometric Gray Scale,'' referenced in FMVSS Nos. 209 and 213, to its current title, ''Gray Scale for Evaluating Change in Color.''[2] These amendments do not alter the substance of any of the sections of Part 571 nor do they alter the requirements of the FMVSSs contained therein.

In addition to consolidating the list of materials incorporated by reference, this rule amends § 571.5 to include updated language regarding how the public may obtain copies of the incorporated materials, including new procedures for

[1] These standards are ASTM E1337–90 and ASTM E1136–93. Various reapproval years are cited in the FMVSSs in which these two standards are referenced. Additionally, several FMVSSs inadvertently omit the version designation in the citations to ASTM E1136–93. This document incorporates by reference ASTM E1337–90 (Reapproved 2008), and ASTM E1136–93 (Reapproved 2003). When ASTM International reapproves a standard, it merely renews the standard as is and makes no revisions. These versions are identical to those currently referenced in the various sections of Part 571.

[2] Grades 1 through 5 on the scale, including No. 2, which is the only grade referenced in the FMVSSs, have not been changed since the scale was adopted in 1954. The only substantive change since that time is the addition of half-grades (e.g., 1–2, 2–3). However, this change does not alter the requirements of the FMVSSs that incorporate the scale.

retrieving materials from the National Archives and Records Administration and a new format indicating the sections where incorporated materials are referenced. Today's document also updates the contact information for all sources of the incorporated materials, including phone numbers and Web sites, where possible, to assist members of the public in acquiring the incorporated materials.

As indicated in the **DATES** section above, the amendments to FMVSS No. 108 (§ 571.108) are not effective until December 1, 2012. The reason for this delay is that on December 4, 2007, NHTSA published a final rule amending FMVSS No. 108 (72 FR 68234). The purpose of the 2007 rule was to reorganize the standard and provide a more straightforward and logical presentation of the applicable regulatory requirements. In response to several petitions for reconsideration, the agency delayed the effective date of the 2007 rule until December 1, 2012 (73 FR 50730; 74 FR 58213). Accordingly, the technical amendments made to the amended version of FMVSS No. 108 by today's final rule are likewise not effective until December 1, 2012. Additionally, the agency notes that the updated table of incorporated materials created by this document in § 571.5 only includes the publications referenced by the amended version of FMVSS No. 108, and does not include all of the publications cited in the version of the standard currently in effect. However, this final rule does not substantively alter or remove any of the references to the incorporated materials in the version of FMVSS No. 108 currently in effect.

This final rule removes the text of one obsolete FMVSS, No. 208a (571.208a). FMVSS No. 208a only applies to vehicles manufactured between January 27, 2004, and August 31, 2004. Given the limited period of applicability of this FMVSS and the fact that those dates are well in the past, this standard is no longer needed in the text of the CFR. This final rule also removes references to FMVSS No. 208a contained in other FMVSSs.

Likewise, this final rule removes outdated provisions contained in other FMVSSs. These provisions are applicable to vehicles and equipment manufactured before dates that have already passed. Accordingly, like FMVSS No. 208a, these provisions are no longer needed in the text of the CFR.

Finally, this final rule makes two technical amendments to Part 571 to correct inaccurate references. First, the authority citation of Part 571 incorrectly cites 49 U.S.C. 30177. This section does not exist. The correct citation is 49 U.S.C. 30117. Second, paragraph S7.2.1 of FMVSS No. 202a incorrectly references paragraph S6.1 of that standard. Paragraph S7.2.1 describes the calculation of annual vehicle production for the purposes of the September 1, 2010, to September 1, 2011, phase-in of the rear seat requirements of the new standard. However, paragraph S7.2.1 references S6.1, which describes the percentage of vehicles manufactured between September 1, 2009, and September 1, 2010, that must comply with the new standard as opposed to the old standard. The correct reference is paragraph S7.1, which describes the percentage of vehicles manufactured between September 1, 2010, and September 1, 2011, that must comply with the rear seat requirements of the new standard.

II. Rulemaking Analyses and Notices

Section 553 of the Administrative Procedure Act (5 U.S.C. 553) provides that when an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment (5 U.S.C. 553(b)(B)). NHTSA has determined that there is good cause for making these technical amendments final without notice and an opportunity for public comment. These amendments consolidate the references to materials currently incorporated by reference in the individual sections of Part 571 and correct the syntax of the references to these publications within each section. The amendments also correct grammatical errors and incorrect references in Part 571. Finally, the amendments delete the text of one obsolete FMVSS as well as various obsolete provisions in other sections of Part 571. The amendments do not alter the substance of the amended sections nor do they alter the requirements of the FMVSSs contained therein. Accordingly, notice and public comment are unnecessary.

We are making the amendments effective 30 days after publication of this document, with the exception of the amendments to FMVSS No. 108, which are effective December 1, 2012. Given that the amendments do not make any substantive changes, we find good cause for making the amendments effective within this timeframe.

The agency has discussed the relevant requirements of Executive Order 12866, Executive Order 13563, DOT Regulatory Policies and Procedures, the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211 (Energy Effects), as applicable, in the underlying substantive rules establishing and amending the various sections of Part 571. Those discussions are not affected by these amendments.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

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*.

III. Regulatory Text

List of Subjects in 49 CFR Parts 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 is amended by revising the citation to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Revise § 571.5 to read as follows:

§ 571.5 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section,

the National Highway Traffic Safety Administration (NHTSA) must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NHTSA, or if you experience difficulty obtaining the standards referenced below, contact NHTSA Office of Technical Information Services, phone number (202) 366–2588. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

(b) American Association of Textile Chemists and Colorists (AATCC), 1 Davis Dr., P.O. Box 12215, Research Triangle Park, NC 27709. Web site: *http://www.aatcc.org*.

(1) AATCC Test Method 30–1981, ''Fungicides, Evaluation on Textiles: Mildew and Rot Resistance of Textiles,'' into § 571.209.

(2) AATCC Gray Scale for Evaluating Change in Color into §§ 571.209; 571.213.

(c) American National Standards Institute (ANSI), 1899 L St., NW., 11th floor, Washington, DC 20036. Telephone: (202) 293–8020; Fax: (202) 293–9287; Web site: *http://www.ansi.org*. Copies of ANSI/RESNA Standard WC/Vol.1–1998 Section 13 may also be obtained from Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), 1700 North Moore St., Suite 1540, Arlington, VA 22209–1903. Telephone: (703) 524–6686; Web site *http://www.resna.org*.

(1) ANSI Z26.1–1977, ''Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' approved January 26, 1977, into § 571.205(a).

(2) ANSI Z26.1a–1980, ''Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' approved July 3, 1980, into § 571.205(a).

(3) ANSI/SAE Z26.1–1996, ''American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways-Safety Standard,'' approved August 11, 1997, into § 571.205.

(4) ANSI/RESNA Standard WC/Vol. 1–1998, Section 13, ''Wheelchairs: Determination of Coefficient of Friction of Test Surfaces,'' into § 571.403.

(d) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959. Telephone: (610) 832–9500; Fax (610) 832–9555; Web site: *http://www.astm.org*.

(1) 1985 Annual Book of ASTM Standards, Vol. 05.04, ''Test Methods for Rating Motor, Diesel, Aviation Fuels, A2. Reference Materials and Blending Accessories, (''ASTM Motor Fuels section''),'' A2.3.2, A2.3.3, and A2.7, into §§ 571.108; 571.205(a).

(2) ASTM B117–64, ''Standard Method of Salt Spray (Fog) Testing,'' revised 1964, into § 571.125.

(3) ASTM B117–73 (Reapproved 1979), ''Standard Method of Salt Spray (Fog) Testing,'' approved March 29, 1973, into §§ 571.108; 571.209.

(4) ASTM B117–97, ''Standard Practice for Operating Salt Spray (Fog) Apparatus,'' approved April 10, 1997, into § 571.403.

(5) ASTM B117–03, ''Standard Practice for Operating Salt Spray (Fog) Apparatus,'' approved October 1, 2003, into § 571.106.

(6) ASTM B456–79, ''Standard Specification for Electrodeposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Chromium,'' approved January 26, 1979, into § 571.209.

(7) ASTM B456–95, ''Standard Specification for Electrodeposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Chromium,'' approved October 10, 1995, into § 571.403.

(8) ASTM C150–56, ''Standard Specification for Portland Cement,'' approved 1956, into § 571.108.

(9) ASTM C150–77, ''Standard Specification for Portland Cement,'' approved February 26, 1977, into § 571.108.

(10) ASTM D362–84, ''Standard Specification for Industrial Grade Toluene,'' approved March 30, 1984, into §§ 571.108; 571.205(a).

(11) ASTM D445–65, ''Standard Method of Test for Viscosity of Transparent and Opaque Liquids (Kinematic and Dynamic Viscosities),'' approved August 31, 1965, into § 571.116.

(12) ASTM D471–98, ''Standard Test Method for Rubber Property—Effect of Liquids,'' approved November 10, 1998, into § 571.106.

(13) ASTM D484–71, ''Standard Specification for Hydrocarbon Drycleaning Solvents,'' effective September 15, 1971, into § 571.301.

(14) ASTM D756–78, ''Standard Practice for Determination of Weight and Shape Changes of Plastics under Accelerated Service Conditions,'' approved July 28, 1978, into § 571.209.

(15) ASTM D1003–92, ''Standard Test Method for Haze and Luminous Transmittance of Transparent Plastics,'' approved October 15, 1992, into § 571.108.

(16) ASTM D1121–67, ''Standard Method of Test for Reserve Alkalinity of Engine Antifreezes and Antirusts,'' accepted June 12, 1967, into § 571.116.

(17) ASTM D1123–59, ''Standard Method of Test for Water in Concentrated Engine Antifreezes by the Iodine Reagent Method,'' revised 1959, into § 571.116.

(18) ASTM D1193–70, ''Standard Specification for Reagent Water,'' effective October 2, 1970, into § 571.116.

(19) ASTM D1415–68, ''Standard Method of Test for International Hardness of Vulcanized Natural and Synthetic Rubbers,'' accepted February 14, 1968, into § 571.116.

(20) ASTM D2515–66, ''Standard Specification for Kinematic Glass Viscometers,'' adopted 1966, into § 571.116.

(21) ASTM D4329–99, ''Standard Practice for Fluorescent UV Exposure of Plastics,'' approved January 10, 1999, into § 571.106.

(22) ASTM D4956–90, ''Standard Specification for Retroreflective Sheeting for Traffic Control,'' approved October 26, 1990, into § 571.108.

(23) ASTM E1–68, ''Standard Specifications for ASTM Thermometers'' (including tentative revisions), accepted September 13, 1968, into § 571.116.

(24) ASTM E4–79, ''Standard Methods of Load Verification of Testing Machines,'' approved June 11, 1979, into § 571.209.

(25) ASTM E4–03, ''Standard Practices for Force Verification of Testing Machines,'' approved August 10, 2003, into § 571.106.

(26) ASTM E8–89, ''Standard Test Methods of Tension Testing of Metallic Materials,'' approved May 15, 1989, into § 571.221.

(27) ASTM E77–66, ''Standard Method for Inspection, Test, and Standardization of Etched-Stem Liquid-in-Glass Thermometers,'' revised 1966, into § 571.116.

(28) ASTM E274–65T, ''Tentative Method of Test for Skid Resistance of Pavements Using a Two-Wheel Trailer,'' issued 1965, into § 571.208.

(29) ASTM E274–70, ''Standard Method of Test for Skid Resistance of Paved Surfaces Using a Full-Scale Tire,'' effective October 2, 1970, into §§ 571.105; 571.122.

(30) ASTM E298–68, ''Standard Methods for Assay of Organic Peroxides,'' effective September 13, 1968, into § 571.116.

(31) ASTM E308–66, ''Standard Practice for Spectrophotometry and

Description of Color in CIE 1931 System,'' reapproved 1981, into § 571.108.

(32) ASTM E1136–93 (Reapproved 2003), ''Standard Specification for a Radial Standard Reference Test Tire,'' approved March 15, 1993, into §§ 571.105; 571.121; 571.126; 571.135; 571.139; 571.500.

(33) ASTM E1337–90 (Reapproved 2008), ''Standard Test Method for Determining Longitudinal Peak Braking Coefficient of Paved Surfaces Using a Standard Reference Test Tire,'' approved June 1, 2008, into §§ 571.105; 571.121; 571.126; 571.135; 571.500.

(34) ASTM F1805–00, ''Standard Test Method for Single Wheel Driving Traction in a Straight Line on Snow- and Ice-Covered Surfaces,'' approved November 10, 2000, into § 571.139.

(35) ASTM G23–81, ''Standard Practice for Generating Light-Exposure Apparatus (Carbon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials,'' approved March 26, 1981, into § 571.209.

(36) ASTM G151–97, ''Standard Practice for Exposing Nonmetallic Materials in Accelerated Test Devices that Use Laboratory Light Sources,'' approved July 10, 1997, into § 571.106.

(37) ASTM G154–00, ''Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials,'' approved February 10, 2000, into § 571.106.

(e) Department of Defense, DODSSP Standardization Document Order Desk, 700 Robbins Ave., Philadelphia, PA 19111–5098. Web site: *http://dodssp.daps.dla.mil/*.

(1) MIL–S–13192, ''Military Specification, Shoes, Men's, Dress, Oxford,'' October 30, 1976, into § 571.214.

(2) MIL–S–13192P, ''Military Specification, Shoes, Men's, Dress, Oxford,'' 1988, including Amendment 1, October 14, 1994, into § 571.208.

(3) MIL–S–21711E, ''Military Specification, Shoes, Women's,'' 3 December 1982, including Amendment 2, October 14, 1994, into §§ 571.208; 571.214.

(f) General Services Administration (GSA), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800; Web site: *http://www.gsa.gov*.

(1) GSA Federal Specification L–S–300, ''Sheeting and Tape, Reflective; Nonexposed Lens, Adhesive Backing,'' September 7, 1965, into § 571.108.

(2) [Reserved]

(g) Illuminating Engineering Society of North America (IES), 120 Wall St., 7th Floor, New York, NY 10005–4001. Telephone: (212) 248–5000; Web site: *http://www.iesna.org*.

(1) IES LM 45, ''IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' approved April 1980, into § 571.108.

(2) [Reserved]

(h) International Commission on Illumination (CIE), CIE Central Bureau, Kegelgasse 27, A–1030 Vienna, Austria. *http://www.cie.co.at*.

(1) CIE 1931 Chromaticity Diagram, developed 1931, into § 571.108.

(2) [Reserved]

(i) National Center for Health Statistics, Centers for Disease Control (CDC), National Division for Health Statistics, Division of Data Services, Hyattsville, MD 20782. Telephone: 1 (800) 232–4636. Web site: *http://www.cdc.gov/nchs*.

(1) DHEW Publication No. (HRA) 76–1074, ''Weight, Height, and Selected Body Dimensions of Adults: United States—1960–1962,'' first published as Public Health Service Publication No. 1000 Series 11–No. 8, June 1965, into § 571.3.

(2) [Reserved]

(j) National Highway Traffic Safety Administration (NHTSA), 1200 New Jersey Ave. SE., Washington, DC 20590. Web site: *http://www.nhtsa.gov*.

(1) Drawing Package, ''NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2003,'' (consisting of drawings and a bill of materials), June 3, 2003, into § 571.213.

(2) Drawing Package, SAS–100–1000, Standard Seat Belt Assembly with Addendum A, Seat Base Weldment (consisting of drawings and a bill of materials), October 23, 1998, into § 571.213.

(3) ''Parts List; Ejection Mitigation Headform Drawing Package,'' December 2010, into § 571.226.

(4) ''Parts List and Drawings; Ejection Mitigation Headform Drawing Package'' December 2010, into § 571.226.

(k) SAE International, 400 Commonwealth Drive, Warrendale, PA 15096. Telephone: (724) 776–4841; Web site: *http://www.sae.org*.

(1) SAE Recommended Practice J100–1995, ''Class 'A' Vehicle Glazing Shade Bands,'' revised June 1995, into § 571.205.

(2) SAE Recommended Practice J211a, ''Instrumentation for Impact Tests,'' revised December 1971, into § 571.222.

(3) SAE Recommended Practice J211, ''Instrumentation for Impact Tests,'' revised June 1980, into §§ 571.213; 571.218.

(4) SAE Recommended Practice J211/1 MAR95, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' revised March 1995, into §§ 571.202a; 571.208; 571.403.

(5) SAE Recommended Practice J211–1 DEC2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' revised December 2003, into §§ 571.206; 571.209.

(6) SAE Recommended Practice J227a, ''Electric Vehicle Test Procedure,'' revised February 1976, into §§ 571.105; 571.135.

(7) SAE Standard J527a, ''Brazed Double Wall Low Carbon Steel Tubing,'' revised May 1967, into § 571.116.

(8) SAE Recommended Practice J567b, ''Bulb Sockets,'' revised April 1964, into § 571.108.

(9) SAE Recommended Practice J573d, ''Lamp Bulbs and Sealed Units,'' revised December 1968, into § 571.108.

(10) SAE Recommended Practice J575–1983, ''Tests for Motor Vehicle Lighting Devices and Components,'' revised July 1983, into § 571.131.

(11) SAE Recommended Practice J578, ''Color Specification,'' revised May 1988, into § 571.131.

(12) SAE Recommended Practice J578–1995, ''Color Specification,'' revised June 1995, into § 571.403.

(13) SAE Recommended Practice J592 JUN92, ''Clearance, Side Marker, and Identification Lamps,'' revised June 1992, into § 571.121.

(14) SAE Recommended Practice J592e–1972, ''Clearance, Side Marker, and Identification Lamps,'' revised July 1972, into § 571.121.

(15) SAE Recommended Practice J602–1963, ''Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units,'' reaffirmed August 1963, into § 571.108.

(16) SAE Recommended Practice J602–1980, ''Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units,'' revised October 1980, into § 571.108.

(17) SAE Recommended Practice J673a, ''Automotive Glazing,'' revised August 1967, into § 571.205(a).

(18) SAE Recommended Practice J673, ''Automotive Safety Glasses,'' revised April 1993, into § 571.205.

(19) SAE Recommended Practice J726 SEP79, ''Air Cleaner Test Code,'' revised April 1979, into § 571.209.

(20) SAE Recommended Practice J759 JAN95, ''Lighting Identification Code,'' revised January 1995, into § 571.121.

(21) SAE Standard J787b, ''Motor Vehicle Seat Belt Anchorage,'' revised September 1966, into § 571.3.

(22) SAE Recommended Practice J800c, ''Motor Vehicle Seat Belt Assembly Installations,'' revised November 1973, into § 571.209.

(23) SAE Standard J826–1980, ''Devices for Use in Defining and

Measuring Vehicle Seating Accommodation,'' revised April 1980, into §§ 571.208; 571.214.

(24) SAE Standard J826 MAY87, ''Devices for Use in Defining and Measuring Vehicle Seating Accommodation,'' revised May 1987, into §§ 571.3; 571.210.

(25) SAE Standard J826–1992, ''Devices for Use in Defining and Measuring Vehicle Seating Accommodation,'' revised June 1992, into § 571.225.

(26) SAE Standard J826 JUL95, ''Devices for Use in Defining and Measuring Vehicle Seating Accommodation,'' revised July 1995, into §§ 571.10; 571.202; 571.202a; 571.216a.

(27) SAE Recommended Practice J839b, ''Passenger Car Side Door Latch Systems,'' revised May 1965, into § 571.201.

(28) SAE Recommended Practice J839–1991, ''Passenger Car Side Door Latch Systems,'' revised June 1991, into § 571.206.

(29) SAE Recommended Practice J902, ''Passenger Car Windshield Defrosting Systems,'' revised August 1964, into § 571.103.

(30) SAE Recommended Practice J902a, ''Passenger Car Windshield Defrosting Systems,'' revised March 1967 (Editorial change June 1967), into § 571.103.

(31) SAE Recommended Practice J903a, ''Passenger Car Windshield Wiper Systems,'' revised May 1966, into § 571.104.

(32) SAE Recommended Practice J921, ''Instrument Panel Laboratory Impact Test Procedure,'' approved June 1965, into § 571.201.

(33) SAE Recommended Practice J941, ''Passenger Car Driver's Eye Range,'' approved November 1965, into § 571.104.

(34) SAE Recommended Practice J941b, ''Motor Vehicle Driver's Eye Range,'' revised February 1969, into § 571.108.

(35) SAE Recommended Practice J942, ''Passenger Car Windshield Washer Systems,'' approved November 1965, into § 571.104.

(36) SAE Recommended Practice J944 JUN80, ''Steering Control System—Passenger Car—Laboratory Test Procedure,'' revised June 1980, into § 571.203.

(37) SAE Standard J964 OCT84, ''Test Procedure for Determining Reflectivity of Rear View Mirrors,'' reaffirmed October 1984, into § 571.111.

(38) SAE Recommended Practice J972, ''Moving Rigid Barrier Collision Tests,'' revised May 2000, into § 571.105.

(39) SAE Recommended Practice J977, ''Instrumentation for Laboratory Impact Tests,'' approved November 1966, into § 571.201.

(40) SAE Recommended Practice J1100a, ''Motor Vehicle Dimensions,'' revised September 1975, into § 571.3.

(41) SAE Recommended Practice J1100 JUN84, ''Motor Vehicle Dimensions,'' revised June 1984, into §§ 571.3; 571.210.

(42) SAE Recommended Practice J1100–1993, ''Motor Vehicle Dimensions,'' revised June 1993, into § 571.225.

(43) SAE Recommended Practice J1100, ''Motor Vehicle Dimensions,'' revised February 2001, into § 571.3.

(44) SAE Recommended Practice J1133, ''School Bus Stop Arm,'' revised April 1984, into § 571.131.

(45) SAE Standard J1703b, ''Motor Vehicle Brake Fluid,'' revised July 1970, into § 571.116.

(46) SAE Standard J1703 NOV83, ''Motor Vehicle Brake Fluid,'' revised November 1983, into § 571.116.

(47) SAE RM–66–04, ''Compatibility Fluid,'' Appendix B to SAE Standard J1703 JAN95, ''Motor Vehicle Brake Fluid,'' revised January 1995, into §§ 571.106; 571.116.

(48) SAE Recommended Practice J2009, ''Discharge Forward Lighting Systems,'' revised February 1993, into § 571.108.

(49) SAE Aerospace-Automotive Drawing Standards, issued September 1963, into §§ 571.104; 571.202.

(l) United Nations Economic Commission for Europe (UNECE), United Nations, Conference Services Division, Distribution and Sales Section, Office C.115–1, Palais des Nations, CH–1211, Geneva 10, Switzerland. Web site: *www.unece.org/trans/main/wp29/wp29regs.html.*

(1) UNECE Regulation 17 ''Uniform Provisions Concerning the Approval of Vehicles with Regard to the Seats, their Anchorages and Any Head Restraints'': ECE 17 Rev. 1/Add. 16/Rev. 4 (July 31, 2002), into § 571.202.

(2) UNECE Regulation 48 ''Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signaling Devices,'' E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2 (February 26, 1996), into § 571.108.

■ 3. Section 571.103 is amended by revising S4.2 and the introductory text of S4.3 to read as follows:

§ 571.103 Standard No. 103; Windshield defrosting and defogging systems.

* * * * *

S4.2 Each passenger car windshield defrosting and defogging system shall meet the requirements of section 3 of SAE Recommended Practice J902 (1964) (incorporated by reference, see § 571.5) when tested in accordance with S4.3, except that ''the critical area'' specified in paragraph 3.1 of SAE Recommended Practice J902 (1964) shall be that established as Area C in accordance with Motor Vehicle Safety Standard No. 104, ''Windshield Wiping and Washing Systems,'' and ''the entire windshield'' specified in paragraph 3.3 of SAE Recommended Practice J902 (1964) shall be that established as Area A in accordance with § 571.104.

S4.3 *Demonstration procedure.* The passenger car windshield defrosting and defogging system shall be tested in accordance with the portions of paragraphs 4.1 through 4.4.7 of SAE Recommended Practice J902 (1964) or SAE Recommended Practice J902a (1967) (both incorporated by reference, see § 571.5) applicable to that system, except that—

* * * * *

■ 4. Section 571.104 is amended:

■ a. In S3 by revising the definitions of ''Daylight opening,'' ''Glazing surface reference line,'' ''Overall width,'' paragraph (a) in the definition of ''Plan view reference line,'' ''Shoulder room dimension'' and ''95 percent eye range contour;''

■ b. By revising S4.1.1.4;

■ c. By revising S4.1.2;

■ d. By revising the first sentence of S4.1.2.1; and

■ e. By revising S4.2.1 and S4.2.2.

The revisions read as follows:

§ 571.104 Standard No. 104; Windshield wiping and washing systems.

* * * * *

S3. *Definitions.* * * *

Daylight opening means the maximum unobstructed opening through the glazing surface, as defined in paragraph 2.3.12 of section E, ''Ground Vehicle Practice,'' of SAE Aerospace-Automotive Drawing Standards (1963) (incorporated by reference, see § 571.5).

Glazing surface reference line means the line resulting from the intersection of the glazing surface and a horizontal plane 635 millimeters above the seating reference point, as shown in Figure 1 of SAE Recommended Practice J903a (1966) (incorporated by reference, see § 571.5).

Overall width means the maximum overall body width dimension ''W116'', as defined in section E, ''Ground Vehicle Practice,'' of SAE Aerospace-Automotive Drawing Standards (1963) (incorporated by reference, see § 571.5).

Plan view reference line means—

(a) For vehicles with bench-type seats, a line parallel to the vehicle longitudinal centerline outboard of the

steering wheel centerline 0.15 times the difference between one-half of the shoulder room dimension and the steering wheel centerline-to-car-centerline dimension as shown in Figure 2 of SAE Recommended Practice J903a (1966) (incorporated by reference, see § 571.5); or

* * * * *

Shoulder room dimension means the front shoulder room dimension ''W3'' as defined in section E, ''Ground Vehicle Practice,'' of SAE Aerospace-Automotive Drawing Standards (1963) (incorporated by reference, see § 571.5).

95 percent eye range contour means the 95th percentile tangential cutoff specified in SAE Recommended Practice J941 (1965) (incorporated by reference, see § 571.5).

* * * * *

S4.1.1.4 Compliance with subparagraphs S4.1.1.2 and S4.1.1.3 may be demonstrated by testing under the conditions specified in sections 4.1.1 and 4.1.2 of SAE Recommended Practice J903a (1966) (incorporated by reference, see § 571.5).

S4.1.2 *Wiped area.* When tested wet in accordance with SAE Recommended Practice J903a (1966) (incorporated by reference, see § 571.5), each passenger car windshield wiping system shall wipe the percentage of Areas A, B, and C of the windshield (established in accordance with S4.1.2.1) that (1) is specified in column 2 of the applicable table following subparagraph S4.1.2.1 and (2) is within the area bounded by a perimeter line on the glazing surface 25 millimeters from the edge of the daylight opening.

S4.1.2.1 Areas A, B, and C shall be established as shown in Figures 1 and 2 of SAE Recommended Practice J903a (1966) (incorporated by reference, see § 571.5) using the angles specified in Columns 3 through 6 of Table I, II, III, or IV, as applicable.* * *

* * * * *

S4.2.1 Each passenger car shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965) (incorporated by reference, see § 571.5), except that the reference to ''the effective wipe pattern defined in SAE J903, paragraph 3.1.2'' in paragraph 3.1 of SAE Recommended Practice J942 (1965) shall be deleted and ''the areas established in accordance with subparagraph S4.1.2.1 of Motor Vehicle Safety Standard No. 104'' shall be inserted in lieu thereof.

S4.2.2 Each multipurpose passenger vehicle, truck, and bus shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965) (incorporated by reference, see § 571.5), except that the reference to ''the effective wipe pattern defined in SAE J903, paragraph 3.1.2'' in paragraph 3.1 of SAE Recommended Practice J942 (1965) shall be deleted and ''the pattern designed by the manufacturer for the windshield wiping system on the exterior surface of the windshield glazing'' shall be inserted in lieu thereof.

■ 5. Section 571.105 is amended by revising the definition of ''skid number'' in paragraph S4, and revising paragraphs S6.2.1, S6.9.2(a), S6.9.2(b), and S7.19 to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S4 * * *

Skid number means the frictional resistance of a pavement measured in accordance with ASTM E274–70 (incorporated by reference, see § 571.5) at 40 mph, omitting water delivery as specified in paragraphs 7.1 and 7.2 of that method.

* * * * *

S6.2.1 The state of charge of the propulsion batteries is determined in accordance with SAE Recommended Practice J227a (1976) (incorporated by reference, see § 571.5). The applicable sections of SAE J227a (1976) are 3.2.1 through 3.2.4, 3.3.1 through 3.3.2.2, 3.4.1 and 3.4.2, 4.2.1, 5.2, 5.2.1, and 5.3.

* * * * *

S6.9.2(a) For vehicles with a GVWR greater than 10,000 pounds, road tests (excluding stability and control during braking tests) are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 0.9 when measured using an ASTM E1136–93 (Reapproved 2003) (incorporated by reference, see § 571.5), standard reference test tire, in accordance with ASTM E1337–90 (Reapproved 2008) (incorporated by reference, see § 571.5), at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

S6.9.2(b) For vehicles with a GVWR greater than 10,000 pounds, stability and control during braking tests are conducted on a 500-foot-radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an ASTM E1136–93 (Reapproved 2003) standard reference tire, in accordance with ASTM E1337–90 (Reapproved 2008) at a speed of 40 mph, with water delivery.

* * * * *

S7.19 *Moving barrier test.* (Only for vehicles that have been tested according to S7.7.2.) Load the vehicle to GVWR, release parking brake, and place the transmission selector control to engage the parking mechanism. With a moving barrier as described in paragraph 4.3 of SAE Recommended Practice J972 (2000) (incorporated by reference, see § 571.5), impact the vehicle from the front at 2½ mph. Keep the longitudinal axis of the barrier parallel with the longitudinal axis of the vehicle. Repeat the test, impacting the vehicle from the rear.

Note: The vehicle used for this test need not be the same vehicle that has been used for the braking tests.

* * * * *

■ 6. Section 571.106 is amended by:
■ a. Revising S5.3.9;
■ b. Revising S6.4;
■ c. Revising in S6.7.1, paragraph (a);
■ d. Removing the first of two paragraphs S6.9 (''End fitting corrosion resistance test'');
■ e. Revising in S6.10.2, paragraph (a);
■ f. Revising S6.11;
■ g. Revising in S8.9, the introductory text;
■ h. Revising in S9.2.8, the first sentence;
■ i. Revising in S10.7, paragraph (a) and;
■ j. Revising in S12.7, paragraph (b).

The revisions read as follows:

§ 571.106 Standard No. 106; Brake hoses.

* * * * *

S5.3.9 *Brake fluid compatibility, constriction, and burst strength.* Except for brake hose assemblies designed for use with mineral or petroleum-based brake fluids, a hydraulic brake hose assembly shall meet the constriction requirement of S5.3.1 after having been subjected to a temperature of 248 degrees Fahrenheit (120 degrees Celsius) for 70 hours while filled with SAE RM–66–04 ''Compatibility Fluid,'' as described in Appendix B of SAE Standard J1703 JAN95 (incorporated by reference, see § 571.5). It shall then withstand water pressure of 4,000 psi for 2 minutes and thereafter shall not rupture at less than 5,000 psi (S6.2 except all sizes of hose are tested at 5,000 psi).

* * * * *

S6.4 *Tensile strength test.* Utilize a tension testing machine conforming to the requirements of ASTM E4–03 (incorporated by reference, see § 571.5) and provided with a recording device to measure the force applied.

* * * * *

S6.7.1 *Preparation.* (a) Attach a hose assembly below a 1-pint reservoir filled with 100 ml. of SAE RM–66–04

Compatibility Fluid as shown in Figure 2.

* * * * *

S6.10.2 *Preparation.* (a) Connect one end of the hose assembly to the pressure cycling machine and plug the other end of the hose. Fill the pressure cycling machine and hose assembly with SAE RM–66–04 ''Compatibility Fluid,'' as described in Appendix B of SAE Standard J1703 JAN95 (incorporated by reference, see § 571.5) and bleed all gases from the system.

* * * * *

S6.11 *End fitting corrosion test.* Utilize the apparatus described in ASTM B117–03 (incorporated by reference, see § 571.5).

* * * * *

S8.9 *Tensile strength test.* Utilize a tension testing machine conforming to the requirements of ASTM E4–03 (incorporated by reference, see § 571.5) and provided with a recording device to measure the force applied.

* * * * *

S9.2.8 *Swell and adhesion.* Following exposure to Reference Fuel B (as described in ASTM D471–98 (incorporated by reference, see § 571.5)), every inside diameter of any section of a vacuum brake hose shall not be less than 75 percent of the nominal inside diameter of the hose if for heavy duty, or 70 percent of the nominal inside diameter of the hose if for light duty.

* * *

* * * * *

S10.7 *Swell and adhesion test.* (a) Fill a specimen of vacuum brake hose 12 inches long with ASTM Reference Fuel B as described in ASTM D471–98 (incorporated by reference, see § 571.5).

* * * * *

S12.7 * * *

(b) *Test standards.* The testing is in accordance with ASTM G154–00, ASTM G151–97, and ASTM D4329–99 (all incorporated by reference, see § 571.5).

* * * * *

■ 7. Effective December 1, 2012, § 571.108, as amended at 72 FR 68234, December 4, 2007, delayed at 73 FR 50730, August 28, 2008, further delayed at 74 FR 58213, November 12, 2009, and further amended at 76 FR 48009, August 8, 2011, is further amended by:

■ a. Revising the definition of ''Color'' in S4;

■ b. Revising S5;

■ c. Removing S5.1;

■ d. Removing S5.2;

■ e. Revising S6.4.5;

■ f. Revising S8.1.13;

■ g. Revising S8.2.1.2;

■ h. Revising S9.3.5;

■ i. Revising S10.14.7.7;

■ j. Revising S10.15.7.6

■ k. Revising S10.18.7;

■ l. Revising S10.18.7.2;

■ m. Revising S12.6;

■ n. Revising S14.2.1.6;

■ o. Revising S14.2.1.6.1;

■ p. Revising S14.2.1.6.2;

■ q. Revising S14.2.5.7.3;

■ r. Revising the introductory sentence of S14.4.2.2.4.1,;

■ s. Revising S14.4.2.2.4.4;

■ t. Revising S14.5.3.2;

■ u. Revising S14.5.4.1,

■ v. Revising S14.6.2.1.1(a);

■ w. Revising S14.6.3.1;

■ x. Revising S14.6.4.1.2;

■ y. Revising S14.6.5.1.2;

■ z. Revising S14.7.3.1.2; and

■ aa. Revising S14.7.3.3.

The revisions read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4 * * *

Color Fundamental definitions of color are expressed by Chromaticity Coordinates according to the CIE 1931 Standard Colorimetric System, as described in the CIE 1931 Chromaticity Diagram (incorporated by reference, see § 571.5).

* * * * *

S5 *References to SAE publications.* Each required lamp, reflective device, and item of associated equipment must be designed to conform to the requirements of applicable SAE publications as referenced and subreferenced in this standard. The words ''it is recommended that,'' ''recommendations,'' or ''should be'' appearing in any SAE publication referenced or subreferenced in this standard must be read as setting forth mandatory requirements.

* * * * *

S6.4.5 *School bus signal lamp aiming.* Each school bus signal lamp must be mounted on the vehicle with its aiming plane vertical and normal to the vehicle longitudinal axis. Aim tolerance must be no more than 5 in vertically and 10 in horizontally at 25 ft from the lamp. If the lamps are aimed or inspected by use of SAE Recommended Practice J602–1963 (incorporated by reference, see § 571.5), the graduation settings for aim must be 2° D and 0° sideways for aiming and the limits must be 3° U to 7° D and from 10° R to 10° L for inspection.

* * * * *

S8.1.13 *Alternative side reflex reflector material.* Reflective material conforming to GSA Federal Specification L–S–300 (incorporated by reference, see § 571.5), may be used for side reflex reflectors if this material as used on the vehicle, meets the performance requirements of Table XVI–a.

* * * * *

S8.2.1.2 *Retroreflective sheeting material.* Retroreflective sheeting must meet the requirements, except photometry, of ASTM D 4956–90 (incorporated by reference, see § 571.5) for Type V Sheeting. Sheeting of Grade DOT–C2 of no less than 50 mm wide, Grade DOT–C3 of no less than 75 mm wide, or Grade DOT–C4 of no less than 100 mm wide may be used.

* * * * *

S9.3.5 The minimum required illuminated area of the indicator must be visible to any tangent on the 95th eyellipse as defined in SAE Recommended Practice J941b (1969) (incorporated by reference, see § 571.5), with the steering wheel turned to a straight ahead driving position and in the design location for an adjustable wheel or column.

* * * * *

S10.14.7.7 Each integral beam headlamp capable of being mechanically aimed by externally applied headlamp aiming devices specified in SAE Recommended Practice J602–1980 (incorporated by reference, see § 571.5), must be designed to conform to the performance requirements of the torque deflection test of S14.6.

* * * * *

S10.15.7.6 Each replaceable bulb headlamp capable of being mechanically aimed by externally applied headlamp aiming devices specified in SAE Recommended Practice J602–1980 (incorporated by reference, see § 571.5), must be designed to conform to the performance requirements of the torque deflection test of S14.6.

* * * * *

S10.18.7 *External aiming.* Each headlighting system that is capable of being mechanically aimed by externally applied headlamp aiming devices must be mechanically aimable using the equipment specified in SAE Recommended Practice J602–1980 (incorporated by reference, see § 571.5), without the removal of any ornamental trim rings, covers, wipers or other vehicle parts.

* * * * *

S10.18.7.2 *Nonadjustable headlamp aiming device locating plates.* Each headlamp may be designed to use the nonadjustable Headlamp Aiming Device

Locating Plate for the 100 × 165 mm unit, the 142 × 200 mm unit, the 146 mm diameter unit, or the 178 mm diameter unit of SAE Recommended Practice J602–1980 (incorporated by reference, see § 571.5), or the 92 × 150 mm Type F unit, and incorporate lens-mounted aiming pads as specified for those units pursuant to Appendix C of part 564 of this chapter. If so designed, no additional lens marking is necessary to designate the type of plate or dimensions.

* * * * *

S12.6 As an alternative to complying with the requirements of S12.1 through S12.5, a vehicle with headlamps incorporating VHAD or visual/optical aiming in accordance with this standard may meet the requirements for *Concealable lamps* in paragraph 5.14 of UNECE Regulation 48 page 17 (incorporated by reference, see § 571.5), in the English language version.

* * * * *

S14.2.1.6 *Bulbs.* Except for a lamp having a sealed-in bulb, a lamp must meet the applicable requirements of this standard when tested with a bulb whose filament is positioned within ± .010 in of the nominal design position specified in SAE Recommended Practice J573d (1968) (incorporated by reference, see § 571.5) or specified by the bulb manufacturer and operated at the bulb's rated mean spherical candela.

S14.2.1.6.1 Each lamp designed to use a type of bulb that has not been assigned a mean spherical candela rating by its manufacturer and is not listed in SAE Recommended Practice J573d (1968) (incorporated by reference, see § 571.5), must meet the applicable requirements of this standard when used with any bulb of the type specified by the lamp manufacturer, operated at the bulb's design voltage. A lamp that contains a sealed-in bulb must meet these requirements with the bulb operated at the bulb's design voltage.

S14.2.1.6.2 A bulb that is not listed in SAE Recommended Practice J573d (1968) (incorporated by reference, see § 571.5) is not required to use a socket that conforms to the requirements of SAE Recommended Practice J567b (1964) (incorporated by reference, see § 571.5).

* * * * *

S14.2.5.7.3 The color response of the photometer must be corrected to that of the 1931 CIE Standard Observer (2-degree) Photopic Response Curve, as shown in the CIE 1931 Chromaticity Diagram (incorporated by reference, see § 571.5).

* * * * *

S14.4.2.2.4.1 After completion of the outdoor exposure test the haze and loss of surface luster as measured by ASTM D1003–92 (incorporated by reference, see § 571.5) must not be greater than:

* * * * *

S14.4.2.2.4.4 After completion of the outdoor exposure test all materials, when compared with the unexposed control samples, must not have their luminous transmittance changed by more than 25% when tested in accordance with ASTM E308–66 (incorporated by reference, see § 571.5) using CIE Illuminant A (2856K).

* * * * *

S14.5.3.2 *Procedure.* The sample device with any drain hole closed must be mounted in its normal operating position, at least 6 in from the wall in a cubical box with inside measurements of 3 ft on each side containing 10 lb of fine powered cement in accordance with ASTM C150–56 (incorporated by reference, see § 571.5). At intervals of 15 minutes during a test period of 5 hours, the dust must be agitated by compressed air or fan blower by projecting blasts of air for a 2 second period in a downward direction into the dust in such a way that the dust is completely and uniformly diffused throughout the entire cube and allowed to settle. After the completion of the dust test the exterior surface of the device must be cleaned.

* * * * *

S14.5.4.1 *Procedure.* The sample device must be subjected to a salt spray (fog) test in accordance with the latest version of ASTM B117–73 (Reapproved 1979) (incorporated by reference, see § 571.5), for a period of 50 hours, consisting of two periods of 24 hour exposure followed by a 1 hr drying time.

* * * * *

S14.6.2.1.1 * * *

(a) ASTM Reference Fuel C, which is composed of Isooctane 50% volume and Toluene 50% volume. Isooctane must conform to A2.7 in the ASTM Motor Fuels section (incorporated by reference, see § 571.5), and Toluene must conform to ASTM D362–84 (incorporated by reference, see § 571.5). ASTM Reference Fuel C must be used as specified in: Paragraph A2.3.2 and A2.3.3 of the ASTM Motor Fuels section (incorporated by reference, see § 571.5); and OSHA Standard 29 CFR 1910.106—Handling Storage and Use of Flammable Combustible Liquids;

* * * * *

S14.6.3.1 *Procedure.* A sample headlamp, mounted on a headlamp test fixture in designed operating position and including all accessory equipment necessary to operate in its normal manner, is subjected to a salt spray (fog) test in accordance with ASTM B117–73 (incorporated by reference, see § 571.5), for 50 total hours, consisting of two periods of 24 hours exposure followed by a 1 hour drying period. If a portion of the device is completely protected in service, that portion is covered to prevent salt fog entry during exposure. After removal from the salt spray and the final 1 hour drying period the sample headlamp is examined for corrosion that affects any other applicable tests contained in S14.6. If such corrosion is found, the affected test(s) must be performed on the corrosion sample and the results recorded.

* * * * *

S14.6.4.1.2 The headlamp, with connector attached to the terminals, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, is subjected to a salt spray (fog) test in accordance with ASTM B117–73 (incorporated by reference, see § 571.5), for 240 hours, consisting of ten successive 24-hour periods.

* * * * *

S14.6.5.1.2 The box contains 4.5 kg of fine powdered cement which conforms to the ASTM C150–77 (incorporated by reference, see § 571.5). Every 15 minutes, the cement is agitated by compressed air or fan blower(s) by projecting blasts of air for a two-second period in a downward direction so that the cement is diffused as uniformly as possible throughout the entire box.

* * * * *

S14.7.3.1.2 *Discharge source.* For a light source using excited gas mixtures as a filament or discharge arc, seasoning of the light source system, including any ballast required for its operation, is made in accordance with section 4.0 of SAE Recommended Practice J2009 (1993) (incorporated by reference, see § 571.5).

* * * * *

S14.7.3.3 *Luminous flux measurement.* The measurement of luminous flux is made in accordance with IES LM 45 (incorporated by reference, see § 571.5).

* * * * *

■ 8. Section 571.111 is amended by revising the first sentence of S11 to read as follows:

§ 571.111 Standard No. 111; Rearview mirrors.

* * * * *

S11. *Mirror Construction.* The average reflectance of any mirror required by this standard shall be determined in

accordance with SAE Standard J964 OCT84 (incorporated by reference, see § 571.5). * * *

* * * * *

■ 9. Section 571.116 is amended by:
■ a. Revising the first sentence of S6.2.1;
■ b. Revising S6.2.3(b);
■ c. Revising the first sentence of S6.3.2(a);
■ d. Revising the first sentence of S6.3.2(d);
■ e. Revising the first sentence of S6.3.3(a);
■ f. Revising the fourth sentence of S6.3.3(b);
■ g. Revising the second sentence of S6.3.6(a);
■ h. Revising the first sentence of S6.4.2;
■ i. Revising S6.5.4.1;
■ j. Revising the first sentence of S6.6.3(a);
■ k. Revising S6.10.2(e);
■ l. Revising the second sentence of S6.11.3(a);
■ m. Revising S6.11.3(b);
■ n. Revising the first sentence of S6.13.2;
■ o. Revising the first sentence of S6.13.3(b);
■ p. Revising S7.1;
■ q. Revising the first two sentences of S7.2;
■ r. Revising S7.4.1(b); and
■ s. Revising the second sentence (after the table) of S7.6.

The revisions read as follows:

§ 571.116 Standard No. 116; Motor vehicle brake fluids.

* * * * *

S6.2.1. *Summary of procedure.* A 350 ml. sample of the brake fluid is humidified under controlled conditions; 350 ml. of SAE triethylene glycol monomethyl ether, brake fluid grade, referee material (TEGME) as described in appendix E of SAE Standard J1703 NOV83 (incorporated by reference, see § 571.5), is used to establish the end point for humidification. * * *

* * * * *

S6.2.3 * * *

(b) SAE TEGME referee material (see Appendix E of SAE Standard J1703 NOV83 (incorporated by reference, see § 571.5)).

* * * * *

S6.3.2 *Apparatus.*

(a) *Viscometers.* Calibrated glass capillary-type viscometers, ASTM D2515–66 (incorporated by reference, see § 571.5), measuring viscosity within the precision limits of S6.4.7. * * *

* * * * *

(d) *Thermometers.* Liquid-in-Glass Kinematic Viscosity Test Thermometers, covering the range of test temperatures indicated in Table IV and conforming to ASTM E1–68 (incorporated by reference, see § 571.5), and in the IP requirements for IP Standard Thermometers. * * *

* * * * *

S6.3.3 *Standardization.*

(a) *Viscometers.* Use viscometers calibrated in accordance with appendix 1 of ASTM D445–65 (incorporated by reference, see § 571.5). * * *

(b) *Thermometers.* * * * (See ASTM E77–66 (incorporated by reference, see § 571.5)).

* * * * *

S6.3.6 *Calculation.* (a) * * * To calculate C at test temperatures other than the calibration temperature for these viscometers, see ASTM D2515–66 (incorporated by reference, see § 571.5) or follow instructions given on the manufacturer's certificate of calibration.

* * * * *

S6.4.2 *Apparatus.* The pH assembly consists of the pH meter, glass electrode, and calomel electrode, as specified in Appendices A1.1, A1.2, and A1.3 of ASTM D1121–67 (incorporated by reference, see § 571.5). * * *

* * * * *

S6.5.4.1 *Materials.* SAE RM–66–04 Compatibility Fluid as described in appendix B of SAE Standard J1703 JAN95 (incorporated by reference, see § 571.5).

* * * * *

S6.6.3 *Materials.* (a) *Corrosion test strips.* Two sets of strips from each of the metals listed in Appendix C of SAE Standard J1703b (1970) (incorporated by reference, see § 571.5). * * *

* * * * *

S6.10.2 * * *

(e) *SAE RM–66–04 Compatibility Fluid.* As described in appendix B of SAE Standard J1703 JAN95 (incorporated by reference, see § 571.5).

* * * * *

S6.11.3 * * *

(a) *Benzoyl peroxide, reagent grade, 96 percent.* * * * Reagent strength may be evaluated by ASTM E298–68 (incorporated by reference, see § 571.5).

(b) *Corrosion test strips.* Two sets of cast iron and aluminum metal test strips as described in appendix C of SAE Standard J1703b (1970) (incorporated by reference, see § 571.5).

* * * * *

S6.13.2 *Apparatus and equipment.* Either the drum and shoe type of stroking apparatus (see Figure 1 of SAE Standard J1703b (1970) (incorporated by reference, see § 571.5)), except using only three sets of drum and shoe assemblies, or the stroking fixture type apparatus as shown in Figure 2 of SAE Standard J1703 NOV83 (incorporated by reference, see § 571.5) with the components arranged as shown in Figure 1 of SAE Standard J1703 NOV83. * * *

* * * * *

S6.13.3 *Materials.*

* * * * *

(b) *Steel tubing.* Double wall steel tubing meeting SAE Standard J527a (1967) (incorporated by reference, see § 571.5). * * *

* * * * *

S7.1 *Distilled water.* Nonreferee reagent water as specified in ASTM D1193–70 (incorporated by reference, see § 571.5) or water of equal purity.

S7.2 *Water content of motor vehicle brake fluids.* Use analytical methods based on ASTM D1123–59 (incorporated by reference, see § 571.5) for determining the water content of brake fluids, or other methods of analysis yielding comparable results. To be acceptable for use, such other method must measure the weight of water added to samples of the SAE RM–66–04 (see Appendix A of SAE Standard J1703 NOV83 (incorporated by reference in § 571.5)) and TEGME Compatibility Fluids (see Appendix B of SAE Standard J1703 JAN95 (incorporated by reference in § 571.5)) within ± 15 percent of the water added for additions up to 0.8 percent by weight, and within ± 5 percent of the water added for additions greater than 0.8 percent by weight. * * *

* * * * *

S7.4.1 * * *

(b) *Hardness tester.* A hardness tester meeting the requirements for the standard instrument as described in ASTM D1415–68 (incorporated by reference, see § 571.5) and graduated directly in IRHD units.

* * * * *

S7.6 * * *

Compounding, vulcanization, physical properties, size of the finished cups, and other details shall be as specified in appendix B of SAE Standard J1703b (1970) (incorporated by reference, see § 571.5). * * *

* * * * *

■ 10. Section 571.121 is amended by revising S5.2.3.3(b)(1) and S6.1.7 to read:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.2.3.3 * * *

(b)(1) The lamp shall be designed to conform to the performance requirements of SAE Recommended Practice J592 JUN92 (incorporated by reference, see § 571.5), or SAE Recommended Practice J592e (1972)

(incorporated by reference, see § 571.5), for combination, clearance, and side marker lamps, which are marked with a ''PC'' or ''P2'' on the lens or housing, in accordance with SAE Recommended Practice J759 JAN95 (incorporated by reference, see § 571.5).

* * * * *

S6.1.7 Unless otherwise specified, stopping tests are conducted on a 12-foot wide level, straight roadway having a peak friction coefficient of 0.9. For road tests in S5.3, the vehicle is aligned in the center of the roadway at the beginning of a stop. Peak friction coefficient is measured using an ASTM E1136 standard reference test tire (see ASTM E1136–93 (Reapproved 2003) (incorporated by reference, see § 571.5)) in accordance with ASTM Method E1337–90 (Reapproved 2008) (incorporated by reference, see § 571.5), at a speed of 40 mph, without water delivery for the surface with PFC of 0.9, and with water delivery for the surface with PFC of 0.5.

* * * * *

■ 11. Section 571.122 is amended by revising the definition of ''Skid number'' in S4 to read as follows:

§ 571.122 Standard No. 122; Motorcycle brake systems.

* * * * *

S4 * * *

Skid number means the frictional resistance of a pavement measured in accordance with ASTM E274–70 (incorporated by reference, see § 571.5) at 40 mph, omitting water delivery as specified in paragraphs 7.1 and 7.2 of that method.

* * * * *

■ 12. Section 571.125 is amended by revising S6.1.1(d) to read as follows:

§ 571.125 Standard No. 125; Warning devices.

* * * * *

S6.1.1 * * *

(d) Salt spray (fog) test in accordance with ASTM B117–64 (incorporated by reference, see § 571.5), except that the test shall be for 4 hours rather than 40 hours; and

* * * * *

■ 13. Section 571.126 is amended by revising S3, removing S3.1 and S3.2, and revising S6.2.2 to read as follows:

§ 571.126 Standard No. 126; Electronic stability control systems.

* * * * *

S3 *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, according to the phase-in schedule specified in S8 of this standard.

* * * * *

S6.2.2 The road test surface must produce a peak friction coefficient (PFC) of 0.9 when measured using an ASTM E1136–93 (Reapproved 2003) (incorporated by reference, see § 571.5) standard reference test tire, in accordance with ASTM E1337–90 (Reapproved 2008) (incorporated by reference, see § 571.5) at a speed of 64.4 km/h (40 mph), without water delivery.

* * * * *

■ 14. Section 571.131 is amended by revising S6.2.1 and revising S6.2.3 to read as follows:

§ 571.131 Standard No. 131; School bus pedestrian safety devices.

* * * * *

S6.2.1 *Color.* The procedure shall be done in accordance with SAE Recommended Practice J578–1988 (incorporated by reference, see § 571.5). When visually compared to the light emitted from a filter/source with a combination of chromaticity coordinates as explained in SAE Recommended Practice J578–1988 within specific boundaries [y=0.33 (yellow boundary) and y=0.98—×(purple boundary)] the color of light emitted from the test object shall not be less saturated (paler), yellower, or purpler. The test object shall be placed perpendicular to the light source to simulate lamps on stop signal arms. In making visual comparisons, the light from the test object shall light one portion of a comparison field and the light from the filter/source standard shall light an adjacent area. To make a valid visual comparison, the two fields to be viewed shall be of near equal luminance.

* * * * *

S6.2.3 *Vibration, Moisture, Dust, Corrosion, Photometry, and Warpage Tests.* The procedure shall be done in accordance with SAE Recommended Practice J575–1983 (incorporated by reference, see § 571.5) and SAE Recommended Practice J1133 (1984) (incorporated by reference, see § 571.5). Lamps and lighting components shall meet the criteria for vibration, moisture, dust, corrosion, photometry, and warpage in SAE Recommended Practice J575–1983 and SAE Recommended Practice J1133 (1984) under the test conditions specified herein.

■ 15. Section 571.135 is amended by revising S6.2.1 and S6.3.11.1 to read as follows:

§ 571.135 Standard No. 135; Light vehicle brake systems.

* * * * *

S6.2.1. *Pavement friction.* Unless otherwise specified, the road test surface produces a peak friction coefficient (PFC) of 0.9 when measured using an ASTM E1136–93 (Reapproved 2003) (incorporated by reference, see § 571.5) standard reference test tire, in accordance with ASTM E1337–90 (Reapproved 2008) (incorporated by reference, see § 571.5), at a speed of 64.4 km/h (40 mph), without water delivery.

* * * * *

S6.3.11.1 The state of charge of the propulsion batteries is determined in accordance with SAE Recommended Practice J227a (1976) (incorporated by reference, see § 571.5). The applicable sections of J227a (1976) are 3.2.1 through 3.2.4, 3.3.1 through 3.3.2.2, 3.4.1 and 3.4.2, 4.2.1, 5.2, 5.2.1 and 5.3.

* * * * *

■ 16. Section 571.139 is amended by revising S2, removing S2.1 and S2.2, and revising the definition of ''Snow tire'' in S3 to read as follows:

§ 571.139 Standard No. 139; New pneumatic radial tires for light vehicles.

* * * * *

S2 *Application.* This standard applies to new pneumatic radial tires for use on motor vehicles (other than motorcycles and low speed vehicles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and that were manufactured after 1975. This standard does not apply to special tires (ST) for trailers in highway service, tires for use on farm implements (FI) in agricultural service with intermittent highway use, tires with rim diameters of 8 inches and below, or T-type temporary use spare tires with radial construction.

S3 * * *

Snow tire means a tire that attains a traction index equal to or greater than 110, compared to the ASTM E1136–93 (Reapproved 2003) (incorporated by reference, see § 571.5) Standard Reference Test Tire when using the snow traction test as described in ASTM F1805–00 (incorporated by reference, see § 571.5), and that is marked with an Alpine Symbol specified in S5.5(i) on at least one sidewall.

* * * * *

■ 17. Section 571.201 is amended by revising the introductory sentence of S5.1.2, the introductory sentence of S5.2.2, and S5.3.1 to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S5.1.2 *Demonstration procedures.* Tests shall be performed as described in SAE Recommended Practice J921 (1965) (incorporated by reference, see § 571.5),

using the specified instrumentation or instrumentation that meets the performance requirements specified in SAE Recommended Practice J977 (1966) (incorporated by reference, see § 571.5), except that:

* * * * *

S5.2.2 *Demonstration procedures.* Tests shall be performed as described in SAE Recommended Practice J921 (1965) (incorporated by reference, see § 571.5), using the specified instrumentation or instrumentation that meets the performance requirements specified in SAE Recommended Practice J977 (1966) (incorporated by reference, see § 571.5), except that:

* * * * *

S5.3.1 *Demonstration procedures.*

(a) Subject the interior compartment door latch system to an inertia load of 10g in a horizontal transverse direction and an inertia load of 10g in a vertical direction in accordance with the procedure described in section 5 of SAE Recommended Practice J839b (1965) (incorporated by reference, see § 571.5), or an approved equivalent.

(b) Impact the vehicle perpendicularly into a fixed collision barrier at a forward longitudinal velocity of 48 kilometers per hour.

(c) Subject the interior compartment door latch system to a horizontal inertia load of 30g in a longitudinal direction in accordance with the procedure described in section 5 of SAE Recommended Practice J839b (1965) (incorporated by reference, see § 571.5), or an approved equivalent.

* * * * *

■ 18. Section 571.202 is amended by revising the definition of ''Height'' in S3, removing and reserving S4.3, revising S4.4(a), revising S5.1(a)(3), revising S5.1(a)(4), and revising S5.2(a) to read as follows:

§ 571.202 Standard No. 202; Head restraints; Applicable at the manufacturer's option until September 1, 2009.

* * * * *

S3 * * *

Height means, when used in reference to a head restraint, the distance from the H-point, measured parallel to the torso reference line defined by the three dimensional SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin, to a plane normal to the torso reference line.

* * * * *

S4.4 * * *

(a) The head restraint must comply with Paragraphs 5.1.1, 5.1.3, 5.3.1, 5.5 through 5.13, 6.1.1, 6.1.3, and 6.4 through 6.8 of the English language version of the UNECE Regulation 17 (incorporated by reference, see § 571.5).

* * * * *

S5.1 * * *

(a) * * *

(3) Position the SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) two-dimensional manikin's back against the flat surface specified in S5.1(a)(1) of this section, alongside the dummy with the H-point of the manikin aligned with the H-point of the dummy.

(4) Establish the torso line of the manikin as defined in SAE Aerospace-Automotive Drawing Standards (1963) (incorporated by reference, see § 571.5), sec. 2.3.6, P.E1.01.

* * * * *

S5.2 * * *

(a) Place a test device, having the back plan dimensions and torso line (centerline of the head room probe in full back position), of the three dimensional SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin, at the manufacturer's recommended design seated position.

* * * * *

■ 19. Section 571.202a is amended by:
■ a. Revising S2;
■ b. Removing S2.1;
■ c. Removing S2.2;
■ d. Revising the definitions of ''Head Restraint Measurement Device (HRMD)'' and ''Height'' in S3;
■ e. Revising S5;
■ f. Revising S5.1;
■ g. Revising S5.1.1;
■ h. Revising S5.2;
■ i. Revising the introductory text of S5.2.1;
■ j. Revising S5.2.2;
■ k. Revising S5.2.5(b);
■ l. Revising S5.2.7(a)(3);
■ m. Revising the first sentence of S5.3.4;
■ n. Revising S5.3.8;
■ o. Revising S5.3.9;
■ p. Revising S5.3.10;
■ q. Revising S5.4(b)(2);
■ r. Revising S5.4(b)(4); and
■ s. Revising S7.2.1.

The revisions read as follows:

§ 571.202a Standard No. 202a; Head restraints; Mandatory applicability begins on September 1, 2009.

* * * * *

S2 *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less, manufactured on or after September 1, 2009. However, the standard's requirements for rear head restraints do not apply to vehicles manufactured before September 1, 2010, and, for vehicles manufactured between September 1, 2010 and August 31, 2011, the requirements for rear head restraints apply only to the extent provided in S7. Until September 1, 2009, manufacturers may comply with the standard in this § 571.202a, with the standard in § 571.202, or with the European regulations referenced in S4.3(a) of § 571.202. For vehicles manufactured on or after September 1, 2009 and before September 1, 2010, manufacturers may comply with the standard in § 571.202 or with the European regulations referenced in S4.3(a) of § 571.202, instead of the standard in this § 571.202a, only to the extent consistent with the phase-in specified in this § 571.202a.

S3 * * *

Head restraint measurement device (HRMD) means the three dimensional SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin with a head form attached, representing the head position of a seated 50th percentile male, with sliding scale at the back of the head for the purpose of measuring backset. The head form is designed by and available from the ICBC, 151 West Esplanade, North Vancouver, BC V7M 3H9, Canada (*www.icbc.com*).

Height means, when used in reference to a head restraint, the distance from the H-point, measured parallel to the torso reference line defined by the three dimensional SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin, to a plane normal to the torso reference line.

* * * * *

S5. *Procedures.* Demonstrate compliance with S4.2 through S4.4 of this section with any adjustable lumbar support adjusted to its most posterior nominal design position. If the seat cushion adjusts independently of the seat back, position the seat cushion such that the highest H-point position is achieved with respect to the seat back, as measured by SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin, with leg length specified in S10.4.2.1 of § 571.208 of this part. If the specified position of the H-point can be achieved with a range of seat cushion inclination angles, adjust the seat inclination such that the most forward part of the seat cushion is at its lowest position with respect to the most rearward part. All tests specified by this standard are conducted with the ambient temperature between 18 degrees C. and 28 degrees C.

S5.1 Except as specified in S5.2.3 and S5.3 of this section, if the seat back is adjustable, it is set at an initial inclination position closest to the manufacturer's design seat back angle,

as measured by SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin. If there is more than one inclination position closest to the design angle, set the seat back inclination to the position closest to and rearward of the design angle.

S5.1.1 *Procedure for determining presence of head restraints in rear outboard seats.* Measure the height of the top of a rear seat back or the top of any independently adjustable seat component attached to or adjacent to the rear seat back in its highest position of adjustment using the scale incorporated into the SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin or an equivalent scale, which is positioned laterally within 15 mm of the centerline of the rear seat back or any independently adjustable seat component attached to or adjacent to the rear seat back.

S5.2 *Dimensional and static performance procedures.* Demonstrate compliance with S4.2 of this section in accordance with S5.2.1 through S5.2.7 of this section. Position the SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin according to the seating procedure found in SAE Standard J826 JUL95.

S5.2.1 *Procedure for height measurement.* Demonstrate compliance with S4.2.1 of this section in accordance with S5.2.1 (a) and (b) of this section, using the headroom probe scale incorporated into the SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin with the appropriate offset for the H-point position or an equivalent scale, which is positioned laterally within 15 mm of the head restraint centerline. If the head restraint position is independent of the seat back inclination position, compliance is determined at a seat back inclination position closest to the design seat back angle, and each seat back inclination position less than the design seat back angle.

* * * * *

S5.2.2 *Procedure for width measurement.* Demonstrate compliance with S4.2.2 of this section using calipers to measure the maximum dimension perpendicular to the vehicle vertical longitudinal plane of the intersection of the head restraint with a plane that is normal to the torso reference line of SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin and 65 ± 3 mm below the top of the head restraint.

* * * * *

S5.2.5 * * *

(b) Instrument the impactor with an acceleration sensing device whose output is recorded in a data channel that conforms to the requirements for a 600 Hz channel class as specified in SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5). The axis of the acceleration-sensing device coincides with the geometric center of the head form and the direction of impact.

* * * * *

S5.2.7 * * *

(a) * * *

(3) In the seat, place a test device having the back pan dimensions and torso reference line (vertical center line), when viewed laterally, with the head room probe in the full back position, of the three dimensional SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin;

* * * * *

S5.3.4 *Seat Adjustment.* At each outboard designated seating position, if the seat back is adjustable, it is set at an initial inclination position closest to 25 degrees from the vertical, as measured by SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin. * * *

* * * * *

S5.3.8 Accelerate the dynamic test platform to 17.3 ± 0.6 km/h. All of the points on the acceleration vs. time curve fall within the corridor described in Figure 1 and Table 1 when filtered to channel class 60, as specified in the SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5). Measure the maximum posterior angular displacement.

S5.3.9 Calculate the angular displacement from the output of instrumentation placed in the torso and head of the test dummy and an algorithm capable of determining the relative angular displacement to within one degree and conforming to the requirements of a 600 Hz channel class, as specified in SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5). No data generated after 200 ms from the beginning of the forward acceleration are used in determining angular displacement of the head with respect to the torso.

S5.3.10 Calculate the HIC_{15} from the output of instrumentation placed in the head of the test dummy, using the equation in S4.3.1(b) of this section and conforming to the requirements for a 1000 Hz channel class as specified in SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5). No data generated after 200 ms from the beginning of the forward acceleration are used in determining HIC.

* * * * *

S5.4 * * *

(b) * * *

(2) Strike a line on the head restraint. Measure the angle or range of angles of the head restraint reference line as projected onto a vertical longitudinal vehicle plane. Alternatively, measure the torso reference line angle with the SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin;

* * * * *

(4) Determine the minimum change in the head restraint reference line angle as projected onto a vertical longitudinal vehicle plane from the angle or range of angles measured in 5.4(b)(2). Alternatively, determine the change in the torso reference line angle with the SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin.

* * * * *

S7.2.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S7.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S7.2.2.

* * * * *

■ 20. Section 571.203 is amended by revising the introductory text of S5.1, revising S5.1(a), and removing and reserving S5.1(b) to read as follows:

§ 571.203 Standard No. 203; Impact protection for the driver from the steering control system.

* * * * *

S5.1 Except as provided in this paragraph, the steering control system of any vehicle to which this standard applies shall be impacted in accordance with S5.1(a).

(a) When the steering control system is impacted by a body block in accordance with SAE Recommended Practice J944 JUN80 (incorporated by reference, see § 571.5), at a relative velocity of 24 km/h, the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 11,120 N, except for intervals whose cumulative duration is not more than 3 milliseconds.

* * * * *

■ 21. Section 571.205 is amended by removing S3, redesignating S3.1 as S3, removing S3.2, revising S5.1, revising S5.1.1, revising S5.1.3, revising S5.2, and revising S5.3.1 to read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S5.1 Glazing materials for use in motor vehicles must conform to ANSI/SAE Z26.1–1996 (incorporated by reference, see § 571.5), unless this standard provides otherwise. SAE Recommended Practice J673 (1993) (incorporated by reference, see § 571.5) is referenced in ANSI/SAE Z26.1–1996.

S5.1.1 *Multipurpose passenger vehicles.* Except as otherwise specifically provided by this standard, glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing for use in trucks as specified in ANSI/SAE Z26.1–1996 (incorporated by reference, see § 571.5).

* * * * *

S5.1.3 *Location of arrow within ''AS'' markings.* In ANSI/SAE Z26.1–1996 (incorporated by reference, see § 571.5) Section 7. ''Marking of Safety Glazing Materials,'' on page 33, in the right column, in the first complete sentence, the example markings ''AS↓1'', ''AS↓14'' and ''AS↑2'' are corrected to read ''A↓S1'', ''A↓S14'' and ''A↑S2''. Note that the arrow indicating the portion of the material that complies with Test 2 is placed with its base adjacent to a horizontal line.

S5.2 Each of the test specimens described in ANSI/SAE Z26.1–1996 (incorporated by reference, see § 571.5) Section 5.7 (fracture test) must meet the fracture test requirements of that section when tested in accordance with the test procedure set forth in that section.

* * * * *

S5.3.1 Shade bands for windshields shall comply with SAE Recommended Practice J100 (1995) (incorporated by reference, see § 571.5).

* * * * *

■ 22. Section 571.205(a) is amended by revising:

■ a. The first sentence of S5.1.1;

■ b. The introductory text of S5.1.1.1;

■ c. S5.1.1.1(d);

■ d. The introductory text of S5.1.1.2;

■ e. The introductory text of S5.1.1.3;

■ f. The introductory sentence of S5.1.1.4;

■ g. S5.1.1.5, S5.1.1.6, S5.1.1.7, and S5.1.2;

■ h. The first sentence of S5.1.2.1;

■ i. The introductory text of S5.1.2.2

■ j. The introductory text of S5.1.2.3;

■ k. The introductory sentence of S5.1.2.11, S5.2;

■ l. The first sentence of S6.1; and

■ m. S6.2 and S6.4.

The revisions read as follows:

§ 571.205(a) Glazing equipment manufactured before September 1, 2006 and glazing materials used in vehicles manufactured before November 1, 2006.

* * * * *

S5.1.1 Glazing materials for use in motor vehicles, except as otherwise provided in this standard shall conform to ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5). * * *

* * * * *

S5.1.1.1 The chemicals specified for testing chemical resistance in Tests Nos. 19 and 20 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5) shall be:

* * * * *

(d) Gasoline, ASTM Reference Fuel C, which is composed of Isooctane 50 volume percentage and Toluene 50 volume percentage. Isooctane must conform to A2.7 in the ASTM Motor Fuels section (incorporated by reference, see § 571.5), and Toluene must conform to ASTM D362–84 (incorporated by reference, see § 571.5), Standard Specification for Industrial Grade Toluene. ASTM Reference Fuel C must be used as specified in:

(1) Paragraph A2.3.2 and A2.3.3 in the ASTM Motor Fuels section (incorporated by reference, see § 571.5); and

(2) OSHA Standard 29 CFR 1910.106—''Handling Storage and Use of Flammable Combustible Liquids.''

S5.1.1.2 The following locations are added to the lists specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5) in which item 4, item 5, item 8, and item 9 safety glazing may be used:

* * * * *

S5.1.1.3 The following locations are added to the lists specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5) in which item 6 and item 7 safety glazing may be used:

* * * * *

S5.1.1.4 The following locations are added to the lists specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5) in which item 8 and item 9 safety glazing may be used:

* * * * *

S5.1.1.5 The phrase ''readily removable'' windows as defined in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5), for the purposes of this standard, in buses having a GVWR of more than 4536 kilograms (10,000 pounds), shall include pushout windows and windows mounted in emergency exits that can be manually pushed out of their location in the vehicle without the use of tools, regardless of whether such windows remain hinged at one side to the vehicle.

S5.1.1.6 Multipurpose passenger vehicles. Except as otherwise specifically provided by this standard, glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing for use in trucks as specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5).

S5.1.1.7 Test No. 17 is deleted from the list of tests specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5) for Item 5 glazing material and Test No. 18 is deleted from the lists of tests specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980, for Item 3 and Item 9 glazing material.

S5.1.2 In addition to the glazing materials specified in ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5), materials conforming to S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8, and S5.1.2.11 may be used in the locations of motor vehicles specified in those sections.

S5.1.2.1 Item 11C—Safety Glazing Material for Use in Bullet Resistant Shields. Bullet resistant glazing that complies with Tests Nos. 2, 17, 19, 20, 21, 24, 27, 28, 29, 30 and 32 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5) and the labeling requirements of S5.1.2.5 may be used only in bullet resistant shields that can be removed from the motor vehicle easily for cleaning and maintenance.

* * *

S5.1.2.2 Item 12—Rigid Plastics. Safety plastics materials that comply with Tests Nos. 10, 13, 16, 19, 20, 21, and 24 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5), with the exception of the test for resistance to undiluted denatured alcohol Formula SD No. 30, and that comply with the labeling requirements of S5.1.2.5, may be used in a motor vehicle only in the following specified locations at levels not requisite for driving visibility.

* * * * *

S5.1.2.3 Item 13—Flexible plastics. Safety plastic materials that comply with Tests Nos. 16, 19, 20, 22, and 23 or 24 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5),

with the exception of the test for resistance to undiluted denatured alcohol Formula SD No. 30, and that comply with the labeling requirements of S5.1.2.5 may be used in the following specific locations at levels not requisite for driving visibility.

* * * * *

S5.1.2.11 Test Procedures for Item 4A—Rigid Plastic for Use in Side Windows Rearward of the ''C'' Pillar. (a) Glazing materials that comply with Tests Nos. 2, 10, 13, 16, 17, as that test is modified in S5.1.2.9(c) (on the interior side only), 17, as that test is modified in paragraph (b) of this section (on the exterior side only), 19, 20, 21, and 24 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5), may be used in the following specific locations:

* * * * *

S5.2 Edges. In vehicles except schoolbuses, exposed edges shall be treated in accordance with SAE Recommended Practice J673a (1967) (incorporated by reference, see § 571.5). In schoolbuses, exposed edges shall be banded.

* * * * *

S6.1 Each prime glazing material manufacturer, except as specified below, shall mark the glazing materials it manufactures in accordance with section 6 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5).

* * *

* * * * *

S6.2 Each prime glazing material manufacturer shall certify each piece of glazing material to which this standard applies that is designed as a component of any specific motor vehicle or camper, pursuant to section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. § 30115), by adding to the mark required by S6.1 in letters and numerals of the size specified in section 6 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5), the symbol ''DOT'' and a manufacturer's code mark, which will be assigned by NHTSA on the written request of the manufacturer.

* * * * *

S6.4 Each manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, shall mark that material in accordance with section 6 of ANSI Z26.1–1977, as amended by ANSI Z26.1a–1980 (both incorporated by reference, see § 571.5).

* * * * *

■ 23. Section 571.206 is amended by revising S5.1.1.4(a) and S5.1.1.4(b)(3)(i) to read as follows:

§ 571.206 Standard No. 206; Door locks and door retention components.

* * * * *

S5.1.1.4 * * *

(a) *Calculation.* The calculation is performed in accordance with paragraph 6 of SAE Recommended Practice J839 (1991) (incorporated by reference, see § 571.5).

* * * * *

(b) * * *

(3) * * *

(i) The acceleration device platform shall be instrumented with an accelerometer and data processing system that conforms to the requirements specified in SAE Recommended Practice J211–1 DEC2003 (incorporated by reference, see § 571.5) Channel Class 60. The accelerometer sensitive axis is parallel to the direction of test platform travel.

* * * * *

■ 24. Section 571.208 is amended by removing and reserving S4.7, and revising S4.13, S6.6(a)(1), S8.1.8.2, S8.2.5, S8.3.2, S10.4.2.1, S13.1, S15.3.6(a)(1), S16.2.5, S19.4.4(a)(1), S21.5.5(a)(1), S23.5.5(a)(1), and S25.4(a)(1) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.13 *Data channels.* For vehicles manufactured on or after September 1, 2001, all data channels used in injury criteria calculations shall be filtered using a phaseless digital filter, such as the Butterworth four-pole phaseless digital filter specified in appendix C of SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5).

* * * * *

S6.6 * * *

(a) * * *

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5) Channel Frequency Class 600.

* * * * *

S8.1.8.2 Each test dummy is clothed in a form fitting cotton stretch short sleeve shirt with above-the-elbow sleeves and above-the-knee length pants. The weight of the shirt or pants shall not exceed 0.25 pounds each. Each foot of the test dummy is equipped with a size 11XW shoe which meets the configuration size, sole, and heel thickness specifications of MIL–S–13192P (incorporated by reference, see § 571.5) change ''P'' and whose weight is 1.25 ± 0.2 pounds.

* * * * *

S8.2.5 The concrete surface upon which the vehicle is tested is level, rigid and of uniform construction, with a skid number of 75 when measured in accordance with ASTM E274–65T (incorporated by reference, see § 571.5) at 40 m.p.h., omitting water delivery as specified in paragraph 7.1 of that method.

* * * * *

S8.3.2 The concrete surface on which the test is conducted is level, rigid, of uniform construction, and of a sufficient size that the vehicle remains on it throughout the entire rollover cycle. It has a skid number of 75 when measured in accordance with ASTM E274–65T (incorporated by reference, see § 571.5) at 40 m.p.h. omitting water delivery as specified in paragraph 7.1 of that method.

* * * * *

S10.4.2.1 *H-point.* The H-points of the driver and passenger test dummies shall coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment and procedures specified in SAE Standard J826–1980 (incorporated by reference, see § 571.5), except that the length of the lower leg and thigh segments of the H-point machine shall be adjusted to 16.3 and 15.8 inches, respectively, instead of the 50th percentile values specified in Table 1 of SAE Standard J826–1980.

* * * * *

S13.1 *Instrumentation for Impact Test—Part 1—Electronic Instrumentation.* Under the applicable conditions of S8, mount the vehicle on a dynamic test platform at the vehicle attitude set forth in S13.3, so that the longitudinal center line of the vehicle is parallel to the direction of the test platform travel and so that movement between the base of the vehicle and the test platform is prevented. The test platform is instrumented with an accelerometer and data processing system having a frequency response of 60 channel class as specified in SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5). The accelerometer sensitive axis is parallel to the direction of test platform travel. The test is conducted at a velocity change approximating 48 km/h (30 mph) with acceleration of the test

platform such that all points on the crash pulse curve within the corridor identified in Figure 6 are covered. An inflatable restraint is to be activated at 20 ms ± 2 ms from the time that 0.5 g is measured on the dynamic test platform. The test dummy specified in S8.1.8, placed in each front outboard designated seating position as specified in S10, excluding S10.7, S10.8, and S10.9, shall meet the injury criteria of S6.1, S6.2(a), S6.3, S6.4(a), S6.5, and S13.2 of this standard.

* * * * *

S15.3.6 * * *

(a) * * *

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5) Channel Frequency Class 600.

* * * * *

S16.2.5 The dummy is clothed in form fitting cotton stretch garments with short sleeves and above the knee length pants. A size 7½ W shoe which meets the configuration and size specifications of MIL–S–21711E (incorporated by reference, see § 571.5) or its equivalent is placed on each foot of the test dummy.

* * * * *

S19.4.4 * * *

(a) * * *

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5) Channel Frequency Class 600.

* * * * *

S21.5.5 * * *

(a) * * *

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5) Channel Frequency Class 600.

* * * * *

S23.5.5 * * *

(a) * * *

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5) Channel Frequency Class 600.

* * * * *

S25.4 * * *

(a) * * *

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.11. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5) Channel Frequency Class 600.

* * * * *

§ 571.208a [Removed]

■ 25. Section 571.208a is removed.

■ 26. Section 571.209 is amended by removing and reserving S4.1(a), and revising S4.1(f), S4.1(k), S4.2(e), S4.3(a)(1), S5.1(b), S5.1(e), S5.1(f), S5.2(a), S5.2(b), S5.2(j)(2)(iii) introductory text, and S5.2(k) to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

(f) *Attachment hardware.* A seat belt assembly shall include all hardware necessary for installation in a motor vehicle in accordance with SAE Recommended Practice J800c (1973) (incorporated by reference, see § 571.5). However, seat belt assemblies designed for installation in motor vehicles equipped with seat belt assembly anchorages that do not require anchorage nuts, plates, or washers, need not have such hardware, but shall have 7/16–20 UNF–2A or 1/2–13 UNC–2A attachment bolts or equivalent metric hardware. The hardware shall be designed to prevent attachment bolts and other parts from becoming disengaged from the vehicle while in service. Reinforcing plates or washers furnished for universal floor, installations shall be of steel, free from burrs and sharp edges on the peripheral edges adjacent to the vehicle, at least 1.5 mm in thickness and at least 2580 mm^2 in projected area. The distance between any edge of the plate and the edge of the bolt hole shall be at least 15 mm. Any corner shall be rounded to a radius of not less than 6 mm or cut so that no corner angle is less than 135° and no side is less than 6 mm in length.

* * * * *

(k) *Installation instructions.* A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c (1973) (incorporated by reference, see § 571.5). If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., ''front right''] in [insert specific vehicle make(s) and model(s)].

* * * * *

S4.2 * * *

(e) *Resistance to light.* The webbing in a seat belt assembly after exposure to the light of a carbon arc and tested by the procedure specified in S5.1(e) shall have a breaking strength not less than 60 percent of the strength before exposure to the carbon arc and shall have a color retention not less than No. 2 on the AATCC Gray Scale for Evaluating Change in Color (incorporated by reference, see § 571.5).

* * * * *

S4.3 * * *

(a) *Corrosion resistance.* (1) Attachment hardware of a seat belt assembly after being subjected to the conditions specified in S5.2(a) shall be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion at peripheral edges or edges of holes on underfloor reinforcing plates and washers. Alternatively, such hardware at or near the floor shall be protected against corrosion by at least an electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware shall be protected by an electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with ASTM B456–79 (incorporated by reference, see § 571.5), but such hardware shall not be racked for electroplating in locations subjected to maximum stress.

* * * * *

S5.1 * * *

(b) *Breaking strength.* Webbing from three seat belt assemblies shall be conditioned in accordance with

paragraph (a) of this section and tested for breaking strength in a testing machine of capacity verified to have an error of not more than one percent in the range of the breaking strength of the webbing in accordance with ASTM E4–79 (incorporated by reference, see § 571.5). The machine shall be equipped with split drum grips illustrated in Figure 1, having a diameter between 51 and 102 mm. The rate of grip separation shall be between 51 and 102 mm per minute. The distance between the centers of the grips at the start of the test shall be between 102 and 254 mm. After placing the specimen in the grips, the webbing shall be stretched continuously at a uniform rate to failure. Each value shall be not less than the applicable breaking strength requirement in S4.2(b), but the median value shall be used for determining the retention of breaking strength in paragraphs (d), (e) and (f) of this section.

* * * * *

(e) *Resistance to light.* Webbing at least 508 mm in length from three seat belt assemblies shall be suspended vertically on the inside of the specimen track in a Type E carbon-arc light exposure apparatus described in ASTM G23–81 (incorporated by reference, see § 571.5), except that the filter used for 100 percent polyester yarns shall be chemically strengthened soda-lime glass with a transmittance of less than 5 percent for wave lengths equal to or less than 305 nanometers and 90 percent or greater transmittance for wave lengths of 375 to 800 nanometers. The apparatus shall be operated without water spray at an air temperature of 60° ± 2 °Celsius (°C) measured at a point 25 ± 5 mm outside the specimen rack and midway in height. The temperature sensing element shall be shielded from radiation. The specimens shall be exposed to light from the carbon-arc for 100 hours and then conditioned as prescribed in paragraph (a) of this section. The colorfastness of the exposed and conditioned specimens shall be determined on the AATCC Gray Scale for Evaluating Change in Color (incorporated by reference, see § 571.5). The breaking strength of the specimens shall be determined by the procedure prescribed in paragraph (b) of this section. The median values for the breaking strengths determined on exposed and unexposed specimens shall be used to calculate the percentage of breaking strength retained.

(f) *Resistance to micro-organisms.* Webbing at least 508 millimeters (mm) in length from three seat belt assemblies shall first be preconditioned in accordance with appendix A(1) and (2) of AATCC Test Method 30–1981 (incorporated by reference, see § 571.5), and then subjected to Test I, ''Soil Burial Test'' of that test method. After soil-burial for a period of 2 weeks, the specimen shall be washed in water, dried and conditioned as prescribed in paragraph (a) of this section. The breaking strengths of the specimens shall be determined by the procedure prescribed in paragraph (b) of this section. The median values for the breaking strengths determined on exposed and unexposed specimens shall be used to calculate the percentage of breaking strength retained.

Note: This test shall not be required on webbing made from material which is inherently resistant to micro-organisms.

S5.2 * * *

(a) *Corrosion resistance.* Three seat belt assemblies shall be tested in accordance with ASTM B117–73 (Reapproved 1979) (incorporated by reference, see § 571.5). Any surface coating or material not intended for permanent retention on the metal parts during service life shall be removed prior to preparation of the test specimens for testing. The period of test shall be 50 hours for all attachment hardware at or near the floor, consisting of two periods of 24 hours exposure to salt spray followed by 1 hour drying and 25 hours for all other hardware, consisting of one period of 24 hours exposure to salt spray followed by 1 hour drying. In the salt spray test chamber, the parts from the three assemblies shall be oriented differently, selecting those orientations most likely to develop corrosion on the larger areas. At the end of test, the seat belt assembly shall be washed thoroughly with water to remove the salt. After drying for at least 24 hours under standard laboratory conditions specified in S5.1(a) attachment hardware shall be examined for ferrous corrosion on significant surfaces, that is, all surfaces that can be contacted by a sphere 19 mm in diameter, and other hardware shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the hardware.

Note: When attachment and other hardware are permanently fastened, by sewing or other means, to the same piece of webbing, separate assemblies shall be used to test the two types of hardware. The test for corrosion resistance shall not be required for attachment hardware made from corrosion-resistant steel containing at least 11.5 percent chromium or for attachment hardware protected with an electrodeposited coating of nickel, or copper and nickel, as prescribed in S4.3(a). The assembly that has been used to test the corrosion resistance of the buckle shall be used to measure adjustment force, tilt-lock adjustment, and buckle latch in paragraphs (e), (f), and (g), respectively, of this section, assembly performance in S5.3 and buckle release force in paragraph (d) of this section.

(b) *Temperature resistance.* Three seat belt assemblies having plastic or nonmetallic hardware or having retractors shall be subjected to the conditions prescribed in Procedure D of ASTM D756–78 (incorporated by reference, see § 571.5). The dimension and weight measurement shall be omitted. Buckles shall be unlatched and retractors shall be fully retracted during conditioning. The hardware parts after conditioning shall be used for all applicable tests in S4.3 and S4.4.

* * * * *

(j) * * *

(2) * * *

(iii) Dynamic tests: Each acceleration pulse shall be recorded using an accelerometer having a full scale range of ±10 g and processed according to the practices set forth in SAE Recommended Practice J211–1 DEC2003 (incorporated by reference, see § 571.5). Channel Frequency Class 60. The webbing shall be positioned at 75 percent extension, and the displacement shall be measured using a displacement transducer. For tests specified in S5.2(j)(2)(iii)(A) and (B), the 0.7 g acceleration pulse shall be within the acceleration-time corridor shown in Figure 8 of this standard.

* * * * *

(k) *Performance of retractor.* After completion of the corrosion-resistance test described in paragraph (a) of this section, the webbing shall be fully extended and allowed to dry for at least 24 hours under standard laboratory conditions specified in S5.1(a). The retractor shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the retractor, and for ferrous corrosion on significant surfaces if the retractor is part of the attachment hardware. The webbing shall be withdrawn manually and allowed to retract for 25 cycles. The retractor shall be mounted in an apparatus capable of extending the webbing fully, applying a force of 89 N at full extension, and allowing the webbing to retract freely and completely. The webbing shall be withdrawn from the retractor and allowed to retract repeatedly in this apparatus until 2,500 cycles are completed. The retractor and webbing

shall then be subjected to the temperature resistance test prescribed in paragraph (b) of this section. The retractor shall be subjected to 2,500 additional cycles of webbing withdrawal and retraction. Then, the retractor and webbing shall be subjected to dust in a chamber similar to one illustrated in Figure 8 containing about 0.9 kg of coarse grade dust conforming to the specification given in SAE Recommended Practice J726 SEP79 (incorporated by reference, see § 571.5). The dust shall be agitated every 20 minutes for 5 seconds by compressed air, free of oil and moisture, at a gage pressure of 550 ± 55 kPa entering through an orifice 1.5 ± 0.1 mm in diameter. The webbing shall be extended to the top of the chamber and kept extended at all times except that the webbing shall be subjected to 10 cycles of complete retraction and extension within 1 to 2 minutes after each agitation of the dust. At the end of 5 hours, the assembly shall be removed from the chamber. The webbing shall be fully withdrawn from the retractor manually and allowed to retract completely for 25 cycles. An automatic-locking retractor or a nonlocking retractor attached to pelvic restraint shall be subjected to 5,000 additional cycles of webbing withdrawal and retraction. An emergency locking retractor or a nonlocking retractor attached to upper torso restraint shall be subjected to 45,000 additional cycles of webbing withdrawal and retraction between 50 and 100 percent extension. The locking mechanism of an emergency locking retractor shall be actuated at least 10,000 times within 50 to 100 percent extension of webbing during the 50,000 cycles. At the end of test, compliance of the retractors with applicable requirements in S4.3 (h), (i), and (j) shall be determined. Three retractors shall be tested for performance.

* * * * *

■ 27. Section 571.210 is amended by revising the introductory text of S4.3.2 to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S4.3.2 Seat belt anchorages for the upper torso portion of Type 2 seat belt assemblies. Adjust the seat to its full rearward and downward position and adjust the seat back to its most upright position. Except a small occupant seating position as defined in 49 CFR 571.222, with the seat and seat back so positioned, as specified by subsection (a) or (b) of this section, the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional drafting template described in SAE Standard J826 MAY87 (incorporated by reference, see § 571.5). The template's ''H'' point shall be at the design ''H'' point of the seat for its full rearward and full downward position, as defined in SAE Recommended Practice J1100 JUN84 (incorporated by reference, see § 571.5), and the template's torso line shall be at the same angle from the vertical as the seat back.

* * * * *

■ 28. Section 571.213 is amended by:
■ a. Revising S5.4.1.2(c)(1),
■ b. Revising S5.9(a);
■ c. Removing and reserving S6.1.1(a)(1)(i);
■ d. Revising S6.1.1(a)(2)(i)(B); and
■ e. Revising S6.1.1(a)(2)(ii)(G).

The revisions read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S5.4.1.2 * * *

(c)(1) After exposure to the light of a carbon arc and tested by the procedure specified in S5.1(e) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 60 percent of the new webbing, and shall have a color retention not less than No. 2 on the AATCC Gray Scale for Evaluating Change in Color (incorporated by reference, see § 571.5).

* * * * *

S5.9 * * *

(a) Each add-on child restraint anchorage system manufactured on or after September 1, 2002, other than a car bed, harness and belt-positioning seat, shall have components permanently attached to the system that enable the restraint to be securely fastened to the lower anchorages of the child restraint anchorage system specified in Standard No. 225 (§ 571.225) and depicted in Drawing Package SAS–100–1000, Standard Seat Belt Assembly with Addendum A or in Drawing Package, ''NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2003'' (both incorporated by reference, see § 571.5). The components must be attached by use of a tool, such as a screwdriver. In the case of rear-facing child restraints with detachable bases, only the base is required to have the components.

* * * * *

S6.1.1 * * *

(a) * * *

(2) * * *

(i) * * *

(B) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in SAE Recommended Practice J211 (1980) (incorporated by reference, see § 571.5). The accelerometer sensitive axis is parallel to the direction of test platform travel.

(ii) * * *

(G) All instrumentation and data reduction is in conformance with SAE Recommended Practice J211 (1980) (incorporated by reference, see § 571.5).

* * * * *

■ 29. Section 571.214 is amended by revising S11.1, S12.1.1(b)(1), S12.1.2(b)(1), and S12.1.3(b)(1) to read as follows:

§ 571.214 Standard No. 214; Side impact protection.

* * * * *

S11.1 *Clothing.*

(a) *50th percentile male.* Each test dummy representing a 50th percentile male is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants. Each foot of the test dummy is equipped with a size 11EEE shoe, which meets the configuration size, sole, and heel thickness specifications of MIL–S–13192 (incorporated by reference, see § 571.5) and weighs 0.68 ± 0.09 kilograms (1.25 ± 0.2 lb).

(b) *5th percentile female.* The 49 CFR Part 572 Subpart V test dummy representing a 5th percentile female is clothed in formfitting cotton stretch garments with short sleeves and about the knee length pants. Each foot has on a size 7.5W shoe that meets the configuration and size specifications of MIL–S–21711E (incorporated by reference, see § 571.5) or its equivalent.

* * * * *

S12.1.1 * * *

(b) * * *

(1) H-point. The H-points of each test dummy coincide within 12.7 mm (½ inch) in the vertical dimension and 12.7 mm (½ inch) in the horizontal dimension of a point that is located 6.4 mm (¼ inch) below the position of the H-point determined by using the equipment for the 50th percentile and procedures specified in SAE Standard J826–1980 (incorporated by reference, see § 571.5), except that Table 1 of SAE Standard J826–1980 is not applicable. The length of the lower leg and thigh segments of the H-point machine are adjusted to 414 and 401 mm (16.3 and 15.8 inches), respectively.

* * * * *

S12.1.2 * * *

(b) * * *

(1) H-point. The H-points of each test dummy coincide within 12.7 mm (½

inch) in the vertical dimension and 12.7 mm (½ inch) in the horizontal dimension of a point that is located 6.4 mm (¼ inch) below the position of the H-point determined by using the equipment for the 50th percentile and procedures specified in SAE Standard J826–1980 (incorporated by reference, see § 571.5), except that Table 1 of SAE J826–1980 is not applicable. The length of the lower leg and thigh segments of the H-point machine are adjusted to 414 and 401 mm (16.3 and 15.8 inches), respectively.

* * * * *

S12.1.3 * * *

(b) * * *

(1) H-point. The H-points of each test dummy coincide within 12.7 mm (½ inch) in the vertical dimension and 12.7 mm (½ inch) in the horizontal dimension of a point that is located 6.4 mm (¼ inch) below the position of the H-point determined by using the equipment for the 50th percentile and procedures specified in SAE Standard J826–1980 (incorporated by reference, see § 571.5), except that Table 1 of SAE J826–1980 is not applicable. The length of the lower leg and thigh segments of the H-point machine are adjusted to 414 and 401 mm (16.3 and 15.8 inches), respectively.

* * * * *

■ 30. Section 571.216a is amended by revising S3 introductory text, removing S3.2, redesignating S3.3 as S3.2, and revising S7.2(a) to read as follows:

§ 571.216a Standard No. 216a; Roof crush resistance; Upgraded standard.

* * * * *

S3 *Application and selection of compliance options.*

* * * * *

S7.2 * * *

(a) Position the three dimensional manikin specified in SAE Standard J826 JUL95 (incorporated by reference, see § 571.5), in accordance to the seating procedure specified in that document, except that the length of the lower leg and thigh segments of the H-point machine are adjusted to 414 and 401 millimeters, respectively, instead of the 50th percentile values specified in Table 1 of SAE J826 JUL95.

* * * * *

■ 31. Section 571.218 is amended by revising the second sentence of S7.1.9 to read as follows:

§ 571.218 Standard No. 218; Motorcycle helmets.

* * * * *

S7.1.9 * * * The acceleration data channel complies with SAE Recommended Practice J211 (1980) (incorporated by reference, see § 571.5) requirements for channel class 1,000.

* * * * *

■ 32. Section 571.221 is amended by revising S6.1.3, S6.2(a), S6.2(b), and S6.3.1 to read as follows:

§ 571.221 Standard No. 221; School bus body joint strength.

* * * * *

S6.1.3 Prepare the test specimen in accordance with the preparation procedures specified in ASTM E8–89 (incorporated by reference, see § 571.5).

S6.2 *Determination of minimum allowable strength.* * * *

(a) If the mechanical properties of a joint component material are specified in ASTM E8–89 (incorporated by reference, see § 571.5), the lowest value of that material's thickness and tensile strength per unit of area shown in that source shall be used.

(b) If the mechanical properties of a material are not specified in ASTM E8–89 (incorporated by reference, see § 571.5), determine its tensile strength by cutting a sheet specimen from outside the joint region of the bus body in accordance with Figure 1 of ASTM E8–89, and by testing it in accordance with S6.3.

* * * * *

S6.3.1 The joint specimen is gripped on opposite sides of the joint in a tension testing machine in accordance with ASTM E8–89 (incorporated by reference, see § 571.5).

* * * * *

■ 33. Section 571.222 is amended by revising the first sentence of S6.6.2 and the first sentence of S6.7.2 to read as follows:

§ 571.222 Standard No. 222; School bus passenger seating and crash protection.

* * * * *

S6.6.2 The head form is instrumented with an acceleration sensing device whose output is recorded in a data channel that conforms to the requirements for a 1,000 Hz channel class as specified in SAE Recommended Practice J211a (1971) (incorporated by reference, see § 571.5). * * *

* * * * *

S6.7.2 The knee form is instrumented with an acceleration sensing device whose output is recorded in a data channel that conforms to the requirements of a 600 Hz channel class as specified in SAE Recommended Practice J211a (1971) (incorporated by reference, see § 571.5). * * *

* * * * *

■ 34. Section 571.225 is amended by:

■ a. Revising the introductory text of S6.2.1.1;

■ b. Revising S6.2.1.1(a)(1);

■ c. Revising the introductory text of S6.2.2;

■ d. Revising S6.2.2(a)(1);

■ e. Revising the introductory text of S6.2.2.1; and

■ f. Revising S6.2.2.1(a)(1).

The revisions read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S6.2.1.1 In the case of passenger cars and multipurpose passenger vehicles manufactured before September 1, 2004, the part of each user-ready tether anchorage that attaches to a tether hook may, at the manufacturer's option (with said option selected prior to, or at the time of, certification of the vehicle), instead of complying with S6.2.1, be located within the shaded zone shown in Figures 8 to 11 of this standard of the designated seating position for which it is installed, relative to the shoulder reference point of the three dimensional H-point machine described in section 3.1 of SAE Standard J826–1992 (incorporated by reference, see § 571.5) such that—

(a) * * *

(1) At the actual H-point of the seat, as defined in section 2.2.11.3 of SAE Recommended Practice J1100–1993 (incorporated by reference, see § 571.5), at the full rearward and downward position of the seat; or

* * * * *

S6.2.2 Subject to S6.2.2.1 and S6.2.2.2, the portion of each user-ready tether anchorage that is designed to bind with a tether strap hook shall be located within the shaded zone shown in Figures 3 to 7 of this standard of the designated seating position for which it is installed, with reference to the H-point of a template described in section 3.1 of SAE Standard J826–1992 (incorporated by reference, see § 571.5), if:

(a) * * *

(1) At the unique Design H-point of the designated seating position, as defined in section 2.2.11.1 of SAE Recommended Practice J1100–1993 (incorporated by reference, see § 571.5), at the full downward and full rearward position of the seat, or—

* * * * *

S6.2.2.1 In passenger cars and multipurpose passenger vehicles manufactured before September 1, 2004, the portion of each user-ready tether anchorage to which a tether strap hook attaches may be located within the shaded zone shown in Figures 8 to 11 of the designated seating position for which it is installed, with reference to the shoulder reference point of a

template described in section 3.1 of SAE Standard J826–1992 (incorporated by reference, see § 571.5), if:

(a) * * *

(1) At the unique Design H-point of the designated seating position, as defined in section 2.2.11.1 of SAE Recommended Practice J1100–1993 (incorporated by reference, see § 571.5), at the full downward and full rearward position of the seat, or—

* * * * *

■ 35. Section 571.301 is amended by revising S7.1.1 to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S7.1.1 The fuel tank is filled to any level from 90 to 95 percent of capacity with Stoddard solvent, having the physical and chemical properties of type 1 solvent, Table I of ASTM D484–71 (incorporated by reference, see § 571.5).

* * * * *

■ 36. Section 571.403 is amended by removing and reserving S5, removing S5.1 through S5.6, removing S5.6.1 through S5.6.3, revising S6.1.4, revising S6.2.3, revising S6.3.1, revising S7.2.2, and revising S7.3.2.

The revisions read as follows:

§ 571.403 Standard No. 403; Platform lift systems for motor vehicles.

* * * * *

S6.1.4 The visual warning required by S6.1.2 and S6.1.3 must be a flashing red beacon as defined in SAE Recommended Practice J578 (1995) (incorporated by reference, see § 571.5), must have a minimum intensity of 20 candela, a frequency from 1 to 2 Hz, and must be installed such that it does not require more than ±15 degrees side-to-side head rotation as viewed by a passenger backing onto the platform from the interior of the vehicle. If a lift has only a visual alarm and the lift manufacturer specifies that the passenger must load onto the platform in a forward direction from the vehicle floor, the visual alarm must be located such that it does not require more than ±15 degrees side-to-side head rotation as viewed by a passenger traversing forward onto the platform.

* * * * *

S6.2.3 *Maximum platform acceleration.* Throughout the range of passenger operation specified in S7.9.4 through S7.9.7, both the horizontal and vertical acceleration of the platform must be less than or equal to 0.3 g after the accelerometer output is filtered with a channel frequency class (CFC) 3 filter. The filter must meet the requirements of SAE Recommended Practice J211/1 MAR95 (incorporated by reference, see § 571.5), with F_H = 3 Hz and F_N = 5 Hz. The accelerometer is located at the geometric center of the platform and is mounted directly on the platform when it is unloaded and on the geometric center of the top, horizontal surface of the standard load specified in S7.1.1 when the platform is loaded.

* * * * *

S6.3.1 *Internally mounted platform lifts.* On platform lifts and their components internal to the occupant compartment of the vehicle or internal to other compartments that provide protection from the elements when stowed, attachment hardware must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in § 571.209, at peripheral surface edges or edges of holes on under-floor reinforcing plates and washers after being subjected to the conditions specified in S7.3. Alternatively, such hardware must be made from corrosion-resistant steel containing at least 11.5 percent chromium per § 571.209, S5.2(a) or must be protected against corrosion by an electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware must be protected by an electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with ASTM B456–95 (incorporated by reference, see § 571.5), but such hardware may not be racked for electroplating in locations subjected to maximum stress. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift. The lift must be accompanied by all attachment hardware necessary for its installation on a vehicle.

* * * * *

S7.2.2 Use the test procedure defined in ANSI/RESNA Standard WC/Vol. 1–1998, Section 13 (incorporated by reference, see § 571.5), except for clauses 5.3, Force Gage and 6, Test Procedure, on the wet section of platform. In lieu of clauses 5.3 and 6, implement the requirements of S7.2.2.1 and S7.2.2.2.

* * * * *

S7.3.2 Attachment hardware, as specified in S6.3.1, and externally mounted platform lifts or components, as specified in S6.3.2, are tested in accordance with ASTM B117–97 (incorporated by reference, see § 571.5). Any surface coating or material not intended for permanent retention on the metal parts during service life are removed prior to testing. Except as specified in S7.3.3, the period of the test is 50 hours, consisting of two periods of 24 hours exposure to salt spray followed by one hour drying.

* * * * *

Issued: December 22, 2011.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2011–33682 Filed 1–5–12; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 77, No. 4

Friday, January 6, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1148; Airspace Docket No. 11–ASO–37]

Proposed Revocation of Class E Airspace; Southport, NC, and Proposed Establishment of Class E Airspace; Oak Island, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E Airspace at Southport, NC, and establish Class E Airspace at Oak Island, NC, as new Standard Instrument Approach Procedures have been developed at Cape Fear Regional Jetport/Howie Franklin Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would recognize the airport name change to Cape Fear Regional Jetport/Howie Franklin Field and update the airport's geographic coordinates.

DATES: Comments must be received on or before February 21, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; Telephone: 1–(800) 647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–1148; Airspace Docket No. 11–ASO–37, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1148; Airspace Docket No. 11–ASO–37) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1148; Airspace Docket No. 11–ASO–37.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to remove Class E airspace extending upward from 700 feet above the surface designated as South Brunswick County Airport, Southport, NC, (old name), and establish Class E airspace extending upward from 700 feet above the surface at Cape Fear Regional Jetport/Howie Franklin Field, Oak Island, NC (new name). Airspace reconfiguration is necessary to the design of new standard instrument approach procedures, and for continued safety and management of IFR operations at the airport. Also, as noted, the airport, formerly called Southport Brunswick County Airport, Southport, NC, would change to Cape Fear Regional Jetport/Howie Franklin Field, Oak Island, NC, and the geographic coordinates would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would remove Class E airspace at Southport, NC and establish Class E airspace at Cape Fear Regional Jetport/Howie Franklin Field, Oak Island, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Southport, NC [Removed]

* * * * *

ASO NC E5 Oak Island, NC [New]

Cape Fear Regional Jetport/Howie Franklin Field, NC
(Lat. 33°55′51″ N., long. 78°04′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Cape Fear Regional Jetport/Howie Franklin Field.

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

Jack Schroeter,

Acting Manager, Operations Support Group, Eastern Service Area, Air Traffic Organization.

[FR Doc. 2012–56 Filed 1–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0590; Airspace Docket No. 11–ASO–25]

Proposed Establishment of Class E Airspace; Marion, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Marion, AL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Vaiden Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 21, 2012.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; Telephone: 1–(800) 647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–0590; Airspace Docket No. 11–ASO–25, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0590; Airspace Docket No. 11–ASO–25) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0590; Airspace Docket No. 11–ASO–25.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal

business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Marion, AL, providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Vaiden Field. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Vaiden Field, Marion, AL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Marion, AL [New]

Vaiden Field, AL

(Lat. 32°30′38″ N., long. 87°23′05″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Vaiden Field.

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

Jack Schroeter,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–60 Filed 1–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Parts 801, 806, and 807

[Docket No.: 111012619–1619–01]

RIN 0691–AA81

International Services Surveys and Direct Investment Surveys Reporting

AGENCY: Bureau of Economic Analysis.

ACTION: Proposed rule; request for comments.

SUMMARY: The Bureau of Economic Analysis (BEA) proposes to revise its rules to establish general guidelines for reporting on international trade in services and direct investment surveys provided for by the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, (the Act)). In addition to the Act, the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908) provides authority for the international trade in services surveys. Currently, international trade in services and direct investment surveys are promulgated through separate rulemaking actions. This rule will modify the guidelines to allow such surveys to be issued through notices rather than as more formal rulemakings. The purpose of this rule is to provide a more general framework for collection of data on these surveys that are required, or provided for, by the statutes. The effect of this rule is to simplify and generalize existing regulations governing the procurement of information on international trade in services and direct investment.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. March 6, 2012.

ADDRESSES: You may submit comments, identified by RIN 0691–AA81, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For Keyword or ID, enter ''EAB–2011–0003.''
- *Email: David.Galler@bea.gov.*
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606–2894.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of

Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort. The Act specifies that regular data collection programs and surveys, as specified in the Act or as deemed necessary by the Secretary of Commerce pursuant to Executive Order 11961, as amended by Executive Orders 12318 and 12518, shall be conducted to secure information on international trade in services and on direct investment, including information that may be necessary for computing the international transactions and national income and product accounts and for deriving estimates of direct investment position and of operations of multinational companies.

The existing regulations (15 CFR parts 801 and 806) implementing certain provisions of the Act govern the reporting information on surveys of international trade in services and direct investment and provide detailed instructions to survey respondents on how to report and what forms to complete and submit when responding to the surveys. This method ensures that all potential respondents are notified of the new survey, but the process can hinder the timely gathering of information due to the necessary rulemaking steps.

BEA proposes to revise these regulations to generalize the reporting requirements with respect to these surveys under the Act. Because of the level of detail included in the existing regulations, a rulemaking is required each time a change—such as changes in the survey year for a benchmark survey, the title of a survey, and the reporting threshold for a survey—is made to a survey. For surveys that are conducted on an ongoing basis—quarterly, annually, quinqenially—specific reporting information regarding individual surveys can more efficiently be issued as notices rather than through individual rulemakings. BEA can determine the likely universe of survey respondents through ongoing research of databases and outreach to professional organizations, so the surveys will continue to receive similar coverage and response rates even if they are issued as notices. Finally, there is no requirement in the Act or elsewhere that the reporting requirements and detailed instructions for such surveys be issued following notice and comment rulemaking. Therefore, BEA proposes to remove the current regulations and publish in the **Federal Register** notices of future surveys of foreign and direct investment in the United States and international trade in services.

If this proposed rule is adopted, notice of specific surveys pertaining to international investment and trade in services and direct investment, including applicable report forms and instructions, would now be separately published in the **Federal Register**. In addition, only respondents notified of these surveys would be required to respond to BEA surveys.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The new rule will affect only BEA's internal procedures regarding how it conducts surveys of international trade in services and direct investment. None of the proposed changes would have a direct effect on any businesses, large or small. Those subject to these surveys will still be required to respond to BEA's requests for information, but the requests themselves will not be subject to notice and comment rulemaking. Therefore, the effect of this proposed rule is to simplify and generalize existing regulations governing the procurement of information on the international trade in services and direct investment under the Act. Because there would be no impact to small entities as a result of this change to the regulations, the Chief Counsel certified that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 801

Cross-Border transactions, Credit card, Debit card, Economic statistics, Foreign investment in the United States, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements, Travel expenses, U.S. investment abroad.

Dated: December 20, 2011.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons discussed in the preamble, Parts 801, and 806 of Title 15 of the Code of Federal Regulations are proposed to be revised to read as follows:

PART 801—SURVEYS OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

Sec.
801.1 Purpose.
801.2 Definitions.
801.3 Reporting Requirements.
801.4 Recordkeeping Requirements.
801.5 Confidentiality.
801.6 Penalties Specified by Law.

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

Source: 42 FR 64315, Dec. 22, 1977 and 51 FR 7772, Mar. 6, 1986, unless otherwise noted.

§ 801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act). The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§ 801.2 Definitions.

For purposes of the Act and for reporting requirements under this Part:

(a) *United States,* when used in a geographic sense, means the several States, the District of Columbia, the

Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) *Services* are economic activities whose outputs are other than tangible goods. This term includes, but is not limited to, banking, other financial services, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(h) *International investment* means: (1) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person; and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(i) *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

§ 801.3 Reporting Requirements.

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the **Federal Register** prior to the implementation of a survey.

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

§ 801.4 Recordingkeeping Requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any information which is essential for carrying out the surveys and studies provided for by the Act.

§ 801.5 Confidentiality.

Information collected pursuant to 3104(c) of title 22 of the United States Code

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) *Civil Penalties.* Whoever fails to furnish any information required by the Act or to comply with any rule, regulation, order or instruction promulgated under the Act shall be subject to a civil penalty of not less than $2,500, and not more than $25,000, and to injunctive relief commanding such person to comply, or both (see 22 U.S.C. 3105(a) and (b)). These civil penalties are subject to inflationary adjustments (15 CFR 6.4.).

(b) *Criminal Penalties.* Whoever willfully fails to submit any information required by the Act or willfully violates any rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both (see 22 U.S.C. 3105(c)).

PART 806—[RESERVED]

PART 807—[RESERVED]

[FR Doc. 2012–47 Filed 1–5–12; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 77, No. 4
Friday, January 6, 2012

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

Forest Service

Nez Perce-Clearwater National Forests; Idaho; Clear Creek Integrated Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service gives notice of its intent to prepare an Environmental Impact Statement for the Clear Creek Integrated Restoration Project. The Proposed action would use a combination of timber harvest, pre-commercial thinning, prescribed fire and reforestation to achieve the desired range of age classes, size classes, vegetative species distributions habitat complexity (diversity) and landscape pattern across the forested portions of the project area. Road decommissioning, culvert replacement and road improvements are also proposed to improve watershed health. The EIS will analyze the effects of the proposed action and alternatives. The Nez Perce-Clearwater Forests invites comments and suggestions on the issues to be addressed. The agency gives notice of the National Environmental Policy Act (NEPA) analysis and decisionmaking process on the proposal so interested and affected members of the public may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by February 15, 2012. The draft environmental impact statement is expected in February 2013 and the final environmental impact statement is expected November 2013.

ADDRESSES: Send written or electronic comments to Attn: Lois Foster, Interdisciplinary Team Leader; Rt. 2 Box 191; Kamiah, ID 83536; Fax (208) 935–4257; Email *comments-northern-nezperce-moosecreek@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Lois Foster, Interdisciplinary Team Leader, (208) 935–4258.

SUPPLEMENTARY INFORMATION: The objective of the Clear Creek Integrated Restoration Project is to manage forest vegetation to restore natural disturbance patterns, improve long term resistance and resilience at the landscape level; restore natural fire regimes and reduce fuels; improve watershed conditions; improve elk habitat effectiveness, improve habitat for early seral species, and maintain habitat structure, function, and diversity. Outputs (timber) from the proposed action will be used to offset treatment costs and support the economic structure of local communities and provide for regional and national needs.

The Purpose and Need for the Proposal

Vegetation and Wildlife Habitat Improvement

Purpose: Trend vegetation species composition, structure, and distributions toward desired conditions described in the Forest Plan.

Need: The project area has a high proportion of grand fir/Douglas fir habitat. These habitats tend to be more susceptible/vulnerable to insects and diseases and grand fir is unlikely to survive in wildfire. There is a need to trend the area towards a more diverse and resilient forest structure by creating a range of age classes, size classes, habitat complexity (diversity) and disturbance patterns that more closely emulate natural mixed severity disturbance. Shifting tree species composition by retaining and planting early seral species (*i.e.* ponderosa pine, western larch and western white pine) in managed areas would help trend the area toward or maintain desired habitat conditions and would make these habitats more resistant and resilient to change agents such as insect, disease, and fire.

Historical logging practices and fire suppression have created a landscape that is more highly fragmented than what would be expected through natural disturbance. Ladder fuels have increased and there has been a shift to shade tolerant species. Habitat structure and patch sizes of young forests are simplified and smaller than what would have been created through natural disturbance. Edges of patches are straight and even. There is a need to increase diversity within previously harvested areas to begin restoring long-term habitat quality for sensitive and old growth associated species.

There is a shortage of young forest habitats on this landscape. Age classes are dominated by middle-aged and mature forest habitats. Forest management would increase high quality early seral wildlife habitats by retaining large trees and promoting establishment of tall shrubs and hardwood tree by using variable retention regeneration harvest. This would benefit wildlife species using early seral habitats such as: neotropical migratory birds, resident birds, small mammals, and big game species in the short term. Tree retention would help maintain habitat structure and complexity needed by old growth associated species in the long-term.

Goods and Service

Purpose: To utilize timber outputs produced through restoration activities to support the economic structure of local communities and provide for regional and national needs. (Forest Plan page II–1).

Need: The need to provide a sustained yield of resource outputs is directed in the Forest Plan. Much of the area consists of grand fir dominated stands that have insect and disease infestations that are contributing to increased tree mortality, or are at risk from stand replacing events. Stands proposed for treatment are currently losing volume and value due to insects and disease. Harvest of the timber would provide materials to local industries.

Fire Regime/Natural Disturbance Restoration and Fuel Reduction

Purpose: Reduce ladder fuels created by shade-tolerant species and create more natural patch sizes by emulating mixed severity fire. (Forest Plan page II–2).

Need: Effective fire suppression in this area began in the 1930s. As a result, there has been vegetative shift to less fire resistant species, and an increase in ladder fuels that can contribute to the risk of high intensity and potentially resource damaging wildfire. Some portions of the project area have been identified as being up to five times outside of their normal fire return intervals. Past harvest patterns do not emulate natural disturbance patterns nor do they emulate natural habitat

structure. There is a need to increase patch sizes to shift age and size class distributions to increase high quality early seral wildlife habitats. Landscape burning and timber harvest that mimics natural fire would help increase forest resilience, help reduce risk of wildfires, and help create high quality habitats that would benefit neotropical migratory birds, resident birds, small mammals, and big game species. Fire dependent wildlife species would benefit from landscape burning.

Watershed Improvement

Purpose: Reduce potential sediment inputs into the aquatic ecosystem from roads.

Need: There are 283 miles of road within the project area, 200 of which are needed for current and future management. The remaining 83 miles of road have been cleared for decommissioning under the SF/WF Clear Creek Road Decommissioning EA (2011). The roads needed for management can contribute sediment to streams through road surface erosion and potential culvert failures. Surface erosion occurs during spring snowmelt and rain events. Dirt coming off roads is diverted into ditchlines which are often directed into streams. Preliminary surveys show most roads in the area are drained by ditches. Culvert failures can result from undersized, damaged or rusting culverts which can plug with debris and then fail as water saturates the surrounding fill. Failures can contribute large pulses of sediment into streams. Surveys indicate at least 60 miles of road with culverts that are in need of replacement or cleaning. There is a minimum of 40 high or moderate priority culverts in need of replacement, and 12 in need of cleaning. There are an additional 40 low priority culverts in need of replacement and 15 in need of cleaning. The surveyed roads pose the highest risk to streams in the project area.

The desired condition for roads is to have ditchlines that drain road surface water away from streams and onto the forest floor. All culverts at stream crossings are appropriately sized to allow for the passage of material within minimal risk of plugging.

There is a need to drain roadside ditchline water away from streams by installing cross drain pipes near live stream crossings. The cross drain pipes collect ditchline water and direct it onto the forest floor. There is also a need to replace existing undersized, damaged, or rusting culverts on streams to minimize failure potential.

The Proposed Action Would Improve Forest Health, Provide Goods and Services, Reduce Fuels and Improve Wildlife Habitat

- Conduct ''variable retention'' regeneration harvest and post harvest burning activities on up to 2500 acres to create early successional plant communities and improve wildlife habitat while re-establishing long-lived early seral tree species. Variable retention harvest would include areas of full retention (clumps), irregular edges, and retention of snags and legacy trees to provide structure and a future source of woody debris. Openings will likely exceed 40 acres.
- Commercially thin approximately 7810 acres to reduce stand densities improve forest health and reduce the chance of crown fire.
- Apply improvement harvest to approximately 311 acres (thin from below) to remove encroachment and ladder fuels from ponderosa pine dominated stands.
- Construct a minimum temporary road system to carry out the proposed action. Roads would be decommissioned after use.
- Pre-commercially thin approximately 1865 acres to reduce stand densities improve forest health and reduce fuels.
- Restore approximately 42 acres of bunchgrass communities through prescribed burning and revegetation with native grasses to improve wildlife winter range through reestablishment of native grasses and forbs.
- Apply approximately 1400 acres of low and mixed severity prescribed fire within the Clear Creek Roadless area to restore natural fire regimes, reduce fuels, improve wildlife habitat and create mosaic forest conditions. Proposed activities are consistent with Idaho Roadless Rule. There is no timber cutting planned within the Clear Creek Roadless area

Reduce Sediment Production and Address Transportation Needs

- Conduct maintenance on or improve 100–130 miles of system roads including culvert installation or replacement, ditch cleaning, and riprap placement for drainage improvement. It may also include gravel placement, road grading and dust abatement.
- Additional site specific maintenance or improvements would occur to improve watershed conditions on up to 20 miles of roads outside of proposed treatment areas.
- Decommission 2–5 miles of system roads no longer considered necessary for transportation needs.

Possible Alternatives the Forest Service will consider include a no-action alternative, which will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives that will be developed to meet the purpose and need for action, and to address significant issues identified during scoping.

The Responsible Official is the Nez Perce-ClearwaterForest Supervisor. 12730 Highway 12, Orofinio, ID 83544.

The Decision To Be Made is whether to adopt the proposed action, in whole or in part, or another alternative; and what mitigation measures and management requirements will be implemented.

The Scoping Process for the EIS is being initiated with this notice. The scoping process will identify issues to be analyzed in detail and will lead to the developemnt of alternatives to the proposal. The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal Governments; and organizations and individuals who may be interested in or affected by the proposed action. Comments received in response to this notice, including the names and addresses of those who comment, will be a part of the project record and available for public review.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The second major opportunity for public input will be when the draft EIS is published. The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Draft EIS is anticipated to be available for public review in February 2013.

Dated: December 19, 2011.

Rick Brazell,

Forest Supervisor.

[FR Doc. 2012–40 Filed 1–5–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the

Connecticut Advisory Committee to the Commission will be held at the University of Connecticut School of Law, Faculty Lounge, 55 Elizabeth Street, Hartford, CT 06105, and will convene at 12:00 noon (EST) Friday, January 13, 2012. The purpose of the planning meeting is to work to finalize the Committee report on racial profiling.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, February 13, 2011. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street NW., Suite 740, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov*.

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, December 31, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit

[FR Doc. 2012–1 Filed 1–5–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting and planning meeting of the New Hampshire Advisory Committee to the Commission will be held at the City Hall Auditorium, 1 City Hall Plaza, Manchester, NH 03101, and will convene at 5:30 p.m. (EST) on Wednesday, January 11, 2012. The purpose of briefing meeting is to learn about diversity issues in the public school system. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, February 13, 2012. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street NW., Suite 740, Washington, DC 20425, fax to (202) 376–7548, or email to *ero@usccr.gov.*

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, December 31, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–2 Filed 1–5–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 1, 2011, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order fresh garlic from the People's Republic of China (''PRC''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted an expedited (120-day) sunset review for this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

DATES: *Effective Date:* January 6, 2012.

FOR FURTHER INFORMATION: Sean Carey or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3964 and (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 54430 (September 1, 2011). The Department received a notice of intent to participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley Garlic, Inc.; and Vessey and Company, Inc. (collectively ''the domestic interested parties'''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers and packagers of fresh garlic and a trade association whose members produce and process a domestic like product in the United States. The Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order.

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined

for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Analysis of Comments Received

All issues raised in this review is addressed in the ''Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China'' from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Susan Kuhbach, Acting Assistant Secretary for Import Administration, dated concurrently with this notice (''Decision Memorandum''), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum consist of the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in this review and corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The signed Decision Memo and the electronic versions of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of dumping. We determine that the following weighted-average percentage margin is likely to prevail:

Manufacturers/exporters/producers	Weighted average margin
PRC-Wide	376.67%

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: December 29, 2011.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–81 Filed 1–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA918

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors in January 2012. The intent of this meeting is to discuss issues of relevance to the Councils, including FY 2012 budget allocations and budget planning for FY2013 and beyond, Marine Recreational Information Program Update, Report on the Allocation of Fishery Resources, Habitat Blueprint, Managing Our Nations III Conference, and other topics related to implementation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The meeting will begin at 9 a.m. on Wednesday, January 25, 2012, recess at 5:30 p.m. or when business is complete; and reconvene at 9 a.m. on Thursday, January 26, 2012, and adjourn by 5:30 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910; telephone: (301) 563–3722, fax: (301) 589–4791.

FOR FURTHER INFORMATION CONTACT: William D. Chappell: telephone: (301) 427–8505 or email at *William.Chappell@noaa.gov;* or Tara Scott: telephone: (301) 427–8579 or email: *Tara.Scott@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 established the Council Coordination Committee by amending Section 302 (16 U.S.C. 1852) of the Magnuson-Stevens Act. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the Magnuson-Stevens Act or other Council members or staff. NMFS will host this meeting and provide reports to the CCC for its information and discussion. All sessions are open to the public.

Proposed Agenda

Wednesday, January 25, 2012

9 a.m.—Morning Session Begins.
9 a.m.–10:30 a.m.—Welcome comments and Council Reports.
10:30 a.m.–10:45 a.m.—Break.
10:45 a.m.–11:30 a.m.—Council Reports (Continued).
12 noon–1:30 p.m.—Lunch.
1:30 p.m.—Afternoon Session Begins.
1:30 p.m.–2:15 p.m.—Budget.
- FY2012: Status, Council funding
- FY2013: Update
- Longer term discussion

3 p.m.–3:15 p.m.—Break.
3:15 p.m.–4:15 p.m.—Marine Recreational Information Program (MRIP) Update.
4:15–5:15 p.m.—Report on Allocation of Fishery Resources.
5:15 p.m.–5:30 p.m.—Wrap up and adjourn for the day.

Thursday, January 26, 2012

9 a.m.—Morning Session Begins.

9 a.m.–9:30 a.m.—Statement of Organization, Practices, and Procedures (SOPPs).
9:30 a.m.–10 a.m.—Update on the National Ocean Council/Coastal and Marine Spatial Planning.
10 a.m.–10:15 a.m.—Break.
10:15 a.m.–11:30 a.m.—Report on 2011 National SSC Workshop.
- Stock Assessment Priority Project

11:30 a.m.–12 noon—Bycatch Reduction Engineering Program (BREP) Question and Answer Session.
12 noon–1:30 p.m.—Lunch.
1:30 p.m.—Afternoon Session Begins.
1:30 p.m.–2:30 p.m.—Habitat Blueprint.
2:30 p.m.–3:30 p.m.—Managing Our Nation's Fisheries (MONF) III Conference.
- Logistics (Date, Location)
- Steering Committee
- Agenda/Theme
- Lead In Workshops

3:30 p.m.–3:45 p.m.—Break.
3:45 p.m.–4:45 p.m.—Outreach and Communication.
- NOAA Fisheries Activities
- 2012 Communication Strategy
- RFMC activities

a. Communication Committee collective efforts
b. Individual Council efforts
4:15 p.m.–4:45 p.m.—Other Business, updates, and next annual CCC Meeting.
4:45 p.m.–5:30 p.m.—Wrap-up.
5:30 p.m.—Adjourn.

The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tara Scott at (301) 427–8579 at least 5 working days prior to the meeting.

Dated: January 3, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–3 Filed 1–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA919

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 Scientific and Statistical Committee (SSC) 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 8 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street Providence, RI 02903; telephone: (401) 861–8000; fax: (401) 861–8002.

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 NEFMC's Scientific and Statistical Committee will:

a. Review the 2011 Gulf of Maine (GOM) cod assessment to become familiar with its assumptions and results;

b. Identify information that was not previously considered and that may influence the interpretation of the assessment results; specify whether the possible influence of these elements warrants a closer examination at a future SSC or other meeting; and provide advice on the structure and timing of any future meeting the SSC believes is warranted; and

c. Review a range of catch levels for GOM cod provided by the Council's Groundfish Plan Development Team (PDT) and recommend an interim catch level for 2012 if warranted. This last step may occur at a meeting yet to be scheduled and pending the results of the January 25, 2012 meeting.

d. Other business may be discussed.

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: January 3, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–38 Filed 1–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service Advisory Board (the Advisory Board), which advises the Secretary of Commerce and the Director of the National Technical Information Service (NTIS) on policies and operations of the Service.

DATES: The Advisory Board will meet on Tuesday, February 10, 2012 from 9 a.m. to approximately 4:30 p.m.

ADDRESSES: The Advisory Board meeting will be held in Room 115 of the NTIS Facility at 5301 Shawnee Road, Alexandria, Virginia 22312. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Moton, (703) 605–6103, *PatMoton@ntis.gov,* or Mr. Bruce Borzino, (703) 605–6405, *bborzino@ntis.gov.*

SUPPLEMENTARY INFORMATION: The NTIS Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The morning session will focus on a review of NTIS' performance in Fiscal Year 2011, strategic directions in Fiscal Year 2011–2012, new markets and new ways to enhance NTIS' utility to Federal and non-Federal customers. The afternoon session is expected to focus on current lines of business and core competencies. A final agenda and summary of the proceedings will be

posted at the NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.aspx*).

The NTIS Facility is a secure one. Accordingly, persons wishing to attend should call the contacts identified above to arrange for admission. If there are sufficient expressions of interest up to one-half hour will be reserved for public comments during the afternoon session. Questions from the public will not be considered by the Board but any person who wishes to submit a written statement for the Board's consideration should mail or email it to the contacts named above not later than January 20, 2012.

Dated: December 28, 2011.

Bruce Borzino,

Director.

[FR Doc. 2012–48 Filed 1–5–12; 8:45 am]

BILLING CODE 3510–04–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add a product and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: 2/6/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85) in connection with the product and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product:

NSN: 3990–00–NSH–0078—Pallet, Treated Wood, 70″ x 42″.
NPA: Willamette Valley Rehabilitation Center, Inc., Lebanon, OR.
Contracting Activity: Dept of Justice, Federal Prison System, Washington, DC.
Coverage: C-List for 100% of the requirements of UNICOR—Sheridan, OR as aggregated by Federal Prison Industries.

Service:

Service Type/Location: Mail Services, National Finance Center (Offsite: 2762 Rand Rd., Indianapolis, IN), 13800 Old Gentilly Road, New Orleans, LA.
NPA: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN.
Contracting Activity: Dept of Agriculture, USDA, Office of the Chief Financial Officer, Washington, DC.

On Friday, December 23, 2011, the Committee proposed for addition to the Procurement List, for production a nonprofit agency, the following service:

Service Type/Location: Dining Facility Attendant, Buildings 1162 and 2382, Fort Polk, LA.
NPA: Lakeview Center, Inc., Pensacola, FL.
Contracting Activity: Dept of the Army, W6QM, FT POLK DOC, Fort Polk, LA.

The following information is provided to further describe the Dining Facility Attendant service being proposed for addition to the Procurement List.

For this project, the DoD contracting activity specifically identified its requirement as Dining Facility Attendant (DFA) Services in its Performance Work Statement (PWS). The dining facilities associated with this service requirement are Buildings 1162 and 2382, and the PWS states that Government personnel will perform management, supervision, cooking, food preparation, and baking in the two facilities. At no time will the contractor be responsible for the management and operational control of the dining facilities. These Government personnel are expected to be the food service personnel assigned to military units subsisting in the facilities. These military personnel will operate and manage the dining facilities and will be augmented by contractor-provided dining facility attendants.

The PWS describes the DFA service tasks as post cleaning of eating utensils, compartmented trays, beverage containers, insulated food containers and inserts * * *, full vegetable preparation; prepare, maintain, and clean dining areas; clean condiment containers, clean spills and remove soiled dinnerware, clean dining room tables, chairs, and booths, clean dining room walls, baseboards, window ledges, doors/door frames, ceiling fans, pictures, wall art, artificial plants, light fixtures, globes/lenses, trophies/display cases, drapes/curtains, venetian blinds and curtain rods; display and remove holiday decorations, buss and replace tray carts during meal periods, service and maintain patron self-service areas, clean food service equipment, utensils, and perform dishwashing, clean and sanitize all pots, pans, utensils, storage shelves, and racks; provide equipment cleaning service, perform facility maintenance and sanitation; provide trash and garbage service; preparation of facilities for pest control fogging; provide pre-opening and post vector control clean-up services.

Comments on the Dining Facility Attendant Service at Fort Polk, LA must be received on or before 1/23/2012.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–39 Filed 1–5–12; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–50]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–50 with attached transmittal and policy justification.

Dated: January 3, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 22 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-50, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense equipment and services in support of the PATRIOT Systems Engineering Services Program (ESP), estimated to cost $120 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 11–50

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia, Ministry of Defense and Aviation (MODA)

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ 0 million
Other	120 million
Total	120 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Continuation of services for the PATRIOT Systems Engineering Services Program (ESP). Also included: Modification kits, engineering changes, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Army (UAJ)

(v) *Prior Related Cases, if any:*

FMS Case JBV—$2.74 billion—28 Jul 08

FMS Case VNX—$991 million—21 May 11

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 22 December 2011

POLICY JUSTIFICATION

Saudi Arabia—Engineering Services Program (ESP)

The Kingdom of Saudi Arabia has requested a possible sale of the continuation of services for the PATRIOT Systems Engineering Services Program (ESP). Also included: Modification kits, engineering changes, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $120 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will facilitate the continuation of existing services that Saudi Arabia has had under the Shared Engineering Services Program (SESP) for the past 20 years. The ESP provides material support to Saudi's defense and serves U.S. interests in the region.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Integrated Defense in Andover, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–43 Filed 1–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50d (agency authority), the DoD gives notice that it is renewing the charter for the Defense Business Board (hereafter referred to as ''the Board'').

The Board is a discretionary Federal advisory committee that at the direction of the Secretary of Defense or the Deputy Secretary of Defense, and according to DoD policy shall examine and advise on overall DoD management and governance.

The Board shall report to the Secretary of Defense or the Deputy Secretary of Defense, and the Deputy Secretary of Defense is authorized to act upon the Board's advice and recommendations.

The Board shall be composed of not more than twenty-five members, who possess: (a) A proven track record of sound judgment in leading or governing large, complex private or public sector corporations or organizations; and (b) a wealth of top-level, global business experience in the areas of executive management, corporate governance, audit and finance, human resources, economics, technology and healthcare. Board members shall be appointed by the Secretary of Defense, with annual renewals.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees. Board members, with the approval of the Secretary of Defense, may serve a term of service on the Board of one to four years; however, no member shall serve more than two consecutive terms of service on the Board. Regardless of the individual's approved term of service, all appointments to the Board shall be renewed on an annual basis.

The Secretary of Defense shall select and appoint the Board's chairperson from the total membership. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

Board members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Chairpersons of the Defense Policy Board and the Defense Science Board may serve as non-voting ex-officio members of the Board. These individuals, when they attend, may provide advice to the Board membership only on the areas governed by their respective Boards and provided the information has been voted on by their membership and it is available to the general public.

The Secretary of Defense or the Deputy Secretary of Defense may appoint former Board members to serve as non-voting Senior Fellows. These individuals are appointed based upon their subject matter expertise and based upon the matters under deliberation by the Board. The Board may utilize non-voting Senior Fellows who, as former members, assist with institutional knowledge and provide continuity of operations.

The Director of the Office of Management and Budget and the Comptroller General of the General Accounting Office shall serve as non-voting observers of the Board. According to DoD policy and procedures, the Secretary of Defense may invite or appoint experts or

consultants, with special expertise, to assist the Board on an ad hoc basis. These experts and consultants, appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees; however, they shall have no voting rights on the Board.

Non-voting ex-officio members, non-voting senior fellows, non-voting observers and those non-voting experts and consultants appointed by the Secretary of Defense shall not count toward the Board's total membership.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures may establish subcommittees, task groups, or working groups deemed necessary to support the Board.

These subcommittees or working groups shall operate under the provisions of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), other governing Federal statutes and regulations, and governing DoD policies and procedures.

Such subcommittees or task groups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees, whose appointments must be renewed on an annual basis. With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Acting Advisory Committee Management Officer for the Department of Defense, (703) 692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is four per year.

The Board's Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures.

The Board's Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Board's Designated Federal Officer, an Alternate Designated Federal Officer, duly appointed to the Board according to DoD policies and procedures, shall attend the entire duration of the Board or subcommittee meetings.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Board's and subcommittee's meetings, prepare and approve all meeting agendas, and adjourn any meeting, when the Designated Federal Officer, or the Alternated Designated Federal Officer, determines adjournment to be in the public's interest or required by governing regulations or DoD policies/procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Business Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Business Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Business Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Business Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Business Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: January 3, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–58 Filed 1–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning a Method and Device for Detection of Bioavailable Drug Concentration in a Fluid Sample

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The invention provides a method for the controlled delivery of a drug as a function of bioavailable drug concentration, a sensor device for detecting bioavailable drug concentration, and a delivery device that controls delivery of the drug based on the real-time detection of bioavailable drug concentration. Announcement is made of the availability for licensing of the invention set forth in International Patent Application No. PCT/US2009/060852 entitled, ''Method and Device for Detection of Bioavailable Drug Concentration in a Fluid Sample,'' filed on October 15, 2009 (which claims the benefit of U.S. Provisional Patent Application Serial No. 651/105,604 filed October 15, 2008). The United States Government, as represented by the Secretary of the Army, has rights to this invention. U.S. and selected foreign rights are available.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to the method of electrochemical detection of bioavailable drug concentration intended to be used to modify the

delivery rate of the drug to a patient during real-time.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–18 Filed 1–5–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning Extraction and Detection of Pathogens Using Carbohydrate-Functionalized Biosensors

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The invention provides extraction and detection of pathogens using carbohydrate-functionalized biosensors. Specific analyte can be achieved with an analyte probe having a detection moiety and a binding pair member specific to the target analyte of interest. Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application No. 61/528,892, entitled ''Extraction and Detection of Pathogens Using Carbohydrate-Functionalized Biosensors,'' filed on August 30, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention. U.S. and selected foreign rights are available.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to a method for detecting the presence of a target analyte, a kit for binding a target analyte and a target analyte complex. Various refinements and extensions of the foregoing methods, kits and target analyte complex are possible.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–21 Filed 1–5–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

Correction

In notice document 2011–33263 appearing on pages 81486–81487 in the issue of Wednesday, December 28, 2011, make the following correction:

On page 81486, in the second column, under the **DATES** heading, in the third line ''December 28, 2011'' should read ''January 27, 2012''.

[FR Doc. C1–2011–33263 Filed 1–5–12; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF EDUCATION

Statewide Longitudinal Data Systems; Reopening Fiscal Year (FY) 2012 Competition

AGENCY: Institute of Education Sciences (IES), Department of Education.

ACTION: Notice reopening the Statewide Longitudinal Data Systems fiscal year (FY) 2012 competition.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.372A

SUMMARY: On September 20, 2011, we published in the **Federal Register** (76 FR 58252) a notice inviting applications for the Statewide Longitudinal Data Systems FY 2012 competition. That notice established a December 15, 2012, deadline date for eligible applicants to apply for funding under this program. As a result of the notice published on September 20, 2011, 31 eligible entities submitted applications.

In order to ensure fairness and afford as many eligible applicants as possible an opportunity to be considered for funding under this program, we are reopening the Statewide Longitudinal Data Systems FY 2012 competition to eligible applicants that were not able to submit applications by the original deadline date. Thus, we will consider as received timely, all of the applications we received through Grants.gov by December 15, 2011 (referred to as ''previously submitted applications'' in this notice), and will consider as timely any additional applications or revisions to any previously submitted application submitted by the new deadline date established in this notice. All information in the September 20, 2011 notice remains the same for new applications and revisions to previously submitted applications submitted in response to this reopening notice, except for the following updates to the *Dates* section and section V. *Submission of Applications.*

DATES: *Applications Available:* January 6, 2012.

Note: The application package for this competition and instructions are available at the following Internet address: *http://ies.ed.gov/funding/slds.asp* Deadline for Transmittal of Applications: January 13, 2012.

V. Submission of New Applications or Revisions to Previously Submitted Applications

New applications or revisions to previously submitted applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. Submission of Paper Applications by Mail

If you submit your new application or revisions to a previously submitted application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your new application or revisions to a previously submitted application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number: 84.372A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your new application or revisions to a previously submitted application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your new application or revisions to a previously submitted application is postmarked after the application deadline date, we will not consider your new application or revisions to a previously submitted application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your new application or revisions to a previously submitted application by hand delivery, you (or a courier service) must deliver the original and two copies of your new application or revisions to a previously submitted application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number: 84.372A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your new application or revisions to a previously submitted application to the Department—

(1) You must indicate on the envelope—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

FOR FURTHER INFORMATION CONTACT: Emily Anthony, U.S. Department of Education, National Center for Education Statistics, 1990 K Street NW., room 9083, Washington, DC 20006–5651. Telephone: (202) 502–7495 or via Internet: *Emily.Anthony@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–(800) 877–8339. Individuals with disabilities may obtain this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

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Program Authority: 20 U.S.C. 9607.

Dated: January 3, 2012.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2012–76 Filed 1–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12758–003]

BOST5 Hydroelectric Company, LLC, (BOST5); Notice of Application Accepted for Filing and Soliciting 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. *Type of Application:* Original Major License.

b. *Project No.:* P–12758–003.

c. *Date filed:* March 28, 2011.

d. *Applicant:* BOST5 Hydroelectric Company, LLC (BOST5).

e. *Name of Project:* Red River Lock & Dam No. 5 Hydroelectric Project.

f. *Location:* The proposed project would be located at the existing Army Corps of Engineer's (Corps) Red River Lock & Dam No. 5 on the Red River, in Bassier Parish near the Town of Ninock, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Spalding, BOST5 Hydroelectric Company, LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Jeanne Edwards (202) 502–6181, or by email at *jeanne.edwards@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 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 *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.

The Commission's Rules of Practice and Procedures 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 has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing U.S. Army Corps of Engineers (Corps) Red River Lock and Dam No. 5, and operate consistent with the Corps current operation policy. The proposed project would consist of: (1) An excavated 416-foot-long headrace channel to convey water from the upstream Pool No. 5 of the Red River to a 301-foot-long by 90-foot-wide concrete powerhouse located northeast of the end of the existing overflow weir; (2) an excavated 495-foot-long tailrace channel to discharge water from the powerhouse to the downstream Pool No. 4 of the Red River; (3) one 28.1-megawatt (MW) horizontal Kaplan bulb turbine/generator unit; (4) one 7-mile-long, 34.5-kilovolt (kV) overhead transmission line leading from the project's powerhouse and connecting to Central Louisiana Electric Company's new substation; and (5) appurtenant facilities. The proposed project would generate about 129,400 megawatt-hours (MWh) annually which would be sold to a local utility.

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 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.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, 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 intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (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. 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.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12757–003

BOST4 Hydroelectric Company, LLC, (BOST4); Notice of Application Accepted for Filing and Soliciting 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. *Type of Application:* Original Major License.

b. *Project No.:* P–12757–003.

c. *Date filed:* February 24, 2011.

d. *Applicant:* BOST4 Hydroelectric Company, LLC (BOST4).

e. *Name of Project:* Red River Lock & Dam No. 4 Hydroelectric Project.

f. *Location:* The proposed project would be located at the existing Army Corps of Engineer's (Corps) Red River Lock & Dam No. 4 on the Red River, in Red River Parish near the Town of Coushatta, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Spalding, BOST4 Hydroelectric Company, LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Jeanne Edwards (202) 502–6181, or by email at *jeanne.edwards@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 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 *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.

The Commission's Rules of Practice and Procedures 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 has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing U.S. Army Corps of Engineers (Corps) Red River Lock and Dam No. 4, and operate consistent with the Corps current operation policy. The proposed project would consist of: (1) An excavated 385-foot-long headrace channel to convey water from the upstream Pool No. 4 of the Red River to a 301-foot-long by 90-foot-wide concrete powerhouse located southwest of the end of the existing overflow weir; (2) an excavated 477-foot-long tailrace channel to discharge water from the powerhouse to the downstream Pool No. 3 of the Red River; (3) one 28.1-megawatt (MW) horizontal Kaplan bulb turbine/generator unit; (4) one 3.0 mile-long, 34.5-kilovolt (kV) overhead transmission line leading from a project substation located at the project's powerhouse and connecting to Central Louisiana Electric Company's existing 34.5-kV transmission line; and (5) appurtenant facilities. The proposed project would generate about 128,532 megawatt-hours (MWh) annually which would be sold to a local utility.

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 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.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before

the specified intervention deadline date, 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 intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (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. 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.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–30–000; PF11–4–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on December 14, 2011, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application under sections 7(c) and 7(b) of the Natural Gas Act (NGA) for a certificate authorizing Transco to construct and operate its Northeast Supply Link Project (Project) and to abandon certain pipeline facilities. Transco states that the proposed Project is an expansion of its existing pipeline system under which Transco will provide 250,000 dekatherms per day (Dth/day) of incremental firm transportation service in Zone 6 from certain supply interconnections on Transco's Leidy Line in Pennsylvania to Transco's 210 Market Pool in New Jersey and the existing Manhattan, Central Manhattan, and Narrows delivery points in New York City, all as more fully set forth in the application. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Transco proposes the following: (1) Construction and operation of approximately 12.03 miles of new 42-inch diameter pipeline looping facilities on Transco's existing mainline; (2) replacement of approximately 0.46 miles of existing 36-inch diameter pipeline, by abandoning the pipeline in place and installing an equivalent length of thickerwalled pipe in a parallel trench; (3) pressure uprating of approximately 27 miles of existing 24-inch, 26-inch, and 36-inch diameter pipeline; (4) a new 25,000 horsepower (hp) electric motor driven compressor station; (5) addition of 16,000 hp at an existing compressor station; (6) compressor unit modifications at an existing compressor station; (7) modifications to various delivery and receipt meter stations in Pennsylvania, New Jersey, and New York; and (8) construction or modification of appurtenant underground and minor aboveground facilities. The estimated cost of the proposed Project is $341 million.

Any questions regarding the Northeast Supply Link Project should be directed to Bill Hammons, Team Leader, Rates and Regulatory or Stephen A. Hatridge, Senior Counsel, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251 or at (713) 215–2130, or *PipelineExpansion@williams.com.*

On March 2, 2011, the Commission staff granted Transco's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF11–4–000 to staff activities involving the project. Now, as of the filing of this application on December 14, 2011, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP12–30–000, as noted in the caption of this notice.

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: January 19, 2012.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–31–000]

Southern LNG Company, L.L.C.; Notice of Application

Take notice that on December 15, 2011, Southern LNG Company, L.L.C. (SLNG), 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, filed an application in the above referenced docket pursuant to section 3(a) of the Natural Gas Act (NGA) and Part 153 of the Federal Energy Regulatory Commission's (Commission) regulations requesting authority to construct, install, own and operate a new 2,500 horsepower electric-driven compressor unit at its liquefied natural gas (LNG) terminal located at Elba Island, Georgia (Additional Compression) for the purpose of providing adequate compression to allow boil-off gas generated naturally within its storage tanks to be delivered to the downstream pipelines without the need to regasify additional LNG as is required with the use of recondensers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Glenn A. Sheffield, Director, Rates & Regulatory Affairs, Southern LNG Company, L.L.C., 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, by telephone at (205) 325–3813 or by email at *glenn.sheffield@elpaso.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 seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on January 19, 2012.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–36–000]

Tres Palacios Gas Storage LLC; Notice of Application

Take notice that on December 20, 2011, Tres Palacios Gas Storage LLC (Tres Palacios), Two Brush Creek Boulevard, Kansas City, Missouri 64112, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for an order granting a certificate of public convenience authorizing Tres Palacios to add Copano Energy L.L.C. (Copano) Houston Central natural gas processing plant as a receipt point on its storage facility header pipeline system by: (i) Constructing a 19.7-mile, 24-inch diameter pipeline from Tres Palacios' North Pipeline Corridor to the Copano plant, and (ii) constructing a new interconnection and receipt meter station at the Copano Plant, 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Further, Tres Palacios seeks reaffirmation of the previously granted authorization to charge market-based rates for its storage and hub services.

Any questions concerning this application may be directed to James F. Bowe, Jr., Dewey & LeBoeuf LLP, 1101 New York Avenue NW., Washington, DC 20005, at (202) 346–8000.

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: January 19, 2012.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–19–000]

FirstEnergy Solutions Corp., Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on December 28, 2011, pursuant to section 206 and 306 of the Federal Power Act, Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, 18 CFR 385.206, FirstEnergy Solutions Corp., Allegheny Energy Supply Company, LLC (Complainants), collectively filed a formal complaint against PJM Interconnection, L.L.C. (Respondent) alleging that provisions of The Respondent's Open Access Transmission Tariff and Operating Agreement (OA), as related to the rules governing the funding of Financial Transmission Rights (FTR), are unjust, unreasonable, unduly discriminatory and preferential. The Complainants request that the Commission direct the Respondent to revise the Tariff and OA prior to the start of the Auction Revenue Rights allocation process in March 2012 to eliminate the references to the real-time market in the calculation of congestion charges that FTR holders receive and direct the Respondent to allocate incremental real-time transmission congestion charges to all customers of the transmission system on a *pro rata* basis.

The Complainant certifies that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials.

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 and 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 13, 2012.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–7 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–17–000]

California Public Employees' Retirement System; Notice of Petition for Declaratory Order

Take notice that on December 21, 2011, pursuant to section 203(a)(1)(A) of the Federal Power Act, 16 USC 824b and 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), the California Public Employees' Retirement System (CalPERS) filed a Petition for Declaratory Order, requesting that the Commission disclaim jurisdiction over the transfer of 75 percent of the Class C non-managing membership interests in Neptune Regional Transmission System, LLC, indirectly held by Alerion IV, LLC, to CalPERS.

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 5, 2012.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13212–002]

Grant Lake Hydroelectric Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 3, 2011, Kenai Hydro, LLC, Alaska, filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Grant Lake Hydroelectric Project to be located on Grant Lake and Grant Creek, near the town of Moose Pass, Kenai Peninsula, Alaska. The project affects federal lands administered by the

U.S. Forest Service within the Chugach National Forest. 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: (1) Either (a) a 2-foot-high by 120-foot-long, concrete gravity dam at Grant Lake, or (b) a natural lake outlet, with a 48-inch-diameter pipe extending back into Grant lake, a gate house, regulating gate, controls, and monitoring equipment; (2) Grant Lake, the project reservoir, with a total storage capacity of 15,900 acre-feet and a water surface area of 1,790 acres at full pool elevation of 700 feet above mean seal level; (3) a 3,200-foot-long, 10-foot-diameter horseshoe tunnel; (4) a 72-inch-diameter, 360-foot-long, welded steel penstock; (5) a 200-foot-long open channel tailrace; (6) a 45-foot by 60-foot by 30-foot-high powerhouse containing two horizontal Francis type turbine units totaling 5 megawatts (MW) (1 x 4 MW unit and 1 x 1 MW unit) of generating capacity; and (7) a transmission line consisting of either a 3.5-mile-long, 24.9 kilovolt (kV) transmission line, or a 1-mile-long, 115 kV transmission line, connecting the powerhouse to the City of Seward's or to Chugach Electric's transmission line. The total energy output would be 19,700 megawatthours.

Applicant Contact: Mr. Mike Salzetti, Kenai Hydro, LLC, 3977 Lake Street, Homer, AK 99603; phone (907) 283–2375.

FERC Contact: Kenneth Hogan; phone: (202) 502–8434.

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–13212) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

December 29, 2011.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

Combined PJM Regional Transmission Planning Task Force/PJM Interconnection Process Senior Task Force

January 6, 2012, 9:30 a.m.–3 p.m., Local Time.

January 27, 2012, 9:30 a.m.–3 p.m., Local Time.

February 17, 2012, 9:30 a.m.–3 p.m., Local Time.

March 9, 2012, 9:30 a.m.–3 p.m., Local Time.

March 28, 2012, 9:30 a.m.–3 p.m., Local Time.

April 20, 2012, 9:30 a.m.–3 p.m., Local Time.

Combined PJM Markets and Reliability Committee/Members Committee

January 26, 2012, 9 a.m.–5 p.m., Local Time.

The above-referenced meetings will be held at:

The Chase Center on the Riverfront, Wilmington, DE.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER06–456, ER06–954, ER06–1271, ER07–424, ER06–880, EL07–57, ER07–1186, ER08–229, ER08–1065, ER09–497, and ER10–268, *PJM Interconnection, L.L.C.*

Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. EL10–52, *Central Transmission, LLC v. PJM Interconnection, L.L.C.*

Docket No. ER11–4070, *RITELine Indiana et. al.*

Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*

Docket No. ER08–386 and ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. ER09–1589, *FirstEnergy Service Company*

Docket No. EL11–56, *FirstEnergy Service Company*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–10, *PJM Interconnection, L.L.C.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: December 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8 Filed 1–5–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–1016; FRL–9331–5]

Kasugamycin; Receipt of Application for Emergency Exemption for Use on Apples in Michigan, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture to use the pesticide Kasugamycin (CAS No. 6980–18–3) to treat up to 10,000 acres of apples to control fire blight. The applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–1016, by one of the following methods:

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

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–1016. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; fax number: (703) 605–0781; email address: *grinstead.keri@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

B. What should I consider as I prepare my comments for EPA?

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

2. Tips for preparing your comments. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. Environmental justice. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Michigan Department of Agriculture has requested the Administrator to issue a specific exemption for the use of kasugamycin on apples to control fire blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that kasugamycin is needed to control streptomycin-resistant strains of *Erwinia amylovora,* the causal pathogen of fire blight, due to the lack of available alternatives and effective control practices.

The Applicant proposes to make no more than three applications of Kasumin 2L on not more than 10,000 acres of apples between April 1 and May 31, 2012 in Berrien, Cass, Grand Traverse, Ionia, Kent, Montcalm, Newaygo, Oceana, Ottawa, and Van Buren counties. As currently proposed, the maximum amount of the product to be applied would be 30,000 gallons.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Michigan Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 22, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–33848 Filed 1–5–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9000–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/27/2011 through 12/30/2011

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110439, Final EIS, USACE, FL, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Biscayne Bay Coastal Wetlands Phase I Project, To Restore the Natural Hydrology and Ecosystem in an Area Degraded by Drainage Systems and Land Development, Miami-Dade County, FL, *Review Period Ends:* 02/06/2012, *Contact:* Brad Tarr (904) 232–3582.

EIS No. 20110440, Revised Draft EIS, USFS, ID, Idaho Panhandle National Forests, Land Management Plan, Revises the 1987 Forest Plan, Implementation, Boundary, Bonner, Kootenai, Benewah, and Shoshone Counties, ID and Pend Oreille County, WA, *Comment Period Ends:* 02/21/2012, *Contact:* Mary Farnsworth (208) 765–7223.

EIS No. 20110441, Revised Draft EIS, USFS, MT, Kootenai National Forest Land Management Plan, Revises the 1987 Forest Plan, Implementation, Lincoln, Sanders, Flathead Counties, MT and Bonner and Boundary Counties, ID, *Comment Period Ends:* 02/21/2012, *Contact:* Paul Bradford (406) 293–6211.

EIS No. 20110443, Final EIS, USFS, VT, Deerfield Wind Project, Updated Information, Application for a Land Use Authorization to Construct and Operate a Wind Energy Facility, Special Use Authorization Permit, Green Mountain National Forest, Bennington County, VT, *Review Period Ends:* 02/06/2012, *Contact:* Bob Bayer (802) 362–2307 ext. 218.

Amended Notices

EIS No. 20110423, Draft EIS, NRC, SC, William States Lee III Nuclear Station Units 1 and 2 Combined Licenses (COLs) Application, Constructing and Operating Two New Nuclear Units at the Lee Nuclear Station Site, NUREG–2111, Cherokee County, SC, *Comment Period Ends:* 03/06/2012, *Contact:* Sarah Lopas (301) 415–1147. Revision to Notice Published 12/23/2011: Extending Comment Period from 2/6/2012 to 3/6/2012.

EIS No. 20110436, Draft EIS, NOAA, AK, Effects of Oil and Gas Activities in the Arctic Ocean, Beaufort and Chukchi Seas, AK, *Comment Period Ends:* 02/13/2012, *Contact:* James H. Lecky (301) 427–8400. Revision to Notice Published 12/30/11: Agency Contact Phone Number changed to (301) 427–8400.

Dated: January 3, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–53 Filed 1–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9616–3]

National Environmental Justice Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its National Environmental Justice Advisory Council (NEJAC). The NEJAC was chartered to provide advice regarding broad, crosscutting issues related to environmental justice. This notice solicits nominations to fill eight (8) new vacancies through June 15, 2015. To maintain the representation outlined by the charter, nominees will be selected to represent: Academia (1 vacancy); Business and industry (two vacancies); grassroots Community-based organizations (1 vacancy); Non-governmental/environmental organizations (1 vacancy); State and local government agencies (two vacancies); and Tribal governments (1 vacancy). Vacancies are anticipated to be filled by May 2012. Sources in addition to this **Federal Register** notice also may be utilized in the solicitation of nominees.

DATES: Nominations should be submitted in time to arrive no later than January 25, 2012.

ADDRESSES: Submit nominations electronically with the subject line NEJAC Membership 2012 to *robinson.victoria@epa.gov*. You also may submit nominations by mail to: Victoria J. Robinson, NEJAC Designated Federal Officer, Office of Environmental Justice, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW. (MC 2201A), Washington, DC 20460. Non-electronic submissions must follow the same format and contain the same information. The Office of Environmental Justice will acknowledge receipt of nominations.

FOR FURTHER INFORMATION CONTACT: Victoria J. Robinson, Designated Federal Officer for the NEJAC, U.S. EPA; telephone (202) 564–6349; fax: (202) 564–1624.

SUPPLEMENTARY INFORMATION: The NEJAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the NEJAC in 1993 to provide independent consensus advice to the EPA Administrator about a broad range of environmental issues related to environmental justice. The NEJAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The Council consists of 25 members (including a Chairperson) appointed by EPA's Administrator. Members serve as non-Federal stakeholders representing: Three (3) from academia, three (3) from business and industry; six (6) from community based organizations; six (6) from non-governmental/environmental organizations; four (4) from state and local governments; and three (3) from tribal governments and indigenous organizations, of which one member serves as a liaison to the National Tribal Caucus. Members are appointed for three (3)-year terms with the possibility of reappointment to a second term.

The NEJAC usually meets face-to-face twice a year, generally in the Spring and the Fall. Additionally, members may be asked to participate in teleconference meetings or serve on Work Groups to develop recommendations, advice letters, and reports to address specific policy issues. The average workload for members is approximately 5 to 8 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business.

Nominations: Any interested person and/or organization may nominate qualified individuals for membership. The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the Summary above. In addition, EPA is seeking nominees with knowledge in community sustainability, public health and health disparities, land use and sustainable development, green jobs and economic initiatives, energy, and environmental financing.

Other criteria used to evaluate nominees will include:

- The background and experience that would help members contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational background, professional affiliations, and other considerations;
- Demonstrated experience with environmental justice and community sustainability issues at the national, state, or local level;
- Excellent interpersonal and consensus-building skills;
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters;
- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations can be submitted in electronic format (preferred) following the template available at *http://epa.gov/environmentaljustice/nejac/index.html#Membership*. To be considered, all nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number.
- Brief Statement describing the nominees interest in serving on the NEJAC.
- Résumé and a short biography (no more than 2 paragraphs) describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees.
- Letter[s] of recommendation from a third party supporting the nomination. Letter[s] should describe how the nominee's experience and knowledge will bring value to the work of the NEJAC.

Other sources, in addition to this **Federal Register** notice, may also be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: December 29, 2011.

Victoria J. Robinson,

Designated Federal Officer, NEJAC.

[FR Doc. 2012–57 Filed 1–5–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 6, 2012.

ADDRESSES: You may submit comments, identified by 7100–0310, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• *Fax:* 202/452–3819 or 202/452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

1. *Report title:* Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs.

Agency form number: Reg K.

OMB control number: 7100–0310.

Frequency: Annually.

Reporters: State member banks; Edge and agreement corporations; and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve.

Estimated annual reporting hours: Establish compliance program, 128 hours; and maintenance of compliance program, 4,476 hours.

Estimated average hours per response: Establish compliance program, 16 hours; and maintenance of compliance program, 4 hours.

Number of respondents: Establish compliance program, 8; and maintenance of compliance program, 1,119.

General description of report: This information collection is mandatory pursuant to the Bank Secrecy Act (BSA)(31 U.S.C. 513(h)). In addition, sections 11, 21, 25, and 25A of the Federal Reserve Act (12 U.S.C. 248(a), 483, 602, and 611(a)) authorize the Federal Reserve to require the information collection and recordkeeping requirements set forth in Regulations K and H. Section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) provide further authority for sections 211.5(m) and 211.24(j)(1) of Regulation K. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, if a BSA compliance program becomes a Federal Reserve record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K require Edge and agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act (BSA) and related regulations. Section 208.63 of Regulation H requires state member banks to establish and maintain the same procedures. There are no required reporting forms associated with this information collection.

Board of Governors of the Federal Reserve System, January 3, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–34 Filed 1–5–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 23, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Thomas Benton Hunter, III,* Lake Forest, Illinois; as trustee of the Hunter 2012 Annuity Trust, and the Hunter 2012 Annuity Trust, both in Chicago, Illinois; to join the existing Steans

Family Control Group, Rosemont, Illinois, and acquire voting shares of Taylor Capital Group, Inc., Rosemont, Illinois, and thereby indirectly acquire voting shares of Cole Taylor Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 3, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–71 Filed 1–5–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *KeyCorp,* Cleveland, Ohio; to retain, in a fiduciary capacity, 9.75 percent of the outstanding voting shares of Mechanics Financial Corporation, and thereby retain Mechanics Savings Bank, both in Mansfield, Ohio.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Teton Financial Services, LLC,* Wilson, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Rocky Mountain Bank, Wilson, Wyoming.

Board of Governors of the Federal Reserve System, January 3, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–69 Filed 1–5–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Council on Alzheimer's Research, Care, and Services

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Advisory Council on Alzheimer's Research, Care, and Services will provide advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. A representative from the Department of Health and Human Services (HHS) will present an overview of the Draft National Plan to Address Alzheimer's Disease. The chairs of the three subcommittees (Research, Clinical Care, Long-Term Services and Supports) will summarize the feedback from their subcommittees and suggest recommendations for discussion among the full Advisory Council. The Advisory Council will discuss and, as appropriate, vote upon recommendations to the Secretary of HHS on the Draft National Plan to Address Alzheimer's Disease.

DATES: January 17, 2012 from 9:30 a.m. to 4 p.m. and January 18, 2012 from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

Comments: Time is allocated on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Helen Lamont, OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont (202) 690–7996, *helen.lamont@hhs.gov.* **NOTE:** Seating may be limited. Those wishing to attend the meeting must call or email Dr. Lamont by Tuesday, January 10, 2012, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Advisory Council will discuss the Draft National Plan to Address Alzheimer's Disease. The Advisory Council is specifically charged with making recommendations to the Secretary on priorities for the National Plan. As appropriate, the Advisory Council will make, discuss, and vote on such recommendations.

Procedure and Agenda: This meeting is open to the public. A representative from the Department of Health and Human Services (HHS) will present an overview of the Draft National Plan to Address Alzheimer's Disease. The chairs of the three subcommittees (Research, Clinical Care, Long-Term Services and Supports) will summarize the feedback from their subcommittees and suggest recommendations for discussion among the full Advisory Council. The Advisory Council will discuss and, as appropriate, vote upon recommendations to the Secretary of HHS on the Draft National Plan to Address Alzheimer's Disease. The Advisory Council will also discuss how to engage stakeholders outside of the Federal government in the writing and implementation of the National Plan. The Advisory Council will allow an open public session for any attendee to address issues or topics that should be addressed in the National Plan.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 19, 2011.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–30 Filed 1–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 6617, January 22, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to establish the National Center for Advancing Translational Science (NCATS), to abolish the National Center for Research Review (NCRR), and to establish organizational components within National Institute of General Medical Sciences (NIGMS), National Institute on Minority Health and Health Disparities (NIMHD) and the NIH Office of the Director (OD).

Section N–8, Organization and Functions, is amended as follows: Immediately after the paragraph headed ''Division of Program Coordination and Integration'' (N 875, formerly HN 875), insert the following:

National Center for Advancing Translational Sciences (NCATS) (N 9, formerly HN 9) (1) Provides leadership for a national program to advance the discipline of translational science and catalyze the generation of innovative methods and technologies that will enhance the development, testing, and implementation of diagnostics and therapeutics across a wide range of human diseases and conditions; (2) conducts intramural research; (3) supports and coordinates research projects through research grants, contracts, and other mechanisms; (4) supports training in translational sciences; (5) collaborates with organizations and other institutions engaged in translational research and training activities; and (6) collects and disseminates research findings and related information.

Office of the Director (OD) (N 91, formerly HN 91) (1) Develops and provides leadership for the Center's translational science programs; (2) manages and directs executive-level activities and functions; (3) provides policy guidance and overall operational coordination for the organizational units within NCATS; and (4) manages critical points of contact and related information flows to respond to external inquiries.

Division of Pre-Clinical Innovation (DPI) (N 92, formerly HN 92) (1) Plans, conducts, and supports research across the pre-clinical phases of the translational science spectrum; (2) plans, conducts, and supports research to develop new methods and technologies to enhance pre-clinical processes; (3) plans, conducts, and supports research to evaluate existing and developing approaches, technologies, and processes in the pre-clinical spectrum; (4) supports training programs relevant to pre-clinical phases of translational science; (5) allocates resources to pre-clinical extramural and intramural investigators; (6) collaborates with ICs and the scientists they support; and (7) consults with stakeholders, including patients, industry, and regulators.

Division of Clinical Innovation (DCI) (N 93, formerly HN 93) (1) Plans, conducts, and supports research across the clinical phases of the translational science spectrum; (2) plans, conducts, and supports research to develop new methods and technologies to enhance clinical processes; (3) plans, conducts, and supports research to evaluate existing and developing approaches, technologies, and processes in the clinical spectrum; (4) supports training programs relevant to clinical phases of translational science; (5) allocates resources to clinical extramural and intramural investigators; (6) collaborates with ICs and the scientists they support; and (7) consults with stakeholders, including patients, industry, and regulators.

Executive Office (EO) (N 912, formerly HN 912) (1) Directs the administrative management and financial management operations of NCATS; (2) develops, administers, and directs NCATS' internal control processes; (3) oversees development of and administers NCATS policies and procedures for administrative, program management, and information technology activities; and (4) oversees personnel management and workforce planning.

Office of Grants Management and Scientific Review (OGMSR) (N 913, formerly, HN 913) (1) Provides advice and assistance to the Director of NCATS, NCATS Division Directors, and other NCATS officials on issues related to policy and procedures for extramural activities; (2) provides oversight and direction for scientific review and grants management activities of NCATS; (3) coordinates NCATS small business research programs and other special grants programs; (4) manages the operations of the national advisory council for NCATS; and (5) provides coordination, support, and staff services for committee management.

Office of Rare Diseases Research (ORDR) (N 914, formerly, HN 914) (1) Guides and coordinates NIH-wide activities involving research into combating and treating the broad array of rare (orphan) diseases; (2) manages the NIH Rare Diseases and Orphan Products Coordinating Committee (Trans-NIH Rare Diseases Working Group); (3) develops and maintains a centralized database on rare diseases; (4) coordinates and provides liaison with Federal and non-Federal national and international organizations concerned with rare disease research and orphan products development; (5) advises the OD/NIH on matters relating to NIH-sponsored research activities that involve rare diseases and conditions; and (6) responds to requests for information on highly technical matters and matters of public policy relative to rare diseases and orphan products.

Office of Policy, Communications, and Strategic Alliances (OPCSA) (N 915, formerly, HN 915) (1) Provides leadership and direction to the planning, coordinating, reporting, analytical, evaluative, and legislative functions that support NCATS program development, science policy formulation, and overall program direction and decision-making activities of the NCATS executive staff; (2) advises the NCATS Director on policy matters pertaining to NCATS scientific programs; (3) communicates information about NCATS programs and accomplishments to a wide range of audiences; (4) advises the NCATS Director on effective communications strategies; (5) fosters relationships and partnerships with stakeholders; (6) assists in the development of content for internal and external Web sites and audiences; (7) develops and executes a strategy for education and training for the disciplines that constitute translational science; (8) facilitates and supports partnerships with NIH OD, other ICs, patient groups, other governmental agencies, nonprofits and the private sector to achieve the goals of the Center; and (9) oversees and manages NCATS technology transfer activities including overseeing NCATS intellectual property, patent, and licensing agreement portfolios.

Section N–D, Organization and Functions, is amended as follows: Immediately after the paragraph headed

''Office of Grants Management'' (N D43, formerly HN D43), insert the following:

Office of Research Training and Capacity Building (ORTCB) (N E32, formerly HN E32) (1) Plans, designs, develops and manages a diverse portfolio of training and career development programs and activities; (2) plans, develops, coordinates, supports and manages programs to expand the Nation's capacity to conduct research at institutions conducting and/or interested in minority health and health disparities research; (3) provides technical assistance to faculty, institutions, community groups and other organizations conducting and/or interested in minority health and health disparities research; and (4) provides support to improve, through construction, facilities conducting biomedical and behavioral research on minority health and health disparities.

Office of Innovation and Program Coordination (ORIPC) (N E33, formerly HN E33) (1) Plans, stimulates, develops and supports a broad extramural research program to include basic, behavioral and clinical research on minority health and health disparity conditions including research to prevent, diagnose and treat such conditions; (2) develops innovative research programs and projects for the Institute that link the biological and non-biological determinants of health; and (3) works with the Office of the Director to coordinate inter- and intra-agency programs and projects on minority health and health disparities.

Section N–R, Organization and Functions, is amended as follows: Immediately after the paragraph headed ''Division of Research Infrastructure'' (N RL, formerly HN RL), insert the following:

Division of Training, Workforce Development, and Diversity (DTWDD) (N S5, formerly HN S5) (1) Serves as the focal point for the Institute's efforts to foster research training and facilitate the development of a diverse and inclusive biomedical research workforce; (2) oversees and coordinates NIGMS policies related to diversity activities, research training programs, and workforce development efforts; (3) implements strategic plans to improve the effectiveness of NIGMS' diversity and training programs; (4) promotes biomedical research workforce diversity through innovative approaches, including programs to increase the competitiveness of faculty at institutions from states with limited NIH research support; and (5) collaborates with NIH, DHHS, and other agencies, as well as the extramural scientific community on these matters.

Division of Biomedical Technology, Bioinformatics, and Computational Biology (DBTBCB) (N S7, formerly HN S7) (1) Plans, directs, and administers a program of research grants, contracts, and other funding mechanisms to support research and research training in data management, analysis and visualization, computational modeling and analysis of systems and networks, including biostatistical analyses, as well as the development of new or improved technologies—in areas such as high performance computing, molecular imaging, structural biology and proteomics—which will be applied to advance biomedical research; (2) defines the Institute's needs for database development and applications, as well as collaborates with other NIH components and federal agencies in developing policies in this area; (3) coordinates the activities of the Biomedical Information Science and Technology Initiative (BISTI) and the trans-NIH Biomedical Information Science and Technology Initiative Committee (BISTIC) with related activities of other federal agencies, NIH institutes, and public and private entities; (4) analyzes national research efforts directed toward the study of the above and makes recommendations to assist the National Advisory General Medical Sciences Council or other advisory committees or appointed groups to (a) participate in decisions about new or continuing areas of program emphasis, or (b) determine the relative scientific merit of applications for grant support; (5) maintains surveillance over new research developments and identifies the need for research in the areas of computational analysis of biological systems at the cellular, subcellular, physiological and population systems levels, as well as innovative technologies and instrumentation for biomedical research which could be used by a wide range of biomedical or clinical researchers and not limited to a specific organ or disease; and (6) provides information to third parties such as universities, other centers of biomedical research, and professional and lay organizations about research needs and requirements of the Division.

Section N–AW, Organization and Functions, is amended as follows: Immediately after the paragraph headed ''Office of Grants Management'' (N AV5, formerly HN AV5), insert the following:

Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI) (N AW, formerly HN AW) (1) Identifies, reports on, and provides support for research that represents important areas of emerging scientific opportunities, rising public health challenges, or knowledge gaps that deserve special emphasis and would benefit from conducting or supporting additional research that involves collaboration between two or more Institutes and Centers (ICs), or would otherwise benefit from strategic coordination and planning; (2) coordinates and provides support for research and activities related to AIDS, behavioral and social sciences, women's health, disease prevention, and dietary supplements; (3) applies resources (databases, analytic tools, and methodologies) and develops specifications for new resources in support of portfolio analyses and priority setting in scientific areas of interest across NIH; (4) engages in activities designed to ensure that NIH addresses important areas of emerging scientific opportunities and public health challenges effectively; (5) plans, conducts, coordinates, and supports program evaluations and coordinates and prepares reports required by the Government Performance and Results Modernization Act and related performance management initiatives; (6) provides animal models, supports the identification and development of new and improved animal models for the study of human diseases, provides repositories for the storage and distribution of genetically altered animal models, and supports specialized animal research facilities for biomedical investigators; (7) supports the development of research models; (8) supports research activities at National Primate Research Centers; (9) provides oversight for the NIH Chimpanzee Management Program (ChiMP) and provides a chimpanzee sanctuary for the lifetime care of research chimpanzees that are no longer needed for biomedical research; (10) supports the improvement of the health and well-being of laboratory animals; (11) supports the breeding of and accessibility to scarce research animals; (12) supports training and career development for veterinarians engaged in research; (13) provides access for biomedical researchers to an array of biological materials and human biospecimens; (14) provides support to improve biomedical and behavioral research facilities through construction and renovation; and (15) plans, develops, coordinates, and provides support for a science education program to improve science literacy in adults and children and to attract young people to biomedical and behavioral science careers.

Office of Research Infrastructure Programs (ORIP) (N AW9, formerly HN

AW9) (1) Provides support for resource activities and research to identify, develop, characterize, and improve animal models for the study of human disease; (2) assists institutions in complying with the regulations and policies related to care and use of laboratory animals, and supports the purchase of equipment for animal resources, transgenic animal resources, and similar activities; (3) provides high-quality, disease-free animal models and specialized animal research facilities for biomedical investigators; (4) supports the development of and access to a wide range of research models, including vertebrate and invertebrate species; (5) provides access for biomedical researchers to an array of biological materials and human biospecimens; (6) supports research activities at National Primate Research Centers; (7) develops and implements policies and provides programmatic oversight for the NIH Chimpanzee Management Program (ChiMP); (8) provides a chimpanzee sanctuary for the lifetime care of chimpanzees no longer needed for biomedical research; (9) supports training and career development for veterinarians engaged in research; (10) provides repositories for the storage and distribution of genetically altered animal models; (11) supports the breeding of and accessibility to scarce research animals; (12) supports grants for the acquisition of state-of-the-art instrumentation and integrated instrument systems; (13) provides support for human tissue and organ research resources to meet the needs of biomedical researchers, including those in academia, government, and industry; (14) supports grants to expand, re-model, renovate, or alter existing research facilities or to construct new research facilities, including to improve laboratory animal facilities; and (15) coordinates science education activities at the NIH, plans, develops, and coordinates a comprehensive science education program to improve science literacy in both adults and children and to attract young people to biomedical and behavioral science careers; and develops and supports grants designed to improve life science literacy throughout the nation through educational programs.

Division of Comparative Medicine (DCM) (N AW92, formerly, HN AW92) (1) Provides high-quality, disease-free animal models and specialized animal research facilities for biomedical investigators; (2) supports the development of and access to a wide range of research models, including vertebrate and invertebrate species; (3) provides access for biomedical researchers to an array of biological materials and human biospecimens; (4) supports research activities at National Primate Research Centers; (5) develops and implements policies and provides programmatic oversight for the NIH Chimpanzee Management Program (ChiMP); (6) provides a chimpanzee sanctuary for the lifetime care of research chimpanzees that are no longer needed for biomedical research; (7) supports the identification and development of new and improved animal models for the study of human diseases; (8) supports improvement of the health and well-being of laboratory animals; (9) supports training and career development for veterinarians engaged in research; (10) provides repositories for the storage and distribution of genetically altered animal models; and (11) supports the breeding of and accessibility to scarce research animals.

Division of Instruments, Infrastructure Resources, and Construction (DIIRC) (N AW93, formerly, HN AW93) (1) Supports programs to expand the Nation's capacity for the conduct of biomedical research; (2) supports grants for the acquisition of state-of-the-art instrumentation and integrated instrument systems; (3) provides support for human tissue and organ research resources to meet the needs of biomedical researchers, including those in academia, government, and industry; and (4) supports grants to expand, re-model, renovate, or alter existing research facilities or to construct new research facilities, including to improve laboratory animal facilities.

Office of Science Education (OSE) (N AW94, formerly, HN AW94) (1) Plans, develops, and coordinates a comprehensive science education program to improve science literacy in both adults and children and to attract young people to biomedical and behavioral science careers; (2) develops and directs an extensive set of education initiatives in the medical sciences targeted to students in grades K–16, educators, and the public; (3) advises NIH leadership on science education issues; (4) conducts, analyzes, and assesses research related to science education; (5) collaborates within the NIH and with public and private sector organizations to develop and coordinate science education activities; and (6) serves as an information resource center providing access to educational materials and activities related to medical science.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: December 30, 2011.

Francis S. Collins,

Director.

[FR Doc. 2012–54 Filed 1–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: State Court Improvement Program.

OMB No.: 0970–0307.

Description: From the funds appropriated for the Promoting Safe and Stable Families Program (PSSF), $10 million is reserved annually for each of three grants to facilitate the State Court Improvement Program (CIP) to facilitate court improvement in the handling of child abuse and neglect cases.

The Court Improvement Program (CIP) is composed of three grants, the basic, data, and training grants, governed by two separate Program Instructions (PIs). The training and data grants are governed by the ''new grant'' PI and the basic grant is governed by the ''basic grant'' PI. Current PIs require separate applications and program assessment reports for each grant. Every State applies for at least two of the grants annually and most States apply for all three. As many of the application requirements are the same for all three grants, this results in duplicative work and high degrees of repetition for State courts applying for more than one CIP grant.

The purpose of this Program Instruction is to streamline and simplify the application and reporting processes by consolidating the PIs into one single PI and requiring one single, consolidated application package and program assessment report per State court annually. These revisions will satisfy statutory programmatic requirements and reduce both the number of required responses and associated total burden hours for State courts. This new PI also describes programmatic and fiscal provisions and reporting requirements for the grants, specifies the application submittal and approval procedures for the grants for fiscal years 2012 through 2015, and identifies technical resources for use by State courts during the course of the

grants. The agency uses the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State Courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	92	4,784
Annual Reports	52	1	86	4,472

Estimated Total Annual Burden Hours: 9,256.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–63 Filed 1–5–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–0165.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessing Factors That Impact AIDS Drug Assistance Program (ADAP) Enrollment and Management in the Face of ADAP Waiting Lists (OMB No. 0915–xxxx)—[New]

HRSA's AIDS Drug Assistance Program (ADAP) provides assistance to help low-income, uninsured and underinsured individuals living with HIV/AIDS to access life-saving medications. As part of the Ryan White HIV/AIDS Program, ADAP is the Payer of Last Resort. Clients enrolled in ADAP have exhausted all other resources to obtain the necessary medications and care. In recent years, ADAP has experienced an increase in enrollment while funding resources have decreased.

This study will use case study methods to identify and examine factors that contribute to the rising enrollments in ADAP and the states' abilities to meet the demands for ADAP services. Data collection will include interviews with up to eight respondents in each of eight selected states, for a maximum of 64 total respondents. Each interview will last approximately 1.5 hours. The respondents will fall into three general categories—ADAP personnel, state HIV/AIDS program leads, and personnel from related state and local programs, such as Medicaid and pharmacy assistance programs. Interviews will be conducted over a period of 2.5 months.

The study will assess factors that may contribute to the rise in ADAP enrollment and costs such as new HIV cases, earlier use of antiretroviral medications, lower attrition of existing clients, unemployment and loss of insurance, or increasing drug costs. In addition, the study will examine factors that may decrease ADAP costs, such as health care reform and cost containment strategies. Findings from the study will be used to develop policy and to recommend promising practices for managing state ADAPs.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
ADAP Personnel Interview	32	1	32	1.5	48
State HIV/AIDS Lead Interview	8	1	8	1.5	12
Alternative State/Local Program Informant Interview	24	1	24	1.5	36
Total					96

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: December 29, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–33854 Filed 1–5–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration (HRSA) is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Section 100.2 of the VICP's implementing regulation (42 CFR Part 100) states that the revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published periodically in a notice in the **Federal Register** and filed with the United States Court of Federal Claims (the Court). This figure is calculated using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS–IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation and Health Research and Educational Trust (KFF/HRET) Employer Health Benefits survey or other authoritative source that may be more accurate or appropriate.

In 2011, MEPS–IC, available at *www.meps.ahrq.gov,* published the annual 2010 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was $4,940. This figure is divided by 12-months to determine the cost per month of $411.67. The $411.67 shall be increased or decreased by the percentage change reported by the most recent KFF/HRET, available at *http://www.kff.org.* The percentage increase was published at 8 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy for 12-month period is $444.60.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $444.60 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the Court. Such notice was delivered to the Court on November 23, 2011.

Dated: December 28, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–33856 Filed 1–5–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at (800) 927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a

suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–(800) 927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets NW., Washington, DC 20405; (202) 501–0084; (This is not a toll-free number).

Dated: December 29, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 01/06/2012

Suitable/Available Properties

Land

California

Seal Beach RR Right of Way
West 19th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140015
Status: Surplus
GSA Number: 9–N–CA–1508–AF
Comments: 8,036.82 sq. ft.; current use: vacant lot

Seal Beach RR Right of Way
East 17th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140016
Status: Surplus
GSA Number: 9–N–CA–1508–AB
Comments: 9,713.88 sq. ft.; current use: private home

Seal Beach RR Right of Way
East of 16th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140017
Status: Surplus
GSA Number: 9–N–CA–1508–AG
Comments: 6,834.56 sq. ft.; current use: vacant

Seal Beach RR Right of Way
West of Seal Beach Blvd.
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140018
Status: Surplus
GSA Number: 9–N–CA–1508–AA
Comments: 10,493.60 sq. ft.; current use: vacant lot

[FR Doc. 2011–33740 Filed 1–5–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Environmental Documents Prepared for Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS Region.

SUMMARY: The Bureau of Ocean Energy Management (BOEM), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI). These EA's were prepared during the period July 1, 2011, through September 30, 2011, for the following oil-, gas-, and mineral-related activities that were proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: The BOEM prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEM conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEM finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/Operator	Location	Date
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 11–192.	Ewing Bank, Block 947, Lease OCS–G 05803, located 68 miles from the nearest Louisiana shoreline.	7/1/2011
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA N–9539.	Mississippi Canyon, Block 431, Lease OCS–G 22877, located 60 miles from the nearest Louisiana shoreline, southeast of Morgan City, Louisiana.	7/1/2011
Shell Offshore Inc., Development Operations Coordination Document, SEA S–7405.	Mississippi Canyon, Block 935, Lease OCS–G 07976, located 61 miles from the nearest Louisiana shoreline, south of Boothville, Louisiana.	7/1/2011

Activity/Operator	Location	Date
Cobalt International Energy, L.P., Exploration Plan, SEA R–5078.	Garden Banks, Block 958, located 160 miles from the nearest Louisiana shoreline, south of Intracoastal City, Louisiana.	7/6/2011
Statoil USA E&P Inc., Exploration Plan, SEA R–5150	Green Canyon, Block 404, located 111 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	7/7/2011
Statoil Gulf of Mexico LLC, Exploration Plan, SEA N–9572	Keathley Canyon, Block 698, Lease OCS–G 22877, located 202 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	7/7/2011
Newfield Exploration Company, Exploration Plan, SEA N–9536	Mississippi Canyon, Block 524, located 76 miles from the nearest Alabama shoreline, south of Mobile, Alabama.	7/7/2011
Eni US Operating Co. Inc., Exploration Plan, SEA N–5089	Walker Ridge, Block 719 & 675, Lease OCS–G 32704 & 32700, respectively, located 193 miles from the nearest Louisiana shoreline, southwest of Port Fourchon, Louisiana.	7/7/2011
Anadarko E&P Company LP, Exploration Plan, SEA N–9566 ..	Walker Ridge, Block 793, located 207 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	7/7/2011
Statoil Gulf of Mexico LLC, Exploration Plan, SEA R–5143	Alaminos Canyon, Block 810, located south of Texas, in the Western Planning Area of the Gulf of Mexico.	7/8/2011
EOG Resources, Inc., Structure Removal, SEA ES/SR 11–197	Eugene Island, Block 135, Lease OCS–G 14467, located 33 miles from the nearest Louisiana shoreline.	7/8/2011
Deep Gulf Energy LP, Development Operations Coordination Document, SEA S–7464.	Garden Banks, Block 605, Lease OCS–G 26664, located in Port Fourchon, Louisiana.	7/8/2011
Repsol E&P USA Inc., Exploration Plan, SEA N–9559	Keathley Canyon, Blocks 642 & 686, Lease OCS–G 33335 & 33341, respectively, located 220 miles from the nearest Louisiana shoreline.	7/8/2011
Petroleum Geo Services, Geological & Geophysical Survey, SEA T11–001.	Located in the Western Planning Area of the Gulf of Mexico ...	7/8/2011
Shell Offshore Inc., Exploration Plan, SEA N–9570	Mississippi Canyon, Block 762, Lease OCS–G 07957, located 50 miles from the nearest Louisiana shoreline, south of Boothville, Louisiana.	7/8/2011
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 11–208 & 11–209.	South Marsh Island, Block 218, Lease OCS–G 00310, located 8 miles from the nearest Louisiana shoreline.	7/8/2011
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 11–212	South Marsh Island, Block 231, Lease OCS–G 00310, located 12 miles from the nearest Louisiana shoreline.	7/8/2011
Apache Deepwater LLC, Exploration Plan, SEA N–9558	South Timbalier, Block 318, located 66 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	7/8/2011
Statoil Gulf of Mexico LLC, Exploration Plan, SEA R–5194	Walker Ridge, Block 969, south of Louisiana in the Central Planning Area of the Gulf of Mexico.	7/12/2011
Pisces Energy LLC, Structure Removal, SEA ES/SR 11–101 ..	Eugene Island, Block 042, Lease OCS–G 04858, located 15 miles from the nearest Louisiana shoreline.	7/13/2011
Magnum Hunter Production, Inc., Structure Removal, SEA ES/SR 11–207.	South Timbalier, Block 265, Lease OCS–G 12980, located 51 miles from the nearest Louisiana shoreline.	7/13/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–215	Main Pass, Block 108, Lease OCS–G 04832, located 44 miles from the nearest Louisiana shoreline.	7/21/2011
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 11–214.	South Marsh Island, Block 253, Lease OCS–G 08690, located 19 miles from the nearest Louisiana shoreline.	7/21/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–241	Eugene Island, Block 196, Lease OCS–G 13821, located 64 miles from the nearest Louisiana shoreline.	7/22/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–244	Eugene Island, Block 204, Lease OCS–G 00804, located 66 miles from the nearest Louisiana shoreline.	7/22/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 10–155	High Island, Block A 371, Lease OCS–G 30035, located 120 miles from the nearest Texas shoreline.	7/22/2011
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 11–210 & 11–211.	South Marsh Island, Block 221, Lease OCS 00310, located 12 miles from the nearest Louisiana shoreline.	7/22/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–247 & 11–248.	Eugene Island, Block 206, Lease OCS–G 00806, located 65 miles from the Louisiana shoreline.	7/26/2011
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 04–001	Mississippi Canyon, Block 63, Lease OCS–G 03206, located 13 miles from the nearest Louisiana shoreline.	7/27/2011
Chevron U.S.A. Inc., Exploration Plan, SEA R–5096	Keathley Canyon, Block 736 located 216 miles from the nearest Louisiana shoreline, southwest of Port Fourchon, Louisiana.	7/29/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–249	Eugene Island, Block 217, Lease OCS–G 00978, located 63 miles from the nearest Louisiana shoreline.	8/1/2011
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 11–252.	High Island, Block A21, Lease RUE OCS–G 30002, located 36 miles from the nearest Texas shoreline.	8/4/2011
SPN Resources, LLC, Structure Removal, SEA ES/SR 11–196	Ship Shoal, Block 253, Lease OCS–G 01031 located 47 miles from the nearest Louisiana shoreline.	8/4/2011
WesternGeco, Geological & Geophysical Survey, SEA L11–008.	Located in the Central Planning Area of the Gulf of Mexico	8/9/2011
WesternGeco, Geological & Geophysical Survey, SEA L11–011.	Located in the Central Planning Area of the Gulf of Mexico	8/9/2011
WesternGeco, Geological & Geophysical Survey, SEA L11–012.	Located in the Central Planning Area of the Gulf of Mexico	8/9/2011
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 11–232	Vermilion, Block 31, Lease OCS–G 02868, located 10 miles from the nearest Louisiana shoreline.	8/9/2011

Activity/Operator	Location	Date
Shell Offshore Inc., Development Operations Coordination Document, SEA R–5144.	Alaminos Canyon, Block 857, located 142 miles from the nearest Texas shoreline, east of Brownsville, Texas.	8/10/2011
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA N–9560.	Mississippi Canyon, Block 300, Leases OCS–G 24064, 22865 & 22868, located 56 miles from the nearest Louisiana shoreline, southeast of Morgan City, Louisiana.	8/11/2011
Petrobras America Inc., Development Operations Coordination Document, SEA S–7461.	Walker Ridge, Block 206, located 165 miles from the nearest Louisiana shoreline, south of Port Fourchon, Louisiana.	8/11/2011
Apache Deepwater LLC, Exploration Plan, SEA R–5166	Green Canyon, Block 861, located 132 miles from the nearest Louisiana shoreline, southwest of Port Fourchon, Louisiana.	8/12/2011
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 11–260 & 11–262.	South Timbalier, Block 027, Lease OCS–G 01443, located 7 miles from the nearest Louisiana shoreline.	8/16/2011
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 11–253, 11–255, 11–256, 11–257, 11–258 & 11–264.	South Timbalier, Block 21, Lease OCS 00263, located 4 miles from the nearest Louisiana shoreline.	8/16/2011
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 11–254 & 11–263.	South Timbalier, Block 21, Lease OCS 00263, located 4 miles from the nearest Louisiana shoreline.	8/16/2011
Energy Partners, Ltd., Structure Removal, SEA ES/SR 11–231	South Timbalier, Block 41, Lease OCS–G 24954, located 13 miles from the nearest Louisiana shoreline.	8/16/2011
Woodside Energy (USA) Inc., Exploration Plan, SEA N–9534 ..	Atwater Valley, Block 187, located 80 miles from the nearest Louisiana shoreline, south of Venice, Louisiana.	8/19/2011
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 06–129.	East Cameron, Block 254, Lease OCS–G 02039, located 74 miles from the nearest Louisiana shoreline.	8/19/2011
Fairways Offshore Exploration, Inc., Structure Removal, SEA ES/SR 11–233.	Galveston, Block 350, Right-Of-Way Lease OCS–G 12366, located 26 miles from the nearest Texas shoreline.	8/19/2011
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 11–091.	High Island, Block A 499, Lease OCS–G 03118, located 100 miles from the nearest Louisiana shoreline.	8/19/2011
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 11–266.	High Island, Block A–22, Lease OCS–G 06180, located 31 miles from the nearest Louisiana shoreline.	8/19/2011
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 11–265.	South Timbalier, Block 265, Lease OCS 00263, located 4 miles from the nearest Louisiana shoreline.	8/19/2011
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 11–259.	South Timbalier, Block 28, Lease OCS–G 01362, located 7 miles from the nearest Louisiana shoreline.	8/19/2011
Shell Offshore Inc., Exploration Plan, SEA R–5177	Walker Ridge, Block 95, located 156 miles from the nearest Louisiana shoreline, south of Amelia, Louisiana.	8/19/2011
Eni US Operating Co. Inc., Exploration Plan, SEA R–5137	Mississippi Canyon, Block 772, located 57 miles from the nearest Louisiana shoreline, southeast of Venice, Louisiana.	8/23/2011
Dynamic Offshore Resources, LLC, Structure Removal, SEA ES/SR 11–171.	West Cameron, Block 499, Lease OCS–G 32786, located 91 miles from the nearest Texas shoreline.	8/25/2011
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9530.	Green Canyon, Block 903, Lease OCS–G 24197, located 136 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	8/26/2011
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 11–092.	Eugene Island, Block 198, Lease OCS 00436, located 48 miles from the nearest Louisiana shoreline.	8/29/2011
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 11–177.	High Island, Block A561, Lease OCS–G 02712, located 83 miles from the nearest Texas shoreline.	8/29/2011
Marathon Oil Company, Exploration Plan, SEA R–5075	Mississippi Canyon, Block 993, Lease OCS–G 24134, located 73 miles from the nearest Louisiana shoreline, south of Boothville, Louisiana.	8/30/2011
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 11–269.	South Timbalier, Block 223, Lease OCS–G 22751, located 44 miles from the nearest Louisiana shoreline.	8/30/2011
BHP Billiton Petroleum (GOM) Inc., Development Operations Coordination Document, SEA S–7463.	Atwater Valley, Blocks 574 & 617, Leases OCS–G08035 & 08037, located 116 miles from the nearest Louisiana shoreline, southwest of Port Fourchon, Louisiana.	8/31/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–246	Eugene Island, Block 205, Lease OCS–G 00805, located 67 miles from the nearest Louisiana shoreline.	8/31/2011
Woodside Energy USA Inc., Exploration Plan, SEA S–7434	Green Canyon, Block 451, located 110 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	9/6/2011
Marathon Oil Company, Exploration Plan, SEA N–9581	Walker Ridge, Block 579, located 190 miles from the nearest Louisiana shoreline, south of Morgan City, Louisiana.	9/7/2011
Tarpon Operating & Development, L.L.C., Well Conductor Removal, SEA APM EI322–007.	Eugene Island, Block 322, Lease OCS–G 02113, located 59 miles from the nearest Louisiana shoreline.	9/9/2011
Tarpon Operating & Development, L.L.C., Well Conductor Removal, SEA APM HIA273, A336 & A343.	High Island, Block A273, A336 & A343, Lease OCS–G 21359, G 25604 & G21359, located 90, 100 & 105 miles, respectively, from the nearest Texas shoreline.	9/9/2011
Rooster Petroleum, LLC, Structure Removal, SEA ES/SR 11–228.	East Cameron, Block 129, Lease OCS–G 14364, located 33 miles from the nearest Louisiana shoreline.	9/12/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–251	Eugene Island, Block 219, Lease OCS–G 00808, located 67 miles from the nearest Louisiana shoreline.	9/12/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–250	Eugene Island, Block 218, Lease OCS 00807, located 57 miles from the nearest Louisiana shoreline.	9/15/2011
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 11–203A.	Matagorda Island, Block A5, Lease OCS–G 22188, located 53 miles from the nearest Texas shoreline.	9/15/2011
Global Geophysical Services, Inc., Geological & Geophysical Survey, SEA L10–048.	Located in the Central Planning Area of the Gulf of Mexico	9/16/2011

Activity/Operator	Location	Date
TGS–NOPEC Geophysical Company, Geological & Geophysical Survey, SEA L11–007.	Located in the Central Planning Area of the Gulf of Mexico	9/16/2011
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 11–213.	Mustang Island, Block 868, Right-Of-Way Lease OCS–G 15699, located 23 miles from the nearest Texas shoreline.	9/16/2011
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA R–5139.	Mississippi Canyon, Block 503, located 38 miles from the nearest Louisiana shoreline, southeast of Port Fourchon, Louisiana.	9/20/2011
Apache Corporation, Structure Removal, SEA ES/SR 11–271	High Island, Block 196, Lease RUE G 22040, located 25 miles from the nearest Louisiana shoreline.	9/21/2011
Statoil USA E&P Inc., Exploration Plan, SEA R–5247	Located south of Louisiana in the Central Planning Area of the Gulf of Mexico.	9/21/2011
Black Elk Energy Offshore Operations, LLC, Structure Removal, SEA ES/SR 10–154A.	High Island, Block 140, Lease OCS 00518, located 20 miles from the nearest Texas shoreline.	9/22/2011
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 03–133A & 11–274.	Main Pass, Block 100, Lease OCS–G 04910, located 32 miles from the nearest Louisiana shoreline.	9/22/2011
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 11–272 & 11–273.	South Marsh Island, Block 49, Lease OCS–G 00787, located 45 miles from the nearest Louisiana shoreline.	9/22/2011
Shell Offshore, Inc., Geological & Geophysical Survey, SEA L11–014.	Located in the Central Planning Area of the Gulf of Mexico	9/23/2011
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 11–275 & 11–276.	West Cameron, Block 368, Lease OCS–G 05315, located 60 miles from the nearest Louisiana shoreline.	9/23/2011
Energy Partners, Ltd., Structure Removal, SEA ES/SR 11–230 & 11–236.	South Pass, Block 28, Lease OCS 00353 & 00694, located 4–5 miles from the nearest Louisiana shoreline.	9/26/2011
Shell Offshore Inc., Exploration Plan, SEA S–7480	Located in the Central Planning Area of the Gulf of Mexico	9/27/2011
Statoil Gulf of Mexico LLC, Exploration Plan, SEA R–5272	Keathley Canyon, Block 698, Lease OCS–G 33343, located 218 miles from the nearest Louisiana shoreline.	9/28/2011
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–245	Eugene Island, Block 205, Lease OCS–G 00805, located 67 miles from the nearest Louisiana shoreline.	9/30/2011
Carteret County Shore Protection Office North Carolina, Geological & Geophysical Survey, SEA E11–003.	Located Beaufort Inlet, Blocks 6375 & 6376, 4 miles from the nearest North Carolina shoreline, on the Atlantic Outer Continental Shelf.	9/30/2011
Shell Offshore Inc., Exploration Plan, SEA R–5275	Located in the Central Gulf of Mexico, 50 miles south of the nearest shoreline, south of Venice, Louisiana.	9/30/2011
Shell Offshore Inc., Exploration Plan, SEA R–5307	Located in the Central Gulf of Mexico, 50 miles south of the nearest shoreline, south of Venice, Louisiana.	9/30/2011
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 10–005A.	South Marsh Island, Block 11, Lease OCS–G 01182, located 35 miles from the nearest Louisiana shoreline.	9/30/2011
Energy Partners, Ltd., Structure Removal, SEA ES/SR 11–293	South Pass, Block 28, Lease OCS 00694, located 4 miles from the nearest Louisiana shoreline.	9/30/2011
Mariner Energy, Inc., Structure Removal, SEA ES/SR 11–261	West Cameron, Block 333, Lease OCS–G 24733, located 38 miles from the nearest Louisiana shoreline.	9/30/2011

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEM at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: November 3, 2011.

John Rodi,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2012–49 Filed 1–5–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Preliminary)]

Utility Scale Wind Towers From China and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–486 and 731–TA–1195–1196 (Preliminary) under section 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Vietnam of utility scale wind towers, provided for in subheading 7308.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by February 13, 2012. The Commission's views are due at Commerce within five business days thereafter, or by February 21, 2012.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* December 29, 2011.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202) 205–3174, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on December 29, 2011, by Broadwind Towers, Inc., Manitowoc, WI; DMI Industries, Fargo, ND; Katana Summit LLC, Columbus, NE; and Trinity Structural Towers, Inc., Dallas, TX.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 19, 2012, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (*William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov*) on or before January 17, 2012. Parties in support of the imposition of antidumping and/or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 24, 2012, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 29, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–15 Filed 1–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Preliminary)]

Steel Wire Garment Hangers From Taiwan and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–487 and 731–TA–1197–1198 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan and Vietnam of steel wire garment hangers, provided for in subheading 7326.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Vietnam. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 13, 2012. The Commission's views are due at Commerce within five business days thereafter, or by February 21, 2012.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* December 29, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202) 205–3188) or Stefania Pozzi Porter (202) 205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on December 29, 2011, by M&B Metal Products Company, Inc., Leeds, AL; Innovation Fabrication LLC/Indy Hanger, Indianapolis, IN; and US Hanger Company, LLC, Gardena, CA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 20, 2012, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (*William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov*) on or before January 18, 2012. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 25, 2012, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 30, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–17 Filed 1–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–784]

Certain Light-Emitting Diodes and Products Containing the Same; Determination Not To Review Initial Determination Concerning Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) of the presiding administrative law judge (''ALJ'') granting in part and denying in part complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3106. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on July 11, 2011, based on two complaints filed by OSRAM GmbH of Munich, Germany (''OSRAM''), alleging, *inter alia,* a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain light-emitting diodes and products containing same by

reason of infringement of certain claims of U.S. Patent Nos. 6,849,881 (''the '881 patent''); 6,975,011; 7,106,090 (''the '090 patent''); 7,151,283; and 7,271,425. 76 FR 40746 (Jul. 11, 2011). The respondents are LG Electronics, Inc. of Seoul, South Korea; LG Innotek Co., Ltd. of Seoul, South Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Innotek U.S.A., Inc. of San Diego, California (collectively, ''LG''). *Id.*

Complainant OSRAM moved to amend the complaint and notice of investigation to withdraw all allegations with respect to the '881 and '090 patents, and to add allegations of a violation of Section 337 by all respondents as to claims 1, 3, 5, 6, 7, 9–12, 15–17, 20, 22, 24, 25, 27, 28, 30, and 33–35 of U.S. Patent No. 7,341,925 (''the '925 patent''). Respondent LG filed a response supporting the withdrawal of allegations with respect to the '881 and '090 patents, and opposing OSRAM's request to add allegations with respect to the '925 patent.

On December 8, 2011, the presiding ALJ issued an ID (Order No. 9). The ALJ granted OSRAM's motion in part to the extent that it sought termination of the '881 patent and the '090 patent from the investigation, and denied the portion of OSRAM's motion that sought to add the '925 patent to this investigation. No party petitioned for review. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h).

By order of the Commission.

Issued: December 30, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–13 Filed 1–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–738]

Certain Components for Installation of Marine Autopilots With GPS or IMU; Termination of Investigation on the Basis of Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (''ID'') (Order No. 26) granting a joint motion to terminate the investigation as to the last remaining respondents on the basis of a settlement agreement, and terminating the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 28, 2010, based on a complaint filed by American GNC of Simi Valley, California (''AGNC''), alleging a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain components for installation of marine autopilots with GPS or IMU (*i.e.,* devices for pointing and stabilizing marine navigation equipment) by reason of infringement of certain claims of U.S. Patent No. 6,596,976. The complaint named eight respondents: Furuno Electronics Co. of Nishinomiya City, Japan and Furuno U.S.A. Inc. of Camas, Washington (collectively ''Furuno''); Navico Holdings AS of Lysaker, Norway, Navico UK, Ltd. of Romsey Hampshire, United Kingdom, and Navico, Inc. of Nashua, New Hampshire (collectively ''Navico''); and Raymarine UK Ltd. of Portsmouth, Hampshire, United Kingdom; Raymarine Inc. of Merrimack, New Hampshire; and FLIR Systems, Inc. of Wilsonville, Oregon (collectively ''Raymarine'').

On June 8, 2011, the Commission determined not to review the ALJ's IDs terminating the investigation as to Furuno and Raymarine on the basis of settlement agreements.

On November 28, 2011, AGNC and Navico jointly moved to terminate the investigation as to the Navico respondents on the basis of a settlement agreement. The Commission investigative attorney supported the motion. On December 6, 2011, the ALJ granted the motion. Order No. 26. Because the Navico parties are the last remaining respondents, termination against Navico results in termination of the investigation.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

By order of the Commission.

Issued: December 30, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–14 Filed 1–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–795]

Certain Video Analytics Software, Systems, Components Thereof, and Products Containing Same; Determination Not To Review an Initial Determination Granting Motion To Amend Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 16) of the presiding administrative law judge (''ALJ'') granting complainant's motion to amend complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3106. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2011, based on a complaint filed by ObjectVideo, Inc. of Reston, Virginia. 76 FR 45859 (Aug. 1, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video analytics software, systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,696,945; 6,970,083; 7,613,324; 7,424,175; 7,868,912; and 7,932,923. The complaint names Robert Bosch GmbH of Stuttgart, Germany; Bosch Security Systems, Inc. of Fairpoint, New York; Samsung Techwin Co., Ltd. of Seoul, Korea; Samsung Opto-Electronics America, Inc. (d/b/a Samsung Techwin America, Inc.) of Ridgefield Park, New Jersey; Sony Corporation of Tokyo, Japan; and Sony Electronics, Inc., of San Diego, California as respondents.

On December 6, 2011, the ALJ issued an ID (Order No. 16) granting complainant's motion to amend complaint and notice of investigation to add Bosch Sicherheitssysteme GmbH of Grasbrunn, Germany; Bosch Security Systems B.V. of Eindhoven, The Netherlands; Bosch Sicherheitssysteme Engineering GmbH of Nurnberg, Germany; Bosch Security Systems—Sistemas de Seguranca, S.A. of Ovar, Portugal; Bosch (Zhuhai) Security Systems, Co., Ltd. of Zhuhai, China; and Extreme CCTV, Inc. of Burnaby, Canada as respondents. No party petitioned for review of the ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h).

By order of the Commission.

Issued: December 30, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–16 Filed 1–5–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Water Act

Notice is hereby given that on December 29, 2011, a proposed Consent Decree in *United States and State of Indiana* v. *City of South Bend, Indiana,* Civil Action No. 3:11CV505 was lodged with the United States District Court for the Northern District of Indiana.

In this case, the United States and the State of Indiana (Indiana) seek civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* Title 13 of the Indiana Code, Title 327 of the Indiana Administrative Code, and certain terms and conditions of National Pollution Discharge Elimination System permits that Indiana issued to the City of South Bend (South Bend) for the relevant time periods, related to alleged discharges of untreated sewage from South Bend's combined sewer collection system, i.e. ''combined sewer overflows,'' during wet weather events, and some dry weather time periods, into ''waters of the United States'' and ''waters of the state.''

The proposed Consent Decree would require South Bend to reduce its combined sewer overflows by comprehensively upgrading and expanding its sewage collection, storage, conveyance, and treatment system, at a cost of approximately $509.5 million in 2007 dollars. South Bend must complete these improvements by December 31, 2031 or, if South Bend demonstrates financial hardship, by December 31, 2036. Additionally, the proposed Decree requires South Bend to pay a total civil penalty of $88,200 split equally between the United States and the State of Indiana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Indiana* v. *City of South Bend, Indiana,* No. 3:11–CV–505 (N.D. Ind.), D.J. Ref. 90–5–1–1–08182.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, IN 46320 (contact Assistant United States Attorney Wayne Ault (219) 937–5650)), and at the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Associate Regional Counsel Gary Prichard (312) 886–0570)).

During the public comment period, the proposed Consent Decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $21.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–41 Filed 1–5–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1578]

Request for Proposals for Certification and Testing Expertise for the Ballistic Resistance of Personal Body Armor (2008) Standard

AGENCY: National Institute of Justice, Department of Justice.

ACTION: Request for Proposals for Certification and Testing Expertise.

SUMMARY: The National Institute of Justice (NIJ) is in the process of revising its *Ballistic Resistance of Personal Body Armor* (2008) Standard and corresponding certification program requirements. This work will be performed by a Special Technical Committee (STC), comprised of practitioners from the field, researchers, testing experts, certification experts, and representatives from stakeholder organizations. It is anticipated that the

STC members will participate in up to fifteen 2-day meetings over an 18-month time period with the goal of completing development of the standard and certification program requirements.

It is anticipated that STC meetings will begin in March 2012. Travel expenses and per diem will be reimbursed for all STC meetings; however, participation time will not be funded. NIJ is seeking representatives from (1) certification bodies and (2) test laboratories with experience in programs for similar types of ballistic-resistant personal protective equipment. Additional preferred knowledge includes experience with law enforcement and corrections operations. There are up to four positions to be filled on the STC, and NIJ will accept the first 20 submissions for peer review. Interested parties should nominate individuals from their organizations and submit an application describing the nominee's relevant experience, preferred knowledge, and affiliations with standards development organizations. To be considered, there must not be any conflict of interest in which the proposed STC member has a direct financial relationship with manufacturers of ballistic-resistant armor.

Debra Stoe is the NIJ Program Manager responsible for this work, and Casandra Robinson is the point of contact for Ms. Stoe. Interested parties must contact Casandra Robinson at *casandra.robinson@usdoj.gov* to request further information on what must be submitted. Any submissions must be emailed to Casandra Robinson by January 20, 2012. The submissions will be peer reviewed, and selected participants will be notified regarding the results of the peer review by February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Casandra Robinson by telephone at (202) 305–2596 [**Note:** this is not a toll-free telephone number] or by email at *casandra.robinson@usdoj.gov*.

DATES: Any submissions must be emailed to Casandra Robinson by January 20, 2012. The submissions will be peer reviewed, and selected participants will be notified regarding the results of the peer review by February 6, 2012.

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2012–66 Filed 1–5–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before February 6, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov*. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* (202) 693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at (202) 693–9447 (Voice), *barron.barbara@dol.gov* (email), or (202) 693–9441 (facsimile). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–040–C.

Petitioner: D & F Deep Mine, 15 Motter Drive, Pine Grove, Pennsylvania 17963.

Mine: Buck Drift #2 Mine, MSHA I.D. No. 36–09963, 15 Motter Drive, Pine Grove, Pennsylvania 17963, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10-quart pails is not practical. The petitioner states that:

(1) Equipping its small anthracite mine with two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face will provide equivalent fire protection.

(2) Anthracite coal is low in volatile matter and dust is not explosive.

(3) The working section is at or below mine pool elevation with frequent pumping required to de-water the work area.

(4) All up-pitch workings of moderate to steep pitch are accessed only through ladders making the carrying of water in pails impractical.

(5) Electric face equipment is nonexistent in this hand-loading anthracite mine and only air-operated equipment is used in or in by the last open crosscut.

(6) The history of underground anthracite mines shows that fires occurring in the working faces are

nonexistent in recent years due to improved explosives and low volatile matter in anthracite coal.

(7) This anthracite mine produces far less than the 300 ton per shift criteria using the hand-loading method.

(8) Belt conveyor haulage is not used in this underground mine for section/main haulage minimizing fire potential. The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2011–041–C.

Petitioner: D & F Deep Mine, 15 Motter Drive, Pine Grove, Pennsylvania 17963.

Mine: Buck Drift #2 Mine, MSHA I.D. No. 36–09963, 15 Motter Drive, Pine Grove, Pennsylvania 17963, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine map).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections on mine maps in lieu of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope. In addition, the petitioner proposes to limit the required mapping of mine workings above and below to those present within 100 feet of the vein(s) being mined unless the veins are interconnected through rock tunnels to other veins beyond the 100-foot limit. The petitioner states that:

(1) Due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible.

(2) The use of cross-sections in lieu of contour lines has been practiced since the late 1800s and provides critical information about spacing between veins and proximity to other mine workings, which fluctuate considerably.

(3) The vast majority of current underground anthracite mining involves either second mining of remnant pillars from previous mining/mine operators or the mining of veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings that may or may not be mapped.

(4) All mapping for mines above and below is researched by the petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the Petitioner's mine, and a hazard analysis is done when mapping indicates the presence of known or potentially flooded workings.

(5) When no rock tunnel connections are found, mine workings that exist beyond 100 feet from the mine are recognized as presenting no hazard to the mine due to the pitch of the vein and rock separation.

(6) Additionally, the mine workings above and below are usually inactive and abandoned and, therefore, are not usually subject to changes during the life of the mine.

(7) Where evidence indicates prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered mined and flooded and appropriate precautions will be taken through § 75.388, which addresses drilling boreholes in advance of mining, where possible.

(8) Where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes may be used to intercept the workings and the results analyzed prior to beginning mining in the affected area.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2011–042–C.

Petitioner: D & F Deep Mine, 15 Motter Drive, Pine Grove, Pennsylvania 17963.

Mine: Buck Drift #2 Mine, MSHA I.D. No. 36–09963, 15 Motter Drive, Pine Grove, Pennsylvania 17963, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202 and 1202–1(a) (Temporary notations, revisions and requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the interval of survey to be established on an annual basis from the initial survey in lieu of every 6 months as required. The petitioner proposes to continue to update the mine map by hand notations on a daily basis and conduct subsequent surveys prior to commencing retreat mining, and whenever either a drilling program under § 75.388 or plan for mining into accessible areas under § 75.389 is required. The petitioner states that:

(1) The low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. In most cases annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development.

(2) The vast majority of small anthracite mines is non-mechanized and use hand-loading mining methods.

(3) Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways.

(4) The available engineering/surveyor resources are very limited in the anthracite coal fields and surveying on an annual basis is difficult to achieve, with four individual contractors currently available.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2011–043–C.

Petitioner: D & F Deep Mine, 15 Motter Drive, Pine Grove, Pennsylvania 17963.

Mine: Buck Drift #2 Mine, MSHA I.D. No 36–09963, 15 Motter Drive, Pine Grove, Pennsylvania 17963, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner requests a modification of the existing standard for cages, platforms or other devices used to transport persons in shafts or slopes in underground coal mines. The petitioner seeks to permit the use of a slope conveyance (gunboat) to transport persons without installing safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner states that:

(1) The haulage slope of this anthracite mine is typical of those in the anthracite region, with a relatively high angle and frequently changing pitches.

(2) A functional safety catch capable of working in slopes with knuckles and curves is not commercially available. A makeshift device would be activated on or by knuckles or curves when no emergency exists. Activation of a safety catch can or will damage the haulage system and subject persons being transported to hazards from dislodged timbering, roof material, or guide rails, and to being battered about within the conveyance.

(3) A safer alternative is to provide secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main termination and use a hoisting rope having a safety factor greater than that recommended in the American Standards Specifications for the Use of Wire Rope in Mines or at least three times greater than the strength required under section § 75.1431(a).

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Dated: December 30, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–33860 Filed 1–05–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before February 6, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* (202) 693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at (202) 693–9447 (Voice), *barron.barbara@dol.gov* (Email), or (202) 693–9441 (Facsimile). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Numbers: M–2011–038–C and M–2011–039–C.

Petitioner: Midland Trail Energy, LLC, 42 Rensford Star Route, Charleston, West Virginia 25306.

Mines: Campbells Creek No. 7 Mine, MSHA I.D. No. 46–09107, and Blue Creek No. 1 Mine, MSHA I.D. No. 46–09297, 3301 Point Lick Road, Charleston, West Virginia 25306, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 900-feet-maximum length cables to supply power to its shuttle cars, roof bolters, and mobile roof supports at the Campbells Creek No. 7 Mine and Blue Creek No. 1 Mine. The petitioner states that:

(1) The maximum length trailing cables supplying the 575-volt shuttle cars, 480-volt roof bolters, and 480-volt mobile roof supports will not exceed 900 feet.

(2) The trailing cable(s) for the shuttle car(s) and the roof bolter(s) will not be smaller than No. 2 American Wire Gauge (AWG), and the trailing cable(s) for mobile roof support(s) will not be smaller than No. 4 AWG.

(3) All circuit breakers used to protect the No. 2 AWG trailing cables that exceed 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes. The trip setting of these circuit breakers will be sealed and will have permanent, legible labels. The labels will identify the circuit breaker as being a specially calibrated circuit breaker suitable for protecting No. 2 AWG cables. This label will be maintained legible.

(4) All circuit breakers used to protect No. 4 AWG trailing cables that exceed 600 feet in length will have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers will be sealed and will have permanent, legible labels. The labels will identify the circuit breakers as being a specially calibrated circuit breaker and suitable for protecting No. 4 AWG cables. This label will be maintained legible.

(5) All components that provide short circuit protection for the No. 4 AWG and No. 2 AWG cables will have an interruption rating in accordance with the maximum available fault current. A short-circuit study, available as part of the petition, indicates the maximum fault current available on the coal producing section. Circuit breakers of sufficient interrupting rating will be provided in accordance with the study.

(6) Replacement circuit breakers and/or instantaneous trip units used to protect No. 2 AWG cables will be calibrated to trip at 800 amperes. This setting will be sealed.

(7) Replacement circuit breakers and/or instantaneous trip units used to protect No. 4 AWG cables will be calibrated to trip at 500 amperes. This setting will be sealed.

(8) Any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced.

(9) Each splice or repair in the trailing cable to the shuttle cars, roof bolters, and mobile roof supports will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The outer jacket of each splice or repair will be sealed or made with material that has been accepted by MSHA as flame-resistant.

(10) If the mining methods or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced, and additional precautions will be taken to ensure that in the future the cable is protected and maintained in safe operating condition.

(11) Permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed short-circuit

protection device. These labels will warn miners not to change or alter the sealed short-circuit settings.

(12) The haulage roads, locations of trailing cable anchoring points, and locations of the belt tailpiece or feeder will be arranged to:

(a) Prevent the shuttle cars from running over their trailing cables.

(b) Minimize the need for secondary (temporary) trailing cable anchoring points.

(c) Minimize back spooling.

(13) The alternative method will not be implemented until all miners designated to examine the integrity of the seals and verify the short-circuit settings have received task training in the proper procedures for examining trailing cables for defects and damage.

(14) Within 60 days after this proposed decision and order becomes final, the proposed revisions for the petitioner's approved 30 CFR part 48 training plan will be submitted to the District Manager. The revisions will specify task training for miners designated to verify that the short-circuit settings of the circuit interrupting device(s) that protect the affected trailing cables do not exceed the specified setting(s). The training plan will include the following:

(a) The hazards of setting the short-circuit interrupting device(s) too high to adequately protect the trailing cables.

(b) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

(c) Mining methods and operating procedures that will protect the trailing cable(s) against mechanical damage.

(d) Proper procedures for examining the affected trailing cable(s) to ensure that the cables are in safe operating condition.

The petitioner further states that procedures specified in 30 CFR 48.3 for proposed revisions to already approved training plans will apply.

The petitioner asserts that the alternative method will provide at all times a measure of protection for the miners equal to or greater than that of the existing standard.

Dated: December 30, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–33861 Filed 1–5–12; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389; NRC–2011–0302]

Draft Environmental Assessment and Draft Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level: Florida Power & Light Company, St. Lucie Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; opportunity to comment.

DATES: Comments must be filed by February 6, 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 and/or Safeguards Information is necessary to respond to this notice must request document access by January 17, 2012.

ADDRESSES: Please include Docket ID NRC–2011–0302 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–2011–0302. 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, 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.* The application for amendment, dated November 22, 2010, contains proprietary information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment, dated December 15, 2010, is available electronically under ADAMS Accession No. ML103560415.
- *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–2011–0302.

FOR FURTHER INFORMATION CONTACT: Tracy Orf, Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–2788; Fax number: (301) 415–1222; email: *Tracy.Orf@nrc.gov.*

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Renewed Facility Operating License Nos. DPR–67 and NPF–16, issued to Florida Power & Light Company (FPL, the licensee) for operation of St. Lucie Plant, Units 1 and

2 (St. Lucie 1 and 2), for a license amendment to increase the maximum thermal power from 2,700 megawatts thermal (MWt) to 3,020 MWt for each unit. In accordance with 10 CFR Section 51.21, the NRC has prepared this draft Environment Assessment (EA) and draft Finding of No Significant Impact (FONSI) for the proposed action. This represents a power increase of 11.85 percent over the current licensed thermal power. In 1981, FPL received approval from the NRC to increase its power by 5.47 percent to the current power level of 2,700 MWt.

The NRC staff did not identify any significant environmental impact associated with the proposed action based on its evaluation of the information provided in the licensee's application and other available information. The draft EA and draft FONSI are being published in the **Federal Register** with a 30-day public comment period ending February 6, 2012.

II. Environmental Assessment

Plant Site and Environs: St. Lucie Nuclear Plant consists of approximately 1,130 acres (457 hectares) in Sections 16 and 17, Township 36 South, Range 41 East on Hutchinson Island in unincorporated St. Lucie County, Florida. The St. Lucie Nuclear Plant is located between the Atlantic Ocean to the east and a tidally influenced estuary, the Indian River Lagoon, to the west. The plant is located on Hutchinson Island between Big Mud Creek to the north and Indian River to the south on an area previously degraded through flooding, drainage, and channelization for mosquito control projects. The nearest towns from the plant site on the Atlantic coast are Port St. Lucie, approximately 2.5 miles (mi) (4 kilometers (km)) southwest, and Fort Pierce, approximately 4 mi (6.4 km) northwest of the plant. The St. Lucie Nuclear Plant has two light-water reactors (Units 1 and 2), each designed by Combustion Engineering for a net electrical power output of 839 megawatts electric. FPL fully owns St. Lucie Unit 1 and has operated it since March 1, 1976. FPL also solely operates St. Lucie Unit 2, which began operations on April 6, 1983, and is co-owned by FPL, Orlando Utilities Commission, and Florida Municipal Power Agency.

The St. Lucie Nuclear Plant withdraws cooling water from the Atlantic Ocean through three offshore cooling water intakes with velocity caps. The ocean water is drawn through buried pipes into the plant's L-shaped intake canal to the eight intake pumps that circulate the non-contact cooling water through the plant. Two mesh barrier nets, one net of 5-inches (in) (12.7-centimeters (cm)) mesh size and the other of 8-in (20.3-cm) mesh size, and one rigid barrier located sequentially in the intake canal reduce the potential loss of large marine organisms, mostly sea turtles. Water passes through a trash rack made of 7.6 cm (3 in) spaced vertical bars and a 1-cm (3/8-in) mesh size traveling screen, against which marine organisms that have passed through the nets are impinged, and into eight separate intake wells (four per unit) where it is pumped to a circulating-water system and an auxiliary cooling water system at each unit. The majority of the water goes to a once-through circulating-water system to cool the main plant condensers. The system has a nominal total capacity of 968,000 gallons per minute (gpm) (61,070 liters per second (L/s)). The auxiliary cooling water systems for St. Lucie Units 1 and 2 are also once-through cooling systems, but use much less water [up to 58,000 gpm (3,660 L/s)] than the circulating-water systems. Marine life that passes through the screens becomes entrained in the water that passes through the plant and is subject to thermal and mechanical stresses. The plant is also equipped with an emergency cooling water intake canal on the west side that can withdraw Indian River Lagoon water through Big Mud Creek, but this pathway is closed during normal plant operation.

The heated water from the cooling water systems flows to a discharge canal and then through two offshore discharge pipes beneath the beach and dune system back to the Atlantic Ocean. One 12-foot (ft) (3.6-meter (m))-diameter discharge pipe extends approximately 1,500 ft (457 m) offshore and terminates in a two-port ''Y'' diffuser. A second 16-ft (4.9-m)-diameter discharge pipe extends about 3,400 ft (1,040 m) from the shoreline and terminates with a multiport diffuser. This second pipe has fifty-eight 16-in (41-cm)-diameter ports spaced 24 ft (7.3 m) apart along the last 1,400 ft (430 m) of pipe farthest offshore. The discharge of heated water through the diffusers on the discharge pipes ensures distribution over a wide area and rapid and efficient mixing with ocean water.

Background Information on the Proposed Action

By application dated November 22, 2010 (Unit 1), and February 25, 2011 (Unit 2), the licensee requested an amendment for an extended power uprate (EPU) for St. Lucie Nuclear Plant to increase the licensed thermal power level from 2,700 MWt to 3,020 MWt for each unit, which represents an increase of 11.85 percent above the current licensed thermal power. This proposed change in core thermal level requires an NRC federal action to consider amending the facility's operating license prior to the licensee implementing the EPU. The NRC considers the proposed action an EPU because it exceeds the typical 7-percent power increase that can be accommodated with only minor plant changes. EPUs typically involve extensive modifications to the nuclear steam supply system contained within the plant buildings.

Although not part of the NRC federal action, changes from the current operations at St. Lucie Nuclear Plant would occur if the NRC approves the EPU. FPL plans to make the physical changes to the non-nuclear plant components that are needed in order to implement the proposed EPU. The modifications are scheduled to be implemented for Unit 1 during the fall 2011 outage starting in November 2011 and are expected to be completed by the spring of 2012. Unit 2 modifications are scheduled to be implemented during the summer 2012 outage starting in June 2012 and are expected to be completed by the fall of 2012. The outage durations for both units are expected to be longer than for a routine 35-day outage. The actual power uprate, if approved by the NRC, constitutes a 12 percent power uprate and includes an additional 1.7 percent measurement uncertainty recapture for each unit. As part of the proposed EPU project, FPL would release heated water with a proposed temperature increase of 2 degrees Fahrenheit (°F) (1.1 degrees Celsius (°C)) above the current discharge temperature through the discharge structures into the Atlantic Ocean.

Approximately 800 people are currently employed at St. Lucie Units 1 and 2 on a full-time basis. FPL estimates this workforce will be augmented by an additional 1,000 construction workers on average per outage during the proposed EPU-related activities with a potential peak of 1,400 additional construction workers. The increase of workers would be larger than the number of workers required for a routine outage; however, the peak construction workforce would be smaller than the FPL reported peak workforce for previous outages involving replacement of major components.

The Need for the Proposed Action

FPL states in its environmental report that the proposed action is intended to provide an additional supply of electric

generation in the State of Florida without the need to site and construct new facilities, or to impose new sources of air or water discharges to the environment. FPL has determined that increasing the electrical output of St. Lucie 1 and 2 is the most cost-effective option to meet the demand for electrical energy while enhancing fuel diversity and minimizing environmental impacts, including the avoidance of greenhouse gas emissions.

Environmental Impacts of the Proposed Action

As part of the licensing process for St. Lucie Units 1 and 2, the U.S. Atomic Energy Commission published a Final Environmental Statement (FES) in 1973 for Unit 1, and the NRC published an FES in 1982 for Unit 2 (NUREG–0842). In the two FESs, the NRC staff considered the best data available to the NRC at the time to predict the environmental impacts that could result from the operation of St. Lucie Units 1 and 2 over their licensed lifetimes. In addition, the NRC published an Environmental Impact Statement (EIS) in May 2003 associated with the license renewal for St. Lucie Units 1 and 2. The 2003 EIS evaluated the environmental impacts of operating the St. Lucie Nuclear Plant for an additional 20 years beyond its then-current operating license, extending the operational life of Unit 1 until 2036 and Unit 2 until 2043. The NRC determined that the environmental impacts of license renewal would be small. The NRC staff's evaluation is contained in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 11, Regarding St. Lucie Units 1 and 2'' (Supplemental EIS–11 (SEIS–11)) [Agencywide Documents Access and Management System (ADAMS) Accession No. ML031360705]. The NRC staff used information from FPL's license amendment request (LAR) (ADAMS Accession No. ML103560419) and SEIS–11 to perform this EA for the proposed EPU.

FPL's application states that it would implement the proposed EPU without extensive changes to buildings or to other plant areas outside of buildings. FPL proposes to perform all necessary physical plant modifications in existing buildings at St. Lucie Units 1 and 2 or along the existing electrical transmission line right of way (ROW). With the exception of the high-pressure turbine rotor replacement, the required plant modifications would be generally small in scope. Other plant modifications would include installing a new digital turbine control system; providing additional cooling for some plant systems; modifying feedwater and condensate systems; accommodating greater steam and condensate flow rates; adjusting the current onsite power system to compensate for increases in electrical loading; and upgrading instrumentation to include minor items such as replacing parts, changing setpoints, and modifying software.

FPL would use a vehicle and helicopter for transmission line modifications proposed along the existing overhead electrical transmission line ROW. The vehicle would transport personnel and a spool of overhead wire as a helicopter holds and moves the wire into place for the stringing activities. Although the modifications are part of the proposed EPU, this type and extent of activity along the ROW is included in existing maintenance permits and licenses.

Nonradiological Impacts

Land Use and Aesthetic Impacts

Potential land use and aesthetic impacts from the proposed EPU include proposed plant modifications at St. Lucie Nuclear Plant. While FPL proposes some plant modifications, most plant changes related to the proposed EPU would occur within existing structures, with the exception of modifications along the electrical transmission line ROW. As described in the licensee's application, the proposed electrical transmission modifications would include the addition of subconductor spacers, an overhead wire, and replacement of relay protection electronics. The overhead wire would function as a ground for relay protection of the transmission lines. FPL would install these transmission line modifications via helicopter. The only land use activity FPL expects to occur on the ground along the ROW would be the periodic need to park a truck or trailer containing a spool of wire that would be strung but would not extend outside of the existing ROW area. The NRC expects little or no observable change in the appearance of the transmission lines as a result of the electrical transmission line modifications. Maintenance of the electrical transmission line ROW (tree trimming, mowing, and herbicide application) would continue after EPU implementation. The NRC does not expect land use or aesthetic changes for the proposed EPU along the transmission line ROW.

No new construction would occur outside of existing plant areas, and no expansion of buildings, roads, parking lots, equipment lay-down areas, or storage areas are required to support the proposed EPU. FPL would use existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms during plant modifications. Therefore, land use conditions and visual aesthetics would not change significantly at St. Lucie Nuclear Plant, and the NRC expects no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of St. Lucie Nuclear Plant.

Air Quality Impacts

Because of its coastal location, meteorological conditions conducive to high air pollution are infrequent at the St. Lucie Nuclear Plant. The plant is located within the South Florida Intrastate Air Quality Control Region. In addition, the Central Florida Intrastate Air Quality Control Region and the Southwest Florida Intrastate Air Quality Control Region are within 50 mi (80.5 km) of the St. Lucie Nuclear Plant. These regions are designated as being in attainment or unclassifiable for all criteria pollutants in the U.S. Environmental Protection Agency's (EPA) 40 CFR 81.310.

Diesel generators, boilers, and other activities and facilities associated with St. Lucie Units 1 and 2 emit pollutants. The Florida Department of Environmental Protection (FDEP) regulates emissions from these sources under Air Permit 1110071–006–AF. The FDEP reported no violations at the St. Lucie Nuclear Plant in the last 5 years. The NRC expects no changes to the emissions from these sources because of the EPU.

During EPU implementation, some minor and short duration air quality impacts would occur from other non-regulated sources. Vehicles of the additional outage workers needed for EPU implementation would generate the majority of air emissions during the proposed EPU-related modifications. FPL plans to complete the construction activities associated with the EPU, if approved by the NRC, by the spring of 2012 for Unit 1 and by the fall of 2012 for Unit 2. The outage durations for both units are expected to be longer than for a routine 35-day outage. The NRC expects air emissions from the EPU workforce, truck deliveries, and construction/modification activities would not be significantly greater than previous modification activities or refueling outages at the St. Lucie Nuclear Plant. In addition, FPL would perform the majority of the EPU work inside existing buildings and would not result in changes to outside air quality. The NRC expects no significant impacts

to regional air quality from the proposed EPU beyond those air impacts evaluated for SEIS–11 including potential minor and temporary impacts from worker activity.

Water Use Impacts

Groundwater

FPL has approval from the City of Fort Pierce and the Fort Pierce Utilities Authority to use freshwater for potable and sanitary purposes. Although this freshwater comes from groundwater sources pumped from the mainland, St. Lucie Nuclear Plant does not use groundwater in any of its cooling systems and has no plans for groundwater use as part of plant operations in the future. The plant currently uses approximately 131,500 gallons (498 m^3) of freshwater per day and uses seawater from the Atlantic Ocean for noncontact cooling water. No production wells are present on the plant site for either domestic-type water uses or industrial use. FPL does not discharge to groundwater at the plant site or on the mainland, and the plant's industrial wastewater facility permit (IWFP) does not apply to groundwater.

Under the EPU, FPL does not expect to significantly change the amount of freshwater use or supply source. With an average estimated increase of 1,000 workers supporting EPU construction activities, the NRC expects potable water use to increase during the outage and return back to the regular operating levels after EPU implementation. It is unlikely this potential increase in temporary groundwater use during the EPU construction activities would have any effect on other local and regional groundwater users. FPL has no use restrictions on the amount of water supplied by the City of Fort Pierce and the Fort Pierce Utilities Authority. The NRC expects no significant impact on groundwater resources during proposed EPU construction activities or following EPU implementation.

Surface Water

The NRC staff evaluated the potential effects of releasing heated water with a proposed temperature increase of 2 °F (1.1 °C) above the current discharge temperature through the discharge pipes into the Atlantic Ocean as part of the proposed EPU project. FDEP regulates the Florida Surface Water Quality Standards through an IWFP, which also establishes the maximum area subject to temperature increase (mixing zone), maximum discharge temperatures, and chemical monitoring requirements with limits specified.

The plant injects chlorine in the form of sodium hypochlorate into seawater upstream of the intake cooling water system in regulated quantities to control microorganisms. Because FDEP regulates discharges and requires chemical monitoring, the NRC expects that the authorized discharges will not exceed the IWFP limitations after EPU implementation.

In the IWFP, FDEP has issued the plant a temporary variance for a temperature increase of heated water discharge from 113 °F (45 °C) above ambient temperature to the proposed thermal discharge of 115 °F (46.1 °C) above ambient temperature after EPU completion for Units 1 and 2 on the condition that no adverse affects are found based on FPL study results. The proposed EPU will not result in an increase in the amount or rate of water withdrawn from or discharged to the Atlantic Ocean. FPL conducted a thermal discharge study for the proposed EPU-related increase in discharge water temperature (ADAMS Accession No. ML100830443) that predicts an increase in the extent of the thermal plume (mixing zone). The ambient water affected by the absolute temperature increase beyond the existing mixing zone would be less than 25 ft (7.6 m) vertically or horizontally for the two-port ''Y'' diffuser and less than 6 ft (1.8 m) in any direction for the multiport diffuser.

As part of its operating license renewal, FPL consulted with the Florida Department of Community Affairs (FDCA) for a review of coastal zone consistency. Based on the information FDCA reviewed, it determined that the licensing renewal action would be consistent with the Florida Coastal Management Program (FCMP). FDCA, in partnership with the FDEP, administers the FCMP and has the authority to review the proposed EPU action for coastal zone consistency.

Aquatic Resource Impacts

The potential impacts to aquatic biota from the proposed action could include impingement of aquatic life on barrier nets, trash racks, and traveling screens; entrainment of aquatic life through the cooling water intake structures and into the cooling water systems; and effects from the discharge of chemicals and heated water.

Because the proposed EPU will not result in an increase in the amount or velocity of water being withdrawn from or discharged to the Atlantic Ocean, the NRC expects no increase in aquatic impacts from impingement and entrainment beyond the current impact levels: all organisms impinged on the trash racks and traveling screens would be killed, as would most, if not all, entrained organisms. FPL would continue to rescue and release sea turtles and other endangered species trapped by the barrier nets in the intake canal. In addition, FPL's IWFP requires FPL to monitor aquatic organism entrapment in the intake canal, and, if unusually large numbers of organisms are entrapped, to submit to the FDEP a plan to mitigate such entrapment.

The predicted 2 °F (1.1 °C) temperature increase from the diffusers and increased size of the mixing zone because of the proposed EPU would increase thermal exposure to aquatic biota at the St. Lucie Nuclear Plant in the vicinity of the discharge locations. The thermal discharge study conducted for the proposed EPU predicts no increase in temperature higher than 96 °F (35.5 °C) within 6 ft (1.8 m) of the bottom of the ocean floor and within 24 ft (7.3 m) from the ocean surface because of heated water discharged from the multiport diffuser. The same study also predicts that heated water discharged from the ''Y'' diffuser would not increase the ocean water temperature higher than 96 °F (35.5 °C) within 2 ft (0.6 m) of the bottom of the ocean floor and within 25 ft (17 m) from the ocean surface. Based on this analysis, surface water temperature would remain below 94 °F (34.4 °C). Thermal studies conducted for the St. Lucie Nuclear Plant prior to its operation and summarized in SEIS–11 predicted there would be minimal impacts to aquatic biota from diffuser discharges that result in a surface temperature less than 97 °F (36.1 °C). Because the NRC expects the surface water temperature not to exceed 94 °F (34.4 °C) because of the proposed EPU, the NRC staff concludes that there are no significant impacts to aquatic biota from the proposed EPU.

Although the proposed increase in temperature after EPU implementation would exceed the Florida Surface Water Quality Standards regulated by FDEP, FDEP is continuing to assess this action by requiring FPL to conduct studies as part of an IWFP variance. If the study results are insufficient to adequately evaluate environmental changes, or if the data indicates a significant degradation to aquatic resources by exceeding Florida Surface Water Quality Standards or is inconsistent with the FCMP, FDEP could enforce additional abatement or mitigation measures to reduce the environmental impacts to acceptable levels. If the NRC approves the proposed EPU, the NRC does not expect aquatic resource impacts significantly greater than current

operations because state agencies will continue to assess study results and the effectiveness of current FPL environmental controls. FDEP could impose additional limits and controls on FPL if the impacts are larger than expected. If FDCA and FDEP review the study results and allow FPL to operate at the proposed EPU level, the NRC has reasonable confidence as discussed above that the increase in thermal discharge will not result in significant impacts on aquatic resources beyond the current impacts that occur during plant operations.

Terrestrial Resources Impacts

The St. Lucie Nuclear Plant is on a relatively flat, sheltered area of Hutchinson Island with red mangrove swamps on the western side of the island that gradually slope downward to a mangrove fringe bordering the intertidal shoreline of the Indian River Lagoon. East of the facility, land rises from the ocean shore to form dunes and ridges approximately 15 ft (4.5 m) above mean low water. Tropical hammock areas are present north of the discharge canal, and additional red mangrove swamps are present north of Big Mud Creek. Habitat in the electrical transmission line ROW is a mixture of human-altered areas, sand pine scrub, prairie/pine flatwoods, wet prairie, and isolated marshes.

Impacts that could potentially affect terrestrial resources include disturbance or loss of habitat, construction and EPU-related noise and lighting, and sediment transport or erosion. FPL plans to conduct electrical transmission line modifications that would require a periodic need to park a truck or trailer containing a spool of wire that would be strung. The NRC concluded in SEIS–11 that no bird mortalities were reported up to that time associated with the electrical transmission lines and predicted that FPL maintenance practices along the ROW would likely have little or no detrimental impact on the species potentially present in or near the electrical transmission ROW. Because FPL proposes a similar type and extent of land disturbance during typical maintenance of the electrical transmission line ROW for the EPU modifications, the NRC expects the proposed transmission line modifications would not result in any significant changes to land use or increase habitat loss or disturbance, sediment transport, or erosion beyond typical maintenance impacts. Noise and lighting would not adversely affect terrestrial species beyond effects experienced during previous outages because construction EPU modification activities would take place during outage periods, which are typically periods of heightened activity. Thus, the NRC expects no significant impacts on terrestrial biota associated with the proposed action.

Threatened and Endangered Species Impacts

A number of species in St. Lucie County are listed as threatened or endangered under the Federal Endangered Species Act, and other species are designated as meriting special protection or consideration. These include birds, fish, aquatic and terrestrial mammals, flowering plants, insects, and reptiles that could occur on or near St. Lucie Units 1 and 2 facility areas and possibly along the electrical transmission line ROW. The most common occurrences of threatened or endangered species near St. Lucie Units 1 and 2 are five species of sea turtles that nest on Hutchinson Island beaches: loggerhead turtles (*Caretta caretta*), Atlantic green turtles (*Chelonia mydas*), Kemp's ridley turtles (*Lepidochelys kempii*), leatherback turtles (*Dermochelys coriacea*), and hawksbill turtles (*Eretmochelys imbricata*). FPL has a mitigation and monitoring program in place for the capture-release and protection of sea turtles that enter the intake canal. The West Indian manatee (*Trichechus manatus*) also has been documented at the St. Lucie Nuclear Plant. Designated critical habitat for the West Indian manatee is located along the Indian River west of Hutchinson Island. The NRC staff assessed potential impacts on the West Indian manatee from St. Lucie Nuclear Plant in SEIS–11. No other critical habitat areas for endangered, threatened, or candidate species are located at the St. Lucie Nuclear Plant site or along the transmission line ROW.

The following table identifies the species that the NRC considered in this EA that were not previously assessed for SEIS–11 because the species were not listed at that time.

TABLE OF FEDERALLY LISTED SPECIES OCCURRING IN ST. LUCIE COUNTY NOT PREVIOUSLY ASSESSED IN SEIS–11

Scientific name	Common name	ESA status [a]
Birds:		
Calidris canutus ssp. Rufa	red knot	Candidate.
Charadrius melodus	piping plover	T.
Dendroica kirtlandii	Kirtland's warbler	E.
Grus americana	whooping Crane [b]	EXPN, XN.
Fish:		
Pristis pectinata	smalltooth sawfish	E.
Mammals:		
Puma concolor	Puma	T/SA.
Reptiles:		
Crocodylus acutus	American crocodile	T.
Gopherus polyphemus	gopher tortoise [c]	Candidate.

[a] E = endangered; T = threatened; T/SA = threatened due to similarity of appearance; EXPN, XN = experimental, nonessential.
[b] Experimental, nonessential populations of endangered species (e.g., red wolf) are treated as threatened species on public land, for consultation purposes, and as species proposed for listing on private land.
[c] The gopher tortoise is not listed by the FWS as occurring in St. Lucie County. The core of the species' current distribution in the eastern portion of its range occurs in central and north Florida (76 FR 45130), and FPL has reported the species' occurrence on the site and in the electrical transmission line right-of-way.
Source: U.S. Fish and Wildlife Service.

The NRC has consulted with the National Marine Fisheries Service (NMFS) since 1982 regarding sea turtle kills, captures, or incidental takes. A 2001 NMFS biological opinion analyzed the effects of the circulating cooling water system on certain sea turtles at the St. Lucie Nuclear Plant. The 2001 NMFS biological opinion provides for limited incidental takes of threatened or endangered sea turtles. Correspondence between the licensee, U.S. Fish and

Wildlife Service, and NMFS in connection with the 2003 license renewal environmental review indicated that effects to federal endangered, threatened, or candidate species, including a variety of sea turtles and manatees, would not significantly change as a result of issuing a license renewal for the St. Lucie Nuclear Plant. The NRC reinitiated formal consultation with NMFS in 2005 after the incidental take of a smalltooth sawfish (*Pristis pectinata*). The NRC added sea turtles to the reinitiation of formal consultation with NMFS in 2006 after the St. Lucie Nuclear Plant exceeded the annual incidental take limit for sea turtles. The NRC provided NMFS with a biological assessment in 2007 (ADAMS Accession No. ML071700161) as an update regarding effects on certain sea turtle species up to that time. The NRC expects a biological opinion from NMFS in response to ongoing consultation, but does not expect the biological opinion to affect the conclusions in this draft EA.

As described in the Aquatic Resources Impacts section, the expected temperature increase of plant water discharged to the Atlantic Ocean could increase thermal exposure to aquatic biota, including the threatened and endangered sea turtles found at the site. The NRC expects the FPL capture-release and monitoring program for sea turtles and NRC interactions with NMFS regarding incidental takes to continue under the terms and conditions of the new biological opinion. Therefore, the NRC expects the proposed EPU would not change the effects of plant operation on threatened and endangered species.

Planned construction-related activities associated with the proposed EPU primarily involve changes to existing structures, systems, and components internal to existing buildings and would not involve earth disturbance, with the exception of planned electrical transmission line modifications. Traffic and worker activity in the developed parts of the plant site during the combined refueling outages and EPU modifications would be somewhat greater than a normal refueling outage. As described in the Terrestrial Resources Impacts section, electrical transmission line modifications may require truck use within the transmission line ROW. The NRC concluded in SEIS–11 that transmission line maintenance practices for the FPL license renewal would not lower terrestrial habitat quality or cause significant changes in wildlife populations. Because the proposed EPU operations would not result in any significant changes to the expected transmission maintenance activities evaluated for the operating license renewal, the proposed EPU transmission modifications also should have little effect on threatened and endangered terrestrial species. The effects of changes to the terrestrial wildlife habitat on the St. Lucie Nuclear Plant site from the proposed EPU should not exceed those potential effects on terrestrial wildlife evaluated in SEIS–11, including potential minor and temporary impacts from worker activity.

Historic and Archaeological Resources Impacts

Records at the Florida Master File in the Florida Division of Historical Resources identify five known archaeological sites located on or immediately adjacent to the property boundaries for the St. Lucie Nuclear Plant, although no archaeological and historic architectural finds have been recorded on the site. None of these sites are listed on the National Register for Historic Places (NRHP). The NRHP lists sixteen properties in St. Lucie County including one historic district. The Captain Hammond House in White City, approximately 6 mi (10 km) from St. Lucie Nuclear Plant, is the nearest property listed on the NRHP.

A moderate to high likelihood for the presence of significant prehistoric archaeological remains occurs along Blind Creek and the northern end of the St. Lucie Nuclear Plant boundary. As previously discussed, all EPU-related modifications would take place within existing buildings and facilities and the electrical transmission line ROW, which are not located near Blind Creek or the northern FPL property boundary. Because no change in ground disturbance or construction-related activities would occur outside of previously disturbed areas and existing electrical transmission line ROW, the NRC expects no significant impact from the proposed EPU-related modifications on historic and archaeological resources.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed EPU include temporary increases in the size of the workforce at St. Lucie Units 1 and 2, and associated increased demand for goods, public services, and housing in the region. The proposed EPU also could generate increased tax revenues for the state and surrounding counties.

Currently, approximately 800 full-time employees work at the St. Lucie Nuclear Plant. FPL estimates a temporary increase in the size of the workforce during the fall 2011 and summer 2012 refueling outages. During the refueling outages, FPL expects the average number of workers to peak by as many as 1,400 construction workers per day to implement the EPU for each unit. The outage durations for both units are expected to be longer than for a routine 35-day outage. Once EPU-related plant modifications have been completed, the size of the refueling outage workforce at St. Lucie Nuclear Plant would return to normal levels and would remain similar to pre-EPU levels, with no significant increases during future refueling outages. The size of the regular plant operations workforce would be unaffected by the proposed EPU.

The NRC expects most of the EPU plant modification workers to relocate temporarily to communities in St. Lucie, Martin, Indian River, and Palm Beach Counties, resulting in short-term increases in the local population along with increased demands for public services and housing. Because plant modification work would be temporary, most workers would stay in available rental homes, apartments, mobile homes, and camper-trailers. The 2010 American Community Survey 1-year estimate for vacant housing units reported 32,056 vacant housing units in St. Lucie County; 18,042 in Martin County; 23,236 in Indian River County; and 147,910 in Palm Beach County that could potentially ease the demand for local rental housing. Therefore, the NRC expects a temporary increase in plant employment for a short duration that would have little or no noticeable effect on the availability of housing in the region.

The additional number of refueling outage workers and truck material and equipment deliveries needed to support EPU-related plant modifications would cause short-term level of service impacts (restricted traffic flow and higher incident rates) on secondary roads in the immediate vicinity of St. Lucie Nuclear Plant. FPL expects increased traffic volumes necessary to support implementation of the EPU-related modifications during the refueling outage. The NRC predicted transportation service impacts for refueling outages at St. Lucie Nuclear Plant during its license renewal term would be small and would not require mitigation. However, the number of temporary construction workers the NRC evaluated for SEIS–11 was less than the number of temporary construction workers required for the proposed EPU. Based on this information and that EPU-related plant modifications would occur during a normal refueling outage, there could be

noticeable short-term (during certain hours of the day) level-of-service traffic impacts beyond what is experienced during normal outages. During periods of high traffic volume (i.e., morning and afternoon shift changes), work schedules could be staggered and employees and/or local police officials could be used to direct traffic entering and leaving St. Lucie Nuclear Plant to minimize level-of-service impacts.

The St. Lucie Nuclear Plant currently pays annual real estate property taxes to the St. Lucie County school district, the County Board of Commissioners, the County fire district, and the South Florida Water Management District. The annual amount of future property taxes the St. Lucie Nuclear Plant would pay could take into account the increased value of St. Lucie Units 1 and 2 as a result of the EPU and increased power generation.

Due to the short duration of EPU-related plant modification activities, there would be little or no noticeable effect on tax revenues generated by temporary workers residing in St. Lucie County. Therefore, the NRC expects no significant socioeconomic impacts from EPU-related plant modifications and operations under EPU conditions in the vicinity of St. Lucie Nuclear Plant.

Environmental Justice Impact Analysis

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with the proposed EPU at St. Lucie Nuclear Plant. Such effects may include biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of St. Lucie Nuclear Plant, and all are exposed to the same health and environmental effects generated from activities at St. Lucie Units 1 and 2.

The NRC considered the demographic composition of the area within a 50-mi (80.5-km) radius of St. Lucie Units 1 and 2 to determine the location of minority and low-income populations and whether the proposed action may affect them. The NRC examined the geographic distribution of minority and low-income populations within 50 mi (80.5 km) of the St. Lucie Units 1 and 2 using the U.S. Census Bureau (USCB) data for 2000. Although the 2010 census occurred, the data is not yet available in a format that provides the population information within a specified radius of the site.

According to the U.S. Census Bureau (USCB) data for 2000 on minority populations in the vicinity of St. Lucie Units 1 and 2, an estimated 1.2 million people live within a 50-mi (80.5-km) radius of the plant located within parts of nine counties. Minority populations within 50 mi (80.5 km) comprise 27 percent (274,500 persons). The largest minority group was African-American (approximately 135,250 persons or 13.3 percent), followed by Hispanic or Latino (approximately 111,000 persons or 11 percent). The 2000 census block groups containing minority populations were concentrated in Gifford (Indian River County), Fort Pierce (St. Lucie County), Pahokee (Palm Beach County near Lake Okeechobee), the agricultural areas around Lake Okeechobee, and Hobe Sound (Martin County).

The NRC examined low-income populations using the USCB data for 2000 and the 2010 American Community Survey 1–Year Estimate. According to the 2000 census data, approximately 11 percent of the population (111,000 persons) residing within 50 mi (80.5 km) of the St. Lucie Nuclear Plant were considered low-income, living below the 2000 federal poverty threshold of $8,350 per individual. According to the 2010 census estimate, approximately 14.1 percent of families and 18 percent of individuals were determined to be living below the Federal poverty threshold in St. Lucie County. The 2010 federal poverty threshold was $22,050 for a family of four and $10,830 for an individual. The median household income for St. Lucie County was approximately $38,671 and 13 percent lower than the median household income (approximately $44,409) for Florida.

Environmental Justice Impact

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (e.g., noise, dust, traffic, employment, and housing impacts). Radiation doses from plant operations after the EPU are expected to continue to remain well below regulatory limits.

Noise and dust impacts would be temporary and limited to onsite activities. Minority and low-income populations residing along site access roads could experience increased commuter vehicle traffic during shift changes. Increased demand for inexpensive rental housing during the EPU-related plant modifications could disproportionately affect low-income populations; however, due to the short duration of the EPU-related work and the availability of housing properties, impacts to minority and low-income populations would be of short duration and limited. According to the 2010 census information, there were approximately 221,244 vacant housing units in St. Lucie County and the surrounding three counties combined.

Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed EPU would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the St. Lucie Nuclear Plant vicinity.

Nonradiological Cumulative Impacts

The NRC considered potential cumulative impacts on the environment resulting from the incremental impact of the proposed EPU when added to other past, present, and reasonably foreseeable future actions in the vicinity of St. Lucie Nuclear Plant. For the purposes of this analysis, past actions are related to the construction and licensing of St. Lucie Units 1 and 2, present actions are related to current operations, and future actions are those that are reasonably foreseeable through the end of station operations including operations under the EPU.

The NRC concluded that there would be no significant cumulative impacts to the resource areas air quality, groundwater, threatened and endangered species, historical and archaeological resources in the vicinity of St. Lucie Units 1 and 2 because the contributory effect of ongoing actions within a region are regulated and monitored through a permitting process (*e.g.,* National Pollutant Discharge Elimination System and 401/404 permits under the Clean Water Act) under State or Federal authority. In these cases, impacts are managed as long as these actions are in compliance with their respective permits and conditions of certification.

Surface water and aquatic resources were examined for potential cumulative impacts. The geographic boundary for potential cumulative impacts is the area of the post-EPU thermal mixing zone. If the proposed EPU is approved and is implemented, St. Lucie Units 1 and 2 are predicted to have a slightly larger and hotter mixing zone than pre-uprate conditions during full flow and capacity. The NRC anticipates that St. Lucie Units 1 and 2 will continue to operate post EPU in full compliance with the requirements of the FDEP IWFP. FDEP would evaluate FPL compliance with the IWFP.

Proposed EPU-related modifications for the electrical transmission line ROW at the St. Lucie Nuclear Plant could

affect land use, aesthetics, and terrestrial species. Improvements and maintenance would be conducted according to Federal and State regulations, permit conditions, existing procedures, and established best management practices to minimize impacts to these resources. Nevertheless, terrestrial wildlife and habitat may be lost, displaced, or disturbed by noise and human presence during EPU-related work in the electrical transmission line ROW. Less mobile animals, such as reptiles, amphibians, and small mammals, would incur greater impacts than more mobile animals, such as birds. The proposed electrical transmission line modifications would neither change land use activities expected during current operations nor change the current aesthetic resources within view of the electrical transmission lines.

The greatest socioeconomic impacts from the proposed EPU and continued operation of St. Lucie Units 1 and 2 would occur during the fall 2011 and summer 2012 fuel outages. The increase in EPU-related construction workforces would have a temporary effect on socioeconomic conditions in local communities from the increased demand for temporary housing, public services (e.g., public schools), and increased traffic.

Nonradiological Impacts Summary

As discussed previously, the proposed EPU would not result in any significant nonradiological impacts. Table 1 summarizes the nonradiological environmental impacts of the proposed EPU at St. Lucie Units 1 and 2.

TABLE 1—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	Proposed EPU-related activities are not expected to cause significant impacts on land use conditions and aesthetic resources in the vicinity of St. Lucie Units 1 and 2.
Air Quality	Temporary air quality impacts from vehicle emissions related to EPU construction workforce is not expected to cause significant impacts to air quality.
Water Use	Water use changes resulting from the proposed EPU are not expected to cause impacts greater than current operations. No significant impact on groundwater or surface water resources.
Aquatic Resources	The NRC expects no significant changes to impacts caused by current operation due to impingement, entrainment, and thermal discharges.
Terrestrial Resources	The NRC expects no significant impacts to terrestrial resources.
Threatened and Endangered Species.	The proposed EPU would change impacts from those caused by current operations. The NRC expects a NMFS to issue a biological opinion on sea turtles and the smalltooth sawfish in the near future.
Historic and Archaeological Resources.	No significant impact to historic and archaeological resources on site or in the vicinity of St. Lucie Units 1 and 2.
Socioeconomics	No significant socioeconomic impacts from EPU-related temporary increase in workforce.
Environmental Justice	No disproportionately high or adverse human health and environmental effects on minority and low-income populations in the vicinity of St. Lucie Units 1 and 2.
Cumulative Impacts	The proposed EPU would not cause impacts significantly greater than current operations. To address potential cumulative impacts for surface water and aquatic resources, a NMFS biological opinion is expected with the authority to impose limits on nonradiological discharges to abate any significant water quality and ecology impacts.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents, Direct Radiation Shine, and Solid Waste

St. Lucie Units 1 and 2 use waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. The licensee's evaluation of plant operation under proposed EPU conditions predict that no physical changes would be needed to the radioactive gaseous, liquid, or solid waste systems.

Radioactive Gaseous Effluents

Radioactive gaseous wastes are principally activation gases and fission product radioactive noble gases resulting from process operations, including continuous cleanup of the reactor coolant system, gases used for tank cover gas, and gases collected during venting. The licensee's evaluation determined that implementation of the proposed EPU would not significantly increase the inventory of nonradioactive carrier gases normally processed in the gaseous waste management system, because plant system functions are not changing and the volume inputs remain the same. The licensee's analysis also showed that the proposed EPU would result in an increase (a bounding maximum, as expected, of 13.2 percent for all noble gases, particulates, radioiodines, and tritium) in the equilibrium radioactivity in the reactor coolant, which in turn increases the radioactivity in the waste disposal systems and radioactive gases released from the plant.

The licensee's evaluation concluded that the proposed EPU would not change the radioactive gaseous waste system design function and reliability to safely control and process the waste. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302 and the as low as is reasonably achievable (ALARA) dose objectives in 10 CFR part 50, Appendix I.

Radioactive Liquid Effluents

Radioactive liquid wastes include liquids from reactor process systems and liquids that have become contaminated. The licensee's evaluation shows that the proposed EPU implementation would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This is because the system functions are not changing and the volume inputs remain the same. The proposed EPU would result in an increase in the equilibrium radioactivity in the reactor coolant (12.2 percent), which in turn would impact the concentrations of radioactive nuclides in the waste disposal systems.

Because the NRC does not expect the composition of the radioactive material in the waste and the volume of radioactive material processed through the system to significantly change, the current design and operation of the radioactive liquid waste system will accommodate the effects of the proposed EPU. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain

radioactive liquid releases within the dose limits of 10 CFR 20.1302 and ALARA dose standards in 10 CFR part 50, Appendix I.

Occupational Radiation Dose Under EPU Conditions

The licensee stated that the in-plant radiation sources are expected to increase approximately linearly with the proposed increase in core power level of 12.2 percent. For the radiological impact analyses, the licensee conservatively assumed an increase to the licensed thermal power level from 2,700 MWt to 3,030 MWt or 12.2 percent, although the EPU request is for an increase to the licensed thermal power level to 3,020 MWt, or 11.85 percent. To protect the workers, the plant radiation protection program monitors radiation levels throughout the plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR part 20 and ALARA.

In addition to the work controls implemented by the radiation protection program, shielding is used throughout St. Lucie Units 1 and 2 to protect plant personnel against radiation from the reactor and auxiliary systems. The licensee determined that the current shielding design, which uses conservative analytical techniques to establish the shielding requirements, is adequate to offset the increased radiation levels that are expected to occur from the proposed EPU. The proposed EPU is not expected to significantly affect radiation levels within the plant, and therefore there would not be a significant radiological impact to the workers.

Offsite Doses at EPU Conditions

The primary sources of offsite dose to members of the public from St. Lucie Units 1 and 2 are radioactive gaseous and liquid effluents. The licensee predicts that maximum annual total and organ doses from liquid effluent releases would increase by 12.2 percent. As discussed previously, operation under the proposed EPU conditions will not change the ability of the radioactive gaseous and liquid waste management systems to perform their intended functions. Also, there would be no change to the radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with NRC radiation protection standards in 10 CFR part 20 and 10 CFR part 50, Appendix I.

Based on the previous information, the offsite radiation dose to members of the public would continue to be within regulatory limits and therefore would not be significant.

Radioactive Solid Wastes

Solid radioactive waste streams include solids recovered from the reactor coolant systems, solids that come into contact with the radioactive liquids or gases, and solids used in the reactor coolant system operation. The licensee evaluated the potential effects of the proposed EPU on the solid waste management system. The largest volume of radioactive solid waste is low-level radioactive waste, which includes bead resin, spent filters, and dry active waste (DAW) that result from routine plant operation, outages, and routine maintenance. DAW includes paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal, and other types of waste generated during routine maintenance and outages.

The licensee states that the proposed EPU would not have a significant effect on the generation of radioactive solid waste volume from the primary reactor coolant and secondary side systems because system functions are not changing and the volume inputs remain consistent with historical generation rates. The waste can be handled by the solid waste management system without modification. The equipment is designed and operated to process the waste into a form that minimizes potential harm to the workers and the environment. Waste processing areas are monitored for radiation, and safety features are in place to ensure worker doses are maintained within regulatory limits. The proposed EPU would not generate a new type of waste or create a new waste stream. Therefore, the impact from the proposed EPU on radioactive solid waste would not be significant.

Spent Nuclear Fuel

Spent fuel from St. Lucie Units 1 and 2 is stored in a plant spent fuel pool. St. Lucie Units 1 and 2 are currently licensed to use uranium-dioxide fuel that has a maximum enrichment of 4.5 percent by weight uranium-235. The average fuel assembly discharge burnup for the proposed EPU is expected to be limited to 49,000 megawatt days per metric ton uranium (MWd/MTU) with no fuel pins exceeding the maximum fuel rod burnup limit of 62,000 MWd/MTU for Unit 1 and 60,000 MWd/MTU for Unit 2. The licensee's fuel reload design goals will maintain the St. Lucie Units 1 and 2 fuel cycles within the limits bounded by the impacts analyzed in 10 CFR part 51, Table S–3, ''Uranium Fuel Cycle Environmental Data'' and Table S–4, ''Environmental Impact of Transportation of Fuel and Waste to and From One Light-Water-Cooled Nuclear Power Reactor,'' as supplemented by NUREG–1437, Volume 1, Addendum 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Section 6.3—Transportation Table 9.1, Summary of findings on NEPA issues for license renewal of nuclear power plants.'' Therefore, there would be no significant impacts resulting from spent nuclear fuel.

Postulated Design-Basis Accident Doses

Postulated design-basis accidents are evaluated by both the licensee and the NRC to ensure that St. Lucie Units 1 and 2 can withstand normal and abnormal transients and a broad spectrum of postulated accidents without undue hazard to the health and safety of the public.

On November 22, 2010, the licensee submitted the St. Lucie Unit 1 EPU LAR to the NRC to increase the licensed core power level from 2,700 MWt to 3,020 MWt. On February 25, 2011, the licensee submitted the St. Lucie Unit 2 EPU LAR to the NRC requesting the same increase in licensed core power level. Analyses were performed by the licensee according to the Alternative Radiological Source Term methodology updated with input and assumptions consistent with the proposed EPU. For each design-basis accident radiological consequence analyses were performed using the guidance in NRC Regulatory Guide 1.183, ''Alternative Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.'' Accident-specific total effective dose equivalent was determined at the exclusion area boundary, at the low-population zone, and in the control room. The analyses also include the evaluation of the waste gas decay tank rupture event. The licensee concluded that the calculated doses meet the acceptance criteria specified in 10 CFR 50.67 and 10 CFR part 50, Appendix A, General Design Criterion 19.

The NRC is evaluating the licensee's LARs to independently determine whether they are acceptable to approve. The results of the NRC evaluation and conclusion will be documented in a Safety Evaluation Report that will be publicly available on the NRC ADAMS. If the NRC approves the LARs, then the proposed EPU will not have a significant impact with respect to the radiological consequences of design basis accidents.

Radiological Cumulative Impacts

The cumulative impacts associated with the proposed EPU for St. Lucie

Unit 1 are considered in conjunction with the operation of St. Lucie Unit 2, which is located next to Unit 1 on the site property. The radiological dose limits for protection of the public and workers have been developed by the NRC and EPA to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are codified in 10 CFR part 20 and 40 CFR part 190.

The cumulative radiation doses to the public and workers are required to be within the limits of the regulations. The public dose limit of 0.25 millisievert (25 millirem) in 40 CFR part 190 applies to all reactors that may be on a site and also includes any other nearby nuclear power reactor facilities. No other nuclear power reactor or uranium fuel cycle facility is located near St. Lucie Units 1 and 2. The staff reviewed several years of radiation dose data contained in the licensee's annual radioactive effluent release reports for St. Lucie Units 1 and 2. The data demonstrate that the dose to members of the public from radioactive effluents is well within the limits of 10 CFR part 20 and 40 CFR part 190. To evaluate the projected dose at EPU conditions for St. Lucie Units 1 and 2, the NRC increased the actual dose data contained in the reports by 12 percent. The projected doses at EPU conditions remained well within regulatory limits. Therefore, the staff concludes that there would not be a significant cumulative radiological impact to members of the public from increased radioactive effluents from St. Lucie Units 1 and 2 at the proposed EPU operation.

As previously evaluated, the licensee has a radiation protection program that maintains worker doses within the dose limits in 10 CFR part 20 during all phases of St. Lucie Units 1 and 2 operations. The NRC expects continued compliance with regulatory dose limits during operation at the proposed EPU power level. Therefore, the NRC concludes that there would not be a significant cumulative radiological impact to plant workers from operation of St. Lucie Units 1 and 2 at the proposed EPU levels.

Radiological Impacts Summary

As discussed previously, the proposed EPU would not result in any significant radiological impacts. Table 2 summarizes the radiological environmental impacts of the proposed EPU at St. Lucie Units 1 and 2.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radioactive Gaseous Effluents	Amount of additional radioactive gaseous effluents generated would be handled by the existing system.
Radioactive Liquid Effluents	Amount of additional radioactive liquid effluents generated would be handled by the existing system.
Occupational Radiation Doses	Occupational doses would continue to be maintained within NRC limits.
Offsite Radiation Doses	Radiation doses to members of the public would remain below NRC and EPA radiation protection standards.
Radioactive Solid Waste	Amount of additional radioactive solid waste generated would be handled by the existing system.
Spent Nuclear Fuel	The spent fuel characteristics will remain within the bounding criteria used in the impact analysis in 10 CFR part 51, Table S–3 and Table S–4.
Postulated Design-Basis Accident Doses.	Calculated doses for postulated design-basis accidents would remain within NRC limits.
Cumulative Radiological	Radiation doses to the public and plant workers would remain below NRC and EPA radiation protection standards.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed EPU (i.e., the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU was not approved for St. Lucie Unit 1, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, in order to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled facility may create impacts in air quality, land use, and waste management significantly greater than those identified for the proposed EPU at St. Lucie Units 1 and 2. Furthermore, the proposed EPU does not involve environmental impacts that are significantly different from those originally indentified in the St. Lucie Units 1 and 2 FESs, NUREG–1437, and SEIS–11.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the FESs or SEIS–11.

Agencies and Persons Consulted

In accordance with its stated policy, on December 8, 2011, the NRC consulted with the State of Florida official regarding the environmental impact of the proposed action. The State official had no comments.

III. Draft Finding of No Significant Impact

On the basis of the EA, the NRC concludes that granting the proposed EPU license amendment is not expected to cause impacts significantly greater than current operations. Therefore, the proposed action of implementing the EPU for St. Lucie Units 1 and 2 will not have a significant effect on the quality of the human environment because no significant permanent changes are involved and the temporary impacts are within previously disturbed areas at the site and the capacity of the plant systems. Accordingly, the NRC has determined it is not necessary to prepare an environmental impact statement for the proposed action. A final determination to prepare an environmental impact statement or a final finding of no significant impact will not be made until the public comment period closes.

For further details on the proposed action, see the licensee's application dated November 22, 2010, for Unit 1 and February 25, 2011, for Unit 2.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 28th day of December 2011.

Siva P. Lingam,

Chief (Acting), Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–32 Filed 1–5–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0262]

Guidance for Fuel Cycle Facility Change Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing a new regulatory guide (RG) 3.74, ''Guidance for Fuel Cycle Facility Change Processes.'' This regulatory guide describes the types of changes for which fuel cycle facility licensees should seek prior approval from the NRC and discusses how licensees can evaluate potential changes to determine whether NRC approval is required before implementing a change. This regulatory guide also describes the level of information that the NRC staff considers acceptable for use in documenting and reporting changes made without prior NRC approval.

ADDRESSES: You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The regulatory guide is available electronically under ADAMS Accession Number ML100890016. The regulatory analysis may be found in ADAMS under Accession No. ML110960217.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0262.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: R. A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7404 or email *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

RG 3.74, ''Guidance for Fuel Cycle Facility Change Processes,'' was issued with a temporary identification as Draft Regulatory Guide, DG–3037, to address several requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, ''Domestic Licensing of Special Nuclear Material.'' The guide describes how fuel cycle facility licensees can evaluate potential changes to determine whether NRC approval is required before implementing them. Operating experience from nuclear fuel cycle facilities shows that past incidents often resulted from changes implemented at the facility. In some cases, licensee management or personnel did not analyze, authorize, or understand the changes before implementing them. Subpart H to 10 CFR part 70, in part, includes requirements for tracking, evaluating, and documenting changes made to fuel cycle facilities, and to licensee safety programs. The requirements governing these changes are stated in 10 CFR 70.72, ''Facility Changes and Change Process,'' and pursuant to 10 CFR 70.60, apply to fuel cycle facility licensees that possess greater than a critical mass of special nuclear material and that are engaged in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, or fabrication of mixed-oxide fuel or fuel assemblies. Such fuel cycle facility licensees must establish a configuration management system to evaluate, implement, and track each change to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel, in accordance with 10 CFR 70.72(a). Licensees may make such changes without prior approval of the NRC as long as the changes meet the criteria in 10 CFR 70.72(c). RG 3.74 describes how fuel cycle facility licensees can evaluate potential changes to determine whether NRC approval is required before implementing them. This regulatory guide identifies an acceptable level of information to be provided by licensees when documenting and reporting changes made without prior NRC approval.

II. Further Information

DG–3037 was published in the **Federal Register** on July 14, 2011 (76 FR 41527). The public comment period closed September 16, 2011. Public comments on DG–3037 and the staff responses to the public comments are available under ADAMS Accession Number ML113050428.

Dated at Rockville, Maryland, this 28th day of December, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–31 Filed 1–5–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–92; Order No. 1080]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Plover, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 24, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received four petitions for review of the Postal Service's determination to close the Plover post office in Plover, Iowa. The first petition for review received November 30, 2011, was filed by Darla Johnson. The second petition for review received November 30, 2011, was filed by Alan and Karen Minkler. A third petition for review received December 2, 2011, was filed by Eugene B. Van Deest. A fourth petition for review received December 6, 2011, was filed by the Citizens of Plover. The earliest postmark date is November 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–92 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 4, 2012.

Notwithstanding the Postal Service's determination to close this post office, on December 15, 2011, the Postal Service advised the Commission that it ''will delay the closing or consolidation of any Post Office until May 15, 2012.'' [1] The Postal Service further indicated that it ''will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.'' *Id.* It stated that the only ''Post Offices'' subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it ''will not close or consolidate any other Post Office prior to May 16, 2012.'' *Id.* Lastly, the Postal Service requested the Commission ''to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.'' *Id.*

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. 404(d)(5).

Categories of issues apparently raised. Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date on which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date on which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 23, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Natalie Rae Ward is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 30, 2011	Filing of Appeal.
December 15, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, (Notice).

PROCEDURAL SCHEDULE—Continued

December 15, 2011	Deadline for the Postal Service to file any responsive pleading.
January 23, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 4, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 24, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 8, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 15, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–62 Filed 1–5–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29898]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 30, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2011. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 2012, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

Tax-Free Investments Trust

[File No. 811–2731]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2008, applicant transferred its assets to Tax-Free Cash Reserve Portfolio, a series of Short-Term Investments Trust, based on net asset value. Expenses of $29,100 incurred in connection with the reorganization were paid by Invesco Advisers, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 23, 2010 and amended on December 2, 2011.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Fidelity Capital Fund, Inc.

[File No. 811–791]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1979, applicant transferred its assets to Fidelity Trend Fund, Inc., based on net asset value. Expenses of approximately $100,000 incurred in connection with the reorganization were paid by applicant and the acquiring fund based on respective net assets.

Filing Dates: The application was filed on October 17, 2011, and amended on December 1, 2011.

Applicant's Address: 82 Devonshire St., Boston, MA 02109.

Rochdale High Yield Advances Fund, LLC

[File No. 811–22539]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 28, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $3,500 incurred in connection with the liquidation were paid by Rochdale Investment Management, LLC, applicant's investment adviser.

Filing Dates: The application was filed on September 21, 2011 and amended on December 16, 2011.

Applicant's Address: 570 Lexington Ave., New York, NY 10022.

First Trust Strategic High Income Fund

[File No. 811–21756]

First Trust Strategic High Income Fund III

[File No. 811–21994]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 3, 2011, applicants transferred their assets to First Trust Strategic High Income Fund II, based on net asset value. Total expenses of approximately $515,500 incurred in connection with the reorganization were paid by applicants and the acquiring fund on a pro rata basis, based on the net asset value of each fund prior to the closing date of the reorganization.

Filing Dates: The applications were filed on October 27, 2011 and amended on December 16, 2011.

Applicants' Address: 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

CPG FrontPoint Multi-Strategy Fund

[File No. 811–22324]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 1, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $11,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on December 1, 2011.

Applicant's Address: c/o Central Park Advisers, LLC, 805 Third Ave., 18th Floor, New York, NY 10022.

Arden Sage Multi-Strategy TEI Fund, LLC

[File No. 811–22377]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2011, applicant transferred its assets to Arden Sage Multi-Strategy Fund, LLC (f/k/a Robeco-Sage Multi-Strategy Fund, LLC), based on net asset value. Expenses of $38,000 incurred in connection with the reorganization were paid by Robeco

Investment Management, Inc., applicant's former investment adviser.

Filing Date: The application was filed on November 30, 2011.

Applicant's Address: 375 Park Ave., 32nd floor, New York, NY 10152.

Arden Sage Multi-Strategy TEI Master Fund, LLC

[File No. 811–22222]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2011, applicant transferred its assets to Arden Sage Multi-Strategy Master Fund, LLC (f/k/a Robeco-Sage Multi-Strategy Master Fund, LLC), based on net asset value. Expenses of $38,000 incurred in connection with the reorganization were paid by Robeco Investment Management, Inc., applicant's former investment adviser.

Filing Date: The application was filed on November 30, 2011.

Applicant's Address: 375 Park Ave., 32nd floor, New York, NY 10152.

Keystone High Yield Priority Value Fund

[File No. 811–6149]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on December 7, 2011.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–46 Filed 1–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29896; 812–13781]

Cantilever Capital, LLC and Cantilever Group, LLC; Notice of Application

December 29, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTIONS: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from section 12(d)(3) of the Act.

APPLICANTS: Cantilever Capital, LLC (''Cantilever'' or the ''Company'') and Cantilever Group, LLC (the ''Adviser'').

SUMMARY OF APPLICATION: Cantilever, or any successor to Cantilever, and the Adviser, or any successor to the Adviser (each, an ''Applicant'' and collectively, the ''Applicants'') seek an order under section 6(c) of the Act to permit Cantilever to acquire the securities of various investment managers that each derives more than 15% of its gross revenues from securities related activities as defined in rule 12d3–1(d)(1) under the Act, in excess of the limitations in rule 12d3–1(b).[1]

DATES: *Filing Dates:* The application was filed on June 8, 2010, and amended on October 18, 2010, and December 5, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 23, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE. Washington, DC 20549–1090. Applicants, c/o Mr. David Ballard, Cantilever Capital, LLC, 137 Rowayton Ave., Third Floor, Rowayton, CT 06853.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Delaware limited liability company, intends to operate as a non-diversified, closed-end management investment company under the Act. The Company intends to elect to be treated as a business development company under section 54 of the Act on or before June 30, 2014.[2] The Adviser is a Delaware limited liability company organized to manage the Company, which will be the sole client of the Adviser, and will not engage in any other business. Cantilever will invest more than 70% of the total value of its assets in securities of private companies engaged exclusively in the investment management business (each, an ''Investment Manager''), with the exception that certain Investment Managers may, through affiliates (as defined below) or subsidiaries, also provide limited broker-dealer services in connection with distribution of their investment products or as part of a wealth management business. Applicants expect that more than 15% of the revenues of each Investment Manager will be from ''securities related activities'' as defined in rule 12d3–1(d)(1) under the Act.[3]

2. Applicants will offer to make available to the Investment Managers, and if desired by the Investment Managers provide, managerial services including distribution and marketing advice; guidance on industry best practices; advice on planning, strategy and product development; geographic expansion and mergers and acquisitions, joint ventures, and liftouts; advice on operations, accounting, legal, capital structure, human resources and compensation, general management and industry networking. Neither the Applicants nor their affiliates will provide any managerial assistance that includes any activity involving any Investment Manager's investment process or investment decisions.

3. The Company will provide debt capital to Investment Managers,

[1] For the purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Section 2(a)(48) of the 1940 Act defines a business development company to be any closed-end investment company that operates for the purposes of making investment in securities described in sections 55(a)(1) through 55(a)(3) of the Act, makes available significant managerial assistance with respect to the issuers of such securities and has elected to be subject to the provisions of section 55 through 65 of the 1940 Act.

[3] Subparagraph (d)(1) of rule 12d3–1 defines ''securities related activities'' to mean a person's activities as a broker, dealer, underwriter, registered investment adviser or investment adviser to a registered investment company.

including Investment Managers that are or may become registered under the Investment Advisers Act of 1940. In exchange for a non-voting, non-controlling loan from the Company or its affiliates (as defined below), the Investment Manager will issue a participating convertible debt security to the Company (each, a ''Note'' and such loan, a ''Loan''). Each Note will have a coupon and will provide for repayment of principal at the Note's maturity (such maturity is contemplated to be 20 years after the issue date) in the event that it is not converted into equity of the underlying Investment Manager at such time. If converted into equity, it is expected that in most cases the equity security received from the conversion of the Notes would consist of non-voting securities and in any case would not represent more than 25% of outstanding voting securities, or otherwise constitute control, of the underlying Investment Manager. The Notes will not be actively or publicly traded; they will be purchased by the Company in private transactions and, generally, held to maturity.

4. Applicants represent that most of the Investment Managers issuing the Notes will be registered investment advisers and the vast majority of each Investment Manager's revenue will be earned by charging a fee on assets under management or possibly also through a performance fee. The amount of the Company's investments in each of the Notes, which Applicants believe will be treated as equity securities for purposes of rule 12d3–1, will likely constitute more than 5% of the outstanding equity securities of each Investment Manager at the time of the investment. In the event the Company invests in Notes of an Investment Manager that are treated as debt securities for purposes of rule 12d3–1, the principal amount of that debt will likely exceed 10% of the outstanding principal amount of the Investment Manager's debt securities. In addition, Applicants believe that there will be instances whereby more than 5% of the value of Applicant's total assets will be invested in each of several of the Investment Managers.[4]

5. Applicants believe that permitting the Company to invest in the equity and debt securities of various Investment Managers, each of which the Applicants believe will be an issuer that derives more than 15% of its gross revenues from ''securities related activities,'' in excess of the quantitative limitations set forth in rule 12d3–1(b) would be in the best interests of the Company's shareholders. Applicants will comply with all other requirements of rule 12d3–1. Applicants will require each of the Investment Managers to contractually agree to be bound by the terms of the conditions of the application.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits a registered investment company from purchasing or otherwise acquiring any securities issued by any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of a registered investment company or a registered investment adviser. Rule 12d3–1 under the Act exempts the acquisition of securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from ''securities related activities,'' provided that, among other things, immediately after the acquisition of such issuer's equity or debt securities, (i) the acquiring company has invested not more than 5% of the value of its total assets in securities of the issuer and (ii) the acquiring company owns (a) with respect to that class of the issuer's equity securities, not more than 5% of the outstanding securities of that class or (b) with respect to the issuer's debt securities, not more than 10% of the outstanding principal amount of the issuer's debt securities. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The Applicants request an order pursuant to section 6(c) of the Act exempting the Applicants from the provisions of section 12(d)(3) of the Act to the extent necessary to permit the Applicants to invest in the equity and debt securities of various Investment Managers, each an issuer that derives more than 15% of its gross revenues from ''securities related activities,'' in excess of the quantitative limitations set forth in rule 12d3–1(b).

3. The Applicants state that section 12(d)(3) was intended (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (b) to prevent potential conflicts of interest and to eliminate certain reciprocal practices between investment companies and securities related businesses, and (c) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. The Applicants believe that the Company's investment in various Investment Managers does not raise the same type of entrepreneurial risks that may have concerned Congress in enacting section 12(d)(3). The Applicants state that the ownership structure of most securities related businesses has changed since the time of enactment from partnership to a corporate form resulting in the limited liability status of these entities. In this case, the Company states that it will invest only in Investment Managers organized as corporations or other limited liability entities. The Applicants argue that shareholders choosing to invest in the Company will have sought exposure to a vehicle that that provides a non-diversified investment in one or more Investment Managers, and the Company's shareholders will be informed of the risks, including entrepreneurial risk, of investing in the Company by disclosure in the Company's prospectus in connection with its initial public offering and its ongoing disclosure as a public company following the offering.

5. The Applicants also believe that the proposed investments in various Investment Managers will not create potential conflicts of interest for the Applicants or their respective shareholders. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. The Applicants note that, as a condition to the granting of exemptive relief, the Investment Managers and their affiliated persons within the meaning of section 2(a)(3) of the Act and affiliated persons of such affiliated persons (collectively, ''Affiliates'') and the clients of the Investment Manager will not buy, sell or otherwise trade any securities issued by the Applicants or any of its Affiliates.

6. Applicant states that another potential conflict of interest is that investment advisers could be influenced to recommend to their clients certain investment companies that invest in

[4] In order to comply with the Internal Revenue Code's diversification requirements for regulated investment companies, it is contemplated that, with respect to at least 50% of the Company's total assets, each of the investments in an Investment Manager will not constitute more 5% of the Company's total assets at the time of investment. However, with respect to the remaining 50% of the Company's total assets, the Company intends to make investments that each constitute more than 5% but less than 25% of the value of the Company's total assets, as measured at the time of the acquisition.

such investment adviser or its affiliates, thereby using the assets of the investment companies to boost the price of the investment adviser's securities. Applicant notes that, as a condition to the requested order, the Investment Managers and their Affiliates will not sell any securities issued by the Applicants as an underwriter, will not make a market in any securities issued by the Applicants, will not act as agent or a broker in connection with the sale of any shares of the Applicants and will not recommend investing in securities of the Applicants.

7. The Applicants state that another purpose of section 12(d)(3) is to prevent investment companies from directing brokerage to a broker-dealer in which the investment company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. The Company represents that its business is to provide specialized debt capital to Investment Managers. The Applicants also represent that Investment Managers today typically do not serve as underwriters and broker-dealers (except as noted above) and thus it is highly unlikely that there would be any opportunity to engage in any transaction with an Investment Manager or its Affiliates, other than the Company's investment (and any follow-on investment) in such Investment Manager. Further, as a condition to the requested order, the Applicants will not use any Investment Manager or any Affiliate thereof as a broker-dealer for the purchase or sale of any portfolio securities.

8. The Applicants also believe that section 12(d)(3) reflects a concern with respect to the liquidity of an investment company's portfolio. Because the shareholders that will invest in the Company prior to its initial public offering (each of which will be intimately familiar with the business of the Company) will have done so for the specific purpose of buying and holding a vehicle that would provide for an investment in Investment Managers, liquidity of the Company's portfolio is not a concern for the Company's shareholders. Furthermore, shareholders that invest in the Company during or following the initial public offering will receive disclosure (i) in the Company's prospectus in connection with its initial public offering and (ii) pursuant to its ongoing reporting requirements as a public company following its initial public offering. Such disclosure will describe the fact that the Company's business (like that of business development companies generally) is investing in illiquid investments of small, developing companies, and more specifically, purchasing Notes in Investment Managers. Moreover, the Company is a closed-end investment company that does not offer redeemable securities; therefore, there are no minimum liquidity standards applicable to the Company under the Act.

9. Applicant believes that its proposed acquisitions of the securities of various Investment Managers do not present the potential for the risks and abuses section 12(d)(3) is intended to eliminate, including the risk of reciprocal practices. The Applicants believe that the standards set forth in section 6(c) have been met.

Applicants' Conditions

The Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Neither of the Applicants and none of their respective Affiliates will engage in any transaction with an Investment Manager other than (i) the Company's investment in the Investment Manager (and any follow-on investment) and (ii) the Company's providing managerial assistance to an Investment Manager. The managerial assistance provided by the Company or any of its Affiliates will not include any activity involving any Investment Manager's investment process or investment decisions.

2. No Investment Manager or its Affiliates or client of an Investment Manager or its Affiliates will (i) buy, sell or otherwise trade securities issued by the Applicants or any of their respective Affiliates, or (ii) buy, sell or otherwise trade securities owned by the Applicants or any of their respective Affiliates in transactions involving the Applicants or any of their respective Affiliates. Nor will any Investment Manager or its Affiliates sell any securities issued or owned by the Applicants or any of their respective Affiliates as an underwriter, make a market in any securities issued or owned by the Applicants or act as agent or as a broker in connection with the sale of any securities issued or owned by the Applicants or any of their respective Affiliates or recommend to their clients the purchase of any such securities.

3. Neither of the Applicants nor any of their respective Affiliates will use any Investment Manager or any Affiliate thereof as a broker-dealer for the purchase or sale of any portfolio securities.

4. No Investment Manager or its Affiliates will provide any services to the Applicants or any of their respective Affiliates.

5. No officer of the Applicants or member of the Applicants' board of managers (''Board'') will be affiliated with an Investment Manager or its Affiliates. The Applicants, their respective Affiliates or their officers or directors will not (i) serve on the board of directors of an Investment Manager, (ii) participate in the management of an Investment Manager (except for providing managerial assistance) or (iii) have other indicia of control as defined in the Act (other than typical rights of debt holders, including, but not limited to, access to certain information). The only affiliation the Applicants (or any of their respective officers or members) will have will be as a provider of debt capital.

6. The Applicants' respective Chief Compliance Officers will monitor and report to the applicable Applicant's Board no less than annually on compliance with these conditions.

7. The Applicants will comply with the provisions of rule 12d3–1 under the Act, except for paragraph (b) solely to the extent necessary to permit the Company to invest (i) more than 5% of the value of its total assets in equity securities issued by a registered investment adviser, (ii) in more than 5% of the outstanding equity securities of a registered investment adviser, and (iii) in more than 10% of the outstanding principal amount of a registered investment adviser's debt securities, provided that, (aa) immediately after the Company makes an investment permitted by (i) and/or (ii), not more than 50% of the value of the Company's total assets will consist of investments permitted by (i) and/or (ii), (bb) in no event will the Company acquire more than 25% of the outstanding voting securities of a registered investment adviser or otherwise control a registered investment adviser, and (cc) immediately after the Company makes an investment permitted by (iii), not more than 10% of the value of the Company's total assets will consist of investments permitted by (iii).[5]

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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[5] For the purposes of this paragraph, the terms ''equity security'' and ''debt securities'' have the meanings given them in Rule 12d3–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66077; File No. SR–Phlx–2011–179]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to the MSCI EM Index

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on December 21, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rules 1079, 1009A and 1101A, to list and trade new options on the MSCI EM Index based upon the Full Value MSCI Emerging Markets (''EM'') Index (''Full Value MSCI EM Index'').[5]

The Exchange also proposes to create a new Rule 1108A entitled ''MSCI EM Index'' which provides additional detailed information pertaining to the index as required by the licensor.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rules 1079 (FLEX Index, Equity and Currency Options), 1009A (Designation of the Index) and 1101A (Terms of Option Contracts) to list and trade P.M. cash-settled, European-style options, including FLEX[6] options and LEAPS,[7] on the MSCI EM Index. Specifically, the Exchange proposes to list and trade long-term options on the Full Value MSCI EM Index (''MSCI EM LEAPS'').[8] The Exchange also proposes to create a new Rule 1108A entitled ''MSCI EM Index'' which provides additional detailed information pertaining to the index as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc.

The MSCI EM Index is a free float-adjusted market capitalization index[9] that is designed to measure equity market performance of emerging markets. The MSCI EM Index consists of component securities from the following twenty-one (21) emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.

Index Design and Composition

The MSCI EM Index is designed to measure equity market performance in the global emerging markets. The Index is maintained by MSCI, Inc. (''MSCI'').[10] The Index was launched on December 31, 1987.

The MSCI EM Index is reviewed on a semi-annual basis. The index review is based on MSCI's Global Investable Markets Indices Methodology. A description of the methodology is available at *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf.* The MSCI EM Index consists of large and midcap components from countries classified by MSCI as ''emerging markets.''

Index Calculation and Index Maintenance

The base index value of the MSCI EM Index was 100, as of December 31, 1987. On June 1, 2011 the index value of the MSCI EM Index was 1166.72. The MSCI EM Index is calculated in U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the closing of the last market on which the components are traded. The methodology used to calculate the value of the MSCI EM Index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes.[11] The level of the MSCI EM Index reflects the free float-adjusted market value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in each index by its respective index divisor.[12]

Static data is distributed daily to clients through MSCI as well as through major quotation vendors, including Bloomberg L.P. (''Bloomberg''), FactSet Research Systems, Inc. (''FactSet') and Thomson Reuters (''Reuters''). Real time data is distributed at least every 15 seconds using MSCI's real-time

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] The Exchange has entered into a license agreement with MSCI Inc. to list this product.

[6] FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX index options may have expiration dates within five years. *See* Exchange Rules 1079 and 1101A.

[7] LEAPS or Long Term Equity Anticipation Securities are long term options that generally expire from twelve to thirty-nine months from the time they are listed.

[8] The Commission has previously approved the listing and trading of an exchange-traded fund based on the MSCI EM Index. *See* Securities Exchange Act Release Nos. 44900 (October 25, 2001) 66 FR 55712 (November 2, 2001) (SR–Amex–2001–45) and 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (SR–Amex–2001–45) (approving the listing and trading of shares of a fund based on the MSCI EM Index, among other indexes). The Commission also approved options on Volatility Indexes comprised of options on the iShares MSCI Emerging Markets Index Fund (''EEM''). *See* Securities Exchange Act Release No. 64551 (May 26, 2011), 76 FR 32000 (June 2, 2011) (SR–CBOE–2011–026). The MSCI EM ETF is one of the twenty most actively traded ETFs.

[9] The free float adjusted market capitalization is used to calculate the weights of the securities in the indices. MSCI defines the free float of a security as the proportion of shares outstanding that is deemed to be available for purchase in the public equity markets by international investors.

[10] MSCI is a provider of investment decision support tools.

[11] Additional information about the methodology for calculating the MSCI EM Index can be found at: *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf.*

[12] A divisor is an arbitrary number chosen at the starting date of an index to fix the index starting value. The divisor is adjusted periodically when capitalization amendments are made to the constituents of the index in order to allow the index value to remain comparable over time. Without a divisor the index value would change when corporate actions took place and would not reflect the true value of an underlying portfolio based upon the index.

calculation engine to Reuters, Bloomberg, SIX Telekurs and FactSet.

The MSCI EM Index is monitored and maintained by MSCI. Adjustments to the MSCI EM Index are made on a daily basis with respect to corporate events and dividends. The MSCI EM Index is generally updated on a quarterly basis in February, May, August and November of each year to reflect amendments to shares outstanding and free float and full index reviews are conducted on a semi-annual basis in May and November of each year for purposes of rebalancing the index.

Exercise and Settlement Value

The settlement value for expiring options on the MSCI EM Index would be based on the closing prices of the component stocks on the last trading day prior to expiration, usually a Friday. The last trading day for expiring contracts is the last business day prior to expiration, usually the third Friday of the expiration month. The index multiplier is $100. The Options Clearing Corporation would be the issuer and guarantor.

Contract Specifications

The MSCI EM Index is a broad-based index, as defined in Exchange Rule 1000A. Options on the MSCI EM Index would be European-style and P.M. cash-settled.[13] The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. E.T. (Philadelphia Time)), as set forth in Exchange Rules 101 and 1101A at Commentary .01, would apply to options on the MSCI EM Index. The expiration date for this index is the Saturday following the third Friday of the expiration month.

The Exchange also notes that the MSCI EM Index is a broad-based index as defined in Exchange Rule 1000A(b)(11).[14] In addition, the Exchange proposes to create specific listing and maintenance standards for options on the MSCI EM Index in Exchange Rule 1009A(g). Specifically, in proposed Rule 1009A(g)(i)(1) through (10) the Exchange proposes to require that the following conditions are satisfied: (1) The index is broad-based, as defined in Rule 1000A(b)(11); (2) Options on the index are designated as P.M.-settled index options; (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) The index consists of 500 or more component securities; (5) All of the component securities of the index will have a market capitalization of greater than $100 million; (6) No single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the MSCI EM Index; (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty-two and a half percent (22.5%) of the weight of the index; (8) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange; (9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and (10) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, the Exchange proposes to require the following maintenance requirements, as set forth in proposed Rule 1009A, for the MSCI EM Index options: (1) The conditions set forth in subparagraphs (g)(i)(1), (2), (3), (4), (7), (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (g)(i)(5) and (6), must be satisfied only as of the first day of January and July in each year; and (2) the total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

The Exchange believes that the modified initial listing requirements are appropriate for trading options on the MSCI EM Index for various reasons. The Exchange believes that a P.M. settlement[15] is appropriate given the nature of this index, which encompasses multiple markets around the world.[16] Specifically, the MSCI EM Index components open with the start of trading in Asia at 7 p.m. E.T. (prior day) and closes with the end of trading in Mexico and Peru at 4 p.m. E.T. (the next day) as closing prices from Brazil, Chile, Peru and Mexico, including late prices,[17] are accounted for in the closing calculation. The closing index level value is distributed by MSCI around 6 p.m. EST each trading day.[18] The index has a higher market capitalization requirement than other broad based indexes. The MSCI EM Index currently contains more than 800 components and no single component comprises more than 3% to 5% of the index, making it not easily subject to market manipulation. Therefore, because the MSCI EM Index has a large number of component securities, representative of many countries, and trades a large volume with respect to ETFs today, the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad based indexes, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

Exchange Rules that apply to the trading of options on broad-based indexes also would apply to options on the Full Value MSCI EM Index.[19] The trading of these options also would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures for index options.[20] The Exchange would apply the same position limits as exist today for broad-based index options, namely 25,000 contracts on the same side of the market for the MSCI EM Index option.[21] All position limit hedge exemptions will apply. The Exchange proposes to apply existing index option margin requirements for the purchase and sale of options on the MSCI EM Index.[22] In addition, the Exchange proposes to amend Rule 1079(d)(1) to also note that with respect to FLEX options on the MSCI EM index, the same number of contracts, 25,000, would apply with respect to the position limit.

[13] *See* proposed Exchange Rule 1009A(g)(i)(2).

[14] *See* Exchange Rule 1000A(b)(11), which defines a broad-based index as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[15] The settlement value of a P.M. settled index option is based on closing prices of the component securities.

[16] The Exchange's Gold/Silver Sector[SM] Index (''XAU'') is a P.M. settled capitalization-weighted index.

[17] Late prices indicates [sic] that while the last real-time stock tick comes in at 4 p.m. E.S.T., the index will stay open for another few minutes to allow any late price information to be obtained. At 4:30 p.m. E.S.T. the final foreign currency rates are applied and the last real-time index value is disseminated.

[18] NYSE Liffe futures based on the MSCI EM Index utilize these P.M. closing prices.

[19] *See generally* Exchange Rules 1000A through 1107A (Rules Applicable to Trading Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[20] *See* Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

[21] The exercise limits would also be 25,000 contracts as per Exchange Rule 1002A.

[22] *See* Exchange Rule 721.

The Exchange proposes to set strike price intervals for these options at $2.50 when the strike price of Full Value MSCI EM Index is below $200, and at least $5.00 strike price intervals otherwise. The minimum tick size for series trading below $3 would be $0.05 and for series trading at or above $3 would be $0.10.[23]

Pursuant to Exchange Rule 1101A, the Exchange proposes to open at least one expiration month and one series for each class of index options open for trading on the Exchange.[24] The Exchange may open additional series of index options to maintain an orderly market, to meet customer demand or when the market price of the underlying index moves more than five strike prices from the initial exercise price or prices. New series of options may be added until the beginning of the month in which the options contract will expire. Additionally, due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on the index until five (5) business days prior to expiration. Also, the opening of a new series of options shall not affect the series of options of the same class previously opened.

Options on the MSCI EM Index would be subject to the same rules that presently govern all Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Exchange Rules are designed to protect public customer trading. Specifically, Rule 1024 prohibits members and member organizations from accepting a customer order to purchase or write an option unless such customer's account has been approved in writing by a designated Options Principal of the Member.[25] Additionally, Exchange Rule 1026, regarding suitability, is designed to ensure that options are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument.[26] Further, Exchange Rule 1027 permits members and employees of member organizations to exercise discretionary power with respect to trading options in a customer's account only if the member or employee of a member organization has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal.[27] Finally, Exchange Rule 1025, Supervision of Accounts, Rule 1028, Confirmations, and Rule 1029, Delivery of Options Disclosure Documents, will also apply to trading in options on the MSCI EM Index.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options on the MSCI EM Index and intends to apply those same procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the national securities exchanges. ISG members work together to coordinate surveillance and share information regarding the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. In addition, the Exchange is an affiliate member of the International Organization of Securities Commissions (''IOSCO''). IOSCO has members from over 100 different countries. Each of the countries from which there is a component security in the MSCI EM Index is a member of IOSCO. These members regulate more than 90 percent of the world's securities markets. Additionally, the Exchange has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges. Given the capitalization of this index and the deep and liquid markets for the securities underlying the MSCI EM Index, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. There is also an active trading volume for the ETFS on the MSCI EM Index.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Full Value MSCI EM Index, including LEAPS on the Full Value MSCI EM Index.

Finally, the Exchange proposes to add a new Rule 1108A entitled ''MSCI EM Index'' to provide additional detailed information pertaining to the index as required by the licensor, including but not limited to, liability and other representations on the part of MSCI Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(5) of the Act[29] in particular, in that it will permit trading in options on Full Value MSCI EM Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices to protect investor and the public interest, and to promote just and equitable principles of trade.

The Exchange believes that because the MSCI EM Index currently contains more than 800 components and no single component comprises more than 3% to 5% of the index, it is not easily subject to market manipulation. Given the capitalization of this index and the deep and liquid markets for the securities underlying the MSCI EM Index, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. There is also an active trading volume for the ETF on the MSCI EM Index. Therefore, because the MSCI EM Index has a large number of component securities, representative of many countries, and trades a large volume with respect to ETFs today, the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad based indexes, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

Exchange Rules that apply to the trading of options on broad-based indexes also would apply to options on the Full Value MSCI EM Index.[30] The trading of these options also would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures for index options.[31] The Exchange would apply the same position limits as exist today for broad-based index options, namely 25,000 contracts on the same side of the market for the MSCI EM Index option.[32] All position limit hedge exemptions will apply. The Exchange proposes to apply existing index option margin requirements for the purchase and sale

[23] *See* Exchange Rule 1034 and proposed Rule 1101A.

[24] *See* Exchange Rule 1101A.

[25] *See* Exchange Rule 1024.

[26] *See* Exchange Rule 1026.

[27] *See* Exchange Rule 1027. Further, this Rule states that discretionary accounts shall receive frequent review by a Registered Options Principal qualified person specifically delegated such responsibilities under Rule 1025, who is not exercising the discretionary authority.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] *See generally* Exchange Rules 1000A through 1107A (Rules Applicable to Trading Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[31] *See* Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

[32] The exercise limits would also be 25,000 contracts as per Exchange Rule 1002A.

of options on the MSCI EM Index.[33] In addition, the Exchange proposes to amend Rule 1079(d)(1) to also note that with respect to FLEX options on the MSCI EM index, the same number of contracts, 25,000, would apply with respect to the position limit.

The Exchange represents that it has an adequate surveillance program in place for options on the MSCI EM Index. The Exchange also represents that it has the necessary systems capacity to support the new options series. As stated in the filing, the Exchange has rules in place designed to protect public customer trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–179 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2011–179.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–179 and should be submitted on or before January 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–52 Filed 1–5–12; 8:45 am]

BILLING CODE 8011–01–P

[33] *See* Exchange Rule 721.

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66074; File No. SR–BX–2011–088]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Waive BX Port Pair Fees for Certain Newly-Added Routable Port Pairs

December 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2011, NASDAQ OMX BX, Inc. (''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to offer a waiver of BX Port Pair fees for certain newly-added routable port pairs during the months of January through March, 2012.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

7015. Access Services

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to receive data from the NASDAQ OMX BX Equities Market:

- $400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month. *The $400 port pair fee will be waived from January 2012 through March 2012 for a single port pair subscribed to by a member used for routing during this free period. To be eligible for the fee waiver, the member must increase the number of routable ports it has as of December 31, 2011 and must send routable order flow through the designated port pair at some point during the free period, otherwise the monthly fee will apply.*
- Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

• TradeInfo BX is available to Members for a fee of $95 per user per month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its fee schedule to waive fees assessed on a single port pair used for routing orders from BX, during the months of January through March, 2012. The Exchange recently began allowing orders placed on the Exchange to route away from BX for execution.[3] The Exchange is proposing to waive, for a limited time, the fee assessed for a single port pair under Rule 7015, applicable to a member firm that adds an additional port and uses that port for routing on BX during the months of January through March, 2012. The Exchange believes that waiving the port pair fee will encourage market participants to utilize the routing function of the market, and to take advantage of new routing strategies made available to market participants.[4]

A member is eligible to subscribe only one free port pair under the proposed fee waiver program and the port must be eligible for routing. The free port pair must be a newly-subscribed port pair and must be net additive to the number of port pairs a member firm is subscribed to as of December 31, 2011 (*i.e.,* it cannot replace an existing port pair). Additional port pairs subscribed to by a member firm and used for routing purposes will not be eligible for the proposed fee waiver. A member firm may add a routable port pair that meets the requirements noted above at any point during the free period, and will not be assessed a fee for the port pair for the months remaining in the free period, so long as routable order flow is sent through the port pair at some point during the free period. If no routable order flow is sent through the designated port pair during the free period, the port pair fee will apply to all months the new port pair is subscribed to. For example, if on January 25, 2012, Firm ABCD adds a routable port on BX, the port pair would be free for the duration of the free period, so long as the member firm sends routable order flow through the port pair at some point during the free period. At the end of the free period, the member will be assessed the normal monthly fee, beginning with April 2012. If the member firm does not send routable order flow through the newly-added port pair, the member firm would be assessed the full fee for each of the months that it had subscribed to the new port pair during the free period (in the example above, all three months of the free period). A member firm is under no obligation to continue subscription to the routable port pair at the end of the free period, and may cancel its subscription at any time prior to the expiration of the free period with no charge.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange believes that the proposed fee waiver is reasonable as it is narrowly focused, of limited duration, and is designed to encourage BX member firms to use the full functionality of the market, thereby increasing liquidity available to investors. The Exchange believes that the proposed fee waiver is equitable since it applies to any BX member firm that seeks to use the routing function of the market and subscribes a new port pair for routing during the free period. To date, no member firms have subscribed new port pairs for the purpose of routing from BX. As noted, a member firm is not penalized for cancelling its routing port pair at the end of the free period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

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

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–088 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–088. 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

[3] Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

[4] *Id.*

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 240.19b–4(f)(2).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2011–088 and should be submitted on or before January 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33858 Filed 1–5–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Delegation of Authority; Delegation of Authority No. 12–A (Revision 5) Re-delegation of Financial Assistance; Amendment 3

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Amendment to Delegation of Authority.

SUMMARY: This document provides the public notice of an amendment to Delegation of Authority No. 12–A (Revision 5) (56 FR 55147, October 24, 1991) (the ''Delegation''), which delegated authority regarding the Small Business Administration's (SBA's) lending and financial assistance programs. This document amends the Delegation to allow certain authority granted therein to be re-delegated and to update the position title of Assistant Administrator for Financial Assistance. SBA is providing this limited re-delegation to facilitate secondary market sales of Certified Development Company (''CDC'') debentures and guaranteed certificate issuance.

FOR FURTHER INFORMATION CONTACT: Ingrid Ripley, Program Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; telephone number: (202) 205–7538, facsimile number: (202) 481–4020; and electronic mail: *ingrid.ripley@sba.gov.*

SUPPLEMENTARY INFORMATION: Delegation of Authority No. 12–A (Revision 5) (56 FR 55147, October 24, 1991) delegated certain authority regarding the Agency's financial assistance programs, including but not limited to, the authority ''To take all necessary actions in connection with the sale of SBA guaranteed CDC debentures and SBA guaranteed certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.'' SBA is authorized to sell CDC debentures and issue guaranteed certificates under 15 U.S.C. 697a and b. The Delegation prohibited the re-delegation of the authority granted therein. (Paragraph III of the Delegation.) This document provides public notice that SBA hereby amends the Delegation to allow the authority delegated to the Assistant Administrator for Financial Assistance pursuant to paragraph I. A.1.d. covering sales of CDC debentures and guaranteed certificates to be re-delegated.

This document also revises the position title previously identified as ''Assistant Administrator for Financial Assistance'' to read ''Director, Office of Financial Assistance (D/FA).'' This revision to position title extends no new responsibilities to the position and aligns the current position title with its associated responsibilities.

Delegation of Authority No. 12–A (Revision 5), is amended to read as follows:

I. * * *

A. To the Director, Office of Financial Assistance (D/FA):

1. Financial Assistance Program

* * * * *

d. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed certificates issued against pools of such debentures to any duly qualified purchaser as determined by SBA. This authority may be re-delegated.

* * * * *

III. The authority delegated herein may not be re-delegated unless authority to re-delegate has been specifically authorized.

* * *

Dated: December 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2012–65 Filed 1–5–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 4910–13]

Noise Exposure Map Update for Albany International Airport, Albany, NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the Albany County Airport Authority (ACAA), for Albany International Airport, under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is December 19, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Suki Gill, Environmental Protection Specialist, Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone (516) 227–3815.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Albany International Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''part 150''), effective December 19, 2011. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with

the requirements of part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the NFTA. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of part 150 includes: Figure NEM–1 ''Existing (2009) Noise Exposure Map'' and Exhibit NEM–2 ''Future (2014) Noise Exposure Map''. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on December 19, 2011.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Monday–Friday—9 a.m.–4 p.m.

Albany County Airport Authority, Administration Building, Suite 200, Albany International Airport, 737 Albany-Shaker Road, Albany, NY 12211, (518) 242–2222, Available upon request, *www.albanyairport.com*.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, New York, December 19, 2011.

Tom Felix,

Manager, Planning & Programming, AEA–610, Eastern Region.

[FR Doc. 2012–26 Filed 1–5–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 312 (Sub–No. 3X)]

South Carolina Central Railroad Company, LLC—Abandonment Exemption—in Chesterfield and Darlington Counties, SC

South Carolina Central Railroad Company, LLC (SCRF) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon approximately 12.8 miles of rail line between milepost 319.89 +/- (centerline of Burlington Drive road crossing), near Society Hill, and extending in a northerly direction to milepost 332.68 (south line of Market Street), including other legs of wye track extending westerly to milepost 332.48 (east line of U.S. Route 1), in Cheraw, in Chesterfield and Darlington Counties, S.C. The line traverses United States Postal Service Zip Codes 29709 and 29593.

SCRF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period. SCRF has further certified that the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 5, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 17, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 26, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to SCRF's representative: Melanie B. Yasbin, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

SCRF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 13, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SCRF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SCRF's filing of a notice of consummation by January 6, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 29, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33806 Filed 1–5–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 331X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Henry and Spalding Counties, GA

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon approximately 4.92 miles of rail line between milepost 4.80 M (south of Meredith Park Drive near the line's crossing of Indian Creek in McDonough) and milepost 9.72 M (east of Trestle Road in Locust Grove), in Henry and Spalding Counties, Ga. The line traverses United States Postal Service Zip Codes 30223, 30228, 30248, and 30253.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 7, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 17, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 26, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, 2401 Pennsylvania Avenue NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 13, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–(800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 6, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 27, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2011–33652 Filed 1–5–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burlington, on behalf of Union Pacific Corporation (WB468–13—12/29/11), for permission to use certain data from the Board's 2010 Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Marcin Skomial, (202) 245–0344.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–45 Filed 1–5–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974; System of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of proposed alteration to a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the United States Department of the Treasury, Bureau of Engraving and Printing (BEP) gives notice of proposed alterations to its Privacy Act system of records entitled ''Treasury/BEP .021—Investigative Files.''

DATES: Comments must be received no later than February 6, 2012. The proposed alterations to the system of records will become effective February 10, 2012 unless the BEP receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Office of the Chief Counsel, United States Department of the Treasury, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228, Room 419–A, Attention: Revisions to PA Systems of Records. Comments can be faxed to (202) 874–5710, or emailed to *Keir.Bancroft@bep.gov.* For emails, please place ''Revisions to SOR'' in the subject line. Comments will be made available for public inspection upon written request. The BEP will make such comments available for public inspection and copying at the above-listed location, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 874–5915. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Keir X. Bancroft, Privacy Officer, United States Department of the Treasury, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228, by phone at (202) 874–5915, or by email at *Keir.Bancroft@bep.gov.*

SUPPLEMENTARY INFORMATION: On June 29, 2009, the Bureau of Engraving and Printing, a bureau within the United States Department of the Treasury, published its inventory of Privacy Act systems of records beginning at 74 FR 31090. Included within that inventory was a system of records entitled ''Treasury/BEP .021—Investigative Files.'' BEP proposes to amend that system of records by adding language under the headings ''Categories of individuals covered in the system,'' ''Categories of records in the system,'' ''Retrievability,'' and ''Retention and disposal.''

Under the existing system of records, BEP may collect and maintain background investigation records on its current and separated employees, its contractors, and its service providers. BEP uses this information for conducting investigations, issuing security clearances, providing access to its facilities, and other administrative reasons.

BEP is amending the categories of individuals covered in the system to include ''employees or contractors of companies to which samples or test decks of Federal Reserve notes or other Government securities are supplied.'' This amendment will allow BEP to collect and maintain background investigation records on individuals who do not work for BEP or for any of its contractors or service providers. These are employees or contractors of third party companies, such as banknote equipment manufacturers and currency reader manufacturers, who receive sample Federal Reserve notes or test decks from BEP for purposes of testing their products' compatibility with new currency designs. These third party companies are typically not contractors or service providers to BEP, but BEP needs to provide sample notes and securities to their employees.

BEP is also amending this system to allow for collection and maintenance of ''passport numbers.'' This new information will allow BEP to perform more in-depth background checks. Passport numbers can be used in domestic and international databases to perform background checks. Further, to the extent other categories of records in the system are not available for purposes of performing a background investigation, a passport number may be the one record available.

BEP is amending the purpose of this system to clarify that background investigation records will be collected from visitors to BEP facilities, and ''others to whom samples or test decks of Federal Reserve notes or other Government securities are supplied.''

BEP is amending the ''Retrievability'' section by indicating that background information may be retrieved numerically by passport number. This reflects the addition of passport numbers to the categories of records in the System.

Finally, BEP is amending the timeframe for retention and disposal by specifying that information will be maintained for ''five years after expiration of a security agreement or a nondisclosure agreement.'' This is the same period of time that BEP retains background information on its employees, contractors, and service providers (i.e., five years after separation or five years after expiration of a contractual relationship).

The altered system of records report has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) and Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For the reasons set forth in the preamble, BEP proposes to amend its system of records entitled ''BEP .021—Investigative Files,'' as follows:

Treasury/BEP .021

SYSTEM NAME:

Investigative Files.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Description of the change: Remove current entry and in its place add the following: ''Employees, separated bureau employees, employee applicants, visitors to the bureau, news-media correspondents, contractor and service company employees (current and separated), and employees or contractors of companies to which samples or test decks of Federal Reserve notes or other Government securities are supplied.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of the change: Following the phrase ''Type of information:'' the words ''passport numbers,'' are added before the words ''character references.''

* * * * *

PURPOSES(S):

Description of the change: Remove current entry and in its place add the following: ''This system is to permit the Bureau to collect and maintain background investigation records on potential applicants, current Bureau employees and contractors for issuance of security clearances, visitors seeking access to Bureau facilities, and others to whom samples or test decks of Federal

Reserve notes or other Government securities are supplied, or other administrative reasons. Information is also collected as part of investigations conducted by the Bureau's Office of Security.''

* * * * *

RETRIEVABILITY:

Description of the change: Remove current entry and in its place add the following: ''Numerically by case number and year, alphabetically by name, social security number, alphabetically by company name, and numerically by passport.''

* * * * *

RETENTION AND DISPOSAL:

Description of the change: Remove current entry and in its place add the following: ''Destroy within 90 days following notification of an employee's death, within five years after separation or transfer of incumbent employee, five years after expiration of contractual relationship, or five years after expiration of a security agreement or nondisclosure agreement, Product Discrepancy Investigative Reports and Bank Letter Investigative Reports are retained indefinitely.''

* * * * *

Dated: December 23, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2012–37 Filed 1–5–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 11 individual(s) and 28 entities) whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 11 individuals and 28 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on December 29, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On December 29, 2011, the Director of OFAC designated the following 11 individuals and 28 entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. ARBELAEZ VELEZ, Ivan Dario, c/o FARBE COMUNICACIONES LTDA; c/o AGROESPINAL S.A.; DOB 26 Jul 1967; POB Medellin, Colombia; Cedula No. 98541418 (Colombia) (individual) [SDNTK].
2. CHEAITELLI SAHELI, Guiseppe Ali, c/o POLYTON (ASIA) LIMITED; DOB 10 Feb 1966; POB Maicao, La Guajira, Colombia; Cedula No. 84046545 (Colombia) (individual) [SDNTK].
3. EDERY CRIVOSEI, Jaime, c/o AGROPECUARIA LA PERLA LTDA.; c/o KPD S.A.; DOB 27 Aug 1957; POB Bogota, Colombia; Cedula No. 16588834 (Colombia) (individual) [SDNTK].
4. EL KHANSA, Ahmad, c/o GLOBAL TECHNOLOGY IMPORT & EXPORT, S.A. (GTI); DOB 4 Oct 1967; POB Ghobeiry, Lebanon; Passport RL 0884631 (Lebanon) (individual) [SDNTK].
5. EL KHANSA, Mohamad Zouheir (a.k.a. TORRES ZAMBRANO, Manuel), c/o ALMACEN ELECTRO SONY STAR; c/o GLOBAL TECHNOLOGY IMPORT & EXPORT, S.A. (GTI); c/o MICRO EMPRESA ASHQUI; DOB 9 Jan 1971; alt. DOB 9 Jan 1970; POB Ghobeiri, Lebanon POB Barranquilla, Colombia; Cedula No. 84077765 (Colombia); Passport RL 0736643 (Lebanon) (individual) [SDNTK].
6. FADLALLAH CHEAITELLY, Jorge (a.k.a. CHEAITELLY SAHELE, Jorge Ali; a.k.a. ''GIORGIO''), c/o BODEGA ELECTRO GIORGIO; c/o EUROCAMBIO, S.A.; c/o GENERAL COMMERCE OVERSEAS, INC.; c/o PRODUCERS GROUP CORP.; c/o ZEDRO INVESTMENT, S.A.; c/o GIORGINO CORPORATION OF PANAMA, S.A.; c/o GIORGIO CHEAITELLY INVESTMENT, S.A.; c/o GIORGIOTELLY, S.A.; c/o III MILLENIUM INTERNATIONAL; c/o J.H. EXIM INTERNACIONAL, S.A.; c/o SANTA MARIA INTERNATIONAL TRADING CORP.; c/o SILVER HOUSE, INC.; c/o OCEAN INDIC OVERSEAS, S.A.; c/o JUNIOR INTERNATIONAL S.A.; DOB 20 Dec 1960; POB Maicao, La Guajira, Colombia; Cedula No. 17849451 (Colombia) (individual) [SDNTK].
7. FADLALLAH CHEAYTELLI, Jaime, c/o GENERAL COMMERCE OVERSEAS, INC.; c/o EURO EXCHANGE Y FINANCIAL COMMERCE, INC.; DOB 18 Jul 1967; POB Maicao, La Guajira, Colombia; Cedula No. 84048039 (Colombia) (individual) [SDNTK].
8. FADLALLATH CHEAITILLY, Fatima (a.k.a. FADLALLAH CHEAITELLY, Fatima), c/o ZEDRO INVESTMENT,

S.A.; c/o GIORGINO CORPORATION OF PANAMA, S.A.; c/o GIORGIO CHEAITELLY INVESTMENT, S.A.; c/o SILVER HOUSE, INC.; c/o ALMACEN ELECTRO SONY STAR; c/o COMERCIAL GLOBANTY; DOB 8 Dec 1972; POB Maicao, La Guajira, Colombia; Cedula No. 56083194 (Colombia) (individual) [SDNTK].

9. ISSA FAWAZ, Benny (a.k.a. ISSA FAUSE, Benny), Calle 12, No. 10–79, Maicao, La Guajira, Colombia; Calle 13, No. 7–49, Barrio El Centro, Maicao, La Guajira, Colombia; c/o FAMILY FEDCO; c/o FEDCO IMPORT & EXPORT, S.A.; DOB 29 Sep 1974; POB Barranquilla, Colombia; Cedula No. 72204490 (Colombia); Passport 72204490 (Colombia) (individual) [SDNTK].
10. RAHALL, Fawaz Mohamad, Calle 122, No. 11B–37, Colombia; DOB 23 Feb 1969; POB Lala, Lebanon; Cedula No. 5176876 (Colombia) (individual) [SDNTK].
11. SALEH, Ali Mohamad, c/o ALMACEN BATUL; c/o COMERCIAL ESTILO Y MODA; DOB 1 Jan 1974; Cedula No. 1124006380 (Colombia) (individual) [SDNTK].

Entities

12. AGROPECUARIA LA PERLA LTDA. (a.k.a. ''AGROPERLA''), Calle 18 Norte, No. 3N–24, Oficina 602, Cali, Colombia; NIT # 8002113865 (Colombia) [SDNTK].
13. ALMACEN BATUL (a.k.a. ''BODEGA CAMPEON''), Calle 10A, No. 11A–41/45, Maicao, La Guajira, Colombia; Matricula Mercantil No 36817 (Colombia); NIT # 639000204–4 (Colombia) [SDNTK].
14. ALMACEN ELECTRO SONY STAR (a.k.a. ''MICROEMPRESA KHANSA''), Calle 13, No. 10–45, Maicao, La Guajira, Colombia; NIT # 639000271–8 (Colombia)[SDNTK].
15. BODEGA ELECTRO GIORGIO, Calle 14 No. 8–67, Maicao, La Guajira, Colombia; Matricula Mercantil No 00027344 (Colombia) [SDNTK].
16. CAFE DU LIBAN, S.A., Avenida Eloy Alfaro, Panama City, Panama; RUC # 36266–1–368869 (Panama) [SDNTK].
17. COMERCIAL ESTILO Y MODA, Calle 10A, No. 11A–41/45, Maicao, La Guajira, Colombia; NIT # 639000204–4 (Colombia) [SDNTK].
18. COMERCIAL GLOBANTY, Calle 13, No. 10–19, Local 02, Maicao, La Guajira, Colombia; Calle 13, No. 10–36, Maicao, La Guajira, Colombia; Matricula Mercantil No 102964 (Colombia); NIT # 56083194–1 (Colombia) [SDNTK].
19. EURO EXCHANGE Y FINANCIAL COMMERCE, INC. (a.k.a. ''EUREX''), Avenida Eusebio A Morales y Via Veneto—Hotel Veneto, Planta Baja, Local 6, Panama City, Panama; Edificio Servicios Aeroportuarios, Segundo Piso, Local 12, Panama City, Panama; RUC # 1652278–1–675861 (Panama) [SDNTK].
20. EUROCAMBIO, S.A. (a.k.a. ''CASA DE CAMBIO EUROCAMBIO''), Calle Ricardo Arias, Edificio Macondo, Local 2–A, Panama City, Panama; RUC # 17762–1–366473 (Panama) [SDNTK].
21. FAMILY FEDCO, Calle 13, No. 14–36, Maicao, La Guajira, Colombia; NIT # 72204490–4 (Colombia) [SDNTK].
22. FARBE COMUNICACIONES LTDA, Carrera 81 A 34, No. C–43, Medellin, Colombia; Matricula Mercantil No 21–290521–03 (Colombia); NIT # 811030724–4 (Colombia) [SDNTK].
23. FEDCO IMPORT & EXPORT, S.A., La Calle 16 Avenue, Santa Isabel, P.O. Box 3114, Zona Libre, Colon, Panama; RUC # 660249–1–461129 (Panama) [SDNTK].
24. GENERAL COMMERCE OVERSEAS, INC., Calle Ricardo Arias, Edificio Macondo, Local 2–A, Panama City, Panama; RUC # 1109850–1–561818 (Panama) [SDNTK].
25. GIORGINO CORPORATION OF PANAMA, S.A., Panama; RUC # 27216–2–227535 (Panama) [SDNTK].
26. GIORGIO CHEAITELLY INVESTMENT, S.A., Panama; RUC # 31850–2–245132 (Panama) [SDNTK].
27. GIORGIOTELLY, S.A., Panama; RUC # 33518–38–252229 (Panama) [SDNTK].
28. GLOBAL TECHNOLOGY IMPORT & EXPORT, S.A. (GTI), Calle 50 Y 53 Marbella, Edificio Plaza 2000, Piso 7, Panama City, Panama; RUC # 1061547–1–549692 (Panama) [SDNTK].
29. III MILLENIUM INTERNATIONAL, Panama; RUC # 16927–1–366365 (Panama) [SDNTK].
30. J.H. EXIM INTERNACIONAL, S.A., Panama; RUC # 46110–70–302460 (Panama) [SDNTK].
31. JUNIOR INTERNATIONAL S.A. (a.k.a. JUNIOR INTERNACIONAL S.A.), Panama; RUC # 17458–23–164253 (Panama) [SDNTK].
32. KPD S.A., Calle 18 Norte, No. 3N–24, Oficina 602, Cali, Colombia; NIT # 9000420320 (Colombia) [SDNTK].
33. MICRO EMPRESA ASHQUI, Carrera 10, No. 12–51, Apt. 301, Maicao, La Guajira, Colombia; Matricula Mercantil No 0036550 (Colombia) [SDNTK].
34. OCEAN INDIC OVERSEAS, S.A., Panama; RUC # 21523–11–193299 (Panama) [SDNTK].
35. POLYTON (ASIA) LIMITED, 20–F China Overseas Building, 139 Hennesy Road, Wan Chai, Hong Kong; Business Registration Document # 38365991 (Hong Kong) [SDNTK].
36. PRODUCERS GROUP CORP., Panama; RUC # 59443–40–344348 (Panama) [SDNTK].
37. SANTA MARIA INTERNATIONAL TRADING CORP., Panama; RUC # 45579–11–300568 (Panama) [SDNTK].
38. SILVER HOUSE, INC., Panama; RUC # 1258011–1–80105701 (Panama) [SDNTK].
39. ZEDRO INVESTMENT, S.A., Panama; RUC # 31906–42–245391 (Panama) [SDNTK].

Dated: December 29, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–36 Filed 1–5–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for 2011 American Eagle Silver Uncirculated Coins

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the re-pricing of the 2011 American Eagle Silver Uncirculated Coins. The price of the 2011 American Eagle Silver Uncirculated Coins will be lowered from $50.95 to $45.95.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW.; Washington, DC 20220; or call (202) 354–7500.

Authority: 31 U.S.C. 5111, 5112, and 9701.

Dated: December 30, 2011.

Al Runnels,

Acting Chief of Staff, United States Mint.

[FR Doc. 2012–24 Filed 1–5–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for 2012 America the Beautiful Quarters® Products and American Eagle Silver Dollars

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing 2012 pricing for America the Beautiful Quarters® products and American Eagle Silver Proof and Uncirculated Coins, as follows:

Product	Retail price
America the Beautiful Quarters Three-Coin Sets™	$9.95
America the Beautiful Quarters Uncirculated Coin Set™	12.95
America the Beautiful Quarters Circulating Coin Set™	5.95
America the Beautiful Five Ounce Silver Uncirculated Coin	204.95
American Eagle Silver Proof Coin	61.95
American Eagle Silver Uncirculated Coin	45.95

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call (202) 354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: December 30, 2011.

Al Runnels,

Acting Chief of Staff, United States Mint.

[FR Doc. 2012–29 Filed 1–5–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for 2012 Products Featuring $1 Coins

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing 2012 pricing for products featuring $1 coins, as follows:

Product	Retail price
Presidential $1 Coin & First Spouse Medal Set™	$9.95
American Presidency $1 Coin Cover Series	19.95
Presidential $1 Coin Proof Set™	18.95
Presidential $1 Coin Uncirculated Set™ (P&D)	16.95
Native American and Presidential $1 Coin Rolls	32.95
$1 Coin 250-Coin Box	275.95
$1 Coin 500-Coin Box	550.95
$1 Coin Five-Coin Set	12.95
$1 Coin 100-Coin Bags	111.95

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call (202) 354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: December 30, 2011.

Al Runnels,

Acting Chief of Staff, United States Mint.

[FR Doc. 2012–27 Filed 1–5–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for America the Beautiful Five Ounce Silver Uncirculated Coins™

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the re-pricing of the America the Beautiful Five Ounce Silver Uncirculated Coins. The price of the America the Beautiful Five Ounce Silver Uncirculated Coins will be lowered from $229.95 to $204.95.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW.; Washington, DC 20220; or call (202) 354–7500.

Authority: 31 U.S.C. 5111, 5112, and 9701.

Dated: December 30, 2011.

Al Runnels,

Acting Chief of Staff, United States Mint.

[FR Doc. 2012–28 Filed 1–5–12; 8:45 am]

BILLING CODE 4810–02–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 4 January 6, 2012

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 110808485–1534–01]

RIN 0648–BB14

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals, by harassment, incidental to conducting operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar in areas of the world's oceans (with the exception of Arctic and Antarctic waters and certain geographic restrictions), from August 16, 2012, through August 15, 2017. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than February 6, 2012.

ADDRESSES: You may submit comments, identified by 0648–BB14, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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, Excel, WordPerfect, or Adobe PDF file formats only. To help NMFS process and review comments more efficiently, please use only one method to submit comments.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

The public may obtain an electronic copy of the Navy's application by writing to the address specified above this section (see **ADDRESSES**), telephoning the contact listed above this section (see **FOR FURTHER INFORMATION CONTACT**), or by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy published a **Federal Register** Notice of Availability of a Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (DSEIS/SOEIS) for employment of SURTASS LFA sonar on August 19, 2011. The public may view the document at: *http://www.surtass-lfa-eis.com.* NMFS is participating in the development of the Navy's DSEIS/SOEIS as a cooperating agency under the National Environmental Policy Act of 1972.

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region during periods of not more than five consecutive years each if certain findings are made and regulations are issued, or if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such taking.

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.

The National Defense Authorization Act of 2004 (NDAA; Pub. L. 108–136) amended the MMPA by removing the ''small numbers'' and ''specified geographical region'' provisions and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) 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 behavior 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 August 17, 2011, NMFS received an application from the U.S. Navy requesting authorization for the take of individuals of 94 species of marine mammals (70 cetaceans and 24 pinnipeds), by harassment, incidental to upcoming routine training and testing of the SURTASS LFA sonar system, as well as the use of the system on a maximum of four U.S. Naval ships during military operations in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea from August 16, 2012 through August 15, 2017. These routine training and testing and military operations are classified as military readiness activities. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within the Navy's operation areas by exposing them to sound from low-frequency active sonar sources. The Navy requests authorization to take individuals of 94 species of marine mammals by Level A and Level B Harassment, although as discussed later in this document, Level A Harassment will likely be avoided through the implementation of the Navy's proposed mitigation measures.

This is NMFS' third rule making for SURTASS LFA sonar operations under the MMPA. NMFS' current five-year

regulations governing incidental takings incidental to SURTASS LFA sonar activities and the related Letters of Authorizations (LOA) expire on August 15, 2012. NMFS published the first rule, effective from August 2002 through August 2007, on July 16, 2002 (67 FR 46712), and published the second rule on August 21, 2007 (72 FR 46846). For this proposed rule making, the Navy is proposing to conduct the same types of sonar activities as they have conducted over the past nine years.

Description of the Specified Activities

Purpose and Background

The Navy's mission is to maintain, train, equip, and operate combat-ready naval forces capable of accomplishing American strategic objectives, deterring maritime aggression, and maintaining freedom of the seas. Section 5062 of Title 10 of the United States Code directs the Secretary of the Navy and Chief of Naval Operations (CNO) to ensure the readiness of the U.S. naval forces.

The Secretary of the Navy and the CNO have established that anti-submarine warfare (ASW) is a critical part of the Navy's mission that requires access to both the open-ocean and littoral environments and continual training to prepare for all potential threats. The Navy is challenged by the increased difficulty in locating undersea threats solely by using passive acoustic technologies due to the advancement and use of quieting technologies in diesel-electric and nuclear submarines. The range at which the Navy's ASW assets are able to identify submarine threats is decreasing, and at the same time, improvements in torpedo design are extending the effective weapons range of subsea threats to the U.S. naval fleet.

To address these changing requirements for ASW readiness, the Navy developed SURTASS LFA sonar, which provides the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. Because low-frequency (LF) sound travels in seawater for greater distances than higher frequency sound, the Navy states that the SURTASS LFA sonar system would meet the need for improved detection and tracking of new-generation submarines at a longer range and would maximize the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range. Thus, the Navy believes that the active acoustic component in the SURTASS LFA sonar is an important augmentation to its passive and tactical systems, as its long-range detection capabilities can effectively counter the threat to the U.S. Navy and national security interests posed by quiet, diesel submarines.

Specified Activities

As previously mentioned, the Navy has requested MMPA authorization to take marine mammals incidental to the operation of up to four SURTASS LFA sonar systems for routine training and testing as well as for the use of the system during military operations from August 16, 2012 through August 15, 2017. The SURTASS LFA sonar system is a long-range, LF sonar (between 100 and 500 Hertz (Hz)) that has both active and passive components (see the Description of SURTASS LFA Sonar section later in this document). Use of the LFA sonar system could occur in the Pacific, Atlantic and Indian Oceans, and the Mediterranean Sea on a maximum of four naval surveillance vessels: the USNS ABLE, USNS EFFECTIVE, USNS IMPECCABLE, and the USNS VICTORIOUS. The Navy states that they will not operate SURTASS LFA sonar in Arctic and Antarctic waters. Further, the Navy also proposes to operate SURTASS LFA sonar such that the sound field does not exceed 180 decibels (dB) within 22 kilometers (km) (13.7 miles (mi); 12 nautical miles (nm) of land; or in proposed offshore biologically important areas (OBIA) for marine mammals, identified later in this document, in the Navy's application, and in the Navy's 2011 DSEIS/SOEIS (see Geographic Restrictions section later in this document).

Because of uncertainties in the world's political climate, the Navy cannot predict a detailed account of future operating locations and conditions. However, for analytical purposes, the Navy has developed a nominal annual deployment schedule and operational concept based on current LFA sonar operations since January 2003 and projected naval fleet requirements (See Table 1).

The Navy anticipates that a normal SURTASS LFA sonar deployment schedule for a single vessel would involve approximately 294 days per year at sea, which includes 240 days of active sonar transmissions and 54 days of transit. SURTASS LFA sonar would operate day and night in a variety of weather conditions. NMFS refers the reader to Table 1 for additional details on the nominal annual deployment schedule for SURTASS LFA sonar vessels.

TABLE 1—EXAMPLE ANNUAL DEPLOYMENT SCHEDULE FOR ONE SURVEILLANCE VESSEL USING SURTASS LFA SONAR

On mission	Days	Off mission	Days
Transit	54	In-Port Upkeep	40
Active Operations:			
432 transmission hours based on a 7.5% duty cycle	240	Regular Overhaul	31
Total Days on Mission	294	Total Days off Mission	71

Potential SURTASS LFA Sonar Operational Areas

Figure 1 depicts the potential areas of operation for SURTASS LFA sonar. Based on the Navy's current operational requirements, potential operations for SURTASS LFA sonar vessels from August 2012 through August 2017 would most likely include areas located in the Pacific, Indian, and Atlantic Oceans and Mediterranean Sea.

The Navy will not operate SURTASS LFA sonar in polar regions (i.e., Arctic and Antarctic waters) of the world (see shaded areas in Figure 1). The Arctic Ocean, the Bering Sea (including Bristol Bay and Norton Sound), portions of the Norwegian, Greenland, and Barents Seas north of 72° North (N) latitude, plus Baffin Bay, Hudson Bay, and the Gulf of St. Lawrence would be non-operational areas for SURTASS LFA sonar. In the Antarctic, the Navy will not conduct SURTASS LFA operations in areas south of 60° South (S) latitude. The Navy has excluded polar waters from operational planning because of the inherent inclement weather conditions and the navigational and operational (equipment) danger that icebergs pose to SURTASS LFA sonar vessels.

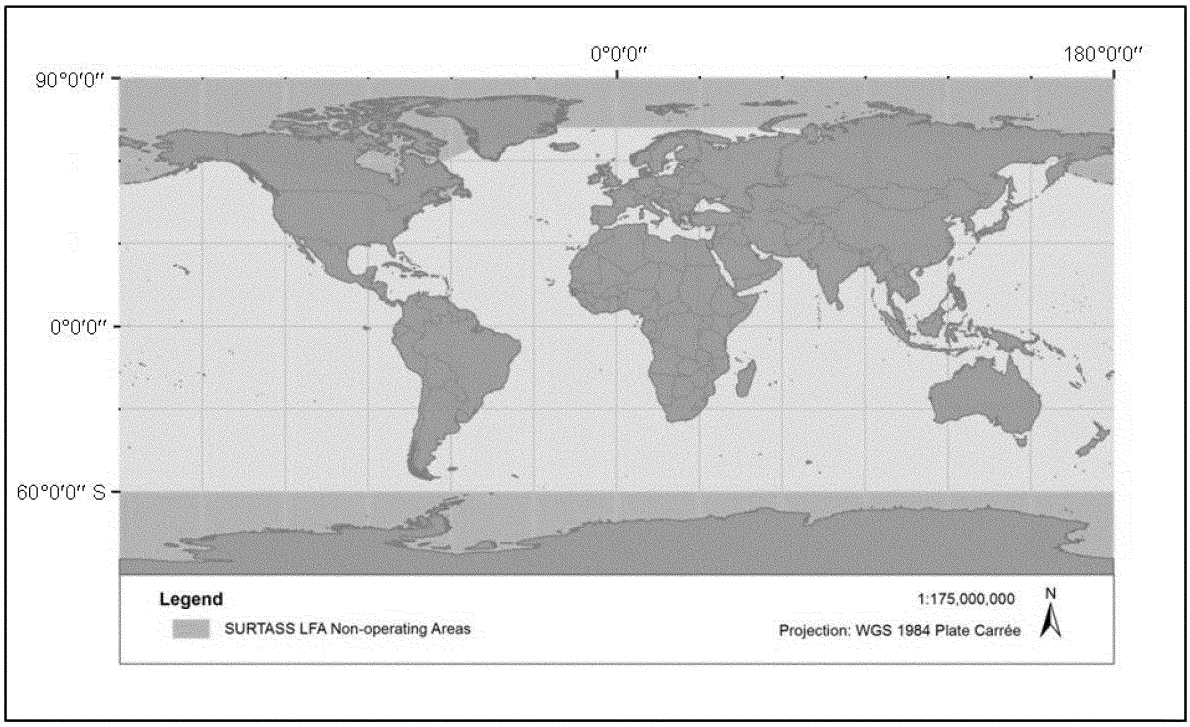

Figure 1 Potential areas of operation for SURTASS LFA sonar (DoN, 2011).

The Navy must anticipate, or predict, where they have to operate in the next five years or so for the MMPA authorization. Naval forces are presently operating in several areas strategic to U.S national and international interests, including areas in the Atlantic Ocean, the Mediterranean Sea, the Indian Ocean and Persian Gulf, and the Pacific Rim. National Security needs may dictate that many of these operational areas will be close to ports and choke points, such as entrances to straits, channels, and canals. It is anticipated that many future naval conflicts are likely to occur within littoral or coastal areas. However, it is infeasible for the Navy to analyze all potential mission areas for all species and stocks for all seasons. Instead, the Navy projects where it intends to test, train, and operate for the next five-year authorization period based on today's political climate and provides NMFS with risk estimates for marine mammal stocks in the proposed areas of operation.

For this third rulemaking, the Navy has modeled and analyzed 19 operational areas for SURTASS LFA operations that would be relevant to U.S. national security interests (see Table 2). They include the following modeled areas: East of Japan; north Philippine Sea; west Philippine Sea; offshore Guam; Sea of Japan; East China Sea; the south China Sea; the northwest Pacific Ocean; the Hawai'i Range Complex; Offshore Southern California in the Southern California (SOCAL) Range Complex; the western Atlantic in the Atlantic Fleet Active Sonar (AFAST) Study Area/Jacksonville (JAX) operational area (OPAREA); the eastern North Atlantic (western approach); the Mediterranean and Ligurian Seas; the Arabian Sea; the Andaman Sea (approaches to the Strait of Malacca); the Panama Canal (western approach); and the northeast Australian Coast.

TABLE 2—POTENTIAL SURTASS LFA SONAR OPERATING AREAS THAT THE NAVY MODELED FOR THE DSEIS/OEIS (DON, 2011) AND THE MMPA LOA APPLICATION

Modeled site	Location (latitude/longitude)	Modeled site	Location (latitude/longitude)
East of Japan	38° N, 148° E	Hawaii South (Hawai'i Range Complex)	19.5° N, 158.5° W.
North Philippine Sea	29° N, 136° E	Offshore Southern California (Southern California (SOCAL) Range Complex).	32° N, 120° W.
West Philippine Sea	22° N, 124° E	Western Atlantic (off Florida) (Atlantic Fleet Active Sonar (AFAST) Study Area/Jacksonville.	30° N, 78° W.
Offshore Guam (Mariana Islands Range Complex, outside Mariana Trench).	11° N, 145° E	Eastern North Atlantic (western approach)	56.5° N, 10° W.
Sea of Japan	39° N, 132° E	Mediterranean Sea—Ligurian Sea	43° N, 8° E.
East China Sea	26° N, 125° E	Arabian Sea	20°N, 65°E.
South China Sea	21° N, 119° E	Andaman Sea (approaches to the Strait of Malacca).	7.5° N, 96° E.
NW Pacific 25° to 40° N	30° N, 165° E	Panama Canal (western approach)	5° N, 81° W.
NW Pacific 10° to 25° N	15° N, 165° E	Northeast Australian Coast	23° S, 155° E.
Hawai'i North (Hawai'i Range Complex)	25° N, 158° W		

Acoustic stimuli (i.e., increased underwater sound) generated during the transmission of low-frequency acoustic signals by the SURTASS LFA sonar system has the potential to cause take of marine mammals in the operational areas. The operation of the SURTASS LFA sonar system during at-sea operations would result in the generation of sound or pressure waves in the water at or above levels that NMFS has determined would result in take. This is the principal means of marine mammal taking associated with these military readiness activities and the Navy has requested an authorization to take 94 species of marine mammals by Level A and Level B harassment. At no point are there expected to be more than four systems in use, and thus this proposed rule analyzes the impacts on marine mammals due to the deployment of up to four LFA sonar systems from 2012 through 2017.

In addition to the use of active acoustic sources, the Navy's activities include the operation and movement of vessels that are necessary to conduct the routine training and testing as well as the use of the system during military operations. This document also analyzes the effects of this part of the activities. However, NMFS does not anticipate take to result from collision with any of the four SURTASS LFA vessels because each vessel moves at a relatively slow speed, for a relatively short period of time. It is likely that any marine mammal would be able to avoid the surveillance vessels.

Description of SURTASS LFA Sonar

SONAR is an acronym for Sound Navigation and Ranging, and its definition includes any system (biological or mechanical) that uses underwater sound, or acoustics, for detection, monitoring, and/or communications. Active sonar is the transmission of sound energy for the purpose of sensing the environment by interpreting features of received signals. Active sonar detects objects by creating a sound pulse or ping that is transmitted through the water and reflects off the target, returning in the form of an echo. Passive sonar detects the transmission of sound waves created by an object.

The SURTASS LFA sonar system is a long-range, all-weather sonar system that has both active and passive components. LFA, the active system component (which allows for the detection of an object that is not generating noise), is comprised of source elements (called projectors) suspended vertically on a cable beneath the surveillance vessel. The projectors produce an active sound pulse (i.e., a ping) by converting electrical energy to mechanical energy by setting up vibrations or pressure disturbances within the water to produce a ping. The Navy uses LFA as an augmentation to SURTASS operations when passive system performance is inadequate. SURTASS, the passive part of the system, uses hydrophones (i.e., underwater microphones) to detect sound emitted or reflected from submerged targets, such as submarines. The SURTASS hydrophones are mounted on a horizontal line array that is towed behind the surveillance vessel. The Navy then processes and evaluates the returning signals or echoes, which are usually below background or ambient sound level, to identify and classify potential underwater targets.

LFA Active Component

The active component of the SURTASS LFA sonar system consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array. The expected water depth at the center of the array is approximately 400 ft (121.9 m). The SURTASS LFA sonar projectors transmit in the low-frequency band (between 100 and 500 Hz) and the Navy will not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hz. The source level of an individual projector in the SURTASS LFA sonar array is approximately 215 dB re: 1 μPa at 1 m or less. (Sound pressure is the sound force per unit area and is usually measured in micropascals (μPa), where one Pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. The commonly used reference pressure level in underwater acoustics is 1 μPa at 1 m, and the units are decibels (dB) re: 1 μPa at 1 m). Because of the physics involved in acoustic beamforming (i.e., a method of mapping noise sources by differentiating sound levels based upon the direction from which they originate) and sound transmission loss processes, the SURTASS LFA sonar array cannot have a sound pressure level (SPL) higher than the SPL of an individual projector.

The SURTASS LFA sonar acoustic transmission is an omnidirectional beam (a full 360 degrees (°)) in the horizontal plane. The LFA sonar system also has a narrow vertical beam that the vessel's crew can steer above or below the horizontal plane. The typical SURTASS LFA sonar signal is not a constant tone, but rather a transmission of various signal types that vary in frequency and duration (including continuous wave (CW) and frequency-modulated (FM) signals). A complete sequence of sound transmissions, also referred to by the Navy as a ''ping'' or a wavetrain, can last as short as six seconds (sec) to as long as 100 sec with an average length of 60 sec. Within each ping, the duration of any continuous frequency sound transmission is no longer than 10 sec and the time between pings is typically from six to 15 minutes (min). Based on the Navy's historical operating parameters over the past nine years, the average duty cycle (i.e., the ratio of sound ''on'' time to total time) for LFA sonar is normally 7.5 to 10 percent and the duty cycle is not expected to exceed 20 percent.

Compact LFA Active Component

At present, the USNS IMPECCABLE is the only naval vessel with an operational LFA sonar system. To meet future undersea warfare requirements in littoral waters, the Navy has developed a compact LFA (CLFA) sonar system now deployed on its three smaller surveillance vessels (i.e., the USNS ABLE, EFFECTIVE, and VICTORIOUS). In the application, the Navy indicates that the operational characteristics of the active component CLFA are comparable to the existing LFA systems and that the potential impacts from CLFA will be similar to the effects from the existing LFA sonar system. CLFA consists of smaller projectors that weigh 142,000 lbs (64,410 kilograms (kg)), which is 182,000 lbs (82,554 kg) less that the mission weight of the LFA projectors on the USNS IMPECCABLE. The CLFA sonar system also consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array and the CLFA sonar projectors transmit in the low-frequency band (also between 100 and 500 Hz). Similar to the active component of the LFA system, the source level of an individual projector in the CLFA sonar array is approximately 215 dB re: 1 μPa or less.

For the analysis in this document, NMFS will use the term LFA to refer to both the LFA sonar system and/or the CLFA sonar system, unless otherwise specified.

SURTASS Passive Component

The passive component of the SURTASS LFA system consists of a SURTASS Twin-line (TL–29A) horizontal line array mounted with hydrophones. The Y-shaped array is 1,000 ft (305 m) in length and has an operational depth of 500 to 1,500 ft (152.4 to 457.2 m). The SURTASS LFA sonar vessel typically maintains a speed of at least 3.4 mph (5.6 km/hr; 3 knots (kts)) to tow the array astern of the vessel in the correct horizontal configuration.

High-Frequency Active Sonar

Although technically not part of the SURTASS LFA sonar system, the Navy also proposes to use a high-frequency sonar system, called the High Frequency Marine Mammal Monitoring sonar (HF/M3 sonar), developed by the Navy and Scientific Solutions, Inc., to detect and locate marine mammals within the SURTASS LFA sonar operational areas. This enhanced commercial fish-finding sonar, mounted at the top of the SURTASS LFA sonar vertical line array, has a source level of 220 dB re: 1 μPa at 1 m with a frequency range from 30 to 40 kilohertz (kHz). The duty cycle is variable, but is normally below between three to four percent and the maximum pulse duration is 40 milliseconds. The HF/M3 sonar has four transducers with 8° horizontal and 10° vertical beamwidths, which sweep a full 360° in the horizontal plane every 45 to 60 sec with a maximum range of approximately 1.2 mi (2 km).

Vessel Specifications

The Navy proposes to deploy the SURTASS LFA sonar system on a maximum of four U.S. Naval ships: the USNS ABLE (T–AGOS 20), the USNS EFFECTIVE (T–AGOS 21), the USNS IMPECCABLE (T–AGOS 23) and the USNS VICTORIOUS (T–AGOS 19).

The USNS ABLE, EFFECTIVE, and VICTORIOUS, are twin-hulled ocean surveillance ships. Each vessel has a length of 235 feet (ft) (71.6 meters (m)); a beam of 93.6 ft (28.5 m); a maximum draft of 25 ft (7.6 m); and a full load displacement of 3,396 tons (3,451 metric tons). A twin-shaft diesel electric engine provides 3,200 horsepower (hp), which drives two propellers.

The USNS IMPECCABLE, also a twin-hulled ocean surveillance ship, has a length of 281.5 ft (85.8 m); a beam of 95.8 ft (29.2 m); a maximum draft of 26 ft (7.9 m); and a full load displacement of 5,368 tons (5,454 metric tons). A twin-shaft diesel electric engine provides 5,000 hp, which drives two propellers.

The operational speed of each vessel during sonar operations will be approximately 3.4 miles per hour (mph) (5.6 km per hour (km/hr); 3 kts) and each vessel's cruising speed outside of sonar operations would be approximately 11.5 to 14.9 mph (18.5 to 24.1 km/hr; 10 to 13 kts). The expected minimum water depth at which the SURTASS LFA vessel would operate is 656.2 ft (200 m) and the vessel will generally travel in straight lines or in oval-shaped (i.e., racetrack) patterns depending on the operational scenario. Also, each SURTASS LFA sonar vessel would operate independently of, or in conjunction with, other naval air, surface or submarine assets.

Each vessel also has an observation area on the bridge from where lookouts will monitor for marine mammals before and during the proposed sonar operations. When stationed on the bridge of the USNS ABLE, EFFECTIVE, or VICTORIOUS, the lookout's eye level will be approximately 32 ft (9.7 m) above sea level providing an unobstructed view around the entire vessel. For the USNS IMPECCABLE, the lookout's eye level will be approximately 45 ft (13.7 m) above sea level.

Description of Real-Time SURTASS LFA Sonar Sound Field Modeling

This section explains how the Navy will determine the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180-dB re: 1 μPa at 1 m isopleth (i.e., the basis for the proposed LFA sonar mitigation zone for marine mammals). NMFS provides this description to aid the public's understanding of this action. However, the actual physics governing the propagation of SURTASS LFA sound signals is extremely complex and dependent on numerous in-situ environmental factors.

Prior to commencing and during SURTASS LFA transmissions, the sonar operators on the vessel will measure oceanic conditions (such as sea water temperature, salinity, and depth) in the proposed action area. This information is required for the sonar technicians to accurately determine the speed at which sound travels and to determine the path that the sound would take through the water column at a particular location (i.e., the speed of sound in seawater varies directly with depth, temperature, and salinity).

The sonar operators use the near-real time environmental data and the Navy's underwater acoustic performance prediction models (updated every 12 hours or more frequently when meteorological or oceanographic conditions change) to generate a plot of sound speed versus depth, typically referred to as a sound speed profile (SSP). The SSP enables the technicians to determine the sound field by predicting the received levels of sound at various distances from the SURTASS LFA sonar source location. Modeling of the sound field in near-real time provides the information necessary to modify SURTASS LFA operations, including the delay or suspension of LFA sonar transmissions for mitigation.

Subchapter 3.1.2 of the SURTASS LFA Sonar 2011 DSEIS/SOEIS (DoN, 2011) discusses some of the environmental factors affecting sound propagation. Appendix B of the 2001 SURTASS LFA Sonar FOEIS/EIS (DoN, 2001) also provides an understanding concerning the general conditions of sound speed in the oceans. NMFS refers the public to these documents at *http://www.surtass-lfa-eis.com* for additional information.

Comments and Responses

On August 30, 2011 NMFS published a notice of receipt of an application for an LOA in the **Federal Register** (76 FR 53884) and requested comments and information from the interested public for 30 days. During the 30-day comment period, NMFS received two comments. One commenter opposed the project on the grounds that it would cause mortality to marine mammals. NMFS notes that the Navy has not requested lethal take of marine mammals in its application and, for the reasons described in this document, NMFS does not anticipate that any mortality will occur as a result of the Navy's activities. Therefore, the proposed rule only envisions the authorization of Level A and Level B harassment of marine mammals. The other comment, from an environmental non-governmental organization, expressed concerns about the geographic mitigation proposed in the Navy's DSEIS/SOEIS, focusing particularly on the process for identifying proposed offshore biologically important areas (OBIAs). NMFS undertook a systematic and scientifically supportable process for identifying OBIAs for this proposed rule making. This process is summarized in the Mitigation section of this proposed rule and detailed in the Navy's DSEIS/SOEIS.

The Marine Mammal Commission (MMC) also submitted comments to the Navy and NMFS. Generally, the MMC agreed that NMFS should propose regulations governing the take of marine mammals incidental to operation of SURTASS LFA sonar for a third five-year period. However, the MMC recommended that the Navy amend its application and related DSEIS/SOEIS to: (1) clarify the Navy's take request for marine mammals by Level A harassment; and (2) specify the numbers of marine mammals that could be taken by Level A and B harassment incidental to operating SURTASS LFA sonar, rather than providing only the probabilities of such takes. With respect to the first point, NMFS notes that the Navy's application specifically requests authorization for Level A harassment of

marine mammals incidental to SURTASS LFA sonar operations.

With respect to the MMC's second point, the percentages given in Tables 6 through 27 in the Navy's application are not probabilities, but rather indicate the percent of the affected stock for a specific marine mammal species. For the Navy's Level A and Level B harassment take request, that percentage is then multiplied by the number of animals in the relevant species or stock to arrive at an estimated number of animals that may be harassed by SURTASS LFA sonar operations. The Navy's approach to estimating Level A harassment and Level B harassment takes is consistent with the approach used in previous rules for SURTASS LFA sonar.

This proposed rule does not specify the number of marine mammals that may be taken in the proposed locations because these are determined annually through various inputs such as mission location, mission duration, and season of operation. As with the previous two rulemakings, this proposed rule analyzes a maximum of 12 percent takes by Level B harassment per stock annually that will be taken per stock annually, regardless of the number of LFA sonar vessels operating. The Navy will use the 12 percent cap (i.e., the maximum percentage of a stock that could be taken annually, not the probability of take) to guide its mission planning and annual LOA applications. For the annual applications for LOAs, the Navy proposes to present both the estimated percentage of stock incidentally harassed as well as the estimated number of animals that may be potentially harassed by SURTASS LFA sonar.

Description of Marine Mammals in the Area of the Specified Activities

Ninety-four (94) marine mammal species or populations/stocks have confirmed or possible occurrence within potential SURTASS LFA operational areas in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. Twelve species of baleen whales (mysticetes), 58 species of toothed whales, dolphins, or porpoises (odontocetes), and 24 species of seals or sea lions (pinnipeds) could be affected by SURTASS LFA sonar operations.

Fifteen of the 94 marine mammal species are listed as endangered and three of the 94 marine mammal species are listed as threatened under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). Marine mammal species under NMFS' jurisdiction listed as endangered include: the blue whale (*Balaenoptera musculus*); fin whale (*Balaenoptera physalus*); sei whale (*Balaenoptera borealis*); humpback whale (*Megaptera novaeangliae*); bowhead whale (*Balaena mysticetus*); North Atlantic right whale (*Eubalaena glacialis*); North Pacific right whale (*Eubalaena japonica*); southern right whale (*Eubalaena australis*); gray whale (*Eschrichtius robustus*); sperm whale (*Physeter macrocephalus*); the Cook Inlet stock of beluga whale (*Delphinapterus leucas*); the Southern Resident population of Killer whale (*Orca orcinus*); the western distinct population segment (DPS) of the Steller sea lion (*Eumetopias jubatus*); Mediterranean monk seal (*Monachus monachus*); and Hawaiian monk seal (*Monachus schauinslandi*). Marine mammal species under NMFS' jurisdiction listed as threatened include: the eastern DPS of the Steller sea lion; the Guadalupe fur seal (*Arctocephalus townsendi*) and the southern DPS of the spotted seal (*Phoca largha*). The aforementioned threatened and endangered marine mammal species also are depleted under the MMPA.

In addition, the Hawaiian insular DPS of false killer whale (*Pseudorca crassidens*) is a candidate for proposed listing under the ESA. Also, three of the 94 species are considered depleted under the MMPA. They are: the western north Atlantic coastal stock of bottlenose dolphin (*Tursiops truncatus*); the northeastern offshore stock of the pantropical spotted dolphin (*Stenella attenuata*); and the eastern stock of the spinner dolphin (*Stenella longirostris*).

Ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*), Chinese river dolphins (*Lipotes vexillifer*) and vaquita (*Phocoena sinus*) do not have stocks designated within potential SURTASS LFA sonar operational areas (see Potential SURTASS LFA Operational Areas section). The ringed seal is found in the Northern Hemisphere with a circumpolar distribution ranging from 35° N to the North Pole. Bearded seals have a circumpolar distribution south of 85° N latitude, extending south into the southern Bering Sea in the Pacific and into Hudson Bay and southern Labrador in the Atlantic. The distribution of the Chinese river dolphin is limited to the main channel of a river section between the cities of Jingzhou and Jiangyin. The vaquita's distribution is restricted to the upper portion of the northern Gulf of California, mostly within the Colorado River delta. Based on the rare occurrence of these species in the Navy's designated operational areas (i.e., outside of Arctic waters or outside of the coastal standoff distance of 22 km (13. mi; 11.8 nmi)), the Navy and NMFS do not anticipate any take of ringed seals, bearded seals, Chinese river dolphins, and vaquita and therefore these species are not addressed further in this document.

The U.S. Fish and Wildlife Service (USFWS) is responsible for managing the following marine mammal species: southern sea otter (*Enhydra lutris*), polar bear (*Ursus maritimus*), walrus (*Odobenus rosmarus*), west African manatee (*Trichechus senegalensis*), Amazonian manatee (*Trichechus inunguis*), west Indian manatee (*Trichechus manatus*), and dugong (*Dugong dugon*). None of these species occur in geographic areas that would overlap with SURTASS LFA sonar operational areas. Therefore, the Navy has determined that routine training and testing of SURTASS LFA sonar as well as the use of the system during military operations would have no effect on the endangered or threatened species or the critical habitat of the ESA-listed species under the jurisdiction of the USFWS. These species are not considered further in this notice.

Tables 3 through 21 summarize the abundance, status under the ESA, and density estimates of the marine mammals that have confirmed or possible occurrence within 19 SURTASS LFA sonar operating areas in the Pacific, Indian, and Atlantic Oceans and Mediterranean Sea. The Navy states that they selected these 19 areas based on relevance to national security interests for this application. Because it is infeasible for the Navy to model enough representative sites to cover all potential SURTASS LFA sonar operating areas, the Navy provided 19 sites, based on the current political climate, as examples of potential operating areas in their application.

Information on how the density and stock/abundance estimates were derived for the selected mission sites is in the Navy's application. These data are derived from current, published source documentation, and provide general area information for each mission area with species-specific information on the animals that could occur in that area, including estimates for their stock abundance and density. The Navy developed the majority of the abundance and density estimates by first using estimates from line-transect surveys that occurred in or near each of the 19 model sites (e.g., Barlow, 2006). When density estimates were not available from a survey in the operating area, the Navy extrapolated density estimates from a region with similar oceanographic characteristics to that operating area. For example, the eastern

tropical Pacific has been extensively surveyed and provides a comprehensive understanding of marine mammals in temperate oceanic waters (Ferguson and Barlow, 2001, 2003). Further, the Navy pooled density estimates for species of the same genus if sufficient data are not available to compute a density for individual species or the species are difficult to distinguish at sea.

TABLE 3—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE EAST OF JAPAN OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale (*Balaenoptera musculus*)	NP	9,250	0.0002	EN
Fin whale (*Balaenoptera physalus*)	NP	9,250	0.0002	EN
Sei whale (*Balaenoptera borealis*)	NP	8,600	0.0006	EN
Bryde's whale (*Balaenoptera edeni*)	WNP	20,501	0.0006	NL
Minke whale (*Balaenoptera acutorostrata*)	WNP "O" Stock	25,049	0.0022	NL
North Pacific right whale (*Eubalaena japonica*)	WNP	922	< 0.00001	EN
Sperm whale (*Physeter macrocephalus*)	NP	102,112	0.0010	EN
Pygmy sperm whale (*Kogia breviceps*) Dwarf sperm whale (*Kogia sima*).	NP	350,553	0.0031	NL
Baird's beaked whale (*Berardius bairdii*)	WNP	8,000	0.0029	NL
Cuvier's beaked whale (*Ziphius cavirostris*)	NP	90,725	0.0054	NL
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*)	NP	22,799	0.0005	NL
Hubbs beaked whale (*Mesoplodon carhubbsi*)	NP	22,799	0.0005	NL
False killer whale (*Pseudorca crassidens*)	WNP-Pelagic	16,668	0.0036	NL
Pygmy killer whale (*Feresa attenuata*)	WNP	30,214	0.0021	NL
Short-finned pilot whale (*Globicephala macrorhynchus*)	WNP	53,608	0.0128	NL
Risso's dolphin (*Grampus griseus*)	WNP	83,289	0.0097	NL
Common dolphin (*Delphinus delphis*)	WNP	3,286,163	0.0761	NL
Fraser's dolphin (*Lagenodelphis hosei*)	WNP	220,789	0.0040	NL
Bottlenose dolphin (*Tursiops truncatus*)	WNP	168,791	0.0171	NL
Pantropical spotted dolphin (*Stenella attenuata*)	WNP	438,064	0.0259	NL
Striped dolphin (*Stenella coeruleoalba*)	WNP	570,038	0.0111	NL
Spinner dolphin (*Stenella longirostris*)	WNP	1,015,059	0.0005	NL
Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)	WNP	931,000	0.0082	NL
Rough-toothed dolphin (*Steno bredanensis*)	WNP	145,729	0.0059	NL

[1] NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 4—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE NORTH PHILIPPINE SEA OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Bryde's whale	WNP	20,501	0.0006	NL
Minke whale	WNP "O" Stock	25,049	0.0044	NL
North Pacific right whale	WNP	922	< 0.00001	EN
Sperm whale	NP	102,112	0.0028	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0031	NL
Cuvier's beaked whale	NP	90,725	0.0054	NL
Blainville's beaked whale (*Mesoplodon densirostris*)	NP	8,032	0.0005	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	NL
Killer whale (*Orca orcinus*)	NP	12,256	0.0004	NL
False killer whale	WNP-Pelagic	16,668	0.0029	NL
Pygmy killer whale	WNP	30,214	0.0021	NL
Melon-headed whale (*Peponocephala electra*)	WNP	36,770	0.0012	NL
Short-finned pilot whale	WNP	53,608	0.0153	NL
Risso's dolphin	WNP	83,289	0.0106	NL
Common dolphin	WNP	3,286,163	0.0562	NL
Fraser's dolphin	WNP	220,789	0.0040	NL
Bottlenose dolphin	WNP	168,791	0.0146	NL
Pantropical spotted dolphin	WNP	438,064	0.0137	NL
Striped dolphin	WNP	570,038	0.0329	NL
Spinner dolphin	WNP	1,015,059	0.0005	NL
Pacific white-sided dolphin	WNP	931,000	0.0119	NL
Rough-toothed dolphin	WNP	145,729	0.0059	NL

[1] NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 5—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE WEST PHILIPPINE SEA OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Fin whale	NP	9,250	0.0002	EN
Bryde's whale	WNP	20,501	0.0006	NL
Minke whale	WNP "O" Stock	25,049	0.0033	NL
Humpback whale	WNP	1,107	0.0008	EN
Sperm whale	NP	102,112	0.0010	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0017	NL
Cuvier's beaked whale	NP	90,725	0.0003	NL
Blainville's beaked whale	NP	8,032	0.0005	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	NL
False killer whale	WNP-Pelagic	16,668	0.0029	NL
Pygmy killer whale	WNP	30,214	0.0021	NL
Melon-headed whale	WNP	36,770	0.0012	NL
Short-finned pilot whale	WNP	53,608	0.0076	NL
Risso's dolphin	WNP	83,289	0.0106	NL
Common dolphin	WNP	3,286,163	0.0562	NL
Fraser's dolphin	WNP	220,789	0.0040	NL
Bottlenose dolphin	WNP	168,791	0.0146	NL
Pantropical spotted dolphin	WNP	438,064	0.0137	NL
Striped dolphin	WNP	570,038	0.0164	NL
Spinner dolphin	WNP	1,015,059	0.0005	NL
Pacific white-sided dolphin	WNP	931,000	0.0245	NL
Rough-toothed dolphin	WNP	145,729	0.0059	NL

[1] NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 6—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OFFSHORE GUAM OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale	ENP	2,842	0.0001	EN
Fin whale	ENP	9,250	0.0003	EN
Sei whale	NP	8,600	0.0003	EN
Bryde's whale	WNP	20,501	0.0004	NL
Minke whale	WNP "O" Stock	25,049	0.0003	NL
Humpback whale	CNP	10,103	0.0069	EN
Sperm whale	NP	102,112	0.0012	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0101	NL
Cuvier's beaked whale	NP	90,725	0.0062	NL
Blainville's beaked whale	NP	8,032	0.0012	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	NL
Longman's beaked whale (*Indopacetus pacificus*)	CNP	1,007	0.0004	NL
Killer whale	CNP	349	0.0001	NL
False killer whale	WNP-Pelagic	16,668	0.0011	NL
Pygmy killer whale	WNP	30,214	0.0001	NL
Melon-headed whale	WNP	36,770	0.0043	NL
Short-finned pilot whale	WNP	53,608	0.0016	NL
Risso's dolphin	WNP	83,289	0.0010	NL
Common dolphin	WNP	3,286,163	0.0021	NL
Fraser's dolphin	CNP	10,226	0.0042	NL
Bottlenose dolphin	WNP	168,791	0.0002	NL
Pantropical spotted dolphin	WNP	438,064	0.0226	NL
Striped dolphin	WNP	570,038	0.0062	NL
Spinner dolphin	WNP	1,015,059	0.0031	NL
Rough-toothed dolphin	WNP	145,729	0.0003	NL

[1] CNP = central north Pacific; ENP = eastern north Pacific; NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 7—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE SEA OF JAPAN OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Fin whale	NP	9,250	0.0009	EN
Bryde's whale	WNP	20,501	0.0001	NL
Minke whale	WNP "O" Stock	25,049	0.0004	NL
Minke whale	WNP "J" Stock	893	0.0002	NL
North Pacific right whale	WNP	922	< 0.00001	EN
Gray whale (*Eschrichtius robustus*)	WNP	121	< 0.00001	EN [5]
Sperm whale	NP	102,112	0.0008	EN
Stejneger's beaked whale (*Mesoplodon stejnegeri*)	NP	8,000	0.0014	NL
Baird's beaked whale	WNP	8,000	0.0003	NL
Cuvier's beaked whale	NP	90,725	0.0043	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	NL
False killer whale	IA-Pelagic	9,777	0.0027	NL
Melon-headed whale	WNP	36,770	0.00001	NL
Short-finned pilot whale	WNP	53,608	0.0014	NL
Risso's dolphin	WNP	83,289	0.0073	NL
Common dolphin	WNP	3,286,163	0.0860	NL
Bottlenose dolphin	IA	105,138	0.0009	NL
Pantropical spotted dolphin	WNP	219,032	0.0137	NL
Spinner dolphin	WNP	1,015,059	0.00001	NL
Pacific white-sided dolphin	WNP	931,000	0.0030	NL
Dall's porpoise (*Phocoenoides dalli*)	SOJ	76,720	0.0520	NL

[1] IA = Inshore Archipelago; NP = north Pacific; SOJ = Sea of Japan; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.

TABLE 8—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE EAST CHINA SEA OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Fin whale	ECS	500	0.0002	EN
Bryde's whale	WNP	20,501	0.0006	NL
Minke whale	WNP "O" Stock	25,049	0.0044	NL
Minke whale	WNP "J" Stock	893	0.0018	NL
North Pacific right whale	WNP	922	< 0.00001	EN
Gray whale	WNP	121	< 0.00001	EN [5]
Sperm whale	NP	102,112	0.0012	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0031	NL
Cuvier's beaked whale	NP	90,725	0.0062	NL
Blainville's beaked whale	NP	8,032	0.0012	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	NL
False killer whale	IA-Pelagic	9,777	0.0011	NL
Pygmy killer whale	WNP	30,214	0.0001	NL
Melon-headed whale	WNP	36,770	0.0043	NL
Short-finned pilot whale	WNP	53,608	0.0016	NL
Risso's dolphin	WNP	83,289	0.0106	NL
Common dolphin	WNP	3,286,163	0.0461	NL
Fraser's dolphin	WNP	220,789	0.0040	NL
Bottlenose dolphin	IA	105,138	0.0146	NL
Pantropical spotted dolphin	WNP	219,032	0.0137	NL
Striped dolphin	WNP	570,038	0.0164	NL
Spinner dolphin	WNP	1,015,059	0.0031	NL
Pacific white-sided dolphin	WNP	931,000	0.0028	NL
Rough-toothed dolphin	WNP	145,729	0.0059	NL

[1] ECS = East China Sea; IA = Inshore Archipelago; NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.

TABLE 9—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE SOUTH CHINA SEA OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Fin whale	WNP	9,250	0.0002	EN
Bryde's whale	WNP	20,501	0.0006	NL
Minke whale	WNP "O" Stock	25,049	0.0033	NL
North Pacific right whale	WNP	922	< 0.00001	EN
Gray whale	WNP	121	< 0.0001	EN [5]
Sperm whale	NP	102,112	0.0012	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0017	NL
Cuvier's beaked whale	NP	90,725	0.0003	NL
Blainville's beaked whale	NP	8,032	0.0005	NL
Ginkgo-toothed beaked whale	NP	22,799	0.0005	NL
False killer whale	IA-Pelagic	9,777	0.0011	NL
Pygmy killer whale	WNP	30,214	0.0001	NL
Melon-headed whale	WNP	36,770	0.0043	NL
Short-finned pilot whale	WNP	53,608	0.0016	NL
Risso's dolphin	WNP	83,289	0.0106	NL
Common dolphin	WNP	3,286,163	0.0461	NL
Fraser's dolphin	WNP	220,789	0.0040	NL
Bottlenose dolphin	IA	105,138	0.0146	NL
Pantropical spotted dolphin	WNP	219,032	0.0137	NL
Striped dolphin	WNP	570,038	0.0164	NL
Spinner dolphin	WNP	1,015,059	0.3140	NL
Rough-toothed dolphin	WNP	145,729	0.0040	NL

[1] IA = Inshore Archipelago; NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.

TABLE 10—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA OFFSHORE JAPAN (25° TO 40° N)

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale	NP	9,250	0.0003	EN
Fin whale	NP	9,250	0.0001	EN
Sei whale	NP	37,000	0.0003	EN
Bryde's whale	WNP	20,501	0.0004	NL
Minke whale	WNP "O" Stock	25,049	0.0003	NL
Sperm whale	NP	102,112	0.0003	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0049	NL
Baird's beaked whale	WNP	8,000	0.0001	NL
Cuvier's beaked whale	NP	90,725	0.0017	NL
Mesoplodon spp.	NP	22,799	0.0005	NL
False killer whale	WNP-Pelagic	16,668	0.0036	NL
Pygmy killer whale	WNP	30,214	0.0001	NL
Melon-headed whale	WNP	36,770	0.0012	NL
Short-finned pilot whale	WNP	53,608	0.0001	NL
Risso's dolphin	WNP	83,289	0.0010	NL
Common dolphin	WNP	3,286,163	0.0863	NL
Bottlenose dolphin	WNP	168,791	0.0005	NL
Pantropical spotted dolphin	WNP	438,064	0.0181	NL
Striped dolphin	WNP	570,038	0.0500	NL
Spinner dolphin	WNP	1,015,059	0.00001	NL
Pacific white-sided dolphin	WNP	67,769	0.0048	NL
Rough-toothed dolphin	WNP	145,729	0.0003	NL
Hawaiian monk seal (*Monachus schauinslandi*)	Hawaii	1,129	< 0.00001	EN

[1] NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 11—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA OFFSHORE JAPAN (10° TO 25° N)

Species	Stock name [1]	Abundance [2]	Density (animals/Km²) [3]	ESA Status [4]
Bryde's whale	WNP	20,501	0.0004	NL
Sperm whale	NP	102,112	0.0004	EN
Pygmy sperm and Dwarf sperm whale	NP	350,553	0.0009	NL
Cuvier's beaked whale	NP	90,725	0.0017	NL
False killer whale	WNP-Pelagic	16,668	0.0021	NL
Melon-headed whale	WNP	36,770	0.0012	NL
Short-finned pilot whale	WNP	53,608	0.0009	NL
Risso's dolphin	WNP	83,289	0.0026	NL
Common dolphin	WNP	3,286,163	0.0863	NL
Bottlenose dolphin	WNP	168,791	0.0007	NL
Pantropical spotted dolphin	WNP	438,064	0.0226	NL
Striped dolphin	WNP	570,038	0.0110	NL
Spinner dolphin	WNP	1,015,059	0.0031	NL
Rough-toothed dolphin	WNP	145,729	0.0003	NL

[1] NP = north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 12—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE NORTHERN HAWAII OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km²) [3]	ESA Status [4]
Blue whale	WNP	1,548	0.0002	EN
Fin whale	Hawaii	2,099	0.0007	EN
Bryde's whale	Hawaii	469	0.0002	NL
Minke whale	WNP	25,000	0.0002	NL
Humpback whale	Hawaii	10,103	< 0.0001	EN
Sperm whale	CNP	6,919	0.0028	EN
Pygmy sperm and Dwarf sperm whale	Hawaii	24,657	0.0101	NL
Cuvier's beaked whale	Hawaii	15,242	0.0062	NL
Blainville's beaked whale	Hawaii	2,872	0.0012	NL
Longman's beaked whale	Hawaii	1,007	0.0004	NL
Killer whale	Hawaii	349	0.0001	NL
False killer whale	Hawaii-Pelagic	484	0.0002	NL
Pygmy killer whale	Hawaii	956	0.0004	NL
Melon-headed whale	Hawaii	2,950	0.0012	NL
Short-finned pilot whale	Hawaii	8,870	0.0036	NL
Risso's dolphin	Hawaii	2,372	0.0010	NL
Fraser's dolphin	Hawaii	10,226	0.0042	NL
Bottlenose dolphin	Hawaii	3,215	0.0013	NL
Pantropical spotted dolphin	Hawaii	8,978	0.0037	NL
Striped dolphin	Hawaii	13,143	0.0054	NL
Spinner dolphin	Hawaii	3,351	0.0014	NL
Rough-toothed dolphin	Hawaii	8,709	0.0036	NL
Hawaiian monk seal	Hawaii	1,129	< 0.0001	EN

[1] CNP = central north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 13—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE SOUTHERN HAWAII OPERATIONAL AREA

Species	Stock name [1]	Abundance [2]	Density (animals/Km²) [3]	ESA Status [4]
Blue whale	WNP	1,548	0.0002	EN
Fin whale	Hawaii	2,099	0.0007	EN
Bryde's whale	Hawaii	469	0.0002	NL
Minke whale	Hawaii	25,000	0.0002	NL
Humpback whale	Hawaii	10,103	0.0008	EN
Sperm whale	CNP	6,919	0.0028	EN
Pygmy sperm and Dwarf sperm whale	Hawaii	24,657	0.0101	NL

TABLE 13—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE SOUTHERN HAWAII OPERATIONAL AREA—Continued

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Cuvier's beaked whale	Hawaii	15,242	0.0062	NL
Blainville's beaked whale	Hawaii	2,872	0.0012	NL
Longman's beaked whale	Hawaii	1,007	0.0004	NL
Killer whale	Hawaii	349	0.0001	NL
False killer whale	Hawaii-Pelagic	484	0.0002	NL
Pygmy killer whale	Hawaii	956	0.0004	NL
Melon-headed whale	Hawaii	2,950	0.0012	NL
Short-finned pilot whale	Hawaii	8,870	0.0036	NL
Risso's dolphin	Hawaii	2,372	0.0010	NL
Fraser's dolphin	Hawaii	10,226	0.0042	NL
Bottlenose dolphin	Hawaii	3,215	0.0013	NL
Pantropical spotted dolphin	Hawaii	8,978	0.0037	NL
Striped dolphin	Hawaii	13,143	0.0054	NL
Spinner dolphin	Hawaii	3,351	0.0014	NL
Rough-toothed dolphin	Hawaii	8,709	0.0036	NL
Hawaiian monk seal	Hawaii	1,129	< 0.0001	EN

[1] CNP = central north Pacific; WNP = western north Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 14—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA OFFSHORE SOUTHERN CALIFORNIA (SOCAL OPAREA)

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale	ENP	2,842	0.0014	EN
Fin whale	CA/OR/WA	2,099	0.0018	EN
Sei whale	ENP	98	0.0001	EN
Bryde's whale	ENP	13,000	0.00001	NL
Northern minke whale	CA/OR/WA	823	0.0007	NL
Humpback whale	CA/OR/WA	942	0.0008	EN
Gray whale	ENP	18,813	0.051	EN [5]
Sperm whale	CA/OR/WA	1,934	0.0017	EN
Pygmy sperm whale	CA/OR/WA	1,237	0.0011	NL
Stejneger's beaked whale	CA/OR/WA	1,177	0.0010	NL
Baird's beaked whale	CA/OR/WA	1,005	0.0009	NL
Cuvier's beaked whale	CA/OR/WA	4,342	0.0038	NL
Blainville's beaked whale	CA/OR/WA	1,177	0.0010	NL
Ginkgo-toothed beaked whale	CA/OR/WA	1,177	0.0010	NL
Hubbs beaked whale	CA/OR/WA	1,177	0.0010	NL
Longman's beaked whale	Hawaii	1,177	0.0010	NL
Perrin's beaked whale (*Mesoplodon perrini*)	CA/OR/WA	1,177	0.0010	NL
Pygmy beaked whale (*Mesoplodon peruvianus*)	CA/OR/WA	1,177	0.0010	NL
Killer whale (offshore)	ENP	810	0.0007	NL
Short-finned pilot whale	CA/OR/WA	350	0.0003	NL
Risso's dolphin	CA/OR/WA	11,910	0.0105	NL
Long-beaked common dolphin (*Delphinus capensis*)	CA/OR/WA	21,902	0.0192	NL
Short-beaked common dolphin (*Delphinus delphis*)	CA/OR/WA	352,069	0.3094	NL
Bottlenose dolphin (offshore)	CA/OR/WA	2,026	0.0018	NL
Striped dolphin	CA/OR/WA	18,976	0.0167	NL
Pacific white-sided dolphin	CA/OR/WA	23,817	0.0209	NL
Northern right whale dolphin (*Lissodelphis borealis*)	CA/OR/WA	11,097	0.0098	NL
Dall's porpoise	CA/OR/WA	85,955	0.0753	NL
Guadalupe fur seal (*Arctocephalus townsendi*)	Mexico	7,408	0.007	NL
Northern fur seal (*Callorhinus ursinus*)	SMI	9,424	0	NL
California sea lion (*Zalophus californianus*)	California	238,000	0.54	NL
California sea lion	California	238,000	0	NL
Harbor seal (*Phoca vitulina*)	California	34,233	0.0095	NL
Northern elephant seal (*Mirounga angustirostris*)	CA-Breeding	124,000	0.0045	NL
Northern elephant seal	CA-Breeding	124,000	0	NL

[1] CA/OR/WA = California, Oregon, and Washington; ENP = eastern north Pacific; SMI = San Miguel Island.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[5] Only the western Pacific population of gray whale is endangered under the ESA.

TABLE 15—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE NORTHWESTERN ATLANTIC OPERATIONAL AREA OFF FLORIDA (JAX OPAREA)

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Humpback whale	WNA	11,570	0.0006	EN
North Atlantic right whale (on shelf)	WNA	438	0.0012	EN
Sperm whale (on shelf)	WNA	4,804	0	EN
Sperm whale (off shelf)	WNA	4,804	0.0005	EN
Pygmy sperm and Dwarf sperm whale	WNA	580	0.0010	NL
Beaked whales (on shelf)	WNA	3,513	0	NL
Beaked whales (off shelf)	WNA	3,513	0.0006	NL
Cuvier's beaked whale	WNA	3,513	0.0006	NL
Blainville's beaked whale	WNA	3,513	0.0006	NL
Gervais' beaked whale (*Mesoplodon europaeus*)	WNA	3,513	0.0006	NL
Sowerby's beaked whale (*Mesoplodon bidens*)	WNA	3,513	0.0006	NL
True's beaked whale (*Mesoplodon mirus*)	WNA	3,513	0.0006	NL
Short-finned pilot whale (on shelf)	WNA	31,139	0.00004	NL
Short-finned pilot whale (off shelf)	WNA	31,139	0.0271	NL
Risso's dolphin (on shelf)	WNA	20,479	0.0009	NL
Risso's dolphin (off shelf)	WNA	20,479	0.0181	NL
Common dolphin	WNA	120,743	0.00002	NL
Bottlenose dolphin (on shelf)	WNA	81,588	0.2132	NL
Bottlenose dolphin (off shelf)	WNA	81,588	0.1163	NL
Pantropical spotted dolphin	WNA	12,747	0.0223	NL
Striped dolphin	WNA	94,462	0.00003	NL
Atlantic spotted dolphin (on shelf) (*Stenella frontalis*)	WNA	50,978	0.4435	NL
Atlantic spotted dolphin (off shelf)	WNA	50,978	0.0041	NL
Clymene dolphin (*Stenella clymene*)	WNA	6,086	0.0106	NL
Rough-toothed dolphin	WNA	274	0.0005	NL

[1] WNA = western north Atlantic.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 16—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA IN THE NORTHEASTERN ATLANTIC OFF THE UNITED KINGDOM.

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale	ENA	100	0.00001	EN
Fin whale	ENA	10,369	0.0031	EN
Sei whale	ENA	14,152	0.0113	EN
Northern minke whale	ENA	107,205	0.0068	NL
Humpback whale	ENA	4,695	0.0019	EN
Sperm whale	ENA	6,375	0.0049	EN
Pygmy sperm and Dwarf sperm whale	ENA	580	0.0001	NL
Cuvier's beaked whale	ENA	3,513	0.0013	NL
Blainville's beaked whale	ENA	3,513	0.0013	NL
Sowerby's beaked whale	ENA	3,513	0.0013	NL
Northern bottlenose whale (*Hyperodon ampullatus*)	ENA	5,827	0.0003	NL
Killer whale	ENA	6,618	0.0001	NL
False killer whale	ENA	484	0.0001	NL
Long-finned pilot whale (*Globicephala melas*)	ENA	778,000	0.0121	NL
Risso's dolphin	ENA	20,479	0.0063	NL
Common dolphin	ENA	273,150	0.238	NL
Bottlenose dolphin	ENA	81,588	0.0094	NL
Striped dolphin	ENA	94,462	0.0765	NL
Atlantic white-sided dolphin (*Lagenorhynchus acutus*)	ENA	11,760	0.0027	NL
White-beaked dolphin (*Lagenorhynchus albirostris*)	ENA	11,760	0.0027	NL
Harbor porpoise (*Phocoena phocoena*)	ENA	341,366	0.2299	NL
Harbor seal (*Phoca vitulina*)	Ireland/Scotland	23,500	0.0230	NL
Gray seal (*Halichoerus grypus*)	ENA	113,300	0.027	NL

[1] ENA = eastern north Atlantic.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 17—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA IN THE WESTERN MEDITERRANEAN SEA AND THE LIGURIAN SEA

Species	Stock name [1]	Abundance [2]	Density (Animals/Km^2) [3]	ESA Status [4]
Fin whale	MED	3,583	0.004	EN
Sperm whale	WMED	6,375	0.0049	EN
Cuvier's beaked whale	ENA	3,513	0.0013	NL
Long-finned pilot whale	ENA	778,000	0.0121	NL
Risso's dolphin	WMED	5,320	0.0075	NL
Common dolphin	WMED	19,428	0.0144	NL
Bottlenose dolphin	WMED	23,304	0.041	NL
Striped dolphin	WMED	117,880	0.24	NL

[1] ENA = eastern north Atlantic; MED = Mediterranean; WMED = western Mediterranean.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 18—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA IN THE NORTHERN ARABIAN SEA

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Bryde's whale	IND	9,176	0.0001	NL
Humpback whale	XAR	200	0.0004	EN
Sperm whale	IND	24,446	0.0125	EN
Dwarf sperm whale	IND	10,541	0.0145	NL
Cuvier's beaked whale	IND	27,272	0.0001	NL
Blainville's beaked whale	IND	16,867	0.0016	NL
Ginkgo-toothed beaked whale	IND	16,867	0.0016	NL
Longman's beaked whale	IND	16,867	0.0016	NL
False killer whale (pelagic)	IND	144,188	0.0003	NL
Pygmy killer whale	IND	22,029	0.0026	NL
Melon-headed whale	IND	64,600	0.0661	NL
Short-finned pilot whale	IND	268,751	0.0034	NL
Risso's dolphin	IND	452,125	0.0125	NL
Common dolphin	IND	1,819,882	0.0265	NL
Bottlenose dolphin	IND	785,585	0.0164	NL
Pantropical spotted dolphin	IND	736,575	0.0127	NL
Striped dolphin	IND	674,578	0.0706	NL
Spinner dolphin	IND	634,108	0.01	NL
Rough-toothed dolphin	IND	156,690	0.0081	NL

[1] IND = Indian Ocean; XAR = Stock X Arabian Sea.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 19—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA IN THE ANDAMAN SEA OFF MYANMAR

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Bryde's whale	IND	9,176	0.0001	NL
Sperm whale	IND	24,446	0.0125	EN
Dwarf sperm whale	IND	10,541	0.0145	NL
Cuvier's beaked whale	IND	27,272	0.0001	NL
Blainville's beaked whale	IND	16,867	0.0016	NL
Ginkgo-toothed beaked whale	IND	16,867	0.0016	NL
Longman's beaked whale	IND	16,867	0.0016	NL
Killer whale	IND	12,593	0.0001	NL
False killer whale (pelagic)	IND	144,188	0.0003	NL
Pygmy killer whale	IND	22,029	0.0026	NL
Melon-headed whale	IND	64,600	0.0661	NL
Short-finned pilot whale	IND	268,751	0.0034	NL
Risso's dolphin	IND	452,125	0.0125	NL
Common dolphin	IND	1,819,882	0.0265	NL
Bottlenose dolphin	IND	785,585	0.0164	NL
Pantropical spotted dolphin	IND	736,575	0.0127	NL
Striped dolphin	IND	674,578	0.0706	NL

TABLE 19—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA IN THE ANDAMAN SEA OFF MYANMAR—Continued

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Spinner dolphin	IND	634,108	0.01	NL
Rough-toothed dolphin	IND	156,690	0.0081	NL

[1] IND = Indian Ocean.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 20—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE PANAMA CANAL OPERATIONAL AREA (WEST APPROACH)

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale	ENP	2,842	0.0001	EN
Bryde's whale	ETP	13,000	0.0003	NL
Humpback whale	ENP	1,391	0.0004	EN
Sperm whale	ETP	22,700	0.0047	EN
Dwarf sperm whale	ETP	11,200	0.0145	NL
Cuvier's beaked whale	ETP	20,000	0.0025	NL
Blainville's beaked whale	ETP	25,300	0.0013	NL
Ginkgo-toothed beaked whale	ETP	25,300	0.0016	NL
Longman's beaked whale	ETP	25,300	0.0003	NL
Pygmy beaked whale (*Mesoplodon peruvianus*)	ETP	25,300	0.0016	NL
Killer whale	ETP	8,500	0.0002	NL
False killer whale (pelagic)	ETP	39,800	0.0004	NL
Pygmy killer whale	ETP	38,900	0.0014	NL
Melon-headed whale	ETP	45,400	0.0174	NL
Short-finned pilot whale	ETP	160,200	0.0058	NL
Risso's dolphin	ETP	110,457	0.0161	NL
Common dolphin	ETP	3,127,203	0.049	NL
Fraser's dolphin	ETP	289,300	0.001	NL
Bottlenose dolphin	ETP	335,834	0.0157	NL
Pantropical spotted dolphin	NEOP	640,000	0.0669	NL
Striped dolphin	ETP	964,362	0.1199	NL
Spinner dolphin	Eastern	450,000	0.007	NL
Rough-toothed dolphin	ETP	107,633	0.0146	NL

[1] ETP = eastern tropical Pacific; NEOP = northeastern offshore Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 21—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA OFF THE NORTHEASTERN AUSTRALIAN COAST

Species	Stock name [1]	Abundance [2]	Density (animals/Km^2) [3]	ESA Status [4]
Blue whale	WSP	9,250	0.0002	EN
Fin whale	WSP	9,250	0.0002	EN
Bryde's whale	WSP	22,000	0.0006	NL
Northern minke whale	WSP	25,000	0.0044	EN
Humpback whale	GVEA	3,500	0.0143	EN
Sperm whale	WSP	102,112	0.0029	EN
Pygmy sperm and Dwarf sperm whale	WSP	350,553	0.0031	NL
Cuvier's beaked whale	WSP	90,725	0.0054	NL
Blainville's beaked whale	WSP	8,032	0.0005	NL
Arnoux's beaked whale (*Berardius arnuxii*)	WSP	22,799	0.0005	NL
Ginkgo-toothed beaked whale	WSP	22,799	0.0005	NL
Longman's beaked whale	WSP	22,799	0.0005	NL
Southern bottlenose whale (*Hyperodon planifrons*)	WSP	22,799	0.0005	NL
Killer whale	WSP	12,256	0.0004	NL
False killer whale (pelagic)	WSP	16,668	0.0029	NL
Pygmy killer whale	WSP	30,214	0.0021	NL
Melon-headed whale	WSP	36,770	0.0012	NL
Globicephala spp.	WSP	53,608	0.0153	NL
Risso's dolphin	WSP	83,289	0.0106	NL

TABLE 21—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH THE OPERATIONAL AREA OFF THE NORTHEASTERN AUSTRALIAN COAST—Continued

Species	Stock name [1]	Abundance [2]	Density (animals/Km²) [3]	ESA Status [4]
Common dolphin	WSP	3,286,163	0.0562	NL
Fraser's dolphin	WSP	220,789	0.004	NL
Bottlenose dolphin	WSP	168,791	0.0146	NL
Pantropical spotted dolphin	WSP	438,064	0.0137	NL
Striped dolphin	WSP	570,038	0.0329	NL
Spinner dolphin	WSP	1,015,059	0.0005	NL
Dusky dolphin (*Lagenorhynchus obscurus*)	WSP	12,626	0.0002	NL
Rough-toothed dolphin	WSP	145,729	0.0059	NL

[1] GVEA = group V east Australia; WSP = western south Pacific.
[2] Refer to Table 5 of the Navy's application for literature references associated with abundance estimates presented in this table.
[3] Refer to Table 5 of the Navy's application for literature references associated with density estimates presented in this table.
[4] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

The Navy provides detailed descriptions of the distribution, abundance, diving behavior, life history, and hearing vocalization information for each affected marine mammal species with confirmed or possible occurrence within SURTASS LFA sonar operational areas in section 4 (pages 38–97) of the application, which is available online at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

Although not repeated in this document, NMFS has reviewed these data, determined them to be the best available scientific information for the purposes of the proposed rulemaking, and considers this information part of the administrative record for this action. Additional information is available in NMFS' Marine Mammal Stock Assessment Reports, which may be viewed at *http://www.nmfs.noaa.gov/pr/sars/species.htm*. Also, NMFS refers the public to Table 5 (page 37) of the Navy's application for literature references associated with abundance and density estimates presented in these tables.

Brief Background on Sound, Marine Mammal Hearing, and Vocalization

Acoustic Source Specifications

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area and is usually measured in micropascals (μPa), where 1 Pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa at 1 m, and the units for SPLs are decibels (dB) re: 1 μPa at 1 m. SPL (in dB) = 20 log (pressure/reference pressure). SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

SPL and the Single Ping Equivalent (SPE)

To model potential impacts to marine animals from exposure to SURTASS LFA sonar sound, the Navy has developed a methodology to estimate the total exposure of modeled animals exposed to multiple pings over an extended period of time. The Navy's acoustic model analyzes the following components: (1) The LFA sonar source modeled as a point source, with an effective source level (SL) in dB re: 1 μPa at 1 m (SPL); (2) a 60-sec duration signal; and (3) a beam pattern that is correct for the number and spacing of the individual projectors (source elements). This source model, when combined with the three-dimensional transmission loss (TL) field generated by the Parabolic Equation (PE) acoustic propagation model, defines the received level (RL) (in SPL) sound field surrounding the source for a 60-sec LFA sonar signal. To estimate the total exposure of animals exposed to multiple pings, the Navy models the RLs for each modeled location and any computer-simulated marine mammals (also called animats) within the location, records the exposure history of each animat, and generates a single ping equivalent (SPE) value. Thus, the Navy can model the SURTASS LFA sound field, providing a four-dimensional (position and time) representation of a sound pressure field within the marine environment and estimates of an animal's exposure to sound.

Figure 2 shows the Navy calculation that converts SPL values to SPE values in order to estimate impacts to marine mammals from SURTASS LFA sonar transmissions. For a more detailed explanation of the SPE calculations, NMFS refers the public to Appendix C of the Navy's 2011 DSEIS/SOEIS.

$$SPE = 5 \times Log_{10} \left(\sum \left(10^{(P_N/10)}\right)^2 \right)$$

SPE is the single ping equivalent of the N received transmissions at the animal.

N is the number of received transmissions at the animal, and

P_N is the received level or pressure in in dB re: 1 μPa (in SPL) at the modeled animal for each received transmission

Figure 2 Equation for SPE as a function for SPL

Underwater Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document.

Sound is a wave of pressure variations propagating through a medium (for the sonar considered in this proposed rulemaking, the medium is seawater). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: Intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 μPa at 1 m (Richardson *et al.,* 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in dB. The logarithmic nature of the scale means that each 10 dB increase is a ten-fold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of sound level, or a 10-dB decrease in noise as a halving of sound level. Sound pressure level or SPL implies a decibel measure and a reference pressure that is used as the denominator of the ratio.

Sound frequency is measured in cycles per second, referred to as Hertz (Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: From earthquake noise at five Hz to harbor porpoise clicks at 150,000 Hz (150 kilohertz (kHz)). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz) and ultrasonic (typically above 20,000 Hz) sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called narrowband, and sounds with a broad range of frequencies are called broadband. Explosives are an example of a broadband sound source and tactical sonars are an example of a narrowband sound source.

Marine Mammal Hearing

Cetaceans have an auditory anatomy that follows the basic mammalian pattern, with some changes to adapt to the demands of hearing in the sea. The typical mammalian ear is divided into an outer ear, middle ear, and inner ear. The outer ear is separated from the inner ear by a tympanic membrane, or eardrum. In terrestrial mammals, the outer ear, eardrum, and middle ear transmit airborne sound to the inner ear, where the sound waves are propagated through the cochlear fluid. Since the impedance of water (i.e., the product of density and sound speed) is close to that of the tissues of a cetacean, the outer ear is not required to transduce sound energy as it does when sound waves travel from air to fluid (inner ear). Sound waves traveling through the inner ear cause the basilar membrane to vibrate. Specialized cells, called hair cells, respond to the vibration and produce nerve pulses that are transmitted to the central nervous system. Acoustic energy causes the basilar membrane in the cochlea to vibrate. Sensory cells at different positions along the basilar membrane are excited by different frequencies of sound (Pickles, 1998).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential (AEP) techniques, anatomical modeling, and other data, Southall *et al.* (2007) designated ''functional hearing groups'' for marine mammals and estimated the lower and upper frequencies of functional hearing (i.e., the frequencies that the species can actually hear) of these groups. The functional groups and the associated frequencies are described here (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency (LF) cetaceans (13 species of mysticetes): Southall *et al.* (2007) estimates that functional hearing occurs between approximately seven Hz and 22 kHz;
- Mid-frequency (MF) cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Southall *et al.* (2007) estimates that functional hearing occurs between approximately 150 Hz and 160 kHz;
- High frequency (HF) cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of cephalorhynchids): Southall *et al.* (2007) estimates that functional hearing occurs between approximately 200 Hz and 180 kHz.
- Pinnipeds in Water: Southall *et al.* (2007) estimates that functional hearing occurs between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

Marine Mammal Functional Hearing Groups and LFA Sonar

Baleen (mysticete) whales (members of the LF functional hearing group) have inner ears that appear to be specialized for low-frequency hearing. Conversely, most odontocetes (i.e., sperm whales, dolphins and porpoises) have inner ears that are specialized to hear mid and high frequencies. Pinnipeds, which lack the highly specialized active biosonar systems of odontocetes, have inner ears that are specialized to hear a broad range of frequencies in water (Southall *et al.,* 2007). Based on an extensive suite of reported laboratory measurements (DoN, 2001, Ketten, 1997, Southall *et al.,* 2007), the LFA sound source is below the range of best hearing sensitivity for MF and HF odontocete and pinnipeds in water hearing specialists (Clark and Southall, 2009).

Marine Mammal Vocalization

Marine mammal vocalizations often extend both above (higher than 20 kHz) and below (lower than 20 Hz) the range of human hearing (National Research Council, 2003; Figure 4–1). Measured data on the hearing abilities of cetaceans are sparse, particularly for the larger cetaceans such as the baleen whales. The auditory thresholds of some of the smaller odontocetes have been determined in captivity. It is generally believed that cetaceans should at least be sensitive to the frequencies of their own vocalizations. Comparisons of the anatomy of cetacean inner ears and models of the structural properties and the response to vibrations of the ear's components in different species provide an indication of likely sensitivity to various sound frequencies. Thus, the ears of small toothed whales are optimized for receiving high-frequency sound, while baleen whale inner ears are best suited for low frequencies, including to infrasonic frequencies (Ketten, 1992; 1997; 1998).

Baleen whale (i.e., mysticete) vocalizations are composed primarily of frequencies below one kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.,* 1987; Richardson *et al.,* 1995; Rivers, 1997; Moore *et al.,* 1998; Stafford *et al.,* 1999; Wartzok and Ketten, 1999) but can be as high as 24 kHz (humpback whale; Au *et al.,* 2006). Clark and Ellison (2004) suggested that baleen whales use low frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Information on auditory function in mysticetes is extremely lacking. Sensitivity to low frequency sound by baleen whales has been inferred from observed vocalization frequencies, observed reactions to playback of sounds, and anatomical analyses of the auditory system. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re: 1 μPa at 1 m. Low-frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking. Marine mammals, like all mammals, have typical U-shaped audiograms that begin with relatively low sensitivity (high threshold) at some specified low frequency with increased sensitivity (low threshold) to a species-specific optimum followed by a generally steep rise at higher frequencies (high threshold) (Fay, 1988).

Toothed whales (i.e., odontocetes) produce a wide variety of sounds, which include species-specific broadband ''clicks'' with peak energy between 10 and 200 kHz, individually variable ''burst pulse'' click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent ''emotive'' signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whales social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100–180 dB re 1 μPa at 1 m (Richardson *et al.,* 1995). No odontocete has been shown audiometrically to have acute hearing (less than 80 dB re 1 μPa at 1 m) below 500 Hz (DoN, 2001; Ketten, 1998). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.,* 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 μPa at 1 m or greater (Mohl *et al.,* 2000).

Brief Background on the Navy's Assessment of the Potential Impacts on Marine Mammals

Acoustic Modeling Scenarios. The Navy based their analysis of potential impacts on marine mammals from SURTASS LFA sonar on literature review, the Navy's Low Frequency Sound Scientific Research Program (LFS SRP), and a comprehensive program of underwater acoustical modeling.

To assess the potential impacts on marine mammals by the SURTASS LFA sonar source operating at a given site, the Navy must predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving: (1) The ability to measure or estimate an animal's location in space and time; (2) The ability to measure or estimate the three-dimensional sound field at these times and locations; (3) The integration of these two data sets into the Acoustic Integration Model (AIM) to estimate the total acoustic exposure for each animal in the modeled population; and (4) Converting the resultant cumulative exposures (within the post-AIM analysis) for a modeled population into an estimate of the risk of a significant disturbance of a biologically important behavior (i.e., a take estimate for Level B harassment of marine mammals based upon an estimated percentage of each stock affected by SURTASS LFA sonar operations) or an assessment of risk in terms of injury of marine mammals (i.e., a take estimate for Level A harassment of marine mammals based on a cumulative exposure of greater than or equal to 180-dB SPE). In the post-AIM analysis, as mentioned in number (4), the Navy developed a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a significant disruption of a biologically important behavior and of injury. This process assessed risk in relation to received level (RL) and repeated exposure. The Navy's risk continuum is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold. Taken together, the LFS SRP results, the acoustic propagation modeling, and the Navy's risk assessment model provide an estimate of takes of marine mammals.

The Navy modeled acoustic propagation using its standard acoustical performance prediction transmission loss model-PE version 3.4. The results of this model are the primary input to the AIM, which the Navy used to estimate marine mammal sound exposures. AIM integrates simulated movements (including dive patterns) of marine mammals, a schedule of SURTASS LFA sonar transmissions, and the predicted sound field for each transmission to estimate acoustic exposure during a hypothetical SURTASS LFA sonar operation. Description of the PE and AIM models, including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density, are described in detail in the Navy's application and in the DSEIS/SOEIS (see Subchapter 4.4 and Appendix C) and are not discussed further in this document.

For this application for rulemaking, the Navy has used the same analytical methodology utilized in the first and second five-year rules and LOAs to provide reasonable and realistic estimates of the potential effects to marine mammals specific to the

potential mission areas as presented in the application. Although this proposed rule uses the same analytical methodology the Navy used for the 2002–2007 rule, the Navy continuously updates the analysis with new marine mammal biological data (behavior, distribution, abundance and density) whenever new information becomes available.

The Navy initially developed 31 acoustic modeling scenarios for the major ocean regions in the SURTASS LFA sonar FOEIS/EIS (DoN, 2001); 11 acoustic modeling scenarios for the 2007 FSEIS and the 2007 rulemaking and LOAs; and eight additional sites for the 2011 DSEIS/SOEIS.

In the initial modeling effort for the 2001 FOEIS/EIS, the Navy selected locations to represent the greatest potential effects for each of the three major ocean acoustic regimes where SURTASS LFA sonar could potentially be used. These acoustic regimes were: (1) Deep-water convergence zone propagation, (2) near surface duct propagation, and (3) shallow water bottom interaction propagation. The Navy selected these sites to model the greatest potential for effects from the use of SURTASS LFA sonar incorporating the following factors: (1) closest plausible proximity to land (from a SURTASS LFA sonar operations standpoint), and/or OBIAs for marine mammals most likely to be affected; (2) acoustic propagation conditions that allow minimum propagation loss, or transmission loss (TL) (i.e., longest acoustic transmission ranges); and (3) time of year selected for maximum animal abundance. These 31 sites presented in the Navy's 2001 FOEIS/EIS represented the upper bound of impacts (in terms of both possible acoustic propagation conditions and marine mammal population and density) that could be expected from operation of the SURTASS LFA sonar system.

In the 2007 FSEIS, the Navy provided a risk assessment case study that included nine additional sites based on reasonable and realistic choices for potential SURTASS LFA sonar testing, training, and operations during the proposed period of the rulemaking and LOA application. Subsequent to the publication of the 2007 FSEIS, the Navy added two additional sites in the waters north and south of the Hawaiian Islands. The most recent risk assessment analyses provided in the Navy's application and 2011 DSEIS/SOEIS proves updated modeling for the 11 sites under the 2007 rulemaking and eight additional sites using the most up-to-date marine mammal abundance, density, and behavioral information available. These 19 operating sites are in areas of potential strategic importance and/or areas of possible naval fleet exercises.

Overall, the Navy's total effort for underwater acoustic modeling includes all 50 potential operational sites for SURTASS LFA sonar. The analysis of the 50 potential sites provides the foundation for the analysis of potential effects of SURTASS LFA sonar operations on the overall marine environment.

If the Navy conducts SURTASS LFA sonar operations in an area that was not acoustically modeled in the 2001 FOEIS/EIS (DoN, 2001), the 2007 FSEIS (DoN, 2007) or the 2011 DSEIS/SOEIS (DoN, 2011), the Navy states that the potential effects would most likely be less than those analyzed for the most similar site in the analyses because the modeled sites represent the upper bound of effects. NMFS concurs with this approach, as any site not modeled in the Navy's analyses should fall within or under the modeled bounds of impacts of possible acoustic propagation conditions and marine mammal densities. The assumptions of the 2001 FOEIS/EIS (DoN, 2001) and the 2007 FSEIS (DoN, 2007) are still valid and there are no new data to contradict the conclusions made in the Navy's documents.

Risk Analysis. To determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals, the Navy defined biological risk standards with associated measurement parameters. The Navy's measurement parameters for determining exposure were RLs in dB, the pulse repetition interval (time between pings), and the number of pings received. To address the potential for accumulation of effects on marine mammals over a seven to 20-day period (i.e., the estimated maximum SURTASS LFA sonar mission period, allowing for varying RLs and a duty cycle of 20 percent or less), the Navy developed a function that translates the modeled history of repeated exposures (as calculated in the AIM) into an equivalent RL for a single exposure with a comparable risk (as previously discussed in the SPL and the Single Ping Equivalent (SPE) section). Based upon the best available information, NMFS believes that the Navy's assumptions are still valid and there are no new data to contradict the conclusions made by the Navy's risk analysis. NMFS refers the reader to Section 6.4.3 of the Navy's application and Appendix C of the 2011 DSEIS/SOEIS for more detailed information on the Navy's risk assessment approach.

Potential Effects of the Specified Activity on Marine Mammals

The Navy has requested authorization for the incidental take of marine mammals that may result from upcoming training, testing, and military operations using SURTASS LFA sonar on a maximum of four U.S. Naval ships in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. In addition to the use of LFA and HF/M3 sonar, the Navy has analyzed the potential impact of ship strike to marine mammals from SURTASS LFA sonar operations, and, in consultation with NMFS as a cooperating agency for the SURTASS LFA sonar 2011 DSEIS/SOEIS, has determined that take of marine mammals incidental to this non-acoustic component of the Navy's operations is unlikely and, therefore, has not requested authorization for take of marine mammals that might occur incidental to vessel ship strike. In this document, NMFS analyzes the potential effects on marine mammals from exposure to LFA and HF/M3 sonar, but also includes some additional analysis of the potential impacts from vessel operations.

For the purpose of MMPA authorizations, NMFS' effects assessments serve four primary purposes: (1) Identification of the permissible methods of taking, meaning: The nature of the take (e.g., resulting from anthropogenic noise versus from ship strike, etc.); the regulatory level of take (i.e., mortality versus Level A or Level B harassment) and the estimated amount of take; (2) Informing the prescription of means of effecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (3) Supporting the determination of whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); and (4) Determining whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses.

NMFS' analysis of potential impacts from SURTASS LFA operations including lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particularly stress responses), and behavioral disturbance

is outlined below this section. NMFS will focus qualitatively on the different ways that SURTASS LFA sonar operations may affect marine mammals (some of which may not classify as take). Then, in the Estimated Take of Marine Mammals Section, NMFS will relate the potential effects to marine mammals from SURTASS LFA sonar operations to the MMPA definitions of take, including Level A and Level B Harassment, and attempt to quantify those effects.

The potential effects to marine mammals described in the following sections do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the Proposed Mitigation section which, as noted, are designed to effect the least practicable adverse impact on affected marine mammals species and stocks.

Potential Effects of Exposure to SURTASS LFA Sonar Operations

Based on the literature, the potential effects of sound from the proposed activities associated with SURTASS LFA sonar might include one or more of the following: Behavioral changes, masking, non-auditory injury, and noise-induced loss of hearing sensitivity (more commonly called ''threshold shift''). Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death. NMFS discusses this potential effect later in the Stranding section.

The effects of underwater noise on marine mammals are highly variable, and one can categorize the effects as follows (Richardson *et al.,* 1995; Nowacek *et al.,* 2007; Southall *et al.,* 2007):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well-being of the animal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases but potentially for longer periods of time;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent, and unpredictable in occurrence, and associated with situations that the animal perceives as a threat;

(5) Any anthropogenic (human-made) noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics (i.e., an organism of the same species), and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is a chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity, also known as threshold shift. In terrestrial mammals and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events (not relevant for this proposed activity) may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Direct Physiological Effects

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity within their auditory range (i.e., sounds must be louder for an animal to detect them) following exposure to a sufficiently intense sound or a less intense sound for a sufficient duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience a temporary threshold shift (TTS) and/or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is recovery back to baseline/pre-exposure levels), can occur within a specific frequency range (i.e., an animal might only have a temporary loss of hearing sensitivity within a limited frequency band of its auditory range), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only six dB or reduced by 30 dB). PTS is permanent (i.e., there is incomplete recovery back to baseline/pre-exposure levels), but also can occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear (at least in terrestrial mammals), displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. Human non-impulsive noise exposure guidelines are based on the assumption that exposures of equal energy (the same Sound Exposure Level (SEL)) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. Three studies, two by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin either exposed to playbacks of Navy MF active sonar or octave-band noise (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz), concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels. All three of these studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts. Generally, with sound exposures of equal energy, those that were quieter (lower sound pressure level (SPL)) with longer duration were found to induce TTS onset at lower levels than those of louder (higher SPL) and shorter duration. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery can occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997; Mooney *et al.*

2009a, 2009b; Finneran *et al.* 2010). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer (lower SPL) sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged or repeated exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold can cause PTS, at least in terrestrial mammals (Kryter, 1985; Lonsbury-Martin *et al.* 1987) (although in the case of SURTASS LFA, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2005a, 2007, 2010a, 2010b; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004; Mooney *et al.,* 2009a, 2009b; Lucke *et al.,* 2009; Finneran and Schlundt, 2010; Popov *et al.,* 2011). For pinnipeds in water, data are limited to Kastak *et al.'*s (1999, 2005) measurement of TTS in one captive harbor seal, one captive elephant seal, and one captive California sea lion (Finneran *et al.,* 2003 tried to induce TTS in two California sea lions but could not).

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is potentially more significant than simple existence of a TTS.

Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious than TTS because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to SURTASS LFA sonar can cause PTS in any marine mammals; instead the possibility of PTS has been inferred from studies of TTS on captive marine mammals (see Richardson *et al.,* 1995).

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (e.g., beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b), although recent preliminary empirical data suggests that there is no increase in blood nitrogen levels or formation of bubbles in diving bottlenose dolphins (Houser, 2009). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of the SURTASS LFA sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested; stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size.

Yet another hypothesis (decompression sickness) speculates that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses (rectified diffusion and decompression sickness) can be referred to as ''hypotheses of acoustically-mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Cox *et al.,* 2006; Rommel *et al.,* 2006). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at exposure levels and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels predicted to cause in vivo bubble

formations within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Rommel *et al.,* 2006). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives, may explain why beaked whales appear to be particularly vulnerable to MF/HF active sonar exposures.

In 2009, Hooker *et al.* (2009) tested two mathematical models to predict blood and tissue tension N2 (P_{N2}) using field data from three beaked whale species: Northern bottlenose whales, Cuvier's beaked whales, and Blainville's beaked whales. The researchers aimed to determine if physiology (body mass, diving lung volume, and dive response) or dive behavior (dive depth and duration, changes in ascent rate, and diel behavior) would lead to differences in P_{N2} levels and thereby decompression sickness risk between species.

In their study, they compared results for previously published time depth recorder data (Hooker and Baird, 1999; Baird *et al.,* 2006, 2008) from Cuvier's beaked whale, Blainville's beaked whale, and northern bottlenose whale. They reported that diving lung volume and extent of the dive response had a large effect on end-dive P_{N2}. Also, results showed that dive profiles had a larger influence on end-dive P_{N2} than body mass differences between species. Despite diel changes (i.e., variation that occurs regularly every day or most days) in dive behavior, P_{N2} levels showed no consistent trend. Model output suggested that all three species live with tissue P_{N2} levels that would cause a significant proportion of decompression sickness cases in terrestrial mammals. The authors concluded that the dive behavior of Cuvier's beaked whale was different from both Blainville's beaked whale, and northern bottlenose whale, and resulted in higher predicted tissue and blood N2 levels (Hooker *et al.,* 2009) and suggested that the prevalence of Cuvier's beaked whales stranding after naval sonar exercises could be explained by either a higher abundance of this species in the affected areas or by possible species differences in behavior and/or physiology related to MF active sonar (Hooker *et al.,* 2009).

The hypotheses for gas bubble formation related to beaked whale strandings is that beaked whales potentially have strong avoidance responses to MF active sonars because they sound similar to their main predator, the killer whale (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Baird *et al.,*2008; Hooker *et al.,* 2009). Because SURTASS LFA sonar transmissions are lower in frequency (less than 500 Hz) and dissimilar in characteristics from those of marine mammal predators, or MF active sonars the SURTASS LFA sonar transmissions are not expected to cause gas bubble formation or beaked whale strandings. Further investigation is needed to further assess the potential validity of these hypotheses.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, the detection of frequencies above those of the masking stimulus decreases. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.) (Richardson *et al.,* 1995).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate that low-frequency sounds can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the higher frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals. Holt *et al.* (2009) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.,* 2005).

Parks *et al.* (2007) provided evidence of behavioral changes in the acoustic behaviors of the endangered North Atlantic right whale, and the South Atlantic right whale, and suggested that these were correlated to increased underwater noise levels. The study indicated that right whales might shift the frequency band of their calls to compensate for increased in-band background noise. The significance of their result is the indication of potential species-wide behavioral change in response to gradual, chronic increases in underwater ambient noise. Di Iorio and Clark (2010) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with survey than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

As mentioned previously, the functional hearing ranges of mysticetes overlap with the frequencies of the SURTASS LFA sonar sources used in the Navy's training and testing, as well as during military operations. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. The masking effects of the SURTASS LFA sonar signal are

expected to be limited for a number of reasons. First, the frequency range (bandwidth) of the system is limited to approximately 30 Hz, and the instantaneous bandwidth at any given time of the signal is small, on the order of 10 Hz. Second, the average duty cycle is always less than 20 percent and, based on past LFA sonar operational parameters (2003 to 2012), is nominally 7.5 to 10 percent. Third, given the average maximum pulse length (60 sec), and the fact that the signals vary and do not remain at a single frequency for more than 10 sec, SURTASS LFA sonar is not likely to cause significant masking. The Navy provided an analysis of marine mammal hearing and masking in Subchapter 4.6.1.2 of the 2007 FSEIS and 4.2.5 in the 2011 DSEIS/SOEIS. In other words, the LFA sonar transmissions are coherent, narrow bandwidth signals of six to 100 sec in length followed by a quiet period of six to 15 minutes. Therefore, the effect of masking will be limited because animals that use this frequency range typically use broader bandwidth signals. As a result, the chances of an LFA sonar sound actually overlapping whale calls at levels that would interfere with their detection and recognition would be extremely low.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before they drop to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure and temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds which reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communications between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involve a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented

fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000).

There is limited information on the physiological responses of marine mammals to anthropogenic sound exposure, as most observations have been limited to short-term behavioral responses, which included cessation of feeding, resting, or social interactions. Despite the dearth of information on stress responses for marine mammals exposed to anthropogenic sounds, studies of other marine animals and terrestrial animals lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (e.g., elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (i.e., goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (in both nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of the sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). A more recent review (Nowacek *et al.,* 2007) addresses studies conducted since 1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the different sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species or extrapolated from closely related species when no information exists.

Alteration of Diving or Movement. Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (e.g., increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, a reaction, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of

the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and the speed of approach, all seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low-frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the varied nature of behavioral effects and consequent difficulty in defining and predicting them.

Foraging. Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior of western gray whales off the coast of Russia (Yazvenko *et al.,* 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.,* 2006). Balaenopterid whales exposed to moderate SURTASS LFA sonar demonstrated no responses or change in foraging behavior that could be attributed to the low-frequency sounds (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received sound pressure level was similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Brownell (2004) reported the behavioral responses of western gray whales off the northeast coast of Sakhalin Island to sounds produced by local seismic activities. In 1997, the gray whales responded to seismic activities by changing their swimming speed and orientation, respiration rates, and distribution in waters around the seismic surveys. In 2001, seismic activities were conducted in a known foraging ground and the whales left the area and moved farther south to the Sea of Okhotsk. They only returned to the foraging ground several days after the seismic activities stopped. The potential fitness consequences of displacing these whales, especially mother-calf pairs and ''skinny whales,'' outside of their normal feeding area are not known; however, because gray whales, like other large whales, must gain enough energy during the summer foraging season to last them the entire year, sounds or other stimuli that cause them to abandon a foraging area for several days could disrupt their energetics (i.e., the measurement of energy flow through an animal, from what goes into an animal as food (prey) to how the animal converts that energy for growth, reproduction, maintenance, and metabolism) and force them to make trade-offs like delaying their migration south, delaying reproduction, reducing growth, or migrating with reduced energy reserves.

Social Relationships. Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Sperm whales responded to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent, and becoming difficult to approach (Watkins *et al.,* 1985). In contrast, sperm whales in the Mediterranean that were exposed to submarine sonar continued calling (J. Gordon pers. comm. cited in Richardson *et al.,* 1995). Social disruptions must be considered, however, in context of the relationships that are affected. While some disruptions may not have deleterious effects, long-term or repeated disruptions of mother/calf pairs or interruption of mating behaviors have the potential to affect the growth and survival or reproductive effort/success of individuals.

Vocalizations. (also see Masking Section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their ''songs'' (Miller *et al.,* 2000; Fristrup *et al.,* 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (e.g., whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Avoidance. Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (i.e., directed movement, rate of travel, etc.). Oftentimes, avoidance is temporary and animals return to the area once the noise has ceased. However, longer term displacement is possible and can lead to changes in abundance or distribution patterns of the species in the affected region if animals do not become acclimated to the presence of the chronic sound (Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b). Short-term avoidance of seismic surveys, low-frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007), while

long-term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to result from the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007).

In 1998, the Navy conducted a Low Frequency Sonar Scientific Research Program (LFS SRP) to investigate avoidance behavior of gray whales to low frequency sound signals. The objective was to determine whether whales respond more strongly to received levels (RL), sound gradient, or distance from the source, and to compare whale avoidance responses to an LF source in the center of the migration corridor versus in the offshore portion of the migration corridor. A single source was used to broadcast LFA sonar sounds up to 200 dB. The Navy reported that the whales showed some avoidance responses when the source was moored one mile (1.8 km) offshore, in the migration path, but returned to their migration path when they were a few kilometers from the source. When the source was moored two miles (3.7 km) offshore, responses were much less, even when the source level was increased to 200 dB re: 1 μPa, to achieve the same RL for most whales in the middle of the migration corridor. Also, the researchers noted that the offshore whales did not seem to avoid the louder offshore source.

Also during the LFS SRP, researchers sighted numerous odontocete and pinniped species in the vicinity of the sound exposure tests with LFA sonar. The MF and HF hearing specialists present in the study area showed no immediately obvious responses or changes in sighting rates as a function of source conditions. Consequently, the researchers concluded that none of these species had any obvious behavioral reaction to LFA signals at received levels similar to those that produced only minor but short-term behavioral responses in the baleen whales (i.e., LF hearing specialists) (Clark and Southall, 2009). Thus, for odontocetes, the chances of injury and/or significant behavioral responses to SURTASS LFA sonar would be low given the MF/HF specialists' observed lack of response to LFA sounds during the LFS SRP and due to the MF/HF frequencies to which these animals are adapted to hear (Clark and Southall, 2009).

Maybaum (1993) conducted sound playback experiments to assess the effects of mid-frequency active sonar on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring the behavior, movement, and underwater vocalizations. The two types of sonar signals differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.,* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: A 1.0 s upsweep 209 dB @ 1–2 kHz every 10 sec for 10 minutes; Source B: With a 1.0 s upsweep 197 dB @ 6–7 kHz every 10 sec for 10 min). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding (where killer whales cooperatively herd fish schools into a tight ball towards the surface and feed on the fish which have been stunned by tailslaps and subsurface feeding (Simila, 1997) ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in a series of behavioral response studies (BRS) on deep diving odontocetes conducted by NMFS and other scientists showed one beaked whale (*Mesoplodon densirostris*) responding to an MF active sonar playback. The BRS–07 cruise report indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The BRS–07 cruise report notes that the results are from a single experiment and that a greater sample size is needed before robust and definitive conclusions can be drawn (NMFS, 2008a).

In the 2008 BRS study, researchers identified an emerging pattern of responses of deep-diving beaked whales to MF active sonar playbacks. For example, Blainville's beaked whales—a resident species within the Tongue of the Ocean, Bahamas study area—appear to be sensitive to noise at levels well below expected TTS (approximately 160 dB re: 1μPa at 1 m). This sensitivity is manifest by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the band width of MF active sonar, which suggests that beaked whales may not respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in the frequency range of the MF active sonar transmission. The response to such stimuli appears to involve the beaked whale increasing the distance between it and the sound source (NMFS, 2008b).

In the 2010 BRS study, researchers again used controlled exposure experiments (CEE) to carefully measure behavioral responses of individual animals to sound exposures of MF active sonar and pseudo-random noise. For each sound type, some exposures were conducted when animals were in a surface feeding (approximately 164 ft (50 m) or less) and/or socializing behavioral state and others while animals were in a deep feeding (greater than 164 ft (50 m)) and/or traveling mode. The researchers conducted the largest number of CEEs on blue whales (n=19) and of these, 11 CEEs involved exposure to the MF active sonar sound type.

For the majority of CEE transmissions of either sound type, they noted few obvious behavioral responses detected either by the visual observers or on initial inspection of the tag data. The researchers observed that throughout the CEE transmissions, up to the highest received sound level (absolute RMS value approximately 160 dB re: 1μPa with signal-to-noise ratio values over 60 dB), two blue whales continued surface feeding behavior and remained at a range of around 3,820 ft (1,000 m) from the sound source (Southall *et al.,* 2011).

In contrast, another blue whale (later in the day and greater than 11.5 mi (18.5 km; 10 nmi) from the first CEE location) exposed to the same stimulus (MFA) while engaged in a deep feeding/travel state exhibited a different response. In that case, the blue whale responded almost immediately following the start of sound transmissions when received sounds were just above ambient background levels (Southall *et al.,* 2011). However, the authors note that this kind of temporary avoidance behavior was not evident in any of the nine CEEs involving blue whales engaged in surface feeding or social behaviors, but was observed in three of the ten CEEs for blue whales in deep feeding/travel behavioral modes (one involving MFA sonar; two involving pseudo-random noise) (Southall *et al.,* 2011). The results of this study further illustrate the importance of behavioral context in understanding and predicting behavioral responses.

Flight Response. A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presences of predators have occurred (Connor and Heithaus, 1996). Flight responses have been speculated as being a component of marine mammal strandings associated with MF active sonar activities (Evans and England, 2001). If marine mammals respond to Navy vessels that are transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). In addition to the limited data on flight response for marine mammals, there are examples for terrestrial species. For instance, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid, 2001a, 2001b), ringed seals *Phoca hispida* (Born *et al.,* 1999), Pacific brant (*Branta bernicl nigricans*), and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Breathing. Variations in respiration naturally occur with different behaviors. Variations in respiration rate as a function of acoustic exposure can co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to foraging grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposing the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance of understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Continued Pre-disturbance Behavior and Habituation. Under some circumstances, some of the individual marine mammals that are exposed to active sonar transmissions will continue their normal behavioral activities; in other circumstances, individual animals will respond to sonar transmissions at lower received levels and move to avoid additional exposure or exposures at higher received levels (Richardson *et al.,* 1995).

It is difficult to distinguish between animals that continue their pre-disturbance behavior without stress responses, animals that continue their behavior but experience stress responses (that is, animals that cope with disturbance), and animals that habituate to disturbance (that is, they may have experienced low-level stress responses initially, but those responses abated over time). Watkins (1986) reviewed data on the behavioral reactions of fin, humpback, right and minke whales that were exposed to continuous, broadband low-frequency shipping and industrial noise in Cape Cod Bay. He concluded that underwater sound was the primary cause of behavioral reactions in these species of whales and that the whales responded behaviorally to acoustic stimuli within their respective hearing ranges. Watkins also noted that whales showed the strongest behavioral reactions to sounds in the 15 Hz to 28 kHz range, although negative reactions (avoidance, interruptions in vocalizations, etc.) were generally associated with sounds that were either unexpected, too loud, suddenly louder or different, or perceived as being associated with a potential threat (such as an approaching ship on a collision course). In particular, whales seemed to react negatively when they were within 100 m of the source or when received levels increased suddenly in excess of 12 dB relative to ambient sounds. At other times, the whales ignored the source of the signal and all four species habituated to these sounds. Nevertheless, Watkins concluded that whales ignored most sounds in the background of ambient noise, including sounds from distant human activities even though these sounds may have had considerable energies at frequencies well within the whales' range of hearing. Further, he noted that of the whales observed, fin whales were the most sensitive of the four species, followed by humpback whales; right whales were the least likely to be disturbed and generally did not react to low-amplitude engine noise. By the end of his period of study, Watkins (1986) concluded that fin and humpback whales have generally habituated to the continuous and broad-band noise of Cape Cod Bay while right whales did not appear to change their response. As mentioned above, animals that habituate to a particular disturbance may have experienced low-level stress responses initially, but those responses abated over time. In most cases, this likely means a lessened immediate potential effect from a disturbance. However, there is cause for concern where the habituation occurs in a potentially more harmful situation. For example, animals may become more vulnerable to vessel strikes once they habituate to vessel traffic (Swingle *et al.,* 1993; Wiley *et al.,* 1995).

Aicken *et al.,* (2005) monitored the behavioral responses of marine mammals to a new low-frequency active sonar system that was being developed for use by the British Navy. During those trials, fin whales, sperm whales, Sowerby's beaked whales, long-finned pilot whales (*Globicephala melas*), Atlantic white-sided dolphins, and common bottlenose dolphins were observed and their vocalizations were recorded. These monitoring studies detected no evidence of behavioral responses that the investigators could attribute to exposure to the low-frequency active sonar during these trials.

Behavioral Responses. Southall *et al.* (2007) reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of

proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal: Some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables. Such data were reviewed and sometimes used for qualitative illustration, but no quantitative criteria were recommended for behavioral responses. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. LFA sonar is considered a non-pulse sound. Southall *et al.* (2007) summarizes the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the following paragraphs).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources, including: Vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μPa at 1 m range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB re: 1 μPa at 1 m range. As mentioned earlier, though, contextual variables play a very important role in the reported responses, and the severity of effects are not linear when compared to a received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MF active sonar, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB re: 1 μPa at 1 m, while in other cases these responses were not seen in the 120 to 150 dB re: 1 μPa at 1 m range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (approximately 90–120 dB re: 1 μPa at 1 m), at least for initial exposures. All recorded exposures above 140 dB re: 1 μPa at 1 m induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There are no data to indicate whether other high-frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources including: AHDs, ATOC, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggest that exposure to non-pulse sounds between 90 and 140 dB re: 1 μPa at 1 m generally do not result in strong behavioral responses of pinnipeds in water, but no data exist at higher received levels.

In addition to summarizing the available data, Southall *et al.* (2007) developed a behavioral response severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system (a comprehensive list of the behaviors associated with each score is in the report):

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory)
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration greater than the duration of sound); minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory)
- 7–9 (Behaviors considered likely to affect vital rates) includes, but is not limited to: Extensive or prolonged aggressive behavior; moderate, prolonged, or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 22, NMFS has summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water to non-pulse sounds. This table is included simply to summarize the findings of the studies and opportunistic observations (all of which were capable of estimating received level) that Southall *et al.* (2007) compiled in an effort to develop acoustic criteria.

Table 22 Summary of reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water to non-pulse sounds.

	Received RMS Sound Pressure Level (dB re: 1 μPa at 1 m)											
Response Score	80 to < 90	90 to < 100	100 to < 110	110 to < 120	120 to < 130	130 to < 140	140 to < 150	150 to < 160	160 to < 170	170 to < 180	180 to < 190	190 to < 200
9												
8		M	M		M		M				M	M
7						L	L					
6	H	L/H	L/H/P	L/M/H	L/M/H	L	L/H	H	M/H	M		
5			H	H	M							
4				L/M	L/M/P	P	L					
3		M	L/M	L/M	M/P	P						
2			L	L/M	L	L	L					
1			M	M	M							
0	L/H/P	L/H/P	L/M/H	L/M/H/P	L/M/H/P	L	M				M	M

Data compiled from three tables from Southall et al. (2007) indicating when marine mammals (low-frequency cetaceans = L, mid-frequency cetaceans = M, high frequency cetaceans = H, and pinnipeds = P) were reported as having a behavioral response of the indicated severity to a non-pulse sound of the indicated received level. As discussed in the text, responses are highly variable and context specific.

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There are few quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exist for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993), cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Feare, 1976; Giese, 1996; Mullner *et al.,* 2004; Waunters *et al.,* 1997), or cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (e.g., resting or foraging) to another behavioral state (e.g., avoidance or escape behavior) because of human disturbance or disturbance stimuli.

One consequence of behavioral avoidance results from the changes in energetics of marine mammals because of the energy required to avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Hartman, 1979; Miksis-Olds, 2006).

Those costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting behavioral states to active behavioral states, which would imply that they incur an energy cost.

Morete *et al.,* (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling). When vessels approached, the amount of time cows and calves spent resting and milling, respectively, declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand only engaged in resting behavior five percent of the time when vessels were within 300 m compared with 83 percent of the time when vessels were not present. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (e.g., when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treating the stimulus as a disturbance and responding accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or attend to cues from prey (Bednekoff

and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities, such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (e.g., multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (e.g., when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. An example of this concept with terrestrial species involved bighorn sheep and Dall's sheep, which dedicated more time to being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the physical condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17 percent reproductive success rate. Similar reductions in reproductive success have been reported for other non-marine mammal species; for example, mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), and caribou disturbed by low-elevation military jet flights (Luick *et al.,* 1996; Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). An example of this concept with terrestrial species involved, a study of grizzly bears (*Ursus horribilis*) which reported that bears disturbed by hikers reduced their energy intake by an average of 12 kilocalories/min (50.2×10^3 kiloJoules/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999). Alternately, Ridgway *et al.,* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance'' (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Strandings Associated With Active Sonar

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of MF active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military MF active sonar use in which exposure to sonar is believed by NMFS and the Navy to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). NMFS refers the reader to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event. Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that the mid-frequency

sonar was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MF active sonar including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales) have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding and only one of these exercises was conducted by the U. S. Navy.

Potential for Stranding From LFA Sonar

There is no empirical evidence of strandings of marine mammals associated with the employment of SURTASS LFA sonar since its use began in the early 2000s. Moreover, the system acoustic characteristics differ between LF and MF sonars: LFA sonars use frequencies generally below 1,000 Hz, with relatively long signals (pulses) on the order of 60 sec; while MF sonars use frequencies greater than 1,000 Hz, with relatively short signals on the order of 1 sec.

As discussed previously, Cox *et al.* (2006) provided a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), and Canary Islands (2002). These included deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (i.e., rapid onset and decay times) generated at depths less than 32.8 ft (10 m) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain *et al.*, 2006). These features do not relate to LFA sonar operations. First, the SURTASS LFA sonar vessel operates with a horizontal line array of 4,921ft (1,500 m) length at depths below 492 ft (150 m) and a vertical line array (LFA sonar source) at depths greater than 328 ft (100 m). Second, the Navy will not operate SURTASS LFA sonar within 22 km (13. mi; 11.8 nm) of any coastline. For these reasons, SURTASS LFA sonar cannot be operated in deep water that is close to land. Also, the LFA sonar signal is transmitted at depths well below 32.8 ft (10 m). While there was an LF component in the Greek stranding in 1996, only MF components were present in the strandings in the Bahamas in 2000, Madeira 2000, and Canaries in 2002. The International Council for the Exploration of the Sea (ICES) in its ''Report of the Ad-Hoc Group on the Impacts of Sonar on Cetaceans and Fish'' raised the same issues as Cox *et al.*, (2006) stating that the consistent association of MF sonar in the Bahamas, Madeira, and Canary Islands strandings suggest that it was the MF component, not the LF component, in the NATO sonar that triggered the Greek stranding of 1996 (ICES, 2005). The ICES (2005) report concluded that no strandings, injury, or major behavioral change have been associated with the exclusive use of LF sonar.

Concurrent Use of LF and MF Active Sonar

The environmental impacts of the SURTASS LFA sonar system, including the potential for synergistic and cumulative effects with MF active sonar operation, has been addressed in detail in the Navy's application and the SURTASS LFA sonar 2011 DSEIS/SOEIS. NMFS will not consider the authorization of take of marine mammals incidental to the operation of MF active sonar in this document because NMFS has already separately authorized the incidental take associated with these activities. NMFS has considered more specifically the manner in which LFA sonar and MFAS may interact in a multi-strike group exercise with respect to the potential to impact marine mammals in a manner not previously considered.

Tactical and technical considerations dictate that the LFA sonar ship would typically be tens of miles from the MF active sonar ship when using active sonar. It is unlikely, but remotely possible, that both LF and MF active sonar would be active at exactly the same time during a major exercise. Based on the differing operating characteristics of each sonar (pulse length, duty cycle, etc.), the percentage of overlap during concurrent MF and LF active sonar operations is approximately 0.017 percent. In the unlikely event that both systems were transmitting simultaneously, the likelihood of more than a relatively small number of individual marine mammals being physically present at a time, location, and depth to be able to receive both LF and MF active sonar signals at levels of concern at the same time is even smaller as the sound from both signals would have attenuated when they reached the marine mammal in question, so even a simultaneous exposure would not be at the full signal of either system. Additionally, only a few species have maximum sensitivity to both the low and middle frequencies.

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from Navy vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally (in a manner that NMFS would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.*, 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Vessel Strike

Commercial and Navy ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 14.9 mph (24.1 km/hr; 13 kts).

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 kts. The majority (79 percent) of these strikes occurred at speeds of 13 kts or greater. The average speed that resulted in serious injury or death was 18.6 kts. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 percent to 75 percent as vessel speed increased from 10 to 14 kts, and exceeded 90 percent at 17 kts. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death by pulling whales toward the vessel. Computer simulation modeling showed that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.*, 1995).

The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals.

The Navy's proposed operation of up to four SURTASS LFA sonar vessels world-wide is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during SURTASS LFA operations is unlikely due to the surveillance vessel's slow operational speed, which is typically 3.4 mph (5.6 km/hr; 3 kts). Outside of operations, each vessel's cruising speed would be approximately 11.5 to 14.9 mph (18.5 to 24.1 km/hr; 10 to 13 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.*, 2001). Second, the Navy would restrict the operation of SURTASS LFA vessels at a distance of 1 km (0.62 mi; 0.54 nmi) seaward of the outer perimeter of any OBIA designated for marine mammals during a specified period, further minimizing the potential for marine mammal interactions. Also, the Navy would not operate SURTASS

LFA vessels a distance of 22 km (13. mi; 11.8 nmi) or less of any coastline, including islands, thus operating in offshore coastal areas with lower densities of marine mammals would minimize adverse impacts.

As a final point, the SURTASS LFA surveillance vessels have a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: The T–AGOS ships have their bridges positioned forward of the centerline, offering good visibility ahead of the bow and good visibility aft to visually monitor for marine mammal presence; lookouts posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to the Deck Officer; Navy lookouts receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea; and SURTASS LFA vessels travel at 3–4 kts (approximately 3.4 mph; 5.6 km/hr) with deployed arrays. For a thorough discussion of mitigation measures, please see the Mitigation section later in this document.

Anticipated Effects on Marine Mammal Habitat

The Navy's proposed routine testing and training, as well as military operations using SURTASS LFA sonar, could potentially affect marine mammal habitat through the introduction of pressure and sound into the water column, which in turn could impact prey species of marine mammals.

Based on the following information and the supporting information included in the Navy's application, the 2001 FOEIS/EIS, the 2007 FSEIS, and the 2011 DSEIS/SOEIS, NMFS has preliminarily determined that SURTASS LFA sonar operations will not have significant or long-term impacts on marine mammal habitat. Unless the sound source is stationary and/or continuous over a long duration in one area, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where SURTASS LFA operations are occurring, but the area will likely be utilized again after the activities have ceased. A summary of the conclusions are included in subsequent sections.

Compliance With Maritime Law

Use of SURTASS LFA sonar entails the periodic deployment of acoustic transducers and receivers into the water column from ocean-going ships. The Navy deploys SURTASS LFA sonar from ocean surveillance ships that are U.S. Coast Guard-certified for operations and operate in accordance with all applicable federal, international, and U.S. Navy rules and regulations related to environmental compliance, especially for discharge of potentially hazardous materials. SURTASS LFA sonar ships comply with all requirements of the Clean Water Act of 1972 (CWA; 33 U.S.C. section 1251 *et seq.*) and Act to Prevent Pollution from Ships (APPS; 33 U.S.C. subsections 1905–1915). SURTASS LFA vessel movements are not unusual or extraordinary and are part of routine operations of seagoing vessels. Therefore, no discharges of pollutants regulated under the APPS or CWA will result from the operation of the sonar systems nor will any unregulated environmental impacts from the operation of the SURTASS LFA sonar vessels occur.

Geographic Restrictions

The Navy has proposed that the sound field does not exceed 180 dB re: 1 μPa at 1 m (i.e., a mitigation zone) within 22 km (13. mi; 11.8 nmi) of any coastline, including islands, or within proposed OBIAs during biologically important seasons, during the conduct of SURTASS LFA operations.

Critical Habitat

Of the designated critical habitat for marine mammals, four areas are at a distance sufficient from shore to potentially be affected by SURTASS LFA sonar. They are the critical habitat for the north Atlantic right whale (NARW), north Pacific right whale (NPRW), Hawaiian monk seal, and Steller sea lion. The Navy proposes that the sound field would not exceed 180 dB re: 1 μPa at 1 m in the areas designated as critical habitat for the north Atlantic right whale, north Pacific right whale, and the Hawaiian monk seal.

For NARW critical habitat, the Navy has proposed an OBIA that encompasses the critical habitats of the North Atlantic right whale in Georges Bank (OBIA #1); Roseway Basin right whale Conservation Area (OBIA #2); in portions of the Gulf of Maine including Stellwagen Bank National Marine Sanctuary, that are located outside of 22 km (13. mi; 11.8 nmi) (OBIA #3); and the southeastern U.S. Right whale Seasonal critical habitat (OBIA #4). In 2008, NMFS designated two areas of critical habitat for the NPRW, one in the Bering Sea where the Navy proposes to not conduct SURTASS LFA sonar operations. For the other designated area for critical habitat in the Gulf of Alaska, the Navy has proposed an OBIA (#5) that bounds the designated critical habitat for the species.

Much of the proposed critical habitat for Hawaiian monk seals is within 22 km (13. mi; 11.8 nmi) of any shoreline and there is no proposed OBIA that encompasses the entirety of Hawaiian monk seal critical habitat. However, the Navy has proposed an OBIA (#16) that encompasses the Penguin Bank portion of the Hawaiian Islands Humpback Whale National Marine Sanctuary.

There is no proposed OBIA that encompasses designated critical habitat for Steller sea lions. Much of the critical habitat for the Steller sea lion is located in the Bering Sea, where SURTASS LFA sonar will not operate. Although it is possible that the sonar will be operated in the western Gulf of Alaska where the eastern critical habitat for the Steller sea lion is located and some of that habitat lies outside of 22 km (13. mi; 11.8 nmi) from shore, the water depth in which the habitat is found is sufficiently shallow that it is unlikely that the Navy would operate sonar in the vicinity of that critical habitat.

Both the Navy and NMFS will consult with NMFS on effects on critical habitat pursuant to section 7 of the ESA.

Marine Protected Areas (MPA)

Within the National System of MPAs, seven formally recognized areas are in potential SURTASS LFA sonar operating areas because a portion of the area or its seaward boundary is located beyond 22 km (13. mi; 11.8 nmi) from the coastline. These MPAs are: Stellwagen Bank National Marine Sanctuary (NMS); Olympic Coast NMS; Gulf of the Farallones NMS; Monterey Bay NMS; Cordell Bank NMS; Hawaiian Islands Humpback Whale NMS; and Papahanaumokuakea Marine National Monument. The Navy has proposed not to operate SURTASS LFA sonar in specified areas of National Marine Sanctuaries during biologically important seasons (see OBIA section discussed later in this document).

The proposed SURTASS LFA operations are not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed operational areas, including the food sources they use (i.e., fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed SURTASS LFA operations. While it is

anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Anticipated Impacts on Fish

The Navy's DSEIS/SOEIS includes a detailed discussion of the effects of active sonar on marine fish and several studies on the effects of both Navy sonar and seismic airguns that are relevant to potential effects of SURTASS LFA sonar on *osteichthyes* (bony fish). In the most pertinent of these, the Navy funded independent scientists to analyze the effects of SURTASS LFA sonar on fish (Popper *et al.,* 2005a, 2007; Halvorsen *et al.,* 2006) and on the effects of SURTASS LFA sonar on fish physiology (Kane *et al.,* 2010).

Several studies on the effects of SURTASS LFA sonar sounds on three species of fish (rainbow trout, channel catfish, and hybrid sunfish) examined long-term effects on sensory hair cells of the ear. In all species, even up to 96 hours post-exposure, there were no indications of damage to sensory cells (Popper *et al.,* 2005a, 2007; Halvorsen *et al.,* 2006). Recent results from direct pathological studies of the effects of LFA sounds on fish (Kane *et al.,* 2010) provide evidence that SURTASS LFA sonar sounds at relatively high received levels (up to 193 dB re: 1 μPa at 1 m) have no pathological effects or short- or long-term effects to ear tissue on the species of fish that have been studied.

Anticipated Impacts on Invertebrates

Among invertebrates, only cephalopods (octopus and squid) and decapods (lobsters, shrimps, and crabs) are known to sense LF sound (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Popper and Schilt (2008) stated that, like fish, some invertebrate species produce sound, possibly using it for communications, territorial behavior, predator deterrence, and mating. Well known sound producers include the lobster (*Panulirus* spp.) (Latha *et al.,* 2005), and the snapping shrimp (*Alpheus heterochaelis*) (Herberholtz and Schmitz, 2001).

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. However, the Navy notes in the DSEIS/SOEIS (Chapter 3–6) that the authors failed to elaborate that there were no anthropogenic sources to which animals might be exposed with characteristics similar to those used in their study. The time sequence of exposure from low-frequency sources in the open ocean would be about once every 10 to 15 min for SURTASS LFA. Therefore, the study's sound exposures were longer in duration and higher in energy than any exposure a marine mammal would likely ever receive and acoustically very different than a free field sound to which animals would be exposed in the real world. Given the lack of data on hearing thresholds of cephalopods, SURTASS LFA sonar operations could only have a lasting impact on these animals if they are within a few tens of meters from the source. In conclusion, NMFS does not expect any short- or long-term effects to marine mammal food resources from SURTASS LFA sonar activities.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) 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 section 101(a)(5)(A) of the MMPA 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 SURTASS LFA sonar application are considered military readiness activities.

NMFS reviewed the proposed SURTASS LFA sonar activities and the proposed mitigation measures as described in the Navy's application to determine if they would result in the least practicable adverse effect on marine mammals, which includes a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.''

To reduce the potential for impacts from acoustic stimuli associated with the Navy's SURTASS LFA sonar activities, the Navy has proposed to implement the following mitigation measures for marine mammals:

(1) LFA sonar mitigation zone—LF sources transmissions are suspended if the Navy detects marine mammals within the mitigation zones by any of the following detection methods:

(a) Visual monitoring;

(b) Passive acoustic monitoring;

(c) Active acoustic monitoring;

(2) Geographic restrictions in the following areas:

(a) Offshore Biologically Important Areas (OBIAs);

(b) Coastal Standoff Zone.

Additionally, as with the previous rulemaking, NMFS proposes to include additional operational restrictions for SURTASS LFA sonar operations:

(1) Additional 1-km buffer around the LFA sonar mitigation zone; and

(2) Additional 1-km buffer around an OBIA perimeter.

Both the Navy's proposed mitigation and NMFS' additional proposed mitigation are discussed below this section.

LFA Sonar Mitigation Zone

The Navy has proposed in its application to establish a 180-dB (RL) isopleth LFA sonar mitigation zone around the surveillance vessel. If a marine mammal approaches or enters the LFA sonar mitigation zone, the Navy would implement a suspension of SURTASS LFA sonar transmissions.

Prior to commencing and during SURTASS LFA transmissions, the Navy will determine the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180-dB isopleth (See Description of Real-Time SURTASS LFA Sonar Sound Field Modeling section). The 180-dB isopleth will define the LFA sonar mitigation zone for marine mammals around the surveillance vessel.

The Navy modeling of the sound field in near-real time conditions provides the information necessary to modify SURTASS LFA operations, including the delay or suspension of LFA transmissions. Acoustic model updates are nominally made every 12 hr, or more frequently when meteorological or oceanographic conditions change. If the sound field criteria were exceeded, the sonar operator would notify the Officer in Charge (OIC), who would order the delay or suspension of transmissions. If it were predicted that the SPLs would

exceed the criteria within the next 12 hr period, the OIC would also be notified in order to take the necessary action to ensure that the sound field criteria would not be exceeded.

NMFS' Additional 1-km Buffer Zone Around the LFA Sonar Mitigation Zone

As an added measure, NMFS again proposes to require a ''buffer zone'' that extends an additional 1 km (0.62 mi; 0.54 nm) beyond the 180-dB isopleth LFA sonar mitigation zone. This buffer coincides with the full detection range of the HF/M3 active sonar for mitigation monitoring (approximately 2 to 2.5 km; 1.2 to 1.5 mi; 1.1 to 1.3 nmi). Thus, the 180-dB isopleth for the LFA sonar mitigation zone, plus NMFS' 1-km (0.54 nm) buffer zone would comprise the entire mitigation zone for SURTASS LFA sonar operations, wherein suspension of transmissions would occur if a marine mammal approaches or enters either zone. The Navy notes in its application that this additional mitigation is practicable and it would adhere to this additional measure if required in the proposed rule.

In addition to establishing a 180-dB (RL) isopleth LFA sonar mitigation zone around the surveillance vessel the Navy has also proposed to establish a mitigation zone for human divers at 145 dB re: 1 μPa at 1 m around all known human commercial and recreational diving sites. Although this geographic restriction is intended to protect human divers, it will also reduce the LF sound levels received by marine mammals located in the vicinity of known dive sites.

Visual Mitigation Monitoring

The use of shipboard lookouts is a critical component of all Navy mitigation measures. Navy shipboard lookouts are highly qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Deck Officer (e.g., trash, a periscope, marine mammals, sea turtles) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

Visual monitoring consists of daytime observations by lookouts (personnel trained in detecting and identifying marine mammals) for marine mammals from the vessel. The objective of these observations is to maintain a bearing of marine mammals observed and to ensure that none approach the source close enough to enter the LFA mitigation zone or the 1-km buffer zone proposed by NMFS (see Additional Mitigation Measure Proposed by NMFS section).

Daylight is defined as 30 min before sunrise until 30 min after sunset. Visual monitoring would begin 30 min before sunrise or 30 min before the Navy deploys the SURTASS LFA sonar array. Lookouts will continue to monitor the area until 30 min after sunset or until recovery of the SURTASS LFA sonar array.

The lookouts would maintain a topside watch and marine mammal observation log during operations that employ SURTASS LFA sonar in the active mode. These trained monitoring personnel maintain a topside watch and scan the water's surface around the vessel systematically with standard binoculars (7x) and with the naked eye. If the lookout sights a possible marine mammal, the lookout will use big-eye binoculars (25x) to confirm the sighting and potentially identify the marine mammal species. Lookouts will enter numbers and identification of marine mammals sighted, as well as any unusual behavior, into the log. A designated ship's officer will monitor the conduct of the visual watches and periodically review the log entries.

If a lookout observes a marine mammal outside of the LFA mitigation or buffer zone, the lookout will notify the OIC. The OIC shall then notify the HF/M3 sonar operator to determine the range and projected track of the marine mammal. If the HF/M3 sonar operator or the lookout determines that the marine mammal will pass within the LFA mitigation or buffer zones, the OIC shall order the delay or suspension of SURTASS LFA sonar transmissions when the animal enters the LFA mitigation or buffer zone to prevent Level A harassment. The lookout will enter his/her observations into the log. This would include tabular information that includes: Date/time; vessel name; LOA area; marine mammals affected (number and type); assessment basis (observed injury, behavioral response, or model calculation); LFA mitigation or buffer zone radius; bearing from vessel; whether operations were delayed, suspended or terminated; and a narrative.

If a lookout observes a marine mammal anywhere within the LFA mitigation or 1-km buffer zone (as proposed by NMFS), the lookout shall notify the OIC who will promptly order the immediate delay or suspension of SURTASS LFA sonar transmissions. The lookout will enter his/her observations into the log.

Marine mammal biologists, who are qualified in conducting at-sea marine mammal visual monitoring from surface vessels, shall train and qualify designated ship personnel to conduct at-sea visual monitoring. The Navy will hire one or more marine mammal biologists qualified in conducting at-sea marine mammal visual monitoring from surface vessels to train and qualify designated ship personnel to conduct at-sea visual monitoring.

Passive Acoustic Mitigation Monitoring

For the second of the three-part mitigation monitoring measures, the Navy proposes to conduct passive acoustic monitoring using the SURTASS towed horizontal line array to listen for vocalizing marine mammals as an indicator of their presence. This system serves to augment the visual and active sonar detection systems. If a passive acoustic technician detects a vocalizing marine mammal that may be potentially affected by SURTASS LFA sonar prior to or during transmissions, the technician will notify the OIC who will immediately alert the HF/M3 active sonar operators and the lookouts. The OIC will order the delay or suspension of SURTASS LFA sonar transmissions when the animal enters the LFA mitigation or buffer zone as detected by either the HF/M3 sonar operator or the lookouts. The passive acoustic technician will record all contacts of marine mammals into the log.

Active Acoustic Mitigation Monitoring

HF active acoustic monitoring uses the HF/M3 sonar to detect, locate, and track marine mammals that could pass close enough to the SURTASS LFA sonar array to enter the LFA sonar mitigation or buffer zones. HF/M3 acoustic monitoring begins 30 min before the first SURTASS LFA sonar transmission of a given mission is scheduled to commence and continues until the Navy terminates the transmissions.

If the HF/M3 sonar operator detects a marine mammal contact outside the LFA sonar mitigation zone or buffer zones, the HF/M3 sonar operator shall determine the range and projected track of the marine mammal. If the operator determines that the marine mammal will pass within the LFA sonar mitigation or buffer zones, he/she shall notify the OIC. The OIC then immediately orders the delay or suspension of transmissions when the animal is predicted to enter the LFA sonar mitigation or buffer zones.

If the HF/M3 sonar operator detects a marine mammal within the LFA mitigation or buffer zones, he/she shall

notify the OIC who will immediately order the delay or suspension of transmissions. The HF/M3 sonar operator will record all contacts of marine mammals into the log.

Prior to full-power operations of the HF/M3 active sonar, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re 1 μPa at 1 m in 10-dB increments until the system attains full power (if required) to ensure that there are no inadvertent exposures of marine mammals to received levels greater than 180 dB re 1 μPa from the HF/M3 sonar. The Navy will not increase the HF/M3 sonar source level if any of the three monitoring programs detect a marine mammal during ramp-up. Ramp-up may continue once marine mammals are no longer detected by any of the three monitoring programs.

Prior to any SURTASS LFA sonar calibrations or testing that are not part of regular SURTASS LFA sonar transmissions, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re 1 μPa at 1 m in 10-dB increments until the system attains full power. The Navy will not increase the HF/M3 source level if any of the three monitoring programs detect a marine mammal during ramp-up. Ramp-up may continue once marine mammals are no longer detected by any of the three monitoring programs.

In situations where the HF/M3 sonar system has been powered down for more than 2 min, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re 1 μPa at 1 m in 10-dB increments until the system attains full power.

Past Mitigation Monitoring Under the Previous Rules

For the first four LOA periods under the 2007 rule, the Navy has reported a total of eight visual sightings, four passive acoustic detections, and 29 HF/M3 active sonar detections (DoN, 2008; 2009a; 2010; 2011) leading to mitigation protocols of suspensions/delays of transmissions in a total of 70 missions.

During the 2002–2007 rule period, the Navy reported a total of four visual sightings, no passive acoustic detections, and 101 active HF/M3 active sonar detections leading to mitigation protocols of suspensions/delays of transmissions (DoN, 2007a; 2007b) in a total of 58 missions. However, these data sets involving marine species are too small to support any meaningful analyses, such as determining if there are any differences in detection during the time when LFA sonar is active versus when it is inactive.

Geographic Restrictions

As noted above, the Navy has proposed two types of geographic restrictions for SURTASS LFA operations in the LOA application: (1) establishing OBIAs for marine mammal protection and restricting SURTASS LFA sonar operations within these designated areas such that the SURTASS LFA sonar-generated sound field will not exceed 180 dB re: 1 μPa (RL); and (2) restricting SURTASS LFA sonar operations within 22 km (13. mi; 11.8 nmi) of any coastline, including islands.

Offshore Biologically Important Areas

As with the previous SURTASS LFA sonar rulemakings, the Navy's application again proposed establishing offshore biologically important areas OBIAs for marine mammal protection. In preparation for this rule making, NMFS developed a more systematic process for selecting, assessing, and designating OBIAs for SURTASS LFA sonar.

First, NMFS developed screening criteria to help initially select potential areas and then determine an area's eligibility for consideration as an OBIA nominee. These OBIA screening criteria included:

(1) Areas with:

(a) High densities of marine mammals; or

(b) Known/defined breeding/calving grounds, foraging grounds, migration routes; or

(c) Small, distinct populations of marine mammals with limited distributions; and

(2) Areas that are outside of the coastal standoff distance and within potential operational areas for SURTASS LFA (i.e., greater than 22 km (13.6 mi; 12 nmi) from any shoreline and not in polar regions).

NMFS used the screening criteria to review 403 existing and potential marine protected areas based on the World Database on Protected Areas (WDPA) (IUCN and UNEP, 2009), Holt (2005), and prior SURTASS LFA sonar OBIAs to produce a preliminary list of 27 OBIA nominees.

NMFS next convened an expert review panel of biologists knowledgeable about potentially affected marine mammal biologically important areas. This panel consisted of subject matter experts (SME), each with expertise in geographic regions including the Atlantic Ocean, Pacific Ocean, Mediterranean Sea, Indian Ocean/Southeast Asia, and East Africa. The SMEs provided their individual analyses of NMFS' preliminary candidates as potential marine mammal OBIAs in waters where the Navy potentially could use the SURTASS LFA sonar systems and provided additional recommendations for other OBIAs. This resulted in a total number of 73 potential OBIAs. These areas were further screened for sufficient scientific support, resulting in 45 potential OBIAs.

Although not part of its initial screening criteria, consideration of marine mammal hearing frequency sensitivity led NMFS to screen out areas that qualified solely on the basis of their importance for mid- or high-frequency hearing specialists. The LFA sound source is well below the range of best hearing sensitivity for most MF and HF odontocete hearing specialists. This means, for example, for harbor porpoises, that a sound with a frequency less than 1 kHz needs to be significantly louder (more than 40 dB louder) than a sound in their area of best sensitivity (around 100 kHz) in order for them to hear it. Additionally, during the 1997 to 1998 SURTASS LFA Sonar Low Frequency Sound Scientific Research Program (LFS SRP), numerous odontocete and pinniped species (i.e., MF and HF hearing specialists) were sighted in the vicinity of the sound exposure tests and showed no immediately obvious responses or changes in sighting rates as a function of source conditions, which likely produced received levels similar to those that produced minor short-term behavioral responses in the baleen whales (i.e., LF hearing specialists). NMFS believes that MF and HF odontocete hearing specialists have such reduced sensitivity to the LFA source that limiting ensonification in OBIAs for those animals would not afford protection beyond that which is already incurred by implementing a shutdown when any marine mammal enters the LFA mitigation and buffer zones. Consideration of this additional information resulted in a list of 22 final OBIA nominees for the Navy's consideration.

The 22 areas are: (1) Georges Bank, year round; (2) Roseway Basin Right Whale Conservation Area, June through December; (3) the Great South Channel, U.S. Gulf of Maine, and Stellwagen Bank NMS, January 1 to November 14; (4) the Southeastern U.S. Right Whale Seasonal Habitat, November 15 to January 15; (5) the North Pacific Right Whale Critical Habitat, March through August; (6) Silver Bank and Navidad Bank, December through April; (7) the coastal waters of Gabon, Congo and

Equatorial Guinea, June through October; (8) the Patagonian Shelf Break, year round; (9) Southern Right Whale Seasonal Habitat, May through December; (10) the central California National Marine Sanctuaries, June through November; (11) the Antarctic Convergence Zone, October through March; (12) Piltun and Chayvo offshore feeding grounds in the Sea of Okhotsk, June through November; (13) the coastal waters off Madagascar, July through September for humpback whale breeding and November through December for migrating blue whales; (14) Madagascar Plateau, Madagascar Ridge, and Walters Shoal, November through December; (15) the Ligurian-Corsican-Provencal Basin and Western Pelagos Sanctuary in the Mediterranean Sea, July to August; (16) Hawaiian Islands Humpback Whale NMS and Penguin Bank, November through April; (17) the Costa Rica Dome, year round; (18) the Great Barrier Reef Between 16° S and 21° S, May through September; (19) the Bonney Upwelling on the west coast of Australia, December through May; (20) the Northern Bay of Bengal and Head of Swatch-of-No-Ground, year round; (21) the Olympic Coast NMS (within 23 nmi (26.5 m; 42.6 km) of the coast from 47°07′ N to 48°30′ N latitude), December, January, March, and May and the Prairie, Barkley Canyon, and Nitnat Canyon, June through September; and (22) an area within the Southern California Bight, June through November for blue whales, December through May for gray whales, year-round for all other species.

The Navy agreed that these areas met NMFS' criteria and based on its practicability assessment pursuant to the MMPA, the Navy proposed 21 of the 22 sites in its application. An area within the Southern California Bight, specifically an area including Tanner and Cortes Banks (see section 4.5.2.3 for boundary information) from June through November, met the criteria as a concentrated area for blue whales based on predictive modeling (Barlow *et al.,* 2009) or as a foraging area based on a 2000–2004 study of blue whale calls (Oleson, Calambokidis, Barlow, & Hildebrand, 2007). However, the Navy concluded that the underlying data cover a short time period and the dynamic nature of blue whale distribution and the variability of prey abundance make it difficult to assign any permanence to this area as one of blue whale concentration. The Navy determined that avoiding this area was operationally impracticable as much of the OBIA is within the existing Southern California (SOCAL) Range Complex which plays a vital part in ensuring military readiness. The training that occurs in the SOCAL Range Complex includes antisubmarine warfare (ASW) training and the SOCAL Range Complex provides the uneven, mountainous underwater topography that is essential to such training, because it is similar to the kind of underwater topography that submarines use to hide or mask their presence. NMFS preliminarily concurs with the Navy's practicability assessment.

Based on the Navy's practicability evaluation, NMFS proposes to designate these 21 sites as OBIAs for LFA sonar. NMFS refers the readers to Table 2 in the Navy's application and Chapter 4 and Appendix D–8 of the Navy's 2011 DSEIS/SOEIS for more detailed information on the specific justification for each OBIA, the locations, and geographic boundaries of the proposed OBIAS.

NMFS' Additional 1-km Buffer Zone Around an OBIA Perimeter

NMFS also proposes an OBIA ''buffer'' requirement for the Navy that would restrict the operation of SURTASS LFA sonar so that the SURTASS LFA sonar sound field does not exceed 180 dB re: 1 μPa at a distance of 1 km (0.62 mi; 0.54 nmi) seaward of the outer perimeter of any OBIA designated for marine mammals during the specified period. The Navy notes in its application that this additional mitigation is practicable and it would adhere to this additional measure if required in the proposed rule.

OBIAs are mitigation measures for SURTASS LFA sonar and are based on the system's unique operating and physical characteristics and should not be assumed to be appropriate for other activities.

Coastal Standoff Zone

The Navy has proposed to restrict SURTASS LFA sonar operations within 22 km (13. mi; 11.8 nmi) of any coastline, including islands such that the SURTASS LFA sonar-generated sound field will not exceed 180 dB re: 1 μPa (RL) at that distance.

Operational Exception

It may be necessary for SURTASS LFA transmissions to be at or above 180 dB re 1 μPa (rms) within the boundaries of the designated SURTASS LFA sonar OBIAs, including operating within an OBIA, when: (1) Operationally necessary to continue tracking an existing underwater contact; or (2) operationally necessary to detect a new underwater contact within the OBIA. This exception will not apply to routine training and testing with the SURTASS LFA sonar systems.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures and considered a broad 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:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In some cases, additional mitigation measures are proposed beyond those that the applicant proposed. Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of LFA sonar or other activities expected to result in the take of marine mammals (this goal may contribute to goal a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of LFA sonar or other activities expected to result in the take of marine mammals (this goal may contribute to goal a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of LFA sonar or other activities expected to result in the take of marine mammals (this goal may contribute to goal a,

above, or to reducing the severity of harassment takes only).

(e) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (i.e., shutdown in the LFA mitigation and buffer zones).

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined preliminarily that the Navy's proposed mitigation measures together with the additional mitigation measures proposed by NMFS provide the means of effecting the least practicable adverse impacts on marine mammals 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. NMFS provides further details in the following section.

NMFS believes that the shutdown in the LFA sonar mitigation and buffer zones, visual monitoring, passive acoustic monitoring, active acoustic monitoring using HF/M3 sonar with ramp-up procedures, and geographic restriction measures proposed will enable the Navy to: (1) Avoid Level A harassment of marine mammals; (2) Minimize the numbers of marine mammals exposed to SURTASS LFA sonar sound associated with TTS; and (3) Minimize the numbers taken specifically during times of important behaviors, such as feeding, migrating, calving, or breeding.

TTS: The LFA sonar signal is not expected to cause TTS at received levels below 180 dB re: 1 μPa. In other words, the received level of the LFA sonar signal at approximately 1 km (0.62 mi; 0.54 nmi) from the vessel is 180 dB re: 1 μPa. Implementing an additional 1-km buffer zone increases the shutdown zone to approximately 2 km (1.2 mi; 1.1 nmi) around the LFA sonar array and vessel will ensure that no marine mammals are exposed to an SPL greater than about 174 dB re: 1 μPa.

The best information available indicates that effects from SPLs less than 180 dB re: 1 μPa will be limited to short-term, Level B behavioral Harassment affecting less than an average of 12 percent of the stocks present in an operational area annually for most affected species.

PTS/Injury: In the case of SURTASS LFA sonar operations, NMFS does not expect marine mammals to be exposed to received sound levels that are high enough or long enough in duration to result in PTS. The Navy's standard protective measures indicate that they would ensure delay or suspension of SURTASS LFA sonar transmissions if any of the three monitoring programs detect a marine mammal entering the LFA mitigation and/or buffer zones i.e., within approximately two km (1.2 mi; 1.1 nmi) of the vessel. The proposed mitigation monitoring measures would allow the Navy to avoid exposing marine mammals to received levels of SURTASS LFA sonar or HF/M3 sonar sound that could result in injury (Level A harassment).

Southall *et al.* (2007) proposed injury criteria for individual marine mammals exposed to non-pulsed sound types, which included discrete acoustic exposures from SURTASS LFA sonar. The proposed injury criteria for cetaceans are sound pressure levels (SPL) of 230 dB re: 1 μPa and sound exposure levels (SEL) of 215 dB re: 1 μPa^2-sec. Taking into account an 18-dB adjustment for the longer LFA signal in SEL units, the proposed injury criteria for cetaceans exposed to SURTASS LFA sonar signals would result in an SEL of 197 dB re: 1 μPa^2-sec (i.e., 215 − 18 = 197) (which converts to an SPL of approximately 182 dB re: 1 μPa). The Navy's criterion for estimating injury marine mammals is an SPL of 180 dB re: 1 μPa is lower than the injury criteria proposed by Southall *et al.* (2007). Thus, the probability of SURTASS LFA sonar transmissions (with mitigation) causing PTS in marine mammals is considered unlikely.

The SPLs capable of potentially causing injury to an animal are well within approximately 1 km (0.62 mi; 0.54 nm) of the ship. Implementing a shutdown zone of approximately 2 km (1.2 mi; 1.1 nmi) around the LFA sonar array and vessel will ensure that no marine mammals are exposed to an SPL greater than about 174 dB re: 1 μPa. This is significantly lower than the 180-dB re: 1 μPa used for other acoustic projects for protecting marine mammals from injury.

Serious injury is unlikely to occur unless a marine mammal is well within the 180-dB re: 1 μPa LFA sonar mitigation zone and close to the source. The closer a mammal is to the vessel, the more likely the Navy personnel will detect it by the three-part monitoring program leading to the immediate suspension of SURTASS LFA sonar operations.

The Navy has operated SURTASS LFA sonar under NMFS regulations for the last nine years without any reports of injury or death. The evidence to date, including recent scientific reports and annual monitoring reports, and nine-year's worth of conducting SURTASS LFA operations further supports the conclusion that the potential for serious injury to occur is minimal.

Proposed Research

The Navy sponsors significant research and monitoring projects for marine living resources to study the potential effects of its activities on marine mammals. These funding levels have increased in recent years to $31 million in FY 2009 and $32 million in FY 2010 for marine mammal research and monitoring activities at universities, research institutions, federal laboratories, and private companies. Navy-funded research has produced many peer-reviewed articles in professional journals. This ongoing marine mammal research relates to hearing and hearing sensitivity, auditory effects, dive and behavioral response models, noise impacts, beaked whale global distribution, modeling of beaked whale hearing and response, tagging of free-ranging marine animals at-sea, and radar-based detection of marine mammals from ships. The Navy sponsors 70 percent of all U.S. research on the effects of human-generated underwater sound on marine mammals and 50 percent of such research conducted worldwide. These research projects may not be specifically related to SURTASS LFA sonar operations; however, they are crucial to the overall knowledge base on marine mammals and the potential effects from underwater anthropogenic noise. The Navy also sponsors research to determine marine mammal abundances and densities for all Navy ranges and other operational areas. The Navy notes that research and evaluation is being carried out on various monitoring and mitigation methods, including passive acoustic monitoring and the results from this research could be applicable to SURTASS LFA sonar passive acoustic monitoring. The Navy has also sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops bring together underwater acoustic subject matter experts and marine biologists from the Navy and

other research organizations to present data and information on current acoustic monitoring research efforts, and to evaluate the potential for incorporating similar technology and methods on Navy instrumented ranges.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, 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 LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, 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 levels of LFA sonar 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 LFA sonar (at specific received levels or other stimuli 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 increase in 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.

(g) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to better achieve the above goals.

Marine Mammal Monitoring (M3) Program

The Marine Mammal Monitoring (M3) Program uses the Navy's permanent seafloor sensor arrays in areas of the Atlantic Ocean to passively monitor the movements of some large cetaceans, including their migration and feeding patterns, by tracking them through their vocalizations. Analysts can not only count numbers of whales, but in some cases also note the interaction and influence of underwater noise sources on the animals. Some whales are vocal enough to allow long-term tracking; e.g., in 2010 a blue whale was tracked for 67 days. Recently, upgraded acoustic signal processing systems have allowed for detection of sperm whale clicks—longest holding to date of one sperm whale is 12 hrs, which included 14 dives. As previously noted these data are not real time and thus cannot be relied upon for mitigation purposes. At present, most of the data resulting from the M3 Program are classified. The Navy will continue to assess the data collected by its undersea arrays and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

Passive Acoustic Monitoring With Fleet Exercises

For fleet exercises that SURTASS LFA sonar is involved in, the Navy is exploring the feasibility of coordinating with other fleet assets and/or range monitoring programs to include the use of SURTASS towed horizontal line arrays to augment the collection of marine mammal vocalizations before, during, and after designated exercises. The goal would be to determine the extent, if any, of changes in marine mammal vocalizations that could have been caused by SURTASS LFA sonar operations during the exercise. This applies directly to increased knowledge of marine mammal species. If the collection of such calibrated and validated data can occur, this could be useful information in NMFS' environmental compliance processes for underwater LF sonar systems.

This effort would require detailed pre-planning and a comprehensive data collection and analysis plan, which will necessarily be subject to the fleet operations plan for the exercise itself. Other factors that would need to be addressed include the following: Scheduling of assets; budgetary constraints; potential for qualified, professional marine mammal biologists to ride the SURTASS LFA sonar vessel during the data collection efforts; security measures; de-conflicting any potential behavioral responses of marine mammals in the fleet exercise area from other underwater sound sources (e.g., MF active sonars) with potential behavioral responses from SURTASS LFA sonar transmissions; and accounting for other variables that may cause a change in marine mammals' vocalization output. This would be a task for a scientific team made up of marine biologists, LFA operators, and meteorological/oceanographic experts.

Ambient Noise Data Monitoring

Several efforts (federal and academic) are underway to develop a comprehensive ocean noise budget (i.e., an accounting of the relative contributions of various underwater sources to the ocean noise field) for the world's oceans that include both anthropogenic and natural sources of noise. Ocean noise distributions and noise budgets are used in marine mammal masking studies, habitat characterization, and marine animal impact analyses.

The Navy will collect ambient noise data when the SURTASS passive towed horizontal line array is deployed. The Navy is exploring the feasibility of declassifying and archiving the ambient noise data for incorporation into appropriate ocean noise budget efforts. Thus, the SURTASS LFA sonar vessels could serve as ad hoc ships of opportunity for monitoring data that could provide validation of marine mammal-relevant global ocean noise budgets by supplying up-to-date measurements of the underwater noise field in data-poor and/or littoral areas not previously surveyed.

Past Monitoring

The Navy's Low Frequency Sound Scientific Research Program (LFS SRP) in 1997 to 1998 provided insights to baleen whale responses to LFA sonar signals. The Navy designed the three-year study to assess the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists specifically addressing three important behavioral contexts for baleen whales: Feeding, migration, and breeding. The results of the LFS SRP confirmed that some portion of the total number of whales exposed to LFA sonar responded behaviorally by changing their vocal activity, moving away from the source vessel, or both; but the responses were short-lived (Clark *et al.,* 2001) (see Potential Effects of Behavioral Disturbance).

Adaptive Management

Our understanding of the potential effects of SURTASS LFA sonar on marine mammals is continually evolving. Reflecting this, the Navy proposes to include an adaptive

management component within the framework of the scientific underpinning of its 2011 SEIS/OEIS that supports its application. This allows the Navy, in concert with NMFS, to consider, on a case-by-case basis, new/revised peer-reviewed and published scientific data and information from qualified and recognized sources within academia, industry, and government/non-government organizations to determine (with input regarding practicability) whether SURTASS LFA sonar mitigation, monitoring, or reporting measures should be modified (including additions or deletions); if new scientific data indicate that such modifications would be appropriate. It also allows for updates to marine mammal stock estimates to be included in annual LOA applications, which, in turn, provides for the use of the best available scientific data for predictive models, including AIM.

Proposed Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. There are several different reporting requirements in these proposed regulations:

General Notification of Injured or Dead Marine Mammals

The Navy will systematically observe SURTASS LFA sonar operations for injured or disabled marine mammals. In addition, the Navy will monitor the principal marine mammal stranding networks and other media to correlate analysis of any whale strandings that could potentially be associated with SURTASS LFA sonar operations.

Navy personnel will ensure that NMFS is notified immediately or as soon as clearance procedures allow if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any SURTASS LFA operations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or found during or shortly after SURTASS LFA sonar operations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

General Notification of a Ship Strike

Because SURTASS LFA vessels move slowly, it is not likely these vessels would strike a marine mammal. In the event of a ship strike by the SURTASS LFA vessel, at any time or place, the Navy shall do the following:

- Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown);
- Report to NMFS as soon as operationally feasible the size and length of the animal, an estimate of the injury status (*e.g.,* dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status;
- Report to NMFS the vessel length, speed, and heading as soon as feasible; and
- Provide NMFS a photo or video, if equipment is available.

Long-Term Monitoring (LTM) Program Reports

During routine operations of SURTASS LFA sonar, the Navy will collect and record technical and environmental data, which are part of the Navy's LTM Program. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs.

Quarterly Mitigation Monitoring Report

On a quarterly basis, the Navy would provide NMFS with classified and unclassified reports that include all active-mode missions completed 30 days or more prior to the date of the deadline for the report. Specifically, these reports will include dates/times of exercises, location of vessel, mission operational area, location of the mitigation zone in relation to the LFA sonar array, marine mammal observations, and records of any delays or suspensions of operations. Marine mammal observations would include animal type and/or species, number of animals sighted by species, date and time of observations, type of detection (visual, passive acoustic, HF/M3 sonar), the animal's bearing and range from vessel, behavior, and remarks/narrative (as necessary). The report would include the Navy's analysis of whether any Level A and/or Level B taking occurred within the SURTASS LFA sonar mitigation zone and, if so, estimates of the percentage of marine mammal stocks affected (both for the quarter and cumulatively (to date) for the year covered by the LOA) by SURTASS LFA sonar operations. This analysis would include estimates for both within and outside the LFA sonar mitigation zone, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics. In the event that no SURTASS LFA missions are completed during a quarter, the Navy will provide NMFS with a report of negative activity.

Annual Report

The annual report, which is due no later than 45 days after the expiration date of the LOAs, would provide NMFS with an unclassified summary of the year's quarterly reports and will include the Navy's analysis of whether any Level A and/or Level B taking occurred within the SURTASS LFA sonar mitigation zones and, if so, estimates of the percentage of marine mammal stocks affected by SURTASS LFA sonar operations. This analysis would include estimates for both within and outside the LFA sonar mitigation zones, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics.

The annual report would also include: (1) Analysis of the effectiveness of the mitigation measures with recommendations for improvements where applicable; (2) assessment of any long-term effects from SURTASS LFA sonar operations; and (3) any discernible or estimated cumulative impacts from SURTASS LFA sonar operations.

Comprehensive Report

NMFS proposes to require the Navy to provide NMFS and the public with a final comprehensive report analyzing the impacts of SURTASS LFA sonar on marine mammal species and stocks. This report, which is due at least 240 days prior to expiration of these regulations, would include an in-depth analysis of all monitoring and Navy-funded research pertinent to SURTASS LFA sonar operations conducted during the 5-year period of these regulations, a scientific assessment of cumulative impacts on marine mammal stocks, and an analysis on the advancement of alternative (passive) technologies as a replacement for LFA sonar. This report would be a key document for NMFS' review and assessment of impacts for any future rulemaking.

The Navy shall respond to NMFS comments and requests for additional

information or clarification on quarterly, annual or comprehensive report. These reports will be considered final after the Navy has adequately addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment within the three-month time period. NMFS will post the annual and comprehensive reports on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Estimated Take of Marine Mammals

As mentioned previously, one of the main purposes of NMFS' effects assessments is to identify the permissible methods of taking, meaning: the nature of the take (e.g., resulting from anthropogenic noise vs. from ship strike, etc.); the regulatory level of take (i.e., mortality vs. Level A or Level B harassment) and the amount of take. The Potential Effects section identified the lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from exposure to SURTASS LFA sonar operations. This section will relate the potential effects to marine mammals from SURTASS LFA sonar operations to the MMPA statutory definitions of Level A and Level B Harassment and attempt to quantify the effects that might occur from the specific training activities that the Navy has proposed.

As mentioned previously, behavioral responses are context-dependent, complex, and influenced to varying degrees by a number of factors other than just received level. For example, an animal may respond differently to a sound emanating from a ship that is moving towards the animal than it would to an identical received level coming from a vessel that is moving away, or to a ship traveling at a different speed or at a different distance from the animal. At greater distances, though, the nature of vessel movements could also potentially not have any effect on the animal's response to the sound. In any case, a full description of the suite of factors that elicited a behavioral response would require a mention of the vicinity, speed and movement of the vessel, and other pertinent factors. So, while sound sources and the received levels are the primary focus of the analysis and those that are laid out quantitatively in the regulatory text, it is with the understanding that other factors related to the training are sometimes contributing to the behavioral responses of marine mammals, although they cannot be quantified.

Definition of Harassment

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].

Level B Harassment

Of the potential effects that were described in the previous sections, the following are the types of effects that fall into the Level B Harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to SURTASS LFA sonar or HF/M3 sonar (or another stressor), is considered Level B Harassment. Louder sounds (when other factors are not considered) are generally expected to elicit a stronger response than softer sounds. Some of the lower level physiological stress responses discussed in the previous sections will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.* (2007) severity scaling system and listed some examples of the three broad categories of behaviors 0–3: (Minor and/or brief behaviors); 4–6: (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9: (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B Harassment, as defined in this document, would include the behaviors described in the 7–9 category and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 category. Behavioral harassment typically would not include behaviors ranked 0–3.

Acoustic Masking and Communication Impairment—The severity or importance of an acoustic masking event can vary based on the length of time that the masking occurs, the frequency of the masking signal (which determines which sounds are masked, which may be of varying importance to the animal), and other factors. Some acoustic masking would be considered Level B Harassment, if it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can disrupt behavioral patterns by inhibiting an animal's ability to communicate with conspecifics and interpret other environmental cues important for predator avoidance and prey capture. However, depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it was in the same frequency band as the necessary vocalizations and of a severity that impeded communication.

The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicates that although PTS is a tissue injury, TTS is not, because the reduced hearing sensitivity following exposure to intense sound results primarily from

fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to either SURTASS LFA sonar or HF/M3 sonar) as Level B Harassment, not Level A Harassment (injury).

Level A Harassment

Of the potential effects that were described in the previous sections, the following are the types of effects that fall into the Level A Harassment category:

PTS—PTS (resulting from either exposure to SURTASS LFA sonar or HF/M3 sonar) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids. Although PTS is considered an injury, the effects of PTS on the fitness of an individual can vary based on the degree of TTS and its frequency band.

Tissue Damage due to Acoustically Mediated Bubble Growth—A few theories suggest ways in which gas bubbles become enlarged through exposure to intense sounds (SURTASS LFA sonar or HF/M3 sonar) to the point where tissue damage results. In rectified diffusion, exposure to a sound field would cause bubbles to increase in size. A short duration of active sonar pings (such as that which an animal exposed to SURTASS LFA sonar) would be most likely to encounter) would not likely be long enough to drive bubble growth to any substantial size. Alternately, bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. The degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert because of how close an animal would need to be to the sound source to be exposed to high enough levels, especially considering the likely avoidance of the sound source and the required mitigation. Still, possible tissue damage from either of these processes would be considered an injury or, potentially, mortality.

Tissue Damage due to Behaviorally Mediated Bubble Growth—Several authors suggest mechanisms in which marine mammals could behaviorally respond to exposure to SURTASS LFA sonar or HF/M3 sonar by altering their dive patterns in a manner (unusually rapid ascent, unusually long series of surface dives, etc.) that might result in unusual bubble formation or growth ultimately resulting in tissue damage (e.g., emboli). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. There is considerable disagreement among scientists as to the likelihood of this phenomenon (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Although it has been argued that the tissue effects observed from recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Tyack *et al.,* 2006), nitrogen bubble formation as the cause of the traumas has not been verified. If tissue damage does occur by this phenomenon, it would be considered an injury or, potentially, mortality.

Estimates of Potential Marine Mammal Exposure

Estimating the take that will result from the proposed activities begins with the CNO and fleet commands proposing mission areas to operate SURTASS LFA sonar. The Navy analyzes the mission areas based on current scientific data to determine the potential sensitivity of marine mammals to SURTASS LFA sonar signals and risks to their stocks. If marine mammal densities prove to be high and/or sensitive animal activities are expected, the Navy changes/refines the mission areas to areas with lower numbers of marine mammals, or lower levels of biologically-sensitive marine mammal activities. Subsequently the process is re-initiated for the modified mission area. Next, the Navy performs standard acoustic modeling and risk analyses, taking into account spatial, temporal, and/or operational restrictions. Then, the Navy applies standard mitigation measures to the analysis to calculate risk estimates for marine mammal stocks in the proposed mission area. Based on these estimates, the Navy decides if the proposed mission area meets the conditions of the MMPA regulations and LOAs, as issued, on marine mammal/animal impacts from SURTASS LFA sonar. If not, the proposed mission area is changed or refined, and the process is re-initiated. If the mission area risk estimates are below the required restrictions, then the Navy has identified and selected the potential mission area with minimal marine mammal/animal activity consistent with its operational readiness requirements and restrictions placed on LFA operations by NMFS in the regulatory and consultation processes. This sensitivity/risk assessment approach allows the Navy to determine where and when SURTASS LFA sonar can operate and meet the MMPA condition for the least practicable adverse impacts on marine mammals.

As described earlier (see Brief Background on the Navy's Assessment of the Potential Impacts on Marine Mammals), the Navy assesses the potential impacts on marine mammals predicting the sound field that a given marine mammal species could be exposed to over time in a potential operating area. This is a multi-part process involving: (1) The ability to measure or estimate an animal's location in space and time; (2) the ability to measure or estimate the three-dimensional sound field at these times and locations; (3) the integration of these two data sets into the AIM to estimate the total acoustic exposure for each animal in the modeled population; (4) the conversion of the resultant cumulative exposures for a modeled population into an estimate of the risk from a significant disturbance of a biologically important behavior; and (5) the use of a risk continuum to convert these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

The Navy uses the LFA sonar mitigation zone to calculate estimates for Level A harassment (injury). The area between the LFA sonar mitigation zone and the 1-km (0.62 mi; 0.54 nmi) buffer zone (estimated to extend to about the 174-dB isopleth) is an area where marine mammals could experience Level B harassment. The Navy uses this area to calculate estimates for Level B harassment using a risk continuum from the 120 to 179-dB isopleth for marine mammals. Based on the Navy's AIM modeling results, the primary effects would be the potential for Level B Harassment. In addition, while possible, Level A harassment, if it occurs at all, is expected to be so minimal as to have no effect on rates of reproduction or survival of affected marine mammal species. More information regarding the risk assessment methodology, the models used, the assumptions used in the models, and the process of estimating take is available in section 6.4 of the Navy's application and section 4.4 of the Navy's 2007 Final SEIS and section 4.4 of the Navy's DSEIS/SOEIS.

Because it is infeasible to model enough representative sites to cover all potential LFA operating areas, the Navy's application presents 19 modeled sites as examples to provide estimates of potential operating areas based on the current political climate. The Navy

analyzed these 19 operating sites using the most up-to-date marine mammal abundance, density, and behavioral information available. These sites they represent, based on today's political climate, areas where SURTASS LFA sonar could potentially test, train, or operate. Tables 9 through 27 provide the Navy's estimates of the number of marine mammals potentially affected for SURTASS LFA sonar operations and are based on reasonable and realistic estimates of the potential effects to marine mammal stocks specific to the potential mission areas. These data are examples of areas where the Navy could request LOAs under the 5-year rule because they are in areas of potential strategic importance and/or areas of possible naval fleet exercises. As stated previously, this proposed rule does not specify the number of marine mammals that may be taken in the proposed locations because these are determined annually through various inputs such as mission location, mission duration, and season of operation. For the annual application for an LOA, the Navy proposes to present both the estimated percentage of stock incidentally harassed as well as the estimated number of animals that may be potentially harassed by SURTASS LFA sonar.

With the implementation of the three-part monitoring programs (visual, passive acoustic, and HF/M3 monitoring), NMFS and the Navy do not expect that marine mammals would be injured by SURTASS LFA sonar because a marine mammal should be detected and active transmissions suspended or delayed. As mentioned previously, the Navy determines Level A harassments based on actual observations and/or detections within the LFA sonar mitigation zone. The probability of detection of a marine mammal by the HF/M3 system within the LFA sonar mitigation zone approaches 100 percent based on multiple pings (see the 2001 FOEIS/EIS, Subchapters 2.3.2.2 and 4.2.7.1 for the HF/M3 sonar testing results). In the Navy's application, the Navy's acoustic analyses predict that less than 0.0001 percent of the endangered north Pacific right whale stock and 0.00 percent of the stocks of all other marine mammal species may be exposed to levels of sound likely to result in Level A harassment (i.e., exposures at 180 dB re: 1 μPa or greater). Quantitatively, the Navy's request translates into take estimates of zero animals for any species including the endangered north Pacific right whale. However, because the probability of detection by the HF/M3 system within the LFA sonar mitigation zone is not 100 percent, NMFS will include a small number of Level A harassment takes for marine mammals over the course of the five-year regulations based on qualitative analyses.

Reviewing the Navy's historical data on visual alerts that have triggered a suspension of SURTASS LFA sonar transmission outside of the LFA sonar mitigation zone, the data indicate that the largest grouping of mysticetes that has triggered a shutdown outside of the LFA sonar mitigation zone and within the buffer zone is three. Similarly, the largest number of odontocetes that has triggered a shutdown is two. Thus, NMFS analyzes the take of no more than six mysticetes (total), across all species requested in the Navy's application by Level A harassment; no more than 25 odontocetes (across all species) by Level A harassment; and no more than 25 pinnipeds (across all species) by Level A harassment over the course of the 5-year regulations. These are the only quantitative adjustments that NMFS has made to the requested takes from the Navy's modeled exposure results. Again, NMFS notes that over the course of the previous two rulemakings, there have been no reported incidents of Level A harassment of any marine mammal. As with the 2002 and 2007 Rules, the Navy will limit operation of LFA sonar to ensure no marine mammal stock will be subject to more that 12 percent of takes by Level B harassment annually, over the course of the five-year regulations. This annual per-stock cap applies regardless of the number of LFA vessels operating. The Navy will use the 12 percent cap to guide its mission planning and annual LOA applications.

Analysis and Negligible Impact Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers:

(1) The number of anticipated mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, and intensity, and duration of Level B harassment; and

(4) The context in which the takes occur.

As mentioned previously, NMFS estimates that 94 species of marine mammals could be potentially affected by Level A or Level B harassment over the course of the five-year period.

For reasons stated previously in this document, no mortalities are anticipated to occur as a result of the Navy's proposed SURTASS LFA operations, and none are proposed to be authorized by NMFS.

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 and the type of taking (i.e., takes by harassment only, or takes by harassment, 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 affected species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences (see Potential Effects of Behavioral Disturbance).

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 of Level B harassment takes, alone, is not enough information on which to base an impact determination. As mentioned previously, in addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must 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.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

The Navy has described its specified activities based on best estimates of the number of hours that the Navy will conduct SURTASS LFA operations. The exact number of transmission hours may vary from year to year, but will not exceed the annual total indicated in Table 1.

Taking the above into account, considering the sections discussed further, and dependent upon the implementation of the proposed mitigation measures, NMFS has preliminarily determined that Navy

training, testing, and military operations utilizing SURTASS LFA sonar will have a negligible impact on the marine mammal species and stocks present in operational areas in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea.

Behavioral Harassment

As discussed in the Potential Effects of Exposure to SURTASS LFA Sonar Operations, marine mammals may respond to SURTASS LFA sonar operations in many different ways, a subset of which qualifies as harassment (see Behavioral Harassment Section). One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.) in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response.

For SURTASS LFA sonar operations, the Navy provided information (Tables 24–42 of the Navy's application) estimating numbers of total takes that could occur within the proposed operational areas. For reasons stated previously in this document, the specified activities associated with the proposed SURTASS LFA operations will most likely fall within the realm of short-term, Level B behavioral harassment. NMFS bases this assessment on a number of factors:

(1) Geographic Restrictions—With the implementation of geographic restrictions on SURTASS LFA sonar operations, NMFS and the Navy have minimized the likelihood of disruption of marine mammal behavior patterns, such as migration, calving, breeding, feeding, or sheltering. Because the coastal standoff and proposed OBIAs restrict the use of SURTASS LFA sonar in known areas of feeding, calving, and breeding for marine mammals, NMFS does not expect nor does it anticipate that SURTASS LFA sonar operations likely will have adverse effects on annual rates of recruitment or survival (i.e., population-level effects).

Also, the Navy's proposal to not conduct SURTASS LFA sonar operations within 22 km (13. mi; 11.8 nmi) of any coastline, including islands, to ensure that the sound field does not exceed 180 dB (i.e., LFA mitigation and buffer zones) offers protection to areas with higher densities of marine mammals. Because the Navy will operate for the most part in waters that are not areas known for high concentrations of marine mammals, few, if any, marine mammals would be within the SURTASS LFA mitigation and buffer zones.

(2) Low Frequency Sonar Scientific Research Program (LFS SRP)—Based on the past nine years of SURTASS LFA sonar operations and the LFS SRP, NMFS does not expect nor does it anticipate that SURTASS LFA sonar operations will have likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). The Navy designed the three-year study to assess the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists, those species believed to be at (potentially) greatest risk. This field research addressed three important behavioral contexts for baleen whales: (1) Blue and fin whales feeding in the southern California Bight, (2) gray whales migrating past the central California coast, and (3) humpback whales breeding off Hawaii. Taken together, the results from the three phases of the LFS SRP do not support the hypothesis that most baleen whales exposed to RLs near 140 dB re: 1 μPa would exhibit disturbance behavior and avoid the area. These experiments, which exposed baleen whales to received levels ranging from 120 to about 155 dB re: 1 μPa, detected only minor, short-term behavioral responses. However, short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors.

(3) Efficacy of the Navy's Three-Part Mitigation Monitoring Program—From 2003 to 2010, the Navy reported a total of 12 visual sightings, four passive acoustic detections, and 130 HF/M3 active sonar detections of marine mammals, all leading to suspension/delays of transmissions in accordance with mitigation protocols. Because the HF/M3 active sonar is able to monitor large and medium marine mammals out to an effective range of 2 to 2.5 km (1.2 to 1.5 mi; 1.1 to 1.3 nmi) from the vessel, it is unlikely that the SURTASS LFA operations would expose marine mammals to an SPL greater than about 174 dB re: 1 μPa at 1 m. The area between the 180-dB LFA sonar mitigation zone and the 1-km (0.62 mi; 0.54 nm) buffer zone proposed by NMFS (estimated to extend to about the 174-dB isopleth from the vessel) is an area where marine mammals would experience Level B Harassment if exposed to LFA sonar transmissions, in accordance with the Navy's risk analysis and acoustic modeling (2001 FOEIS/EIS, Subchapter 4.2.3). Past results of the HF/M3 sonar system tests provide confirmation that the system has a demonstrated probability of single-ping detection of 95 percent or greater for single marine mammals, 10 m (32.8 ft) in length or larger, and a probability approaching 100 percent for multiple pings for any sized marine mammal. Further, implementing a shutdown zone of approximately 2 km (1.2 mi; 1.1 nmi) around the vessel will ensure that no marine mammals are exposed to an SPL greater than about 174 dB re: 1 μPa at 1 m.

TTS

Schlundt *et al.* (2000) documented TTS in trained bottlenose dolphins and belugas after exposure to intense 1-second signal duration tones at 400 Hz, and 3, 10, 20, and 75 Hz. NMFS notes the LF-band tones at 400 Hz at which the researchers were unable to induce TTS in any animal at levels up to 193 dB re: 1 μPa at 1 m which was the maximum level achievable with the equipment used in the experiment. The researchers implied that the TTS threshold for a 100-second signal would be approximately 184 dB (Table 1–4, 2001 FOEIS/EIS).

When SURTASS LFA sonar transmits, there is a boundary that encloses a volume of water where received levels equal or exceed 180 dB (the 180-dB isopleth LFA sonar mitigation zone) and a volume of water outside this boundary where received levels are below 180 dB (the 1 km buffer encircling the 180-dB LFA sonar mitigation zone. The level of risk for TTS for marine mammals depends on their location in relation to SURTASS LFA sonar. Because the onset of PTS for marine mammals may be 15–20 dB above TTS levels, one can assume that a marine mammal would have to be within the 1 km buffer around the 180-dB LFA sonar mitigation zone (i.e., modeled SPLs of 120–180 dB re: 1 μPa at 1 m) to induce TTS. However, the Navy's standard protective measures indicate that they would ensure delay or suspension of SURTASS LFA sonar transmissions if any of the three monitoring programs detect a marine mammal within 2 km (1.2 mi; 1.1 nmi) of the vessel. Thus, the proposed mitigation measures would allow the Navy to reduce the number of marine mammals exposed to received levels of SURTASS LFA sonar or HF/M3 sonar sound that could result in TTS. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Again, in the case of SURTASS LFA, animals are not expected to be exposed

to levels high enough or durations long enough to result in TTS. In order to receive more than one ''ping'' during a normal vessel leg, an animal would need to match the ship in speed and course direction between pings. Because of the relatively short duty cycle, the water depth of the convergence zone ray path, the movement of marine mammals in relationship to the SURTASS LFA sonar ship, and the effectiveness of the three-part mitigation program, few marine mammals are likely to be affected by TTS (see Direct Physiological Effects—Threshold Shift (Noise-Induced Loss of Hearing).

PTS

In NMFS' 2002 and 2007 rules, NMFS and the Navy based their estimate of take by injury or the significant potential for such take (Level A harassment) on the criterion of 180 dB. NMFS continues to believe this is a scientifically supportable and conservative value for preventing auditory injury or the significant potential for such injury (Level A harassment), as it represents a value less than where the potential onset of a minor TTS in hearing might occur based on Schlundt *et al.'s* (2000) research (see the Navy's 2007 Final Comprehensive Report Tables 5 through 8).

The Navy's standard protective measures indicate that they would ensure delay or suspension of SURTASS LFA sonar transmissions if any of the three monitoring programs detect a marine mammal either entering the LFA sonar mitigation zone or buffer zones; (within approximately two km (1.2 mi; 1.1 nmi)) of the LFA transmit array or vessel. The proposed mitigation measures would allow the Navy to avoid exposing marine mammals to received levels of SURTASS LFA sonar or HF/M3 sonar sound that would result in injury (Level A harassment). The sound pressure level (SPL) that is capable of potentially causing injury to an animal is within approximately 1 km (0.62 mi; 0.54 nm) of the ship. Implementing a shutdown zone of approximately 2 km (1.2 mi; 1.1 nmi) around the LFA sonar array and vessel will ensure that no marine mammals are exposed to an SPL greater than about 174 dB re: 1 μPa (RL). This is significantly lower than the 180-dB re: 1 μPa (RL) used for other acoustic projects for protecting marine mammals from injury. Serious injury is unlikely to occur unless a marine mammal is well within the 180-dB LFA sonar mitigation zone and close to the source. The closer the mammal is to the vessel, the more likely it will be detected by the tripartite monitoring program leading to the immediate suspension of SURTASS LFA sonar transmissions.

With three levels of mitigation monitoring for detecting marine mammals, NMFS believes it is unlikely that any marine mammal would be exposed to received levels of 180 dB re: 1 μPa before being detected and the SURTASS LFA sonar shut down. However, because the probability is not zero, the Navy has requested Level A harassment takes incidental to SURTASS LFA sonar operations.

Mortality

There is no empirical evidence of strandings of marine mammals associated with the employment of SURTASS LFA sonar. Moreover, the system acoustic characteristics differ between LF and MF sonars associated with strandings: LFA sonars use frequencies generally below 1,000 Hz, with relatively long signals (pulses) on the order of 60 sec; while MF sonars use frequencies greater than 1,000 Hz, with relatively short signals on the order of 1 sec. NMFS has provided a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), Canary Islands (2002), Hanalei Bay (2004), and Spain (2006) earlier in this document. These included operation of MF sonar, deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (i.e., rapid onset and decay times) generated at depths less than 32.8 ft (10 m) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain *et al.,* 2006). None of these features relate to SURTASS LFA sonar operations.

In summary (from the discussion above this section), NMFS has made a preliminary finding that the total taking from SURTASS LFA activities will have a negligible impact on the affected species or stocks based on following: (1) The historical effectiveness of the Navy's three-part monitoring program in detecting marine mammals and triggering shutdowns, which make it unlikely that an animal will be exposed to sound levels above 180 dB (i.e., levels potentially associated with injury); (2) Geographic restrictions such as OBIAs and the coastal standoff zone; (3) The requirement that the SURTASS LFA sonar sound field not exceed 180 dB within 22 km of any shoreline, including islands, or at a distance of one km from the perimeter of an OBIA; (4) The fact that LF signals attenuate greatly in the near-surface zone, where many of the marine mammals congregate for biologically-important behaviors; (5) The small number of SURTASS LFA sonar systems that would be operating world-wide; (6) The relatively low duty cycle, short mission periods and offshore nature of the SURTASS LFA sonar; (7) The fact that marine mammals in unspecified migration corridors and open ocean concentrations would be adequately protected by the three-part monitoring and mitigation protocols; and (8) Previous Endangered Species Act consultation findings that that operation of the SURTASS LFA sonar is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Impacts to marine mammals are anticipated to be in the form of Level B behavioral harassment, due to the brief duration and sporadic nature of the SURTASS LFA sonar operations. Certain species may have a behavioral reaction (e.g., increased swim speed, avoidance of the area, etc.) to the sound emitted during the proposed activities. In conclusion, while marine mammals will potentially be affected by the SURTASS LFA sonar sounds, NMFS has preliminarily determined that these impacts will be short-term and are not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsistence Harvest of Marine Mammals

Although the Navy will not operate SURTASS LFA sonar in the vast majority of Arctic waters, the Navy may potentially operate LFA sonar in the Gulf of Alaska, where subsistence uses of marine mammals occur. Subsistence uses of marine mammals in the Gulf of Alaska include the harvest of harbor seals and Steller sea lions along coastal and inshore, including bay, areas of the gulf. As many as six Alaskan Native groups subsistence hunt harbor seals in the Gulf of Alaska, although the Dena'ina only occasionally hunt harbor seals, and four Native groups hunt Steller sea lions, with the Southeastern Alaska Native groups only occasionally harvesting Stellers (Wolfe *et al.,* 2009). Subsistence products that are derived from harbor seals and Steller sea lions by these Alaskan Native groups include oil, meat, and skins. Subsistence hunting of harbor seals and Steller sea lions is a specialized activity among Alaska Native groups, with only 30 percent and 3 percent of the surveyed native households hunting harbor seals and Steller sea lions, respectively (Wolfe *et al.,* 2009).

Should the Navy operate SURTASS LFA sonar in the Gulf of Alaska, sonar operation would adhere to the shutdown in the mitigation and buffer zones, we well as established geographic restrictions, which include the coastal standoff range (which dictates that the sound field produced by the sonar must be below 180 dB re: 1 μPa at 1 m within 22 km (13. mi; 11.8 nmi) of any coastline) and exclusion from OBIAs.

Although there are peaks in harvest activity for both species, both harbor seals and Steller sea lions are harvested year-round in the coastal waters of the gulf. While it is impossible to predict the future timing of the possible employment of SURTASS LFA sonar in the Gulf of Alaska, regardless of the time of year the sonar may be employed in the Gulf of Alaska, there should be no overlap in time or space with subsistence hunts due to the geographic restrictions on the sonar use (i.e., coastal standoff range and OBIA restrictions). These restrictions will prevent the Navy from generating a sound field that reaches the shallow coastal and inshore areas of the Gulf of Alaska where harvest of the two pinniped species occurs. The possible employment of SURTASS LFA sonar in the Gulf of Alaska will not cause abandonment of any harvest/hunting locations, will not displace any subsistence users, nor place physical barriers between marine mammals and the hunters. No mortalities of marine mammals have been associated with the employment of SURTASS LFA sonar and the Navy undertakes a suite of mitigation measures whenever SURTASS LFA sonar is actively transmitting. Therefore, NMFS has preliminarily determined that the possible future employment of SURTASS LFA sonar will not lead to unmitigable adverse impacts on the availability of marine mammal species or stocks for subsistence uses in the Gulf of Alaska.

In August 2011, the Navy sent a letter to the Native Affairs and Natural Resources Advisor, Alaska Command at Elmendorf Air Force base requesting that they provide copies of the SURTASS LFA Sonar DSEIS/SOEIS (DoN, 2011) to pertinent native groups that participate in subsistence hunting in the Gulf of Alaska. To date, the Navy has not received any requests from Alaskan tribes for government-to-government consultation pursuant to Executive Order 13175. The Navy will continue to keep the Alaskan tribes informed of the timeframes of any future SURTASS LFA sonar exercises planned for the area.

Endangered Species Act

There are 15 marine mammal species under NMFS' jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in potential operational areas for SURTASS LFA: the blue, fin, sei humpback, bowhead, North Atlantic right, North Pacific right, southern right, gray, and sperm whales, as well as the western and eastern distinct population segments (DPS) of the Steller sea lion, Mediterranean monk seal, Hawaiian monk seal, the eastern DPS of the Steller sea lion; the Guadalupe fur seal and the southern DPS of the spotted seal.

On October 4, 1999, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for its SURTASS LFA sonar activities. NMFS concluded consultation with the Navy on this action on May 30, 2002. The conclusion of that consultation was that operation of the SURTASS LFA sonar system for testing, training and military operations and the issuance by NMFS of incidental take authorizations for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. The Navy and NMFS conducted additional consultations prior to issuance of the annual LOAs.

On June 9, 2006, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for the 2007–2012 SURTASS LFA sonar activities and NMFS' authorization for incidental take under the MMPA. NMFS concluded consultation with the Navy on this action on August 17, 2007. The conclusion of that consultation was that operation of the SURTASS LFA sonar system for testing, training and military operations and the issuance by NMFS of MMPA incidental take authorizations for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. As with the first rule, the Navy and NMFS conducted additional consultations prior to issuance of the annual LOAs.

The Navy will consult with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of regulations and LOAs under section 101(a)(5)(A) of the MMPA for SURTASS LFA sonar activities. NMFS will conclude consultation with itself and the Navy prior to making a determination on the issuance of the final rule and LOAs.

The USFWS is responsible for regulating the take of the several marine mammal species including the southern sea otter, polar bear, walrus, West African manatee, Amazonian manatee, West Indian manatee, and dugong. None of these species occur in geographic areas that overlap with SURTASS LFA sonar operations. Therefore, the Navy has determined that SURTASS LFA sonar training, testing, and military operations will have no effect on the endangered or threatened species or their critical habitat of the ESA-listed species under the jurisdiction of the USFWS. Thus, no consultation with the USFWS pursuant to Section 7 of the ESA will occur.

National Environmental Policy Act

NMFS has participated as a cooperating agency on the Navy's Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (DSEIS/SOEIS) for employment of SURTASS LFA sonar, published on August 19, 2011. The Navy's DSEIS is posted on the Navy's Web site at *http://www.surtass-lfa-eis.com*. NMFS intends to adopt the Navy's Final SEIS/SOEIS, if adequate and appropriate. If the Navy's Final SEIS/SOEIS is deemed inadequate, NMFS would supplement the existing analysis to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

Classification

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that will be affected by this rulemaking, not a small governmental jurisdiction, small

organization, or small business, as defined by the RFA. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy.

NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: December 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

Subparts T Through W [Added and Reserved]

2. Subparts T through W are added to part 218 and reserved.

3. Subpart X is added to part 218 to read as follows:

Subpart X—Taking and Importing of Marine Mammals; Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

Sec.
218.230 Specified activity.
218.231 Effective dates. [Reserved]
218.232 Permissible methods of taking.
218.233 Prohibitions.
218.234 Mitigation.
218.235 Requirements for monitoring.
218.236 Requirements for reporting.
218.237 Applications for Letters of Authorization.
218.238 Letters of Authorization.
218.239 Renewal of Letters of Authorization.
218.240 Modifications to Letters of Authorization.
218.241 Adaptive Management.

Subpart X—Taking and Importing of Marine Mammals; Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

§ 218.230 Specified activity.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 218.238 of this chapter, include the transmission of low frequency sounds from the SURTASS LFA sonar system and the transmission of high frequency sounds from the mitigation sonar described in § 218.234 during routine training and testing as well as during military operations.

(a) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section may be authorized in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea, as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

(1) *Mysticetes*—blue whale (*Balaenoptera musculus*), bowhead whale (*Balaena mysticetus*), Bryde's whale (*Balaenoptera edeni*), fin whale (*Balaenoptera physalus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), North Atlantic right whale (*Eubalaena glacialis*), North Pacific right whale (*Eubalena japonica*), pygmy right whale (*Capera marginata*), sei whale (*Balaenoptera borealis*), southern right whale (*Eubalaena australis*),

(2) *Odontocetes*—Andrew's beaked whale (*Mesoplodon bowdoini*), Arnoux's beaked whale (*Berardius arnuxii*), Atlantic spotted dolphin (*Stenella frontalis*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Baird's beaked whale (*Berardius bairdii*), Beluga whale (*Dephinapterus leucas*), Blainville's beaked whale (*Mesoplodon densirostris*), Chilean dolphin (*Cephalorhynchus eutropia*), Clymene dolphin (*Stenella clymene*), Commerson's dolphin (*Cephalorhynchus commersonii*), common bottlenose dolphin (*Tursiops truncatus*), Cuvier's beaked whale (*Ziphius cavirostris*), Dall's porpoise (*Phocoenoides dalli*), Dusky dolphin (*Lagenorhynchus obscurus*), dwarf sperm and pygmy sperm whales (*Kogia simus* and *K. breviceps*), false killer whale (*Pseudorca crassidens*), Fraser's dolphin (*Lagenodelphis hosei*), Gervais' beaked whale (*Mesoplodon europaeus*), ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), Gray's beaked whale (*Mesoplodon grayi*), Heaviside's dolphin (*Cephalorhynchus heavisidii*), Hector's beaked whale (*Mesoplodon hectori*), Hector's dolphin (*Cephalorhynchus hectori*), Hourglass dolphin (*Lagenorhynchus cruciger*), Hubbs' beaked whale (*Mesoplodon carhubbsi*), harbor porpoise (*Phocoena phocoena*), killer whale (*Orca orcinus*), long-beaked common dolphin (*Delphinus capensis*), long-finned pilot whale (*Globicephala melas*), Longman's beaked whale (*Indopacetus pacificus*), melon-headed whale (*Peponocephala electra*), northern bottlenose whale (*Hyperodon ampullatus*), northern right whale dolphin (*Lissodelphis borealis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), pantropical spotted dolphin (*Stenella attenuata*), Peale's dolphin (*Lagenorhynchus australis*), Perrin's beaked whale (*Mesoplodon perrini*), pygmy beaked whale (*Mesoplodon peruvianus*), pygmy killer whale (*Feresa attenuata*), Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Shepherd's beaked whale (*Tasmacetus sheperdii*), short-beaked common dolphin (*Delphinus delphis*), short-finned pilot whale (*Globicephala macrorhynchus*), southern bottlenose whale (*Hyperodon planifrons*), southern right whale dolphin (*Lissodelphis peronii*), Sowerby's beaked whale (*Mesoplodon bidens*), spade-toothed beaked whale (*Mesoplodon traversii*), spectacled porpoise (*Phocoena dioptrica*), sperm whale (*Physeter macrocephalus*), spinner dolphin (*Stenella longirostris*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), strap-toothed beaked whale (*Mesoplodon layardii*), striped dolphin (*Stenella coeruleoalba*), True's beaked whale (*Mesoplodon mirus*), white-beaked dolphin (*Lagenorhynchus albirostris*),

(3) *Pinnipeds*—Australian sea lion (*Neophoca cinerea*), California sea lion (*Zalophus californianus*), Galapagos fur seal (*Arctocephalus galapagoensis*), Galapagos sea lion (*Zalophus wollebaeki*), gray seal (*Halichoerus grypus*), Guadalupe fur seal (*Arctocephalus townsendi*), harbor seal (*Phoca vitulina*), harp seal (*Pagophilus*

groenlandicus), Hawaiian monk seal (*Monachus schauinslandi*), hooded seal (*Cystophora cristata*), Juan Fernadez fur seal (*Arctocephalus philippi*), Mediterranean monk seal (*Monachus monachus*), New Zealand fur seal (*Arctocephalus forsteri*), New Zealand fur seal (*Phocarctos hookeri*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), ribbon seal (*Phoca fasciata*), South African and Australian fur seals (*Arctocephalus pusillus*), South American fur seal (*Arctocephalus australis*), South American sea lion (*Otaria flavescens*), southern elephant seal (*Mirounga leonina*), spotted seal (*Phoca largha*), Steller sea lion (*Eumetopias jubatus*), subantarctic fur seal (*Arctocephalus tropicalis*).

§ 218.231 Effective dates. [Reserved]

§ 218.232 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.238 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 218.230(a), provided that the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The Holder of the Letter of Authorization must conduct the activities identified in § 218.230 in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.230 is limited to the species listed in § 218.230(b) by the method of take indicated in paragraphs (c)(2), (c)(3), (c)(4), and (c)(5) of this section.

(1) The Navy must maintain a running calculation/estimation of takes of each species over the effective period of this subpart.

(2) Level B Harassment will not exceed 12 percent of any marine mammal stock listed in § 218.230(b)(1) through (3) annually over the course of the five-year regulations. This annual per-stock cap of 12 percent applies regardless of the number of LFA vessels operating.

(3) Level A harassment of no more than six mysticetes (total), of any of the species listed in § 218.230(b)(1) over the course of the five-year regulations.

(4) Level A harassment of no more than 25 odontocetes (total), of any of the species listed in § 218.230(b)(2) over the course of the five-year regulations.

(5) Level A harassment of no more than 25 pinnipeds (total), of any of the species listed in § 218.230(b)(3) over the course of the five-year regulations.

§ 218.233 Prohibitions.

No person in connection with the activities described in § 218.230 may:

(a) Take any marine mammal not specified in § 218.230(b);

(b) Take any marine mammal specified in § 218.230 other than by incidental take as specified in § 218.232(c)(2), (c)(3), (c)(4), and (c)(5);

(c) Take any marine mammal specified in § 218.230 if NMFS makes a determination that such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, any of the terms, conditions, or requirements of this subpart or a Letter of Authorization issued under § 216.106 and 218.238 of this chapter.

§ 218.234 Mitigation.

The Navy must conduct the activity identified in § 218.230 in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 218.230, the mitigation measures described in this section and in any Letter of Authorization issued under § 216.106 and § 218.238 of this chapter must be implemented.

(a) *Personnel Training—Lookouts:* (1) The Navy shall train the lookouts in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if they spot marine mammals.

(2) The Navy will hire one or more marine mammal biologist qualified in conducting at-sea marine mammal visual monitoring from surface vessels to train and qualify designated ship personnel to conduct at-sea visual monitoring.

(b) *General Operating Procedures:* (1) Prior to SURTASS LFA sonar operations, the Navy will promulgate executive guidance for the administration, execution, and compliance with the environmental regulations under this subpart and Letters of Authorization.

(2) The Holder of a Letter of Authorization will not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hz.

(c) *LFA Mitigation Zone and 1-km Buffer Zone:* (1) Prior to commencing and during SURTASS LFA sonar transmissions, the Holder of a Letter of Authorization will determine the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180-decibel (dB) re: 1 μPa isopleth.

(2) The Holder of a Letter of Authorization will establish an 180-dB LFA mitigation zone around the surveillance vessel that is equal in size to the 180-dB re: 1 μPa isopleth (i.e., the area subjected to sound pressure levels of 180 dB or greater) as well as a one-kilometer (1-km) buffer zone around the LFA mitigation zone. If a marine mammal is detected, through monitoring required under § 218.235, within or about to enter the LFA mitigation zone plus the 1-km buffer zone, the Holder of the Authorization will immediately delay or suspend SURTASS LFA sonar transmissions.

(d) *Resumption of SURTASS LFA sonar transmissions:* (1) The Holder of a Letter of Authorization will not resume SURTASS LFA sonar transmissions earlier than 15 minutes after:

(i) All marine mammals have left the area of the LFA mitigation and buffer zones; and

(ii) There is no further detection of any marine mammal within the LFA mitigation and buffer zones as determined by the visual, passive, and high frequency monitoring described in § 218.235.

(2) [Reserved].

(e) *Ramp-up procedures for the high-frequency marine mammal monitoring (HF/M3) sonar required under § 218.235:* (1) The Holder of a Letter of Authorization will ramp up the HF/M3 sonar power level beginning at a maximum source sound pressure level of 180 dB: re 1 μPa at 1 meter in 10-dB increments to operating levels over a period of no less than five minutes:

(i) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(ii) Prior to any SURTASS LFA sonar calibrations or testing that are not part of regular SURTASS LFA sonar transmissions described in § 218.230; and

(iii) Anytime after the HF/M3 source has been powered down for more than two minutes.

(2) The Holder of a Letter of Authorization will not increase the HF/M3 sound pressure level once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(f) *Geographic Restrictions on the SURTASS LFA Sonar Sound Field:*

(1) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar such that:

(i) The SURTASS LFA sonar sound field exceeds 180 dB re: 1 μPa (rms) at a distance less than 12 nautical miles

(nmi) (22 kilometers (km)) from any coastline, including offshore islands;

(ii) The SURTASS LFA sonar sound field exceeds 180 dB re: 1 μPa (rms) at a distance less than 1 km (0.5 nm) seaward of the outer perimeter of any offshore biologically important area designated in § 218.234(f)(1)(iii) during the period specified.

(iii) Offshore Biologically Important Areas (OBIAs) for marine mammals (with specified periods) for SURTASS LFA sonar operations include the following:

Name of area	Location of area	Months of importance
Georges Bank	40°00′ N, 72°30′ W 39°37′ N, 72°09′ W. 39°54′ N, 71°43′ W. 40°02′ N, 71°20′ W. 40°08′ N, 71°01′ W. 40°04′ N, 70°44′ W. 40°00′ N, 69°24′ W. 40°16′ N, 68°27′ W. 40°34′ N, 67°13′ W. 41°00′ N, 66°24′ W. 41°52′ N, 65°47′ W. 42°20′ N, 66°06′ W. 42°18′ N, 67°23′ W.	Year-round.
Roseway Basin Right Whale Conservation Area	43°05′ N, 65°40′ 43°05′ N, 65°03′ W. 42°45′ N, 65°40′ W. 42°45′ N, 65°03′ W.	June through December, annually.
Great South Channel, U.S. Gulf of Maine, and Stellwagen Bank National Marine Sanctuary (NMS).	41°00.000′ N, 69°05.000′ W 42°09.000′ N, 67°08.400′ W. 42°53.436′ N, 67°43.873′ W. 44°12.541′ N, 67°16.847′ W. 44°14.911′ N, 67°08.936′ W. 44°21.538′ N, 67°03.663′ W. 44°26.736′ N, 67°09.596′ W. 44°16.805′ N, 67°27.394′ W. 44°11.118′ N, 67°56.398′ W. 43°59.240′ N, 68°08.263′ W. 43°36.800′ N, 68°46.496′ W. 43°33.925′ N, 69°19.455′ W. 43°32.008′ N, 69°44.504′ W. 43°21.922′ N, 70°06.257′ W. 43°04.084′ N, 70°21.418′ W. 42°51.982′ N, 70°31.965′ W. 42°45.187′ N, 70°23.396′ W. 42°39.068′ N, 70°30.188′ W. 42°32.892′ N, 70°35.873′ W. 42°07.748′ N, 70°28.257′ W. 42°05.592′ N, 70°02.136′ W. 42°03.664′ N, 69°44.000′ W. 41°40.000′ N, 69°45.000′ W.	January 1 to November 14, annually.
Southeastern U.S. Right Whale Seasonal Habitat.	Critical Habitat Boundaries are coastal waters between 31°15′ N and 30°15′ N from the coast out 15 nautical miles (nmi); and the coastal waters between 30°15′ N and 28°00′ N from the coast out 5 nmi. (50 CFR § 226.13(c)). OBIA Boundaries are coastal waters between 31°15′ N and 30°15′ N from 12 to 15 nmi.	November 15 to January 15, annually.
North Pacific Right Whale Critical Habitat	57°03′ N, 153°00′ W 57°18′ N, 151°30′ W 57°00′ N, 151°30′ W. 56°45′ N, 153°00′ W. (50 CFR § 226.215).	March through August, annually.
Silver Bank and Navidad Bank	Silver Bank 20°38.899 N, 69°23.640′ W 20°55.706′ N, 69°57.984′ W. 20°25.221′ N, 70°00.387′ W 20°12.833′ N, 69°40.604′ W. 20°13.918′ N, 69°31.518′ W. 20°28.680′ N, 69°31.900′ W. Navidad Bank: 20°15.596′ N, 68°47.967′ W 20°11.971′ N, 68°54.810′ W. 19°52.514′ N, 69°00.443′ W. 19°54.957′ N, 68°51.430′ W. 19°51.513′ N, 68°41.399′ W.	December through April, annually.

Name of area	Location of area	Months of importance
Coastal waters of Gabon, Congo and Equatorial Guinea.	An exclusion zone following the 500-m isobath extending from 3°31.055′ N, 9°12.226′ E in the north offshore of Malabo southward to 8°57.470′ S, 12°55.873′ E offshore of Luanda.	June through October.
Patagonian Shelf Break	Between 200- and 2000-m isobaths and the following latitudes: 35°00′ S, 39°00′ S, 40°40′ S, 42°30′ S, 46°00′ S, 48°50′ S.	Year-round.
Southern Right Whale Seasonal Habitat	Coastal waters between 42°00′ S and 43°00′ S from 12 to 15 nmi including the enclosed bays of Golfo Nuevo, Golfo San Jose and San Matias. Golfos San Jose and San Nuevo are within 22 km (12 nmi) coastal exclusion zone.	May through December, annually.
Central California National Marine Sanctuaries	Single stratum boundary created from the Cordell Bank (15 CFR 922.10), Gulf of the Farallones (15 CFR 922.80), and Monterey Bay (15 CFR 922.30) NMS legal boundaries. Monterey Bay NMS includes the Davidson Seamount Management Zone.	June through November, annually.
Antarctic Convergence Zone	30° E to 80° E, 45° S 80° E to 150° E, 55° S. 150° E to 50° W, 60° S. 50° W to 30° E, 50° S.	October through March, annually.
Piltun and Chayvo offshore feeding grounds in the Sea of Okhotsk.	54°09.436′ N, 143°47.408′ W 54°09.436′ N, 143°17.354′ W. 54°01.161′ N, 143°17.354′ W. 53°53.580′ N, 143°13.398′ W. 53°26.963′ N, 143°28.230′ W. 53°07.013′ N, 143°35.481′ W. 52°48.705′ N, 143°38.447′ W. 52°32.077′ N, 143°37.788′ W. 52°21.605′ N, 143°34.163′ W. 52°09.470′ N, 143°26.582′ W. 51°57.686′ N, 143°30.208′ W. 51°36.033′ N, 143°42.794′ W. 51°08.082′ N, 143°51.301′ W. 51°08.082′ N, 144°16.742′ W. 51°24.514′ N, 144°11.139′ W. 51°48.116′ N, 144°10.809′ W. 52°03.194′ N, 144°20.363′ W. 52°23.235′ N, 144°10.150′ W. 52°28.674′ N, 144°12.787′ W. 52°42.523′ N, 144°10.150′ W. 53°12.972′ N, 143°55.648′ W. 53°18.505′ N, 143°56.637′ W. 53°23.041′ N, 143°53.011′ W. 53°28.250′ N, 143°53.341′ W. 53°44.039′ N, 143°49.056′ W. 53°53.207′ N, 143°50.045′ W. 53°59.819′ N, 143°48.067′ W.	June through November, annually.
Coastal waters off Madagascar	16°03′55.04″ S, 50°27′12.59″ E 16°12′23.03″ S, 51°03′37.38″ E. 24°30′45.06″ S, 48°26′00.94″ E. 24°15′28.07″ S, 47°46′51.16″ E. 22°18′00.74″ S, 48°14′13.52″ E. 20°52′24.12″ S, 48°43′13.49″ E. 19°22′33.24″ S, 49°15′45.47″ E. 18°29′46.08″ S, 49°37′32.25″ E. 17°38′27.89″ S, 49°44′27.17″ E. 17°24′39.12″ S, 49°39′17.03″ E. 17°19′35.34″ S, 49°54′23.82″ E. 16°45′41.71″ S, 50°15′56.35″ E.	July through September, annually for humpback whale breeding and November through December, annually for migrating blue whales.
Madagascar Plateau, Madagascar Ridge, and Walters Shoal.	25°55′20.00″ S, 44°05′15.45″ E 25°46′31.36″ S, 47°22′35.90″ E. 27°02′37.71″ S, 48°03′31.08″ E. 35°13′51.37″ S, 46°26′19.98″ E. 35°14′28.59″ S, 42°35′49.20″ E. 31°36′57.96″ S, 42°37′49.35″ E. 27°41′11.21″ S, 44°30′11.01″ E.	November through December, annually.
Ligurian-Corsican-Provencal Basin and Western Pelagos Sanctuary in the Mediterranean Sea.	42°50.271′ N, 06°31.883′ E 42°55.603′ N, 06°43.418′ E. 43°04.374′ N, 06°52.165′ E. 43°12.600′ N, 07°10.440′ E.	July to August, annually.

Name of area	Location of area	Months of importance
	43°21.720′ N, 07°19.380′ E.	
	43°30.600′ N, 07°32.220′ E.	
	43°33.900′ N, 07°49.920′ E.	
	43°36.420′ N, 08°05.580′ E.	
	43°42.600′ N, 08°22.140′ E.	
	43°50.880′ N, 08°34.500′ E.	
	43°58.560′ N, 08°47.700′ E.	
	43°59.040′ N, 08°56.040′ E.	
	43°57.047′ N, 09°03.540′ E.	
	43°52.260′ N, 09°08.520′ E.	
	43°47.580′ N, 09°13.500′ E.	
	43°36.060′ N, 09°16.620′ E.	
	43°28.440′ N, 09°05.820′ E.	
	43°21.360′ N, 09°02.100′ E.	
	43°16.020′ N, 08°57.240′ E.	
	43°04.440′ N, 08°47.580′ E.	
	42°54.900′ N, 08°35.400′ E.	
	42°45.900′ N, 08°27.540′ E.	
	42°36.060′ N, 08°22.020′ E.	
	42°22.620′ N, 08°15.849′ E.	
	42°07.202′ N, 08°17.174′ E.	
	41°52.800′ N, 08°15.720′ E.	
	41°39.780′ N, 08°05.280′ E.	
	41°28.200′ N, 08°51.600′ E.	
	42°57.060′ N, 06°19.860′ E.	
Hawaiian Islands Humpback Whale NMS and Penguin Bank.	21°10′02.179″ N, 157°30′58.217″ W	November through April, annually.
	21°09′46.815″ N, 157°30′22.367″ W.	
	21°06′39.882″ N, 157°31′00.778″ W.	
	21°02′51.976″ N, 157°30′30.049″ W.	
	20°59′52.725″ N, 157°29′28.591″ W.	
	20°58′05.174″ N, 157°27′35.919″ W.	
	20°55′49.456″ N, 157°30′58.217″ W.	
	20°50′44.729″ N, 157°42′42.418″ W.	
	20°51′02.654″ N, 157°44′45.333″ W.	
	20°53′56.784″ N, 157°46′04.716″ W.	
	20°56′32.988″ N, 157°45′33.987″ W.	
	21°01′27.472″ N, 157°43′10.586″ W.	
	21°05′20.499″ N, 157°39′27.802″ W.	
	21°10′02.179″ N, 157°30′58.217″ W.	
Costa Rica Dome	Centered at 9° N and 88° W	Year-round.
Great Barrier Reef Between 16° S and 21° S	16°01.829′ S, 145°38.783′ E	May through September, annually.
	15°52.215′ S, 146°20.936′ E.	
	17°28.354′ S, 146°59.392′ E.	
	20°16.228′ S, 151°39.674′ E.	
	20°58.381′ S, 150°30.897′ E.	
	20°17.007′ S, 149°38.247′ E.	
	20°10.941′ S, 149°18.247′ E.	
	20°02.403′ S, 149°12.623′ E.	
	19°53.287′ S, 149°03.986′ E.	
	19°49.866′ S, 148°52.135′ E.	
	19°53.287′ S, 148°44.302′ E.	
	19°47.965′ S, 148°36.870′ E.	
	19°47.205′ S, 148°26.024′ E.	
	19°19.978′ S, 147°39.626′ E.	
	19°14.065′ S, 147°37.014′ E.	
	19°08.913′ S, 147°31.993′ E.	
	19°05.667′ S, 147°24.160′ E.	
	19°07.576′ S, 147°18.134′ E.	
	18°51.718′ S, 146°51.219′ E.	
	18°44.258′ S, 146°54.031′ E.	
	18°37.175′ S, 146°51.420′ E.	
	18°31.620′ S, 146°43.385′ E.	
	18°27.595′ S, 146°40.573′ E.	
	17°36.676′ S, 146°20.488′ E.	
	17°20.484′ S, 146°16.671′ E.	
	17°07.745′ S, 146°13.056′ E.	
	16°49.769′ S, 146°11.047′ E.	
	16°41.835′ S, 146°03.817′ E.	
	16°39.706′ S, 145°54.979′ E.	
Bonney Upwelling on the west coast of Australia.	37°12′20.036″ S, 139°31′17.703″ E	December through May, annually.
	37°37′33.815″ S, 139°42′42.508″ E.	
	38°10′36.144″ S, 140°22′57.345″ E.	
	38°44′50.558″ S, 141°33′50.342″ E.	
	39°07′04.125″ S, 141°11′00.733″ E.	

Name of area	Location of area	Months of importance
	37°28′33.179″ S, 139°10′52.263″ E.	
Northern Bay of Bengal and Head of Swatch-of-No-Ground.	20°59.735′ N, 89°07.675′ E	Year-round.
	20°55.494′ N, 89°09.484′ E.	
	20°52.883′ N, 89°12.704′ E.	
	20°55.275′ N, 89°18.133′ E.	
	21°04.558′ N, 89°25.294′ E.	
	21°12.655′ N, 89°25.354′ E.	
	21°13.279′ N, 89°16.833′ E.	
	21°06.347′ N, 89°15.011′ E.	
Olympic Coast NMS and Prairie, Barkley Canyon, and Nitnat Canyon.	Boundaries within 23 nmi (26.5 m; 42.6 km) of the coast from 47°07′ N to 48°30′ N latitude.	Olympic NMS: December, January, March, and May.
	48°30′01.995″ N, 125°58′38.786″ W	Prairie, Barkley Canyon, and Nitnat Canyon: June through September.
	48°16′55.605″ N, 125°38′52.052″ W.	
	48°23′07.353″ N, 125°17′10.935″ W.	
	48°12′38.241″ N, 125°16′42.339″ W.	
	47°58′20.361″ N, 125°31′14.517″ W.	
	47°58′20.361″ N, 126°06′16.322″ W.	
	48°09′46.665″ N, 126°25′48.758″ W.	

(2) [Reserved]

(g) *Operational Exception for the SURTASS LFA Sonar Sound Field*

(1) During military operations SURTASS LFA sonar transmissions may exceed 180 dB re: 1 μPa (rms) within the boundaries of a SURTASS LFA sonar OBIA when: (1) Operationally necessary to continue tracking an existing underwater contact; or (2) operationally necessary to detect a new underwater contact within the OBIA. This exception does not apply to routine training and testing with the SURTASS LFA sonar systems.

(2) [Reserved]

§ 218.235 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 218.238 of this chapter must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset). During operations that employ SURTASS LFA sonar in the active mode, the SURTASS vessels shall have lookouts to maintain a topside watch with standard binoculars (7x) and with the naked eye.

(2) Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations.

(c) Holders of Letters of Authorization for activities described in § 218.230 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring required under the Letter of Authorization.

§ 218.236 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit classified and unclassified quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the quarter and cumulatively for the year) covered by the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an unclassified annual report to the Director, Office of Protected Resources, NMFS, no later than 45 days after the expiration of a Letter of Authorization. The reports must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of this subpart. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

(d) The Navy will continue to assess the data collected by its undersea arrays and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

§ 218.237 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, the U.S. Navy authority conducting the activity identified in § 218.230 must

apply for and obtain a Letter of Authorization in accordance with § 216.106 of this chapter.

(b) The application for a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the area(s) where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each area for the period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with § 216.104(b) of this chapter and, if adequate and complete, issue a Letter of Authorization.

§ 218.238 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed one year, but may be renewed annually subject to renewal conditions in § 218.239.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 218.239 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in § 218.230 may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.237 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in § 218.237(c);

(3) Timely receipt of the monitoring reports required under § 218.236, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 218.234, 218.235, and 218.236 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation, or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 218.240 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.230(b)(1), (2), or (3), NMFS may modify a Letter of Authorization without prior notice and opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

§ 218.241 Adaptive Management.

NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in this subpart. NMFS will provide a period of 30 days for public review and comment if such modifications are substantial. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(a) Results from the Navy's monitoring from the previous year's operation of SURTASS LFA sonar.

(b) Compiled results of Navy-funded research and development studies.

(c) Results from specific stranding investigations.

(d) Results from general marine mammal and sound research funded by the Navy or other sponsors.

(e) Any information that reveals marine mammals may have been taken in a manner, extent or number not anticipated by this subpart or subsequent Letters of Authorization.

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Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1355 and 1356

Tribal Child Welfare; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355 and 1356

RIN 0970–AC41

Tribal Child Welfare

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Interim final rule.

SUMMARY: The Administration for Children and Families (ACF) is issuing this interim final rule to implement statutory provisions related to the Tribal title IV–E program. Effective October 1, 2009, section 479B(b) of the Social Security Act (the Act) authorizes direct Federal funding of Indian Tribes, Tribal organizations, and Tribal consortia that choose to operate a foster care, adoption assistance and, at Tribal option, a kinship guardianship assistance program under title IV–E of the Act. The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires that ACF issue interim final regulations which address procedures to ensure that a transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E plan occurs in a manner that does not affect the child's eligibility for title IV–E benefits or medical assistance under title XIX of the Act (Medicaid) and such services or payments; in-kind expenditures from third-party sources for the Tribal share of administration and training expenditures under title IV–E; and other provisions to carry out the Tribal-related amendments to title IV–E. This interim final rule includes these provisions and technical amendments necessary to implement a Tribal title IV–E program.

DATES: This rule is effective February 6, 2012. Consideration will be given to all comments received by March 6, 2012.

ADDRESSES: Interested persons may submit written comments to the Federal eRulemaking Portal: *http://www.regulations.gov.* Written comments also may be submitted via email to *CBComments@acf.hhs.gov.* Please include ''Tribal Child Welfare'' in the subject line of the message. Written comments also may be submitted via mail or courier delivery: Elizabeth Sharp, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sharp, Children's Bureau, Administration on Children, Youth and Families, (202) 205–7265 or by email at *elizabeth.sharp@acf.hhs.gov.* Do not email comments to this address.

SUPPLEMENTARY INFORMATION:

I. Submitting Comments
II. Background
III. Justification for Interim Final Rule
IV. Tribal and Stakeholder Consultation
V. Section by Section Discussion of the Interim Final Rule
VI. Impact Analysis

I. Submitting Comments

Although this interim final rule is effective without further regulatory action as indicated in the 'dates' section, we are soliciting comments from interested parties that we can use to determine the need for any further rulemaking. Comments should be specific, address issues raised by the rule, propose alternatives where appropriate, and explain reasons for any objections or recommended changes. You should reference the specific section of the interim final rule that is being addressed in the comment. We urge you to submit comments electronically to ensure we receive them in a timely manner.

II. Background

The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (Pub. L.) 110–351 (hereafter ''Fostering Connections'') was enacted on October 7, 2008. Prior to the law's enactment, the title IV–E program provided States and territories (hereafter, ''States'') with Federal funds to support eligible children in foster care, eligible children with special needs in adoptions, and the administrative expenses of States to operate the title IV–E program. As amended, the law permits Federally-recognized Indian Tribes, Tribal organizations or consortia (hereafter, ''Indian Tribes'') to apply to the Secretary of HHS to operate a title IV–E program beginning October 1, 2009.

By law, the requirements of title IV–E apply to a Tribal agency ''in the same manner as this part [IV–E] applies to a State'' (section 479B(b) of the Act), with limited exceptions specified in the law. This means that an Indian Tribe wishing to operate a title IV–E plan must adhere to most existing statutory and regulatory title IV–E requirements in place for a State title IV–E agency, with some exceptions provided in law. Those exceptions include: the ability for Indian Tribes to define their own service areas and Tribal licensing standards; flexibility to use nunc pro tunc orders and affidavits to meet judicial determination requirements in the first 12 months of operation of the Tribal title IV–E plan; and, the ability to use in-kind third-party funding sources for sharing in the costs of the title IV–E program. As reflected throughout this rule, we determined that there are a very limited number of other variances necessary.

Public Law 110–351 also provides limited grants, beginning in Federal fiscal year (FY) 2009, to assist Indian Tribes that intend to implement a title IV–E program to develop a title IV–E plan. Eleven Indian Tribes have received a title IV–E development grant, and ACF expects to award grants to five more Indian Tribes in FY2011. Finally, the law permits a title IV–E agency to enter into a contract or cooperative agreement with an Indian Tribe to share in the administration of the title IV–E programs on behalf of Indian children.

In addition to creating these provisions unique to Indian Tribes, Fostering Connections contains new requirements and options for States and Indian Tribes with title IV–E plans. Public Law 110–351 permits a title IV–E agency the option to administer a new kinship guardianship assistance program under title IV–E, revises the eligibility criteria for the title IV–E adoption assistance program, allows a title IV–E agency the option to extend title IV–E foster care, adoption assistance, and kinship guardianship assistance payments to youth who meet certain conditions up to age 21, among other changes to the title IV–B and IV–E requirements. The entire text of Fostering Connections and issuances related to the new provisions can be found on the Children's Bureau's Web site at *www.acf.hhs.gov/programs/cb* and *www.acf.hhs.gov/programs/cb/laws_policies/implementation_foster.htm.*

III. Justification for Interim Final Rule

Section 301(e) of Public Law 110–351 requires that we publish interim final rules generally to carry out the amendments made to title IV–E of the Act to authorize Indian Tribes to directly-operate title IV–E programs. Many of these amendments are present throughout this rule in the form of minor language changes to existing regulatory provisions to be inclusive of a Tribal title IV–E agency because the law mandates that we apply title IV–E requirements equally to States and Indian Tribes. Also, the law specifically requires that we develop and codify

procedures in an interim final rule to ensure that a transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E plan or to an Indian Tribe with an agreement or contract under title IV–E does not affect the child's eligibility for title IV–E or Medicaid. Further, the law requires that we address in interim final rules the types and amounts of in-kind expenditures that Indian Tribes may claim under a title IV–E plan. These specific requirements can be found in new sections of the regulation, 45 CFR 1356.67 and 1356.68.

We also are including several technical and conforming amendments to existing regulatory requirements that, although not directly related to the amendments of Public Law 110–351, clarify implementation of the title IV–E programs. These conforming amendments are to update statutory citations, remove obsolete references and make technical corrections. The Administrative Procedure Act provides an exception to the standard rulemaking process to propose rules and solicit comments prior to adopting a final rule where an agency finds good cause to adopt a rule without prior public participation (5 U.S.C. 553(b)(3)(B)). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. We find proposing rulemaking for these technical and conforming amendments impracticable and unnecessary since they are not substantive and only align the regulations with current law or practice. Moreover, we believe that delaying rulemaking on these technical amendments would be contrary to the public interest since doing so would cause significant confusion about the statutory and regulatory provisions to which Indian Tribes must adhere in implementing the title IV–E program for the first time. Therefore we find good cause to include these technical amendments in this interim final rule. More specific rationale for each amendment can be found in the section by section discussion.

IV. Tribal and Stakeholder Consultation

Section 301(e) of Public Law 110–351 requires us to consult with Indian Tribes and affected States prior to issuing interim final rules. Consistent with this requirement and the Department's commitment to consult with Indian Tribes on a government-to-government basis, we conducted a series of consultation sessions with Indian Tribes and other Tribal stakeholders prior to issuing these rules. On March 13, 2009, we published a **Federal Register** notice, 74 FR 10920 (hereafter, ''FR notice'') inviting Tribal leaders and/or their representatives to attend one of seven in-person meetings held in Bloomington, Minnesota; Kansas City, Missouri; Seattle, Washington; Denver, Colorado; San Francisco, California; Dallas, Texas; and, Marksville, Louisiana. The FR notice also invited written comments from Tribal leaders or any other interested party.

Indian Tribes and other stakeholders were invited to provide input on the following questions:

- Considering that the Secretary is to apply title IV–E of the Act to Indian Tribes in the same manner as to States except where directed by law, what, if any, provisions and clarifications related to the title IV–E program for directly-funded Indian Tribes should be in regulations?
- Are guidelines above and beyond those provided pursuant to the Indian Child Welfare Act (ICWA) of 1974 needed to execute the transfer of placement and care responsibility of a title IV–E Indian child to an Indian Tribe operating a title IV–E plan? If so, please provide suggestions.
- What specific information pertaining to title IV–E and Medicaid should a State make available to an Indian Tribe that seeks to gain placement and care responsibility over an Indian child?
- Should the third-party sources and in-kind limits on Tribal administrative and training costs remain consistent with section 479B(c)(1)(D) of the Act? Please provide a rationale for this response.
- Any other comments regarding the development of an interim final rule per section 301(e) of Public Law 110–351.

The consultation was limited in scope and not intended to solicit comments on the remaining provisions of Public Law 110–351 or the title IV–E program in general. However, the consultations elicited a wide range of questions, issues and suggestions regarding implementation and operation of a title IV–E program. Further, we continue to listen to Tribal partners in ongoing consultations and less formal opportunities for discussion such as grantee meetings. Highlights of the comments that we received and how they are addressed in this regulation follow.

Commenters felt strongly that the requirement in Public Law 110–351 that title IV–E requirements apply to Indian Tribes in the same way as they apply to States, does not consider Indian Tribes' sovereignty, cultural standards, lack of historical funding under title IV–E and current economic circumstances. In particular, commenters requested: (1) Relief from the application of State-specific 1996 Aid to Families with Dependent Children (AFDC) requirements; (2) use of *nunc pro tunc* orders to ensure title IV–E eligibility for all Indian children who did not have the requisite court orders beyond the first twelve months of the approved Tribal title IV–E plan; and, 3) direct funding of selected components of the title IV–E plan of the Indian Tribe's choosing. Although we respect Tribal sovereignty and standards and understand the unique situation of Indian Tribes in operating a long-standing Federal program for the first time, the existing statutory requirements of title IV–E of the Social Security Act do not allow us to meet these particular requests. Rather we have indicated in this interim final regulation the areas in which the law must be applied equally to Indian Tribes and States, where the law crafted unique requirements specific to Indian Tribes with title IV–E plans, and where there is discretion for the Indian Tribe to develop its own practices and approaches. We encourage Indian Tribes to seek technical assistance from the Children's Bureau (CB) Regional Office staff in dealing with these issues.

Commenters sought more clarity about the relationships between States and Indian Tribes, and how those relationships may impact various parts of the title IV–E program and/or transfers of placement and care responsibility of a child from one jurisdiction to another. Commenters asked us to specify: (1) Which entities are responsible for funding Indian children in Tribal title IV–E programs; (2) the extent to which States may influence the direction of Tribal title IV–E plans/programs; and, (3) the extent of Tribal access to State-owned resources, such as funding, information systems, data and Medicaid program benefits. In general, we do not believe it necessary nor do we have the authority to prescribe the relationships between Indian Tribes and States. Rather, in this interim final regulation we have specified the minimum information States must provide to Indian Tribes with either a title IV–E plan or agreement when a child is transferred from the responsibility of the State to the Indian Tribe and we have explained that the law permits States and Indian Tribes to enter into various arrangements in support of Tribal title IV–E programs. A State that has a title IV–E plan under existing law may craft the relationships and partnerships it

desires with other public agencies, private child placing agencies and other contractors within broad Federal parameters. Indian Tribes with a title IV–E plan have this same discretion to enter into relationships and partnerships it finds beneficial in supporting the title IV–E plan. Through consultation, coordinated efforts and good faith negotiation of title IV–E agreements, States and Indian Tribes can determine for themselves issues of funding, responsibility, shared resources and services.

An overarching concern of most Tribal commenters was funding, and as such Indian Tribes requested: (1) More funding to operate the title IV–E program; (2) relief from provisions that limit in-kind contributions, require matching funds and/or allocation of costs; and (3) numerous clarifications about how title IV–E funding operates and interacts with other funding streams. We have clarified throughout this regulation how Indian Tribes may draw down title IV–E funding and will continue to make this a priority in further technical assistance activities. However, the title IV–E program's basic funding structure as a reimbursement program of a portion of an agency's expenses on behalf of eligible children, is not one that we can alter in the absence of statutory changes.

Finally, we received a number of specific questions about items that are not germane to this regulation. For example, we received questions about the Family Connection grants authorized by Public Law 110–351 (section 427 of the Act); availability of American Recovery and Reinvestment Act of 2009 (''stimulus'') funding; and provisions for a kinship guardianship assistance program or an extension of title IV–E assistance to 18 to 21 year olds which are not specific to Indian Tribes. We will use the questions and comments we received in consultation that are outside this regulation to formulate other technical assistance efforts, policy proposals, and further consultation as appropriate.

V. Section by Section Discussion of the Interim Final Rule

Section 1355.20—Definitions

Section 1355.20 contains definitions pertaining to terms used in 45 CFR parts 1355, 1356 and 1357 of this title. We amended several definitions by removing references to ''State'' or ''States'' and replacing such references with the broader terms of ''title IV–E agency'' or ''title IV–E agencies'' or, by adding references to ''Indian Tribe'' or ''Tribal'' as descriptive terms. These changes apply the terms defined in the regulation equally to States and Indian Tribes with an approved title IV–E plan pursuant to Public Law 110–351. These changes are made to the following definitions: ''date a child is considered to have entered foster care'', ''entity'', ''foster care'', ''foster family home'', ''full review'' and ''permanency hearing.'' In some definitions we made additional conforming changes which are described below.

Adoption

We amended the definition of the term ''adoption'' to include adoptions under Tribal law for Tribal title IV–E purposes. We understand that Indian Tribes finalize legal adoptions through court processes and/or through traditional or ceremonial processes, and therefore this change ensures that the term ''adoption'' is inclusive of adoptions finalized through these processes for Tribal title IV–E agencies.

Child Care Institution

We amended the definition of a ''child care institution'' to account for the ability of an Indian Tribe that has an approved title IV–E plan pursuant to section 479B of the Act to license child care institutions in its service area. The revised definition provides three types of licensing authorities: A State licensing authority in the State in which the child care institution is located, a Tribal licensing authority with respect to a child care institution on or near an Indian Reservation, or the Tribal licensing authority of an Indian Tribe that operates a title IV–E plan pursuant to section 479B of the Act with respect to a child care institution in the Indian Tribe's service area.

A commenter requested that Indian Tribes be permitted flexibility with regard to the definition of ''on or near an Indian Reservation.'' This language comes from section 1931 of the Indian Child Welfare Act of 1978 (ICWA) (Pub. L. 95–608) and applies to both child care institutions and foster family homes. The ICWA requirement states that for purposes of qualifying for funds under a Federally assisted program, e.g., titles IV–E and IV–B, licensing or approval of foster or adoptive homes or institutions on or near an Indian Reservation by an Indian Tribe is equivalent to licensing or approval by a State. There is no statutory or regulatory definition of this term. As such, if an Indian Tribe has a reservation, it has the discretion to make a reasonable determination of what it considers on or near the reservation. Another commenter requested clarification that the existing Tribal licensing authorities may serve in the licensing role for title IV–E purposes. We confirm that the Indian Tribe has the discretion to use existing licensing authorities or create new authorities to license foster family homes or child care institutions on or near reservations and/or within a Tribal agency's service area.

Foster Family Home

We amended the definition of ''foster family home'' to add a sentence that clarifies that the authority that licenses a foster family home must be a State licensing authority in the State in which the foster family home is located pursuant to section 471(a)(10) of the Act, a Tribal authority with respect to a foster family home on or near an Indian Reservation pursuant to section 1931 of ICWA, or the Tribal authority of an Indian Tribe that operates a title IV–E plan pursuant to section 479B(c)(2) of the Act with respect to a foster family home in the Tribal agency's service area. These changes are similar to the ones made to the definition of a child care institution.

During consultation, some commenters sought clarification of whether an Indian Tribe has to abide by Federal or State foster family home licensing/approval standards and exceptions to such standards such as, State rules that may limit the number of children in the home, Indian Health Service safety requirements, or requirements on driving. Another commenter sought flexibility in Federal Tribal licensing standards because of the limited nature of housing in Indian country and the unique cultural issues in Indian Tribes. In response, we would like to explain the foster family home licensing/approval requirements in title IV–E. Section 471(a)(10) of the Act requires the State or Tribal agency to establish or designate an authority for establishing and maintaining standards for foster family homes and child care institutions. An Indian Tribe that has a title IV–E plan will be responsible for establishing such an authority and applying the standards developed to the foster family homes or child care institutions in its service area and/or on or near its reservation. At a minimum, the licensing standards must cover admission policies, safety, sanitation, and protection of civil rights (see sections 471(a)(10) and 479B(c)(2) of the Act). Therefore, Indian Tribes may take into consideration the unique features of the housing, landscape and cultural norms in developing licensing or approval standards for foster family homes. In addition, standards must be applied equally to any licensed or approved foster family home receiving

title IV–B and IV–E funds, with one exception in section 471(a)(10) of the Act. The exception permits a title IV–E agency to waive the application of a standard unrelated to safety for relative foster family homes on a case-by-case basis. The title IV–E agency may not exclude relative homes, or any other group from the licensing requirement (see section 471(a)(10) of the Act and the definition of ''foster family home'' in 45 CFR 1355.20). There are no ACF prescribed standards for licensing or approving homes, although section 471(a)(10) of the Act requires standards to accord with recommended standards of national organizations. An Indian Tribe or a State may have to follow other Federal standards for licensure to the extent that the foster family homes are governed by other Federal laws and/or funding restrictions. Please note that for title IV–E funding purposes, criminal record and child abuse and neglect registry checks are a related but separate issue from licensure. Requirements related to the criminal record check provisions are in section 471(a)(20) of the Act and discussed in relation to section 1356.30 later in the preamble.

Some commenters sought clarification on whether Indian Tribes can use title IV–E to pay for children placed with prospective foster parents in the process of being licensed or approved as a foster family home. In certain circumstances, a title IV–E agency, including an Indian Tribe, may seek administrative cost reimbursement for eligible children placed with such prospective foster parents. Consistent with section 472(i)(1)(A) of the Act and policy at Child Welfare Policy Manual (CWPM) 8.1B Q/A #11, the title IV–E agency may claim administrative costs on behalf of an otherwise eligible child placed in an unlicensed or unapproved relative home for 12 months or the average length of time it takes the agency to license or approve a foster family home, whichever is less. During this time, an application for licensure or approval of the relative home as a foster family home must be pending. The title IV–E agency may only claim administrative costs in this situation for a child placed in an unlicensed or unapproved relative foster family home. For the purposes of this provision, a relative is defined by section 406(a) of the Act as in effect on July 16, 1996, and implemented in 45 CFR 233.90(c)(1)(v). In general, a title IV–E agency may not claim the cost of a title IV–E foster care maintenance payment on behalf of an otherwise eligible child until the first day of the first month in which the foster family home meets all licensure or approval requirements. See CWPM 8.3A.8c Q/A #16.

Full Review

We amended the definition of ''full review'' to apply the definition equally to States and Indian Tribes by removing language that described the Child and Family Services Review (CFSR) as focused on child and family service programs ''in the States'' relative to ''State'' plans for title IV–B and IV–E. By removing this language, we make clear that the full reviews can occur in States or Indian Tribes with approved plans for both titles IV–E and IV–B. Further, we added parenthetical language to the definition of a full review to clarify that the statewide assessment, which is a component of the CFSR, may be an assessment of the Tribal service area in the case of a Tribal agency. For the purposes of title IV–E, a service area is defined by the Indian Tribe pursuant to section 479B(c)(1)(B) of the Act and for the purposes of title IV–B, it is the area covered by the Indian Tribe's Child and Family Services Plan (CFSP). See sections 1355.31 through 1355.37 for a more complete discussion of the CFSRs as they apply to Indian Tribes with title IV–E plans.

Partial Review

We amended the definition of ''partial review'' to apply the process for reviewing title IV–E compliance to Indian Tribes with an approved title IV–E plan, consistent with section 479B(b) of the Act. As we did in the ''full review'' definition, we removed language that references States in paragraph (1) of the definition. This means that an Indian Tribe with an approved title IV–E plan will be subject to a partial review, if necessary, if there is a compliance issue that falls within the scope of the CFSR. Also, we added a new paragraph (3) to the definition to specify that partial reviews encompass Tribal title IV–E plan compliance issues that fall outside of the CFSR. This requirement is similar to the existing requirement for States in paragraph (2). Partial reviews do not pertain to Indian Tribes with only a title IV–B plan. Such compliance issues are regulated by the process described in sections 1355.30(n) and (p) instead.

Statewide Assessment (or Tribal Assessment)

We amended the definition of ''statewide assessment'' to apply the initial phase of a full review to Tribal title IV–E agencies by inserting the term ''Tribal assessment.'' This means that a Tribal assessment for a Tribal title IV–E agency is a review of all Federally-assisted child and family services programs in the Tribal service area (as opposed to a review of all Federally-assisted child and family services programs in the State for a Statewide assessment). We also made an amendment to apply the assessment to the entire Tribal service area by inserting the phrase ''(or for a Tribal title IV–E agency, in the service area).''

Title IV–E Agency

We added a new definition of a ''title IV–E agency.'' This definition is inclusive of a State or Tribal agency that administers or supervises the administration of both the title IV–B (subparts 1 and 2) plan and IV–E plan and a Tribal agency that administers or supervises the administration of both the title IV–B, subpart 1 and title IV–E plan. We added this definition pursuant to Public Law 110–351 which authorizes Indian Tribes to operate a title IV–E plan and requires ACF to apply the title IV–E program equally to States and Indian Tribes. This term is used throughout the interim final rule when we refer to common requirements for a State or Tribal title IV–E agency; we use the terms State agency (defined in this section of the regulation) or Tribal agency as described below, when we are referring to requirements unique to those entities.

Tribal Agency

We added a new definition of ''Tribal agency.'' Tribal agency means, for the purpose of title IV–E, the agency of the Indian Tribe, Indian Tribal organization or consortium of Indian Tribes that is designated to administer or supervise the administration of the title IV–E and title IV–B, subpart 1 plan. Section 479B(a) of the Act incorporates the definition of Indian Tribe in 25 U.S.C. 450b which is any Indian Tribe, band, nation, or other organized group or community that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. Such Tribes are commonly referred to as Federally-recognized Indian Tribes. Section 479B(a) of the Act also incorporates the definition of Indian Tribal organization in 25 U.S.C. 450b which is a recognized body of an Indian Tribe. In this context, a consortium of Indian Tribes is two or more Federally-recognized Indian Tribes that agree to join for the purpose of operating the title IV–E plan.

Section 1355.21—Plan Requirements for Titles IV–E and IV–B

Section 1355.21 specifies the requirements for title IV–B and IV–E plans.

We changed the title of this section by removing the term ''State'' so that the section refers more generally to the plan requirements for titles IV–E and IV–B rather than ''State plan'' requirements. Similarly, we amended section 1355.21 in paragraphs (a), (b) and (c) to make conforming changes by removing the term ''State'' before ''plan'' and in paragraph (c) to replace the term ''State agency'' with the more general ''title IV–E agency'' to clarify that Indian Tribes with title IV–E plans must follow the same rules consistent with Public Law 110–351. These conforming changes apply the title IV–E and title IV–B plan requirements in section 1355.21 equally to States and Indian Tribes.

In addition, we amended paragraph (b) to add clarifying language that a title IV–E agency must comply with the applicable Departmental regulations described in section 1355.30. Section 1355.30 specifies which Departmental regulations apply to a title IV–E agency generally, or those that are specific to either a Tribal or State title IV–E agency.

In paragraph (c) as indicated above, we replaced the term ''State agency'' with ''title IV–E agency'' to make a conforming change. Through this conforming change, we apply the existing requirement that a title IV–E agency must make the title IV–E plan available for public review and inspection equally to all title IV–E agencies. Therefore, in addition to making the Child and Family Services Plans and the Annual Progress and Services Reports available for public review and inspection, an Indian Tribe with an approved title IV–E plan must make the title IV–E plan available for public review and inspection.

Section 1355.30—Other Applicable Regulations

Section 1355.30 identifies other Departmental regulations that are applicable to title IV–B and IV–E programs.

We amended the introductory paragraph to section 1355.30 to apply the regulations cited in this section to both State and Tribal title IV–B and title IV–E programs, as appropriate. The cited regulations are for: Departmental Appeals Board procedures (45 CFR 1355.30(a)), collecting claims (45 CFR 1355.30(b)), nonprocurement debarment and suspension (45 CFR 1355.30(c)), drug-free workplaces (45 CFR 1355.30(d)), nondiscrimination under title VI of the Civil Rights Act and associated hearing procedures (45 CFR 1355.30(e)–(f)), nondiscrimination on the basis of handicap (45 CFR 1355.30(g)), nondiscrimination on the basis of age (45 CFR 1355.30(h)), lobbying restrictions (45 CFR 1355.30(j)), and grants and administration of public assistance programs (45 CFR 1355.30(k), (m) and (n)). The regulations in the above mentioned sections previously applied to State and Tribal title IV–B programs and State title IV–E programs. These amendments apply the regulatory requirements equally to Indian Tribes with a title IV–E plan consistent with Public Law 110–351. In addition, we made conforming amendments in the paragraphs described below that align these regulations with other regulatory and statutory changes implemented between November 2003 and January 2010.

We amended paragraph (c) to delete the Administration of Grants rules previously located in 45 CFR part 74 from the list of applicable requirements as 45 CFR part 74 is now obsolete. HHS moved a number of programs, including titles IV–B and IV–E, into the scope of 45 CFR part 92, and removed such programs from the scope of Part 74 (68 FR 52843–44, September 8, 2003). Therefore, an agency operating titles IV–B and IV–E programs is subject to the administrative rules published in 45 CFR part 92 as cited by amended section 1355.30(i) (see discussion below). We amended paragraph (c) further to add ''2 CFR Part 376—Nonprocurement Debarment and Suspension'' as an applicable regulation. This amendment reflects regulatory changes to the governmentwide Debarment and Suspension (nonprocurement) regulations at 45 CFR Part 76, which were previously cross-referenced in section 1355.30(d). HHS issued an interim final rule on March 1, 2007 which removed the full text of the Department's debarment and suspension rules from 45 CFR part 76 and issued a new 2 CFR part 376 on nonprocurement debarment and suspension (72 FR 9233–9235). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

We made a technical amendment to paragraph (d) to reflect changes in regulatory citations by deleting the current citation and replacing it with ''2 CFR Part 382—Requirements for Drug-Free Workplace (Financial Assistance).'' On November 26, 2003, HHS issued a final rule that implemented changes to the governmentwide nonprocurement debarment and suspension common rule and the associated rule on drug-free workplace requirements (68 FR 66557). The rule on debarment and suspension was removed from Part 76 and codified at 2 CFR part 376 (see discussion in previous paragraph). The rule on drug-free workplace requirements was initially revised and codified in 45 CFR part 82, but effective January 11, 2010 these requirements were further simplified and relocated to 2 CFR 382 (74 FR 58189).

Paragraph (i) describes the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments in 45 CFR part 92 that are applicable to the title IV–B and IV–E programs. We made a technical amendment to paragraph (i) by replacing the reference to the ''Independent Living Program'' with ''the John H. Chafee Foster Care Independence Program'' to reflect the name change and broader program purposes established in the Foster Care Independence Act of 1999. We also amended paragraph (i) to apply 45 CFR part 92 to Indian Tribes which operate Chafee Foster Care Independence Programs (CFCIP) in accordance with Section 477(j) of the Act.

We also amended paragraph (i) to maintain and clarify the current rule that Part 92 applies to State-operated title IV–E foster care and adoption assistance programs. The regulations cross-referenced in 45 CFR part 74 have moved to 45 CFR part 92, so we cite the relocated sections that do not apply to State title IV–E programs (matching or cost sharing requirements found at 45 CFR 92.24 which was formerly 45 CFR 74.23 and financial reporting requirements found at 45 CFR 92.41 which was formerly 45 CFR 74.52). Therefore, title IV–E policy and regulations continue to preclude States from using third-party in-kind contributions and places certain conditions on the use of donated funds as a source of non-Federal funds for the title IV–E foster care and adoption assistance programs.

Finally, we added language in paragraph (i) to apply 45 CFR part 92 to Tribal title IV–E plans for foster care and adoption assistance except that section 92.41 and the sections specified in section 1356.68 do not apply to a Tribal title IV–E agency.

Unlike States, title IV–E specifically allows Indian Tribes with an approved title IV–E plan to use in-kind contributions from third-party sources up to a specified percentage of the Indian Tribe's cost sharing requirements for title IV–E administrative and training costs for certain fiscal years in

accordance with section 479B(c)(1)(D) of the Act. Regulations at 2 CFR part 225 Appendix B, Office of Management and Budget (OMB) Circular A–87, which set out cost principles for States, localities and Tribal Governments, apply to Indian Tribes and item 12b within that Circular requires that Indian Tribes that use third-party contributions follow 45 CFR part 92. Because an Indian Tribe may claim in-kind administrative and training contributions of its share of the title IV–E program from third-party sources, section 92.24 (formerly section 74.23) applies cost-sharing principals and section 92.41 (formerly section 74.52) applies financial reporting to an Indian Tribe's use of in-kind contributions from third-party sources.

We amended paragraph (k) to apply most of 45 CFR part 95 to both States and Indian Tribes with approved title IV–B and IV–E plans. The exceptions are specified in the subparagraphs detailed below. This is a conforming change consistent with section 479B(b) of the Act for an Indian Tribe with a title IV–E plan; it does not amend existing rules applicable to States or Indian Tribes with title IV–B plans or States with title IV–E plans.

We added a new subparagraph (k)(1), to maintain the exception to the applicability of 45 CFR 95.1(a), subpart A, to the State title IV–B program and the CFCIP for States, and to apply the exception to Indian Tribes operating title IV–B programs and CFCIP as well. The regulation at 45 CFR 95.1(a) specifies time limits for submitting financial claims which do not apply to the CFCIP or title IV–B programs; statutory provisions establish the claim submission timeframe.

We created a new subparagraph (k)(2) to explain that unlike States, 45 CFR part 95 subpart E, Cost Allocation Plans, is not applicable to Indian Tribes with an approved title IV–E plan pursuant to section 479B of the Act. This is because the Department of Interior (Interior) is the cognizant agency for cost allocation and Interior has provided for the use of indirect cost rates for Indian Tribes in accordance with that authority. However, ACF still retains authority for guiding the allocation and documentation of title IV–E costs pursuant to section 1356.60 and 2 CFR 225. As such, we issued guidance, ACYF–CB–PI–10–13, on how Indian Tribes can develop appropriate cost methodologies November 23, 2010.

We amended paragraph (m) to clarify that the regulations in 45 CFR 100.12 related to simplifying, consolidating or substituting federally required plans apply to States only. The regulatory provision relates to a process for operationalizing intergovernmental partnership and Federalism principles for States. Although this particular provision applies only to States, other guidance reflects our commitment to working with Indian Tribes on a government-to-government basis. In particular, Executive Order 13175 (65 FR 6724, November 9, 2000) requires HHS to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

In paragraph (n), which applies certain regulations related to grants for public assistance programs in 45 CFR part 201 to programs funded under titles IV–B and IV–E, we made minor amendments to remove references to ''State'' and replace them with more general references to apply the rules equally to Indian Tribes in subparagraph (n)(2). In addition we removed parenthetical marks but not the provisions within them, from paragraphs (n)(1) through (n)(4).

We amended paragraph (o) to clarify that the provision cross-referenced at 45 CFR 204.1 which requires that title IV–E plans be submitted for a Governor's review is applicable only to States. Indian Tribe's must submit their title IV–E plan to their designated Tribal leadership for review prior to submitting it to HHS. More instructions for doing so are included in the title IV–E plan preprint (most recently, in ACYF–CB–PI–09–08 issued October 14, 2009) which is applicable to States and Indian Tribes and is available on the CB Web site at *www.acf.hhs.gov/programs/cb.*

Section 1355.31—Elements of the Child and Family Services Review System

This section specifies the scope of the CFSRs.

The CFSRs were established through regulations issued on January 25, 2000 (65 FR 4020) to monitor the performance of State child welfare programs consistent with section 1123A of the Act. The review assesses a title IV–E agency's substantial conformity with certain Federal requirements regarding child protection, foster care, adoption, family preservation and family support, and independent living services. The reviews are based on plan requirements in titles IV–B, subpart 1 and 2 of the Act and the title IV–E foster care and adoption programs. The reviews enable CB to: (1) Ensure conformity with Federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and, (3) assist agencies to enhance their capacity to help children and families achieve positive outcomes.

We removed language in this section that limited the scope of the reviews to child and family services programs ''administered by States,'' so that the CFSRs apply to such programs administered by a Tribal agency consistent with the requirement in Public Law 110–351 to apply the provisions of the title IV–E program equally to State and Tribal title IV–E agencies. The amendments in this section and throughout the CFSR related regulatory sections do not affect how we conduct CFSRs in States or our existing guidance to States engaged in the CFSR process. The application of the CFSRs to a Tribal title IV–E agency has been modified somewhat to take into consideration that such agencies are entering into a preexisting monitoring process. We encourage Indian Tribes to review the most recent CFSR procedures manual on CB's Web site, which explains the CFSR process in more detail (*http://www.acf.hhs.gov/programs/cb/cwmonitoring/tools_guide/proce_manual.htm*).

Section 1355.32—Timetable for the Reviews

This section specifies the review timetable for the initial and subsequent CFSRs.

Section 1355.32(a)—Initial Reviews

In paragraph (a), we provide the timetable for the initial CFSR for a State or Tribal agency. The initial reviews for States were completed between FY's 2001 and 2004.

We amended paragraph (a) to specify a schedule of initial reviews for a Tribal title IV–E agency and replaced the reference to ''Administration for Children and Families'' with the acronym ''ACF.'' The added provision establishes that each Tribal title IV–E agency must complete an initial full CFSR during the four-year period after we determine that the Indian Tribe has plans approved for each of the title IV–B subpart 1, title IV–B subpart 2 and title IV–E programs and has a sufficient number of cases to apply the procedures in section 1355.33(c). This new provision provides for reviews on an initial schedule for a Tribal agency similar to that for a State consistent with the statutory requirement to apply the title IV–E program rules equally to Indian Tribes with approved plans. However, we adjusted the timeframe to accommodate the unique position of Indian Tribes with approved title IV–E plans. When the initial reviews were scheduled for States, all States were

operating programs under both subparts of title IV–B and IV–E, and had been doing so for several years. This allowed us to set a fixed timeframe by which all States had to have an initial review. Since the title IV–E option is available to Indian Tribes on a continuous basis, we allow the timeframe for the initial review to vary depending on when an Indian Tribe's title IV–E plan is approved and other factors discussed below.

A title IV–E agency must have a sufficient number of children in foster care and children receiving in-home services during the period under review (i.e., those that have a case open for in-home services with the child welfare agency for a period of at least 60 days) from which we can select a sample of at least 30–50 cases for an on-site review as required by existing regulations. This sample is taken from a larger oversample of 150 foster care and 150 in-home services cases. At the time of promulgation of the CFSR process we were confident that States typically had at least this many child welfare cases open during our period under review. However, we understand that Indian Tribes operating title IV–E plans may not serve as many children at the initiation of their programs or for some years to follow. Therefore, to maintain fidelity with the existing CFSR process and apply the procedures equally to a Tribal title IV–E agency, we will not initiate a CFSR for such an Indian Tribe until we can select a sample that meets this threshold number of cases.

Finally, certain CFSR criteria are premised on the agency having in place a continuum of child welfare services as supported by the Federal requirements and provisions of title IV–B, subparts 1 and 2 (see 63 FR 50067), in addition to those of title IV–E. Indian Tribes which can be approved to operate a title IV–E program also must have a title IV–B, subpart 1 program for child welfare services (see CWPM Section 9.1 Q/A #4). However, there is nothing in Federal law that compels a Tribal title IV–E agency to operate the Promoting Safe and Stable Families Program under title IV–B, subpart 2. In fact, the existing provisions of title IV–B, subpart 2 limit the availability of grants under the program to those Indian Tribes who would qualify through the formula for a grant of at least $10,000 (section 432(b)(2)(B) of the Act). We will conduct a full CFSR only if a Tribal title IV–E agency is operating both a title IV–B subpart 1 and 2 program.

Due to the many factors that must be met for ACF to conduct a CFSR of a Tribal agency, we will utilize all other existing monitoring protocols at our disposal to ensure that such agencies are in compliance with Federal requirements and are achieving positive outcomes for children and families. Such protocols include reviewing and approving title IV–B plans and title IV–E plans, reviewing actual and estimated claims submitted on the CB–496 financial reporting forms each quarter and performance reported by Tribes in their title IV–B annual progress and service reviews, conducting partial reviews of requirements outside the scope of a CFSR of Federal requirements that we have reason to believe are out of conformity, and, as necessary, requiring Tribal title IV–E agencies to develop a program improvement plan to respond to areas we determine are out of substantial conformity. Consistent with section 1123A, the necessary elements of a program improvement plan and, if necessary, the amount of the withholding of Federal funds, will be commensurate with the extent of a Tribal title IV–E agency's non-conformity. See sections 1355.21, 1355.32(d), 1356.20 and 1357.15 for more information on ACF's oversight tools. In addition, ACF Regional Offices will continue to offer ongoing technical assistance to Indian Tribes as issues related to title IV–B and IV–E plans arise.

Section 1355.32(b)—Reviews Following the Initial Review

Paragraph (b) establishes the timetable for CFSRs after the initial review. We conduct a full review every five years following a review in which we determine the title IV–E agency to be operating in substantial conformity or two years after the approval of the Program Improvement Plan (PIP) if we determine that the title IV–E agency is not operating in substantial conformity.

We made a number of conforming amendments to paragraph (b) to apply the regulatory provisions for review timing following the initial review to a Tribal title IV–E agency in the same way as they are applied to a State title IV–E agency. Specifically, we amended paragraph (b)(1) to replace the reference to ''State'' with ''title IV–E agency.'' In paragraph (b)(1)(ii) we added reference to an assessment of the Tribal service area to parallel the reference to a statewide assessment, we removed ''statewide'' from the second and third sentences, we replaced the first reference to ''State'' with ''title IV–E agency'', we replaced the reference to ''Administration for Children and Families'' with the acronym ''ACF'', we added the phrase ''or Indian Tribe's'' to follow ''the State's'', and we removed the word ''State'' from the phrase ''State plan requirements subject to review.'' In paragraph (b)(2) we removed the word ''State'' in the phrase ''a State program.'' In sum, these changes mean that once a Tribal title IV–E agency has had an initial CFSR review, a subsequent review will occur five years later if the agency is found in substantial compliance or two years following an approved PIP for an agency that is not in substantial conformity.

Section 1355.32(c)—Reinstatement of Reviews Based on Information That a Title IV–E Agency Is Not in Substantial Conformity

Paragraph (c) describes the requirements for reinstatement of a full or partial review and describes the types of information that may require a review.

In paragraph (c) we made a number of conforming amendments to apply the requirements for reinstatement of a full or partial review to a Tribal title IV–E agency in the same way as the requirements are applied to a State title IV–E agency. Specifically, we amended paragraphs (c) and (c)(1) through (4) to replace all references to ''State'' with ''title IV–E agency.''

Section 1355.32(d)—Partial Reviews Based on Noncompliance With Plan Requirements That Are Outside the Scope of a Child and Family Services Review

This section sets the parameters for addressing noncompliance with title IV–B and IV–E plan requirements that are outside of the scope of a child and family services review in the form of a partial review. In paragraph (d), we made conforming amendments to apply the partial review process to a Tribal title IV–E agency in the same way it is applied to a State title IV–E agency. Specifically, we amended the title to remove the term ''State'' that preceded ''plan'' and we replaced all references to ''State'' with ''title IV–E agency'' in paragraphs (d)(1) through (d)(4).

Section 1355.33—Procedures for the Review

This section sets forth the CFSR process and outlines general procedures for both the CFSR assessment and the on-site review portions of the review.

Section 1355.33(a)

Paragraph (a) describes the two phases of the review process and the review team membership. We made a number of conforming amendments to this paragraph to apply the two-part review process and review team membership to a Tribal title IV–E agency in the same way they are applied

to a State title IV–E agency. Specifically, we amended paragraph (a)(2) to change ''State'' to ''title IV–E agency'' to indicate that when there is a CFSR of a Tribal title IV–E agency, the review team will consist of representatives from ACF and the Tribal title IV–E agency. This parallels the review team composition for CFSRs conducted in States. We amended paragraphs (a)(2)(i), (a)(2)(ii) and (a)(2)(iv) to replace all references to ''State'' with ''title IV–E agency.'' In addition, we amended paragraph (a)(2)(i) to remove the word ''State'' from the phrase ''State child and family services agency'' and the phrase ''State and local'' from the phrase ''State and local offices.'' These changes apply the two steps of the review process equally to States and Indian Tribes as required by Public Law 110–351.

Section 1355.33(b)—Statewide or Tribal Assessment

In this paragraph, we describe the assessment process in more detail. The assessment involves representatives from the title IV–E agency and external stakeholders, reviewing and analyzing data to evaluate the strengths and needs of the child and family services system.

We made a number of conforming amendments in paragraph (b) to apply the requirements of the assessment process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency, as required by Public Law 110–351. We amended the title to include ''or Tribal'' to precede ''assessment'' so it is clear that there is either a State or Tribal assessment, depending on which is the title IV–E agency subject to the CFSR. We indicated that in the case of the Tribal title IV–E agency, the assessment covers the scope of the Indian Tribe's service area, including both the Indian Tribe's title IV–E service area (as defined by the Indian Tribe in the title IV–E plan) and the title IV–B service area (that is, the area covered by the Indian Tribe's CFSP). In paragraph (b)(1) we replaced references to ''statewide'' with ''statewide/Tribal'' and in paragraph (b)(2) we replaced references to ''statewide'' with ''statewide/Tribal service area'' to precede ''data indicators.'' This is a technical change to apply the data indicators equally to both State and Tribal IV–E agencies, as there is a single set of data indicators for Tribes and States. We also made changes throughout paragraphs (b) and (b)(2) through (b)(6), to replace all references to ''State'' and ''State agency'' with ''title IV–E agency'' and remove ''statewide'' where it prefaced ''assessment.'' These changes ensure that the assessment provisions are parallel for States and Indian Tribes.

Section 1355.33(c)—On-Site Review

Paragraph (c) describes requirements for the on-site review process, including information on the scope of the review, the review sites, sources of information used in the review, and case sampling.

In paragraph (c) we made a number of conforming amendments to apply the regulatory requirements of the on-site review process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency, with the exception of one requirement in paragraph (c)(2) discussed below. Specifically, we made conforming amendments to paragraphs (c)(1) through (c)(3) by replacing most references to ''State'' with ''title IV–E agency.'' We also amended paragraph (c)(4)(iv) to include reference to an Indian Tribe's CFSP in the same way that we reference a State's CFSP and replaced the reference to the ''statewide'' assessment to the ''statewide/Tribal'' assessment in paragraph (c)(6). In paragraph (c)(2), we maintain the reference to the State's largest metropolitan area as a mandatory location for the on-site portion of the CFSR and did not include a mandate for a similar location for a Tribal CFSR. We kept this provision as is because we recognize that the Tribal title IV–E agency's service area in most cases will not include a metropolitan area at all, or if there is a metropolitan area, it may not represent a subdivision in which a large number of child welfare services cases can be found as was the intention with the original requirement.

Taking the paragraph as amended as a whole, for Indian Tribes the onsite review will consist of a review of a title IV–E agency's title IV–B and IV–E programs in operation in the title IV–E agency's service area. The review will be planned jointly between ACF and the Tribal title IV–E agency, may focus on several political subdivisions in the Tribal service area (e.g., different Tribal organizations included in a Tribal consortium) as guided by information in the assessment, and will involve the gathering of information during the on-site portion of the review from Tribal agency staff, families who are served by the agency and stakeholders internal and external to the agency, including those who participated in the development of the Indian Tribe's CFSP. The review will focus on at least 30 cases of foster care and in-home services cases, taken from a larger oversample of cases for each, which may be used to resolve discrepancies between the assessment and the on-site review.

Section 1355.33(d)—Resolution of Discrepancies Between the Assessment and the Findings of the On-Site Portion of the Review

In paragraph (d), we describe the process for resolving discrepancies between the assessment and the on-site portion of the review through either, at the title IV–E agency's option, the submission of additional information or the review of additional cases.

In paragraphs (d), (d)(1) and (d)(2), we made conforming amendments to apply the regulatory requirements for resolution of such discrepancies to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to ''State'' and replacing it with ''title IV–E agency.'' The paragraph now requires that discrepancies between the assessment and the findings of the on-site portion of the review be resolved by either information submitted by the title IV–E agency or the review of additional cases, as opted by the title IV–E agency.

Section 1355.33(e)—Partial Review

In paragraph (e) we outline when a targeted partial child and family services review will be conducted. We made a conforming amendment in this paragraph to apply the regulatory requirements of the partial review process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to ''State'' and replacing it with ''title IV–E agency.'' In the case of a Tribal title IV–E agency, partial CFSRs will be planned and conducted jointly by ACF and the Tribal title IV–E agency based on the nature of the concern.

Section 1355.33(f)—Notification

Paragraph (f) provides for ACF to notify the title IV–E agency as to whether it is, or is not, operating in substantial conformity within 30 days following a full review, partial review or resolution of a discrepancy between the findings of the on-site review and the statewide/Tribal assessments. In this paragraph we made conforming amendments to apply the regulatory requirements of the notification process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to ''State agency'' and ''State'' and replacing them with ''title IV–E agency.'' We also removed references to ''statewide'' where it preceded ''assessment'' so that it is inclusive of either State or Tribal assessments. ACF will therefore notify the title IV–E agency, whether State or Tribal, of its

conformity status within 30 days of the events mentioned above.

Section 1355.34—Criteria for Determining Substantial Conformity

This section describes the criteria that will be used to determine a title IV–E agency's degree of conformity with specified title IV–B and IV–E plan requirements for each outcome and systemic factor of the title IV–E agency's service delivery system that undergoes review.

Section 1355.34(a)—Criteria To Be Satisfied

Paragraph (a) describes the basic criteria used to determine the title IV–E agency's substantial conformity with applicable CFSP requirements based on: (1) The achievement of the seven outcomes specified in paragraph (b); and (2) the functioning of seven core systemic factors directly related to the title IV–E agency's capacity to deliver services leading to improved outcomes. In paragraph (a) we made conforming amendments to apply these basic criteria to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the word ''State'' from the phrase ''title IV–B and IV–E State plan requirements'' and removing the references to ''State'' in paragraphs (a) and (a)(3) and replacing them with ''title IV–E agency.'' In paragraph (a)(1) we replaced the phrase ''statewide'' with ''statewide/Tribal service area'' to preface data indicators. This is a technical change to apply the data indicators equally to both States and Tribes, as there are not separate data indicators for each.

Section 1355.34(b)—Criteria Related to Outcomes

Paragraph (b) describes the seven outcomes in the areas of child safety, permanency for children and child and family well-being used for the purposes of the review. The title IV–E agency's substantial conformity will be determined based on its ability to substantially achieve these outcomes. We made several conforming amendments in paragraph (b) to apply the regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency and to update obsolete citations. Specifically, we made conforming amendments to remove the references to ''State'' in paragraphs (b)(1) through (b)(3) and in most cases replacing them with ''title IV–E agency.'' We also removed the reference to the title IV–B assurances being made ''by the State'' so that more general language remains to allow for the review of these assurances when made by the Indian Tribe.

To remove and replace out-of-date statutory references with current citations, we amended: Paragraph (b)(2)(ii)(C) by removing reference to section ''422(b)(9)'' and replacing it with ''422(b)(7)''; paragraph (b)(2)(ii)(D) by removing the reference to section ''422(b)(10)(C)(i) and (ii)'' and replacing it with ''422(b)(8)(B)''; paragraph (b)(2)(ii)(E) by removing the reference to section ''422(b)(11)'' and replacing it with ''422(b)(9)'' and paragraph (b)(2)(ii)(F) by removing the reference to section ''422(b)(12)'' and replacing it with ''422(b)(10).'' We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

We did not change the reference to the State's compliance with ICWA in paragraph (b)(2)(ii)(E) as one of the CFSP assurances subject to review to make it also applicable to a Tribal title IV–E agency. This is because the ICWA provisions cited in section 422 of the Act and referenced here are those provisions which apply to State court proceedings and handling of custodial issues with regard to Indian children. Such provisions are not applicable to Indian Tribes and therefore cannot be a part of a review of Tribal title IV–E agency compliance with title IV–B and IV–E provisions.

We amended paragraphs (b)(2)(i), (b)(3)(i) and (b)(4) by replacing the term ''statewide'' with ''statewide/Tribal service area'' prior to ''data indicator.'' This allows ACF to develop data indicators based on title IV–E agencies' Adoption and Foster Care Analysis and Reporting System (AFCARS) and National Child Abuse and Neglect Data System (NCANDS) data and make such indicators a factor in substantial conformity for both State and Tribal IV–E agencies. However, we did not alter the references to ''statewide'' indicators in paragraph (b)(5) as they refer to the data standards that were set initially in 2000 and not to those that may be established in the future. Any changes to the actual indicators that are applicable to the CFSR will be announced by ACF, as applicable, through other means, such as a **Federal Register** notice or other formal issuance.

Section 1355.34(c)—Criteria Related to Title IV–E Agency Capacity To Deliver Services Leading to Improved Outcome for Children and Families

In paragraph (c) we describe criteria for the seven core systemic factors that we evaluate to determine the agency's capacity to deliver services that improve outcomes for children and families.

We made several conforming amendments in paragraph (c) to apply the regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency and to update outdated citations. The substance of the systemic factors remains the same with these conforming changes.

To apply the regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency we removed references to ''State'' or ''State's'' in paragraphs (c), (c)(2), (c)(3), (c)(4)(iv), (c)(5)(v) and (c)(6)(iv). We also removed and replaced references to ''State agency'' with ''title IV–E agency'' in the title, paragraphs (c), (c)(2) and (c)(2)(iii), (c)(3), (c)(4) and (c)(4)(i), (c)(5), (c)(6)(i), and (c)(7)(iii) through (c)(7)(v). We amended the title of paragraph (c)(1), paragraph (c)(4)(v) and (c)(6)(i) by replacing the terms ''Statewide'' with ''Statewide/Tribal'', ''State-licensed'' with ''State/Tribal-licensed'', ''State-approved'' with ''State/Tribal-approved'', ''county'' with ''county/local'' and ''State'' with ''State/Tribal'' respectively. We amended paragraphs (c)(2)(i) and (c)(3)(i) by adding the phrase ''Tribal service area'' to follow ''State.'' We amended paragraphs (c)(7)(i) and (ii) by adding the phrase ''or Tribe'' to follow the word ''State.''

To conform the regulation to current law as amended in this section, we updated several statutory references. In particular we amended: Paragraph (c)(1) by replacing the citation to section ''422(b)(10)(B)(i)'' with ''422(b)(8)(A)(i)''; paragraphs (c)(2)(i) through (v) by replacing the citation to section ''422(b)(10)(B)(ii)'' with ''422(b)(8)(A)(ii)''; paragraph (c)(5) by removing the citation to section ''422(b)(10)(B)(iii)'' and replacing it with ''422(b)(8)(A)(iii)''; paragraph (c)(7)(iv) by removing the citation to section ''422(b)(9)'' and replacing it with ''422(b)(7)''; and, paragraph (c)(7)(v) by removing the citation to section ''422(b)(12)'' and replacing it with ''422(b)(10).'' Further, we are amending one regulatory reference that we have discovered is incorrect. In paragraph (c)(6)(i) we are replacing the reference to 45 CFR 1357.15(l)(4) to the correct reference to the title IV–B consultation requirements in 45 CFR 1357.15(l)(3).

Section 1355.34(d)—Availability of Review Instruments

This paragraph describes the availability of review instruments to those subject to CFSRs. We made a conforming amendment in paragraph (d)

to apply the section to a Tribal title IV–E agency in the same way it is applied to a State title IV–E agency by removing the word ''States'' from the phrase ''make available to States'' and replacing it with the term ''title IV–E agencies.'' Therefore, review instruments will be made available to both States and Indian Tribes that are subject to the CFSR.

Section 1355.35—Program Improvement Plans

This section describes the requirements for developing, implementing and reviewing program improvement plans and for providing technical assistance to a title IV–E agency in implementing the program improvement plans. It implements the requirement in section 1123A(b)(4) of the Act that a title IV–E agency found not to be in substantial conformity be afforded the opportunity to develop and implement a corrective action plan. These plans are termed PIPs and are developed through a partnership between the title IV–E agency and ACF. In addition to the changes described below, we added a statement after paragraph (f) indicating that the information collection requirements in this section have been approved by OMB and providing the applicable OMB Control Number.

Section 1355.35(a)—Mandatory Program Improvement Plan

This paragraph describes the requirement that a PIP must be developed jointly by the title IV–E agency and Federal staff when the title IV–E agency is not in substantial conformity, and describes the content requirements for the PIPs. In paragraph (a) we made several conforming amendments to apply the regulatory requirements of the mandatory PIPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency. Specifically, we removed the references to ''State'', ''States'' and ''State's'' and replaced them with ''title IV–E agency,'' ''title IV–E agencies'' and ''title IV–E agency's'' in paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(v) and (a)(2). We also amended paragraph (a)(1)(iv) by replacing the term ''statewide'' with ''statewide/Tribal.''

Section 1355.35(b)—Voluntary Program Improvement Plan

This paragraph explains the requirements for a voluntary PIP, developed jointly by the title IV–E agency and an ACF Regional Office when the title IV–E agency is in substantial conformity but elects to develop a plan to target areas in need of improvement. In paragraph (b) we made several conforming amendments to apply the regulatory provisions for voluntary PIPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to ''States'' ''State'' and ''State's'' and replacing them with ''title IV–E agencies,'' ''title IV–E agency'' and ''title IV–E agency's'' in paragraphs (b), (b)(1) and (b)(3), respectively.

Section 1355.35(c)—Approval of Program Improvement Plans

This paragraph outlines the requirements for the approval of a mandatory PIP by ACF, and sets a 90-day timeline for the initial submission of the PIP with a 30-day timeline for the resubmission of a plan in need of revision to meet the approval requirements, as well as when ACF will begin to withhold funds. In paragraph (c) we made several conforming amendments to apply the regulatory requirements which govern PIPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to ''State'' and replacing them with ''title IV–E agency'' in paragraphs (c)(1), (c)(3) and (c)(4).

Section 1355.35(d)—Duration of Program Improvement Plans

This paragraph describes ACF's authority for establishing time frames, not to exceed two years, for the completion of PIPs, extensions of deadlines, the required title IV–E agency quarterly status reports to ACF. In paragraph (d) we made several conforming amendments to apply these regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to ''State'' and replacing them with ''title IV–E agency'' in paragraphs (d)(3) and (d)(4).

Section 1355.35(e)—Evaluating Program Improvement Plans

This paragraph outlines the requirements for the joint evaluation of a PIP by the title IV–E agency and ACF and the ability to jointly renegotiate a PIP, as applicable. We made several conforming amendments to apply these regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to ''State'' and ''State's'' and replacing them with ''title IV–E agency'' and ''title IV–E agency's'' respectively in paragraphs (e), (e)(1) through (e)(4) and (e)(4)(i). We also amended paragraph (e)(1) and (e)(4)(i) by replacing the term ''statewide'' with ''statewide/Tribal service area'' to precede ''data indicators'' as they are applied equally to State and Tribal title IV–E agencies.

Section 1355.35(f)—Integration of Program Improvement Plans With CFSP Planning

This paragraph describes the requirement that the elements of the PIP be incorporated into the goals and objectives of the CFSP and the annual reviews and progress reports related to the CFSP. In paragraph (f) we made a conforming amendment to apply the regulatory requirements for integrating PIPs into CFSPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to ''State's'' and replacing it with ''title IV–E agency's.''

Section 1355.36—Withholding Federal Funds Due to Failure To Achieve Substantial Conformity or Failure To Successfully Complete a Program Improvement Plan

This section describes the pool of funds that are subject to withholding and the process for withholding Federal funds due to the failure of the title IV–E agency to meet the CFSR criteria for substantial conformity. The provisions address the method we use to determine the amount of funds to be withheld and the conditions under which such withholding may be applied, or if applicable, suspended or terminated.

We made several conforming amendments to apply the regulatory requirements for withholding funds to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing all references to ''State'', ''States'' and ''State's'' and replacing them with ''title IV–E agency'', ''title IV–E agencies'', and ''title IV–E agency's'' respectively in paragraphs (a)(1) and (2), (b), (b)(1) through (4), (b)(4)(i) and (ii), (b)(6), (b)(7), (b)(7)(iii), (b)(8), (b)(8)(iii), (c)(1), (c)(1)(ii), (d), (e)(1), (e)(2)(i), (e)(2)(iii), and (e)(3) through (5).

We made a technical amendment to paragraph (e)(5) to reflect changes in regulatory citations by deleting the current citation and replacing it with ''45 CFR 30.18.'' On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

Section 1355.37—Opportunity for Public Inspection of Review Reports and Materials

This section requires the title IV–E agency to make all statewide or Tribal

assessments, reports of findings, and PIPs available for public review. In this paragraph we made a conforming amendment to apply the regulatory requirements related to making these documents available to the public to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to ''State'' and replacing it with ''title IV–E,'' and by adding the phrase ''or Tribal'' before ''assessment.''

Section 1355.38—Enforcement of Section 471(a)(18) of Act Regarding the Removal of Barriers to Interethnic Adoption

This section implements the provisions of sections 474(d)(1) and (2) of the Act, which contain enforcement provisions regarding the requirements in section 471(a)(18) of the Act. Section 471(a)(18) of the Act prohibits a title IV–E agency, or any other entity in the State/Tribe that receives Federal funds and is involved in adoption or foster care placements, from denying an individual the opportunity to foster or adopt on the basis of the child's or the prospective parent's race, color or national origin, or delay or deny a child's placement in foster care or adoption on that basis. Section 1355.38 describes the existing process for addressing an identified violation of section 471(a)(18) of the Act by a title IV–E agency, including corrective action plans and withholding. This process includes collaboration with the Department's Office for Civil Rights (OCR) due to its significant expertise in investigating alleged civil rights violations including involvement in the development and implementation of corrective action plans. We want to note that section 471(a)(18) of the Act does not affect how ICWA applies.

With the exception of paragraph (d), where no changes were necessary, we made amendments to apply the regulatory requirements related to violations of section 471(a)(18) of the Act to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency in each paragraph. We accomplished this by removing the references to ''State'', ''States'' and State's'' in each place those terms appeared and replacing them with ''title IV–E'', ''title IV–E agencies'' and ''title IV–E agency's'' respectively. We also added the word ''Tribe'' to the phrase ''an entity in the State'' in paragraph (a)(2).

We made a technical amendment to paragraph (h)(4) to reflect changes in regulatory citations by deleting the current citation and replacing it with ''45 CFR 30.18.'' On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

In addition to the change described above, we added a statement following the end of paragraph (h) providing that the information collection requirements in this section have been approved by the Office of Management and Budget (OMB) and provide the applicable OMB Control Number.

Section 1355.39—Administrative and Judicial Review

Section 1355.39 describes the administrative and judicial review requirements applicable to a title IV–E agency if the agency appeals a finding of non-conformity with title IV–E or IV–B plan requirements.

We amended section 1355.39 in the opening paragraph of the section and paragraphs (b) and (c) to replace the term ''State'' with ''title IV–E agency'' pursuant to Public Law 110–351. In doing so, we apply the appeal procedures for title IV–E agencies in 45 CFR Part 16 equally to State and Tribal title IV–E agencies. The term ''title IV–E agency'' is inclusive of both State and Tribal programs with a plan approved pursuant to section 471(a) of the Act.

Part 16 allows a title IV–E agency to file an appeal related to the operation of the title IV–B and IV–E programs to the HHS Departmental Appeals Board (DAB). The DAB is authorized to review disputes in HHS programs (45 CFR Part 16 Appendix A). The DAB specifically has jurisdiction over disputes arising from title IV–E disallowances, and title IV–B and IV–E withholding determinations. In accordance with section 1123A(c)(3) of the Act, we provide a title IV–E agency with the opportunity to appeal DAB decisions in the district court for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

Section 1355.40—Foster Care and Adoption Data Collection

Section 1355.40(a)—Scope of the Data Collection System

Paragraph 1355.40(a) describes the scope of the data collection system and the reporting populations that each title IV–E agency is to include in submissions to ACF. The system is called AFCARS.

We made several conforming amendments to apply the regulatory requirements for data collection and reporting to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency either by removing references to ''State'', ''States'' and ''State's'' and replacing them with ''title IV–E agency'', ''title IV–E agencies'', and ''title IV–E agency's'' respectively, or by adding a similar provision for a Tribal title IV–E agency.

In paragraph (a)(1) we removed specific dates when States were to begin collecting and transmitting data after the original AFCARS final rule (58 FR 67912) was issued in 1993 because they are obsolete. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation. An Indian Tribe will begin collecting and transmitting AFCARS data after we approve the Indian Tribe's title IV–E plan, so the specific date will vary among Tribal title IV–E agencies.

In paragraphs (a)(2) and (a)(3) we added a requirement for children in an Indian Tribe's placement and care responsibility and children placed for adoption that is similar to the State requirement in paragraphs (a)(2) and (a)(3). For children in the Tribal title IV–E agency's placement and care responsibility or who are placed in foster care or for adoption and who are placed outside of the Tribal service area, the Indian Tribe placing the child and making foster care payments or adoption assistance payments must submit and continually update the data for each such child.

Section 1355.40(b)—Foster Care and Adoption Reporting Requirements

Paragraph (b) describes the requirements for transmitting foster care and adoption data, including timelines for submission, child-specific data requirements, summary file requirements and internal data consistency checks. We made several conforming amendments to apply the regulatory requirements for foster care and adoption reporting requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency either by removing references to ''State'', ''States'' and ''State's'' and replacing them with ''title IV–E agency'', ''title IV–E agencies'', and ''title IV–E agency's'' respectively, or by adding a similar provision for a Tribal title IV–E agency.

Section 1355.40(c)—Missing Data Standards

Paragraph (c) describes what we consider to be missing data, which is a factor in determining compliance with the AFCARS requirements. We are amending paragraph (c)(2) and

removing (c)(3) to remove obsolete references to a financial penalty as a consequence of an agency exceeding the threshold for missing data. In the case of paragraph (c)(2) we removed the reference to an obsolete penalty in paragraph (c)(3) and modified the language to accurately state that exceeding the missing data threshold is considered substantial noncompliance. We also completely removed paragraph (c)(3) and its references to penalties as these provisions are obsolete. Enactment of the Adoption Promotion Act of 2003 (Pub. L. 108–145), which added section 474(f) to the Act superseded these penalties in regulation, rendering them obsolete. We indicated in ACYF–CB–IM–04–04 that no penalties would be assessed until we issue revised final AFCARS regulations, yet to be published. In the interim, a title IV–E agency that exceeds the missing data threshold or any other AFCARS standard has an opportunity to correct its data, and failing that receives a notice that it is not in compliance. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

We find proposed rulemaking for these technical amendments to bring the regulation in line with existing practice impracticable and unnecessary since they are not substantive. States have not been subject to penalties for some time and Tribal title IV–E agencies will not be subject to these penalties until new regulations state otherwise. Moreover, we believe that delaying rulemaking on these technical amendments would be contrary to the public interest since doing so would cause significant confusion about the statutory and regulatory provisions which Indian Tribes must abide by in implementing the title IV–E program for the first time. Rather, it is prudent to change the regulation now to conform to existing practice so that States and Indian Tribes have an equal understanding that there is not an existing financial penalty being implemented due to noncompliance with AFCARS requirements. Therefore, we find good cause to include these technical amendments, and similar ones described below, in this interim final rule.

Section 1355.40(d)—Timeliness of Foster Care Data Reports

In paragraph (d) we renumbered paragraph (d)(1) as (d) and amended it to indicate that, in accordance with current policy, a title IV–E agency that does not meet the threshold for timely transaction date entries will be found in substantial noncompliance. We removed paragraph (d)(2), in its entirety because it references paragraph (e) regarding penalties for missing data, which is obsolete. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Section 1355.40(e)—Substantial Noncompliance

In paragraph (e) we describe what constitutes substantial noncompliance with the AFCARS requirements. We renamed the title ''Substantial Noncompliance'' as opposed to ''Penalties'' and removed the second sentence of paragraph (e)(1) that discussed penalties. We deleted paragraphs (e)(2), (3), (4), and (5) and renumbered paragraph (e) accordingly. All of the changes to this paragraph were to bring the regulation in line with the current practice which does not penalize a title IV–E agency for noncompliance with the AFCARS standards, as discussed previously.

In addition to the changes described above, we added a statement after the end of paragraph (e) providing that the information collection requirements in this section have been approved by the OMB and providing the applicable OMB Control Number.

Section 1355.50—Purpose of This Part

Section 1355.50 describes the procedures and requirements a title IV–E agency must meet to receive Federal financial participation for the automated child welfare information system.

We amended section 1355.50 to make a conforming change by replacing the term ''States'' with ''title IV–E agencies'' to comply with Public Law 110–351 which permits Indian Tribes pursuant to an approved plan under title IV–E to operate a title IV–E program directly. We added ''or Tribal'' to follow reference to the ''statewide'' system to be inclusive of Tribal systems. Consequently, this conforming amendment applies the regulatory requirements to receive Federal financial participation for the planning, design, development, installation and operation of automated child welfare information systems equally to States and Indian Tribes operating title IV–E programs.

Section 1355.52—Funding Authority for Statewide or Tribal Automated Child Welfare Information Systems (SACWIS/TACWIS)

Section 1355.52 describes the requirements a title IV–E agency must follow to claim Federal reimbursement for automated child welfare information system expenditures at the 50 percent match rate.

We amended the title to section 1355.52 to include a reference to ''Tribal'' automated child welfare systems and the accompanying acronym ''TACWIS'' within the parenthesis. We also amended paragraphs (a), (a)(1) and (b) to make conforming changes by replacing the term ''States'' or ''State'' with ''title IV–E agencies'' and ''title IV–E agency'' respectively. We similarly added reference to a ''Tribal'' automated information system to accompany references to a ''State'' or ''statewide'' automated system in paragraphs (a) and (a)(3) and removed the word ''State'' that preceded ''plan'' in paragraph (a)(4). These conforming changes apply the regulatory provisions for a title IV–E agency to claim Federal Financial Participation (FFP) for expenditures related to planning, designing, developing, and installing a child welfare information system at the 50 percent rate equally to States and Indian Tribes, as required by Public Law 110–351.

In response to the FR notice that solicited comments, we received questions regarding funding for the initial development of an automated child welfare information system. Previously, States were eligible to receive 75% Federal match for the initial development costs of a SACWIS as was reflected in the provision in paragraph (a). However, the statutory authority for that higher level of match expired several years ago and there is no other statutory authority for an enhanced match for automated systems development costs for any title IV–E agency, State or Tribal. To avoid confusion and accurately reflect existing law, we are making a technical change to remove the obsolete reference to a 75% rate for development of a SACWIS. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Section 1355.53—Conditions for Approval of Funding

Section 1355.53 describes the requirements a title IV–E agency must follow in designing, developing, and operating an automated child welfare system to receive funding for the system.

We amended paragraphs (b)(2), (b)(3), (e), and (f) to make conforming changes by replacing the term ''State'', ''States'', ''State agency'' and ''State agencies'' with ''title IV–E agency'' or ''title IV–E agencies'' to apply the SACWIS conditions for funding to a Tribal title IV–E agency in the same way they are

applied to a State title IV–E agency, as required by Public Law 110–351. In addition, we made additional conforming amendments to this section for the same reasons. Specifically, we amended paragraph (a) to make a conforming change to add the acronym ''TACWIS'' to follow ''SACWIS'' and to remove the term ''State'' before ''plan.'' These conforming changes apply the advance planning document (APD) requirements a title IV–E agency must follow to receive funding for its automated child welfare system equally to States and Indian Tribes. Similarly, in paragraph (b)(2) we added ''or Tribe'' to follow the reference to a ''State'' so that it is clear that Tribal automated systems should have electronic exchanges and referrals with other Tribal systems such as TANF and child support, as appropriate. In paragraph (b)(3), we added a parenthetical provision that indicates that for Indian Tribes, the automated system is to support the collection of data across the Tribal service area on children in foster care, which parallels the provision that States have statewide data that supports the same. In paragraph (g) we inserted the term ''and where applicable, Tribal standards'' after ''State standards'' to apply the existing requirement that the automated system must perform Quality Assurance functions related to compliance with State and Federal standards equally to Tribal standards where applicable.

Section 1355.54—Submittal of Advance Planning Documents

Section 1355.54 requires that the APD be signed by the appropriate official, in accordance with procedures specified in 45 CFR part 95, subpart F.

We amended section 1355.54 to make conforming changes by removing the two references to ''State'' to apply equally the requirement that the title IV–E agency submit an APD for an automated system signed by the appropriate official to Tribal and State title IV–E agencies, as required by Public Law 110–351.

Section 1355.55—Review and Assessment of the System Developed With Enhanced Funds

Section 1355.55 explains the process for the review and assessment of the automated child welfare information system. Such a review is conducted to determine the extent to which the system meets the functionality requirements, the approved APD and the requirements of 45 CFR part 95, subpart F. More details on the assessment are available in a review guide accessible at *http://www.acf.hhs.gov/programs/cb/systems/sacwis/sacwisreviewguide/sacwisreviewguide_08.pdf*.

We amended section 1355.55 to make a conforming change by adding the acronym ''TACWIS'' to follow ''SACWIS'' to apply the same ACF review and assessment process to both Tribal and State title IV–E systems.

In addition to the change described above, we added a statement after the end of paragraph (b) providing that the information collection requirements in this section have been approved by the OMB and providing the applicable OMB Control Number.

Section 1355.56—Failure To Meet the Conditions of the Approved APD

Section 1355.56 discusses the conditions in which an APD can be suspended and describes the suspension process.

We amended section 1355.56 in paragraphs (a), (b)(1), (b)(1)(iv), (b)(2) and (b)(4) to make conforming changes by replacing the term ''State agency'' with ''title IV–E agency'' to comply with Public Law 110–351. These conforming changes in section in 1355.56 apply the conditions in which an APD can be suspended and the suspension process equally to States and Tribal IV–E agencies.

Section 1355.57—Cost Allocation

Section 1355.57 discusses the cost allocation requirements for SACWIS/TACWIS administrative costs claimed under title IV–E.

We amended section 1355.57 in paragraphs (a) and (b) by replacing a reference to ''State'' with ''title IV–E agency,'' by replacing references to ''State plan'' with ''title IV–E plan,'' and by adding the acronym ''TACWIS'' after ''SACWIS'' to comply with Public Law 110–351. We also updated the citation for section 474(e) to section 474(c) of the Act. These conforming changes in section 1355.57 apply the cost allocation conditions for SACWIS/TACWIS administrative costs equally to States and Tribal title IV–E agencies.

We want to note that the Department of the Interior, not HHS, is the cognizant agency for cost allocation for Indian Tribes. However, ACF still retains authority for guiding the allocation and documentation of title IV–E costs pursuant to section 1356.60 and 2 CFR 225. As such, we issued guidance including ACYF–CB–PI–10–13 (issued on November 23, 2010) on how Indian Tribes can develop appropriate cost methodologies, including the allocation for TACWIS administrative costs and ACYF–CB–PI–09–11 (issued on September 17, 2009) which discusses conditions for obtaining Federal financial participation (FFP) by Indian Tribes for automated information technology projects including a TACWIS.

Appendices to Part 1355

Section 1355.40 includes references to appendices that identify the data elements, definitions, format standards and error standards for AFCARS.

We amended Appendices A through E to replace many of the references to ''State'', ''State agency'' or ''title IV–B/IV–E State agency'' with ''title IV–E agency'' so that the related AFCARS provisions are applied equally to States and Indian Tribes operating title IV–E programs, pursuant to Public Law 110–351. We further amended the appendices as discussed in more detail below.

Appendix A to Part 1355—Foster Care Data Elements

Appendix A outlines the definitions and instructions for the foster care data elements a title IV–E agency is required to collect.

We added the variant ''/Tribal service area'' to the description of the data element ''Is Current Placement Out-of-State?'' and its response options in section I, V.B so that where applicable, Indian Tribes can report to AFCARS whether a child is placed inside or outside of the Tribal service area as defined under sections 471(a)(3) and 479B(c)(1)(B) of the Act. This is a parallel option to that for a State which must indicate whether a child's current placement is intra- or interstate. Here we slightly modified this data element because a Tribal title IV–E agency must operate the title IV–E program in a Tribal service area. Therefore, a Tribal title IV–E agency reporting whether a child in its placement and care responsibility was placed in- or out-of-State would not provide us with meaningful information in this context. The service area of an Indian Tribe may be incongruent with a State's geographical lines. Therefore, we developed a similar concept that is specific to a Tribal title IV–E agency to meet the law's mandate that title IV–E requirements apply equally to Indian Tribes pursuant to Public Law 110–351. We also amended Section II, Reporting population, to replace the obsolete citation to section ''422(b)(10)'' with section ''422(b)(8)'' to reflect the existing statutory child protections. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

In section II, I.A. we amended the instruction by renaming it Title IV–E agency and clarifying that an Indian Tribe submitting the report will use an abbreviation provided by ACF rather than a U.S. Postal Service abbreviation. We had to modify this requirement to address a Tribal title IV–E agency because the Tribal service areas do not correspond to State geographical areas. Further, we need a separate naming convention so that we can distinguish between AFCARS reports that come in from States and Indian Tribes. ACF will provide each Tribal title IV–E agency with an appropriate abbreviation or code to report in this data element outside of the regulatory process. Similarly, in section II, I.C. we amend the instruction for the data element ''local agency'' to permit a Tribal title IV–E agency to use an ACF-provided code other than a Federal Information Processing Standard (FIPS) as a representation of the local agency which has responsibility for the child's foster care case. The FIPS five digit codes that States use for AFCARS standards were originally designed by the National Institute of Standards and Technology to correspond to county jurisdictional lines, which would not accurately reflect Tribal service areas. Again, ACF will provide the Tribal title IV–E agency with an appropriate code that represents the local agency with responsibility for the child's case.

In section II, V.A., we amended the description related to the data element ''Identify the type of setting in which the child currently lives.'' We amended the definitions of ''Foster Family Home (Relative)'' and ''Foster Family Home (Non-Relative)'' to remove the phrase ''State'' and replace it with ''title IV–E agency'' to indicate that a foster family home is one regarded by either a State or Tribal title IV–E agency as a foster care living arrangement. We also amended the definition of ''Trial Home Visit'' to remove the phrase ''State agency supervision'' and replace it with ''title IV–E agency supervision'' to indicate that a child that has been in a foster care placement under State or Tribal title IV–E agency supervision, but has been returned to the principal caretaker for a limited and specified period of time, is in a trial home visit placement.

In section II, V.B., we amended the description related to the data element ''Is current placement setting outside of the State?'' We added the phrase ''or Tribal service area'' to the element names and its response options so that where applicable, Indian Tribes can report to AFCARS whether a child is placed inside or outside of the Tribal service area as defined under the section 471(a)(3) of the Act. This is the same change as the one made earlier in section I, V.B. We made a similar change in section II, X.B. related to the ''transfer to another agency'' response option for the element ''Reason for discharge.'' In that provision we added language to clarify that the title IV–E agency is to indicate that the reason for discharge is transfer to another agency when the responsibility for the care of the child was awarded to another agency in or outside of the State ''or Tribal service area.''

In section II, XI. we amended the description related to the data element ''Source(s) of Federal Support/ Assistance for Child.'' We amended the definition of ''None of the Above'' to remove the phrase ''State'' and replace it with ''title IV–E agency'' so that Tribal title IV–E agencies can report if a child is receiving support only from the Tribal title IV–E agency.

We consider all of these as conforming changes that apply AFCARS requirements to a Tribal title IV–E agency in the same manner as they are applied to States.

Appendix B to Part 1355—Adoption Data Elements

In Appendix B we provide definitions and instructions for the title IV–E agency reporting of adoption data elements.

We amended section I to add the variant ''/Tribal service area'' to the description of the responses to the ''Child was placed from'' data element described in section I, VII.A so that where applicable, Indian Tribes can report to AFCARS whether a child is placed for adoption inside or outside of the Tribal service area as defined under the section 471(a)(3) of the Act. This is the same change made for the same reasons as the one described earlier for the foster care data element related to child placement. We amended the question portion of section I, III.A to remove the phrase ''State child welfare agency'' and replace it with ''title IV–E agency'' to indicate that both State and Tribal title IV–E agencies are to report to AFCARS whether the agency determined if the child has special needs. We also amended the title of section I, VIII by removing the reference to ''Federal/State'' from ''Financial Adoption Support.'' This change will require both State and Tribal title IV–E agencies to report on monthly financial adoption subsidies being paid on behalf of a child.

We also amended section II, to add language to the Reporting Population section and in the following paragraph (b), to include children in a Tribal title IV–E agency's service area who are adopted and whom the agency has had some involvement in the adoption as within the scope of the reporting population. This added language parallels the scope of the adoption reporting population for a State title IV–E agency and therefore implements the requirement that the same title IV–E requirements apply to Indian Tribes and States per Public Law 110–351. We further made a technical change to the reporting population section to remove a sentence that instructed States to report all adoptions which occurred on or after October 1, 1994. We removed this instruction because it imposed a requirement related to the initial implementation of AFCARS in 1993; now obsolete. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

The title IV–E agency must include in the AFCARS adoption file all children adopted with the involvement of the title IV–E agency, at the time of their adoption, as indicated in the remaining provisions of the reporting population section. Finally, in the same paragraph we revise language that suggested that financial penalties were a consequence of failure to report information on adoptions. As explained elsewhere, there are no financial penalties in effect at this time. Therefore, we have replaced the language with a provision that explains that a finding of noncompliance is the consequence for a title IV–E agency not reporting to AFCARS information on all adoptions in the reporting population.

We amended section II, I.A. to provide for a Tribal title IV–E agency to submit a two-digit abbreviation provided by ACF as opposed to the Postal Service abbreviation used by States. This is the same amendment made to the similar element found in the foster care file addressed previously. We also amended section II, I.D. related to the question ''Did the title IV–E agency have any involvement in this adoption?'' The element requires the title IV–E agency to indicate how it was involved in the child's adoption for children in the reporting population. We amended the question by changing ''State'' to ''title IV–E'' and the instruction to include children who are in the placement and care responsibility of the title IV–E agency who are adopted ''in the service area'' of the Indian Tribe. This parallels State reporting of children within their placement and care responsibility who are adopted in the State. This is a conforming change that

applies the AFCARS requirements to Indian Tribes in the same manner as they are applied to States, as required by Public Law 110–351.

Section II, IV.B describes the adoption data element ''Was the mother married at the time of the child's birth?'' We amended this description to define marriage for the purposes of this data element to include situations of common law marriage if it is legal in the Indian Tribe, in addition to those situations in which it is legal in the State. This is a technical change that allows Indian Tribes to report common law marriage as with States.

Section II, VII.A and B describe two data elements related to from where a child was placed for adoption and who the child was placed by for adoption. In the first element, we amended the response options so that references to adoptions that occur ''within State'' and ''another State'' include the alternatives ''within Tribal service area'' and ''another Tribal service area.'' These response options are to be used by the Tribal title IV–E agency as appropriate to indicate when children are placed for adoption with a family that is considered either within the service area or outside of the service area as defined in section 471(a)(3) of the Act. As with other conforming changes, this allows Indian Tribes to report AFCARS data in a similar manner to States. The second element describes a Tribal agency as a unit within one of the federally-recognized Indian Tribes or Indian Tribal organizations. We amended this response option to be inclusive of Tribal consortia to conform to Public Law 110–351 which permits Tribal consortia to operate a title IV–E plan.

In section II, VIII.A we amended the title of the section and the data element instruction regarding whether a child is receiving a monthly subsidy. We removed reference in the title to ''State/Federal'' adoption support and left it broad so it can be inclusive of Tribal adoption support. Similarly, we amended the instruction for the response option so that Indian Tribes can report whether the child was adopted with an adoption assistance agreement under which regular ''Tribal'' subsidies are paid in addition to Federal or State subsidies. This change is conforming in nature as it allows a Tribal title IV–E agency to report the same type of information as a State as required by Public Law 110–351; whether the Indian Tribe is providing adoption subsidies that are supported with their own funds, or with Federal funds.

Appendix C to Part 1355—Electronic Data Transmission Format

In Appendix C, we describe the transmission criteria that must be met by each title IV–E agency. We amended Appendix C to replace ''State agency'' and ''States'' with ''title IV–E agency'' and ''title IV–E agencies.''

In order to meet the transmission criteria, the regulation offers as much flexibility as possible to negotiate a method of transmission best suited to the title IV–E agency's environment. This language allows ACF and Tribal title IV–E agencies greater flexibility regarding electronic data exchange and secure transmission protocols and standards for the transmission of AFCARS data files through AFCARS Technical Bulletins, rather than regulation. States transmit the AFCARS data using a secure data transfer connection between the State's information system and the Federal system. While an Indian Tribe may be able to submit data electronically using a similar software program, we also learned through discussions and consultations with Indian Tribes in the Spring 2009 that some Indian Tribes have limited technical resources with which to develop or upgrade a data reporting system and face technological barriers to submitting data through an electronic data exchange, including limited access to software and systems that will transmit data. We believe that the inability to transmit data via data transfer software should not be a barrier to Tribal operation of a title IV–E program, and that this section allow us flexibility regarding electronic data exchange. We will work with Tribes and prescribe alternative secure transmission protocols and standards for the transmission of AFCARS data files through AFCARS Technical Bulletins. We also will provide technical assistance to Indian Tribes in order to assist in building the capacity of Indian Tribes to submit AFCARS data files via a direct file transfer in accordance with Appendix C and 1355.40(b).

We removed the description of four methods for electronic data exchange that were in operation at HHS at the time the Appendix was issued in 1993 because the methods are now obsolete. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Further, we amended Appendix C to clarify that the four criteria for data submissions apply to a Tribal title IV–E agency in the same manner they apply to a State title IV–E agency consistent with Public Law 110–351, regardless of whether a Tribal title IV–E agency transmits data in an electronic or non-electronic file in accordance with 1355.40(b). The four criteria which remain in the regulation are: (1) Records must be written using ASCII standard character format; (2) all elements must be comprised of integer (numeric) value(s); (3) all records must be a fixed length; and, (4) all State and Tribal title IV–E agencies must inform the Department, in writing, of the method of transfer they intend to use.

Appendix D to Part 1355—Foster Care and Adoption Record Layouts

Appendix D outlines the detailed record layouts for the AFCARS files.

We amended Appendix D to incorporate the changes previously discussed in Appendices A through C that affect the record layout. These changes include replacing references to ''State'' with ''Title IV–E agency,'' adding language that indicates whether a placement for adoption or foster care is in or out of the ''Tribal service area,'' and adding language that allows a Tribal title IV–E agency to submit a two-digit abbreviation provided by ACF as opposed to the Postal Service abbreviation used by States.

Appendix E to Part 1355—Data Standards

Appendix E outlines the four types of assessments which are conducted on the foster care and adoption data submissions to determine the completeness and internal consistency of the data.

We amended Appendix E throughout to replace references to ''State'' with ''Title IV–E agency'' and added language that indicates whether a placement for adoption or foster care is in or out of the ''Tribal service area.''

In section A.2.a.(1) we amend the instruction for the data element ''Local Agency'' and the summary file to permit a Tribal title IV–E agency to use an ACF-provided code other than a FIPS as a representation of the local agency which has responsibility for the child's foster care case.

We also amended Appendix E to remove references to the penalty provisions in section 1355.40(e) because they are obsolete as discussed previously, and replaced such provisions with language that indicates that the results of the assessments determine whether a title IV–E agency is in substantial compliance with the AFCARS requirements. We believe that because these changes are technical in nature that there is no need to go through the notice and comment

process to update the regulation accordingly.

Appendix F to Part 1355

Appendix F contained a chart that indicated the State allotments of incentive funds in 1993. These allotments were the basis for fiscal penalties for substantial noncompliance with AFCARS requirements. We have deleted Appendix F in its entirety because as explained previously the penalty structure in the regulations is no longer in use.

Part 1356—Requirements Applicable to Title IV–E

Section 1356.10—Scope

This section indicates the scope of the part 1356 rules as applicable to the title IV–E programs for foster care, adoption assistance and independent living.

We amended this section to replace ''State'' with ''title IV–E agency'' pursuant to Public Law 110–351 to apply the title IV–E program equally to States and Indian Tribes directly operating a title IV–E program.

Section 1356.20—Title IV–E Plan Document and Submission Requirements

This section outlines the process for submission and approval of title IV–E plans under section 471 of the Act.

We amended section 1356.20 in paragraphs (a), (b), (c) and (d) (as renumbered) by deleting all references to ''State'' and ''State plan'' and replacing them with ''title IV–E agency'' and ''title IV–E plan'' respectively, to apply the title IV–E program equally to States and Indian Tribes directly operating a title IV–E program pursuant to Public Law 110–351. We made additional changes to these paragraphs to remove obsolete references, conform to Public Law 110–351 or make technical corrections as follows. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation accordingly.

We amended paragraph (a) to specify that Indian Tribes directly operating a title IV–E program must have a plan approved by the Secretary that meets the requirements of section 479B(c) of the Act, in addition to the requirements of 45 CFR part 1355 and section 471(a) of the Act. This additional citation to section 479B(c) of the Act is necessary since Public Law 110–351 specifies some unique criteria for Tribal title IV–E programs only.

We removed an obsolete reference in paragraph (b) to penalties described in 45 CFR 1355.40(e) for AFCARS (see more discussion related to this provision in the section by section description of 45 CFR 1355.40(e)). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

We deleted paragraph (c) because it contained references to outdated statutory provisions regarding voluntary foster care placements. Although these citations have been removed, both State and Tribal title IV–E agencies still have the option to provide title IV–E for eligible children voluntarily placed into foster care pursuant to section 472(a)(2)(A)(i) of the Act. Therefore, this is a technical change only. We renumbered paragraphs (d) and (e) as (c) and (d) accordingly.

We made various technical changes to renumbered paragraph (c) to clarify the Tribal official who has the authority to sign the title IV–E plan. States must have the governor or his or her designee review and submit the title IV–E plan. We added a parallel provision for Indian Tribes to authorize the Tribal leader or his or her designee to review and submit the plan in paragraph (c)(2). This is consistent with the law's requirement to apply title IV–E requirements equally to States and Indian Tribes. We also amended paragraph (c)(4) because it is obsolete. ACYF is authorized to approve title IV–E plans consistent with our most recent functional statement of organization rather than the ACF Regional Administrator (see 71 FR 59117–59123, 10/06/06). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation. Further, we amended paragraph (c)(8) to apply the requirements for effective dates of a new title IV–E plan equally to States and Indian Tribes. As such, in the case of an Indian Tribe that directly operates a title IV–E program, the effective date for expenditures made may not be earlier than the first day on which the plan is in operation in the Indian Tribe's entire service area. This is a comparable requirement to the one in existence for States: Expenditures cannot be made earlier than the first day the plan is in operation on a statewide basis.

One commenter requested that an Indian Tribe that directly operates a title IV–E program be able to start a title IV–E program in any quarter of a fiscal year. This is allowable if the Indian Tribe submits an approvable title IV–E plan to ACF by the end of the calendar quarter. Another commenter requested that Indian Tribes be permitted to operate the foster care maintenance payments program but not the adoption assistance program. The statute at section 471(a)(1) of the Act requires the operation of both the foster care and adoption programs under title IV–E as mandatory features of the program.

Section 1356.21—Foster Care Maintenance Payments Program Implementation Requirements

This section describes many of the requirements of the foster care maintenance payments program which relate to child eligibility.

We amended section 1356.21 throughout by deleting numerous references to ''State agency,'' ''State plan'' and ''State'' replacing them with ''title IV–E agency'' or ''title IV–E plan'' respectively pursuant to Public Law 110–351 to apply the title IV–E program equally to States and Indian Tribes directly operating a title IV–E program. The additional changes we made throughout this section are discussed below.

Section 1356.21(a)—Statutory and Regulatory Requirements of the Federal Foster Care Program

This paragraph states the requirements that apply in general to the title IV–E foster care maintenance payments program. In paragraph (a), for a Tribal title IV–E agency, we added a cross reference to section 479B(c)(1)(C)(ii)(II) of the Act. This statutory provision requires a Tribal title IV–E agency to use the 1996 AFDC eligibility standards in effect in the State of the child's removal for the purposes of title IV–E foster care eligibility. We received comments during consultation that requested some form of relief from this requirement, as many noted that it would be burdensome to an Indian Tribe to become familiar with and apply AFDC eligibility standards from a number of different States. Suggestions included that we establish a national AFDC standard, streamline the AFDC eligibility determination process, and allow a Tribal title IV–E agency to disregard the AFDC income/resource standards or specifically exempt Tribal per capita payments from State AFDC standards. We are unable to deviate from the explicit statutory requirement regarding the process for determining eligibility for AFDC (section 479B(c)(1)(C)(ii)(II) of the Act). The Tribal title IV–E agency must use the 1996 title IV–A plan standards of the State in which the child was residing at the time of removal including those related to income and resources, with only those exceptions provided in law for deviating from those 1996 standards. Specifically, a title IV–E agency must use: The

Federal $10,000 child resources limitation as provided for in section 472(a)(3)(B) of the Act; the State definition of unemployed parent subject to the requirements of 45 CFR 233.101(a)(1) as amended after 1996; and, the Federal restrictions on benefits to certain types of immigrants as provided for in section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

Section 1356.21(b)—Reasonable Efforts

This paragraph outlines the statutory requirement at section 471(a)(15) of the Act. We made a technical change to this paragraph to replace the reference to section 472(a)(1) of the Act with the correct citation to section 472(a)(2). At the time that the regulations were originally published, the eligibility requirement for a judicial determination regarding reasonable efforts was located in section 472(a)(1) of the Act. The Deficit Reduction Act of 2005 (Pub. L. 109–171) amended the law and repositioned the reasonable efforts requirement at section 472(a)(2) of the Act. This is a conforming change only to update the statutory reference. We further amended this paragraph to remove the reference to ''State'' in the statement that a child's health and safety must be the paramount concern in making reasonable efforts. This change applies the requirement equally to States and Indian Tribes pursuant to Public Law 110–351.

A commenter sought clarification on the title IV–E requirements related to reasonable efforts versus the ICWA provisions for active efforts and requested that we explain who is responsible for determining whether the reasonable and active efforts standards are met. The title IV–E foster care eligibility requirement in paragraph (b)(1) mandates that the title IV–E agency obtain a judicial determination to the effect that reasonable efforts were made to prevent a child's removal from the home within 60 days of the child's removal, or a judicial determination that efforts are not required (i.e., making no efforts was reasonable) because one of the conditions in section 471(a)(15)(D) of the Act have been met. Additionally, per paragraph (b)(2) the title IV–E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan in effect within 12 months of the child's entry into foster care. Whether the State or Tribal title IV–E agency obtains this judicial determination depends on which party has placement and care responsibility for the child at the time it is due. ICWA at 25 U.S.C. 1912(d) requires that any party seeking to effect a foster care placement of, or termination of parental rights to, an *Indian child under State law* (emphasis added) shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Here the party responsible for obtaining an active efforts determination is the one making the petition for foster care or other custodial proceedings in a State court. The requirements for reasonable efforts and active efforts are under separate Federal authorities and are not altered or superseded by one another. However, as ICWA is outside ACF's purview, we do not have authority to instruct States and Tribes on how to meet its requirements.

There is no particular language required to satisfy the title IV–E reasonable efforts judicial requirements, however, the order should be clear that the court has determined that reasonable efforts were made or were not required (65 FR 4056). Therefore, to the extent that a State court makes a finding related to active efforts for ICWA purposes, it is possible that such a finding could also satisfy one of the title IV–E requirements related to reasonable efforts. However, this is a determination that can only be made in light of a specific case. ACF regional office staff and technical assistance resources are available to work in partnership with a title IV–E agency and its courts to help them address processes for meeting judicial determination requirements.

Section 1356.21(b)(3)—Circumstances in Which Reasonable Efforts Are Not Required To Prevent a Child's Removal From Home or to Reunify the Child and Family

This paragraph describes the circumstances in which reasonable efforts to prevent a child's removal or to reunify a child with his or her family are not required consistent with section 471(a)(15)(D) of the Act. We amended paragraph (b)(3)(i) to specify that if an Indian Tribe operates a title IV–E program, Tribal law must define what constitutes aggravated circumstances under which reasonable efforts are not required to prevent a child's removal from home or reunify the child and family. We made this change to align the requirements for States and Indian Tribes directly operating a title IV–E plan as required by Public Law 110–351. We note here that Tribal law governs aggravated circumstances in the case of a Tribal title IV–E plan, but not in the situation of a State plan under which a Tribal public agency has an title IV–E agreement pursuant to section 472(a)(2)(B)(ii) of the Act. In the case of a title IV–E agreement, there is no ''Tribal title IV–E agency'' and our existing policy at CWPM Section 9.4 Q/A #5 prevails. This policy explains that another public agency or Indian Tribe operating under a title IV–E agreement is bound by any State statute or policy related to the operation of the title IV–E program.

We received a comment requesting clarification on whether a finding regarding reasonable efforts to prevent placement is a requirement for children removed from their homes by police officers on an emergency basis. In all cases in which the State or Tribal title IV–E agency seeks to claim title IV–E funds for a child involuntary removed from his/her home, there must be a judicial determination that either: (1) Reasonable efforts were made to prevent the child's removal from the home; or (2) that reasonable efforts to prevent removal are not required because one of the conditions in section 1356.21(b)(3) have been satisfied (i.e., a parent has subjected the child to aggravated circumstances, the parent was convicted of murdering another child, etc.). We also note that we have existing policy (CWPM Section 8.3A.9b Q/A #4) that explains, ''* * * if there is a judicial determination to the effect that efforts to prevent removal or reunify the family have not been made due to the immediate danger to the child, or that the lack of efforts is appropriate due to the particular circumstances of the case, the reasonable efforts requirements in 45 CFR 1356.21(b)(1) and (2) will be satisfied.''

Section 1356.21(c)—Contrary to the Welfare Determinations

This paragraph describes the requirement under section 472(a)(2) of the Act for a determination to the effect that continuation of residence in the home would be contrary to the welfare of the child. We made a technical change to this paragraph to replace the reference to section 472(a)(1) of the Act with the correct citation to section 472(a)(2).

Section 1356.21(d)—Documentation of Judicial Determinations

This paragraph describes the documentation requirements for the reasonable efforts and contrary to the welfare judicial determinations.

We amended paragraph (d)(2) to give effect to section 479B(c)(1)(C)(ii)(I) of the Act that allows a Tribal title IV–E agency to use nunc pro tunc orders and

affidavits in limited circumstances. This amendment allows a Tribal title IV–E agency, for the first 12 months in which the title IV–E plan is in effect, to use affidavits or nunc pro tunc orders to demonstrate that a judicial determination was made regarding reasonable efforts or contrary to the welfare of the child. This means that for the first 12 month period only, if the reasonable efforts or contrary to the welfare determination is not included in the requisite orders, we will accept an affidavit, or nunc pro tunc order as evidence that it was in fact made.

Several commenters to the FR notice requested that Indian Tribes be able to use nunc pro tunc orders to correct existing State/Tribal court orders for title IV–E eligibility purposes. We are not clear what was envisioned by this comment. The Tribal title IV–E agency may use nunc pro tunc orders to correct deficiencies in the record and otherwise provide evidence of a judicial determination regarding contrary to the welfare or reasonable efforts. We do not anticipate that judges will sign a nunc pro tunc order in the absence of evidence that substantiates the finding. In other words, we caution the Tribal agency from seeking nunc pro tunc orders as merely a paperwork exercise to obtain Federal funding. As we explained in a prior rule (65 FR 4056), the legislative history of the Federal foster care program indicates that the statutory requirement for judicial determinations was created as an ''important safeguard(s) against inappropriate agency action.'' Further, nunc pro tunc orders are related only to judicial determinations and cannot be used to 'correct' other aspects of eligibility, such as licensure of foster family homes or child care institutions or AFDC eligibility.

A commenter requested that nunc pro tunc orders be allowed for cases which are subject to a State/Tribal title IV–E agreement. The statutory flexibility exists only for a Tribal title IV–E agency through the first 12 months of the title IV–E plan, therefore, States may not use nunc pro tunc orders to document a judicial determination for cases subject to a title IV–E agreement. Another commenter requested that we provide a rationale to explain why nunc pro tunc orders are allowed for only a 12 month period at the beginning of the Tribal title IV–E plan and requested that we permit such orders beyond this period. The use of nunc pro tunc orders is limited in statute to 12 months and there is no explicit legislative history that clarifies why this flexibility was provided to Indian Tribes or why this particular timeframe. However, the effect is to provide Indian Tribes who are commencing their title IV–E programs with a limited period where the Indian Tribe may be held harmless for court orders that ACF may otherwise find insufficient for title IV–E funding purposes.

We amended paragraph (d)(3) to include a Tribal title IV–E agency in the provision that explains that court orders that reference State (or Tribal) law to substantiate judicial determinations are not acceptable documentation that the findings were made. We made this change to align the requirements for States and Indian Tribes with a title IV–E plan as required by Public Law 110–351.

Section 1356.21(g)—Case Plan Requirements

This paragraph outlines the provisions for developing case plans for each child in foster care. In paragraph (g) we removed the phrase ''State and local'' that preceded ''staff'' so that the provision refers to staff of either a State or Tribal title IV–E agency. The paragraph now clarifies that the title IV–E agency must promulgate policy materials related to case plans. We also added ''Tribal'' adoption exchanges to the list of examples of child specific recruitment efforts that should be documented in the case plan for children with the goal of adoption or placement in another permanent home in paragraph (g)(5). These changes apply the existing case plan requirements to a Tribal title IV–E agency on the same basis as a State as required by Public Law 110–351.

A commenter asked during consultation whether Indian Tribes will be required to document child specific recruitment efforts for permanency; this change clarifies that they will.

One commenter requested that case plans developed by a Tribal title IV–E agency be completed within 90 days rather than the 60 day period in existing regulations. The commenter opined that a lack of Tribal resources and high caseloads justified the extended timeframe. We are following the statutory requirement to implement the program in the same manner for all title IV–E agencies and are therefore leaving the requirement at 60 days. Further, the requirement to develop case plans within 60 days is a longstanding requirement that dates back to the original title IV–E regulations issued in 1983. At that time, we concluded after public comment that 60 days is a reasonable and responsible time period in which to document the child and family's assessed needs, set goals, identify needed services and estimate a timeframe for permanency (47 FR 30932). Timely engagement of families and establishing provisions for the child's safety, well-being, and permanency are critical components to the title IV–E foster care program.

The same commenter requested clarification regarding whether a Tribal title IV–E agency has the discretion to develop a case plan format of their own. This is allowable. There are no Federal requirements regarding the format of the case plan and a Tribal title IV–E agency may develop their own formats as they see fit. An Indian Tribe may want to take advantage of our Regional Office staff or technical assistance resource partners to help them develop or adapt a case plan format and process that works best for them and is conducive to parent engagement and the law's other requirements. The same commenter sought clarification on whether Indian Tribes can develop case plans jointly with extended family/kin should reunification not be likely. The regulatory requirement is for the IV–E agency to develop a case plan jointly with the child's parents or guardians. Additional persons, such as family, kin, service providers and other persons who can serve as supports to the child and family, can be engaged to assist in developing the child's case plan as the State or Tribal title IV–E agency deems appropriate.

A commenter requested that regulatory references to children being placed in close proximity to their parent's home, as in paragraph (g)(3), take into consideration that an Indian child may have affiliations with more than one Indian Tribe or be located in a service area that spans the geographic jurisdictions of several States. We have not made any adjustments to the regulatory text in response to this comment. Rather, we note here that the case plan provision to discuss how the placement setting will be in close proximity to the home of the parents, among other factors, is not a mandate that in all cases the child be placed close to the home of his/her parents. Rather, the goal is for the agency to outline in the case plan how the agency weighed or will weigh close proximity to the child's parents in determining his/her placement setting(s). Another commenter requested that States provide enough information when cases are transferred from State to Tribal custody to allow the development of a good case plan. We concur that these transfers will require extensive coordination and communication between title IV–E agencies and set forth such provisions in new section 1356.67.

Section 1356.21(i)—Application of the Requirements for Filing a Petition To Terminate Parental Rights at Section 475(E) of the Social Security Act

This paragraph implements the provisions of section 475(E) of the Act regarding filing a petition to terminate parental rights (TPR) when a child has been abandoned, or has been in foster care for 15 out of 22 months unless a statutory exception applies.

We amended paragraph (i)(1)(ii) to include in the parenthetical statement that when a child is determined by a court to be abandoned, consistent with Tribal law, a petition to file termination of parental rights is due within 60 days of that determination. The situation in which Tribal law, as opposed to State law, is applicable is when an Indian Tribe has a title IV–E plan. Similar to aggravated circumstances, if an Indian Tribe is under a title IV–E agreement (section 472(a)(2)(B)(ii) of the Act) with a State, then State law on abandonment is controlling rather than Tribal law.

We received a request that we clarify whether customary adoptions satisfy the TPR requirement and whether Indian Tribes must follow the requirements for TPR. While we recognize that termination of parental rights and adoption may not be a part of an Indian Tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian Tribal children from the requirement to file a petition for TPR. All title IV–E agencies must file or seek to join a petition to terminate parental rights in the case of a child who has been in foster care for the specified timeframe or is abandoned. However, Federal law provides case by case exceptions to the requirement to file a petition for TPR that include: The child is being cared for by a relative; the agency has not provided reasonable efforts to reunify the family consistent with the case plan; adoption is not appropriate for the child; no legal grounds for TPR exist (see section 475(5)(E)(i) through (iii) of the Act). What constitutes the legal grounds for TPR are at the discretion of the Indian Tribe with regard to Tribal title IV–E plans. Once a title IV–E agency has filed a TPR consistent with this provision, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child per section 1356.21(j)(3). Seeking customary adoption of a child is equivalent to other forms of legal adoption for these purposes. We direct a Tribal title IV–E agency to existing policy in the CWPM at Section 8.3C.2e for additional clarifications of the TPR provisions.

Section 1356.21(l)—Living With a Specified Relative

Paragraph 1356.21(l) describes the required conditions for living with a specified relative prior to removal from home to meet the AFDC requirements for title IV–E eligibility for foster care maintenance payments.

We amended paragraph (l) regarding living with a specified relative in two respects. First, we changed the statutory citation from section 472(a)(4) of the Act to section 472(a)(3) of the Act as renumbered by the enactment of the Deficit Reduction Act of 2005 (Pub. L. 109–171). Second, we added a reference to section 479B(c)(1)(C)(ii)(II) of the Act to cross reference the AFDC requirements that are applicable to Indian Tribes with a title IV–E plan. The terms ''parent'' and ''specified relative'' used in paragraph (l) are those of the AFDC program of the State in which the child was living at the time of removal as mandated by the statute. The law does not provide any discretion for a Tribal IV–E agency to define these terms. Rather, the regulations of the AFDC program at 45 CFR 233.90(c)(1)(v), state that a child may be considered to meet the requirement of living with a specified relative if his home is with a parent or a person in one of the following groups: (1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great; (2) Stepfather, stepmother, stepbrother, and stepsister; (3) Person who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law; and, (4) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce. Several commenters reasoned that a Tribal IV–E agency should have discretion regarding the AFDC-related requirements by allowing Indian Tribes to define the scope of a relative or otherwise permit ''Indian custodians'' as a substitute for parents or specified relatives. To do as the commenters requested regarding the AFDC-related requirements of title IV–E would go beyond the statute's mandate. All title IV–E agencies must comply with the requirements of the AFDC program as in effect on July 16, 1996. In the case of a Tribal title IV–E agency, the relevant AFDC program is the one in effect on that date in the State the child lived in at the time of removal.

We also received a couple of comments that asked whether we would overturn the ''Rosales'' requirement or deem as title IV–E eligible those children who resided with different relatives within six months of the child's removal from home. The commenter asserted that doing so would be more culturally sensitive to Indian Tribes. We understand the issue to be whether we will continue to require a title IV–E agency to base eligibility on an AFDC-eligible relative with whom a child was living during the six months prior to the removal month, but from whom he was not removed. The reference to Rosales is to a court case, *Rosales* v. *Thompson,* 321 F.3d 835 (9th Cir. 2003), that led to the clarification in Public Law 109–171 on the specified relative for whom AFDC eligibility will be determined. Again, we cannot deviate from the statutory requirements which tie title IV–E foster care eligibility to whether the child meets the AFDC criteria in the specified relative's home from which he or she is removed.

Section 1356.21(n)—Foster Care Goals

This paragraph describes the statutory requirement related to foster care goals that must be established by the title IV–E agency.

We amended paragraph (n) which requires that foster care goals be in law, to add in that such goals can be incorporated into Tribal law by statute, code, resolution or administrative rule. This change implements the requirement that a Tribal title IV–E agency operate the title IV–E program in the same manner as a State as required by Public Law 110–351.

Section 1356.21(o)—Notice and Right To Be Heard

This paragraph describes the requirement for a title IV–E agency to provide foster parents, and any pre-adoptive parent or relative providing care for the child with timely notice of court-held proceedings and a right to be heard.

We amended paragraph (o) to make it consistent with the Act and reflect changes made by Public Law 109–171. First, we changed the title of the paragraph from ''Notice and opportunity to be heard'' to ''Notice and right to be heard'' to reflect the statutory provision. Second, we deleted specific reference to the kinds of hearings to which the regulation applies to and replaced it with the phrase ''in any proceedings held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver'' to give effect to the

changes made by Public Law 109–171 to section 475(5)(G) of the Act.

The regulation now reflects the requirement that the foster parents, pre-adoptive parents or relatives providing care for a child must, at a minimum, be provided with notice of their right to be heard in all permanency hearings, as well as six-month reviews, if held by the court (see also the CWPM Section 8.3C.2b Q/A #2).

Section 1356.22—Implementation Requirements for Children Voluntarily Placed in Foster Care

Section 1356.22 describes the requirements a title IV–E agency must follow to receive reimbursement on behalf of children placed through voluntary placement agreements.

We amended section 1356.22 in paragraphs (a) and (c) to make conforming changes by replacing the term ''State'' or ''State agency'' with ''title IV–E agency.'' These changes apply the voluntary placement agreement provisions equally to State and Tribal title IV–E agencies consistent with Public Law 110–351. To remove and replace an out-of-date statutory reference with the current citation, we amended paragraph (a)(2) by removing the reference to section ''422(b)(10)'' and replacing it with ''422(b)(8).'' We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation. In addition, we amended paragraph (c) by inserting the term ''or Tribal'' after ''State'' to apply the requirement for a uniform procedure for revoking voluntary placement agreements to Indian Tribes with a title IV–E plan.

During consultation, we received a request to clarify how the requirement at section 472(f) of the Act for voluntary placements may impact work that an Indian Tribe is doing with an Indian family. Sections 472(f) and 472(a)(2)(A)(i) of the Act should be read together as providing the statutory authority for a title IV–E agency to claim Federal reimbursement on behalf of an eligible child who is placed into foster care as a result of a voluntary agreement between the agency and the parents/legal guardians of the child. It is an option for the State or Tribal title IV–E agency to have a title IV–E plan that includes accepting voluntary placement agreements. Typically, voluntary agreements are used when the family is in need of short term stabilization or experiencing a temporary crisis that renders them unable to care for the child (i.e., a single mother has to enter the hospital for an acute episode and has no other resources available to take care of her child). Judicial intervention—including judicial determinations regarding contrary to the welfare and reasonable efforts to prevent placement—is not necessary in voluntary placement cases unless the title IV–E agency seeks to continue the child's placement beyond 180 days. However, a judicial determination that continued placement is in the child's best interests is required within the first 180 days of such placement to continue title IV–E payments beyond that period. See CWPM Section 8.3A.13 for more information on voluntary placement agreements.

Section 1356.30—Safety Requirements for Foster Care and Adoptive Home Providers

Section 1356.30 describes the required safety checks for prospective foster family homes, child care institutions and adoptive parents.

We amended section 1356.30 in paragraphs (a), (b), and (c) to make conforming changes by replacing the term ''State'' with ''title IV–E agency.'' These changes apply the safety requirements in those paragraphs to Indian Tribes with a title IV–E plan in the same manner as States as required by Public Law 110–351. In addition, we removed the opening clause of paragraph (a), which referred to paragraph (d) and removed and reserved paragraph (d) as the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) made these provisions obsolete. Paragraph (d) contained provisions that were relevant if a State opted out of criminal background checks, but Public Law 109–248 removed this option. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation. Existing law requires a title IV–E agency to conform to the criminal background check and child abuse registry checks described in section 471(a)(20)(A) through (C) of the Act.

We amended paragraph (e) by changing the term ''opts'' to the past tense, and by inserting the phrase ''as permitted prior to the amendments made by section 152 of Public Law 109–248'' after ''criminal records check requirement.'' This change was necessary to preserve the safety requirements for foster family homes or child care institutions that were in place under the prior law's provisions.

Commenters requested clarification regarding procedures that are sufficient to fulfill the criminal background check requirements for title IV–E. The commenters inquired whether other criminal background check requirements for other programs would suffice for title IV–E purposes, such as those under the Indian Child Protection and Family Violence Prevention Act (Pub. L. 101–630). Under section 471(a)(20) of the Act, the title IV–E agency is required to conduct fingerprint-based checks for prospective foster parents, adoptive parents and relative guardians through the Federal Bureau of Investigation's national crime information databases. As such, it is the only procedure that will meet title IV–E requirements.

Section 1356.40—Adoption Assistance Program: Administrative Requirements To Implement Section 473 of the Act

Section 1356.40 describes the administrative requirements a title IV–E agency must follow for the adoption assistance program.

We amended section 1356.40 in paragraphs (a), (d), (e), and (f) to make conforming changes by replacing the term ''State'' or ''State agency'' with ''title IV–E agency. Through these conforming amendments we apply the regulatory provisions for the adoption assistance program equally to a Tribal title IV–E agency as they are applied to a State title IV–E agency. We made the following additional conforming amendments in this section.

We amended paragraph (a) to qualify the provision which requires the title IV–E agency to comply with section 473 of the Act as this section no longer refers solely to adoption assistance provisions. The amendments to the Act made by Public Law 110–351 added the optional kinship guardianship assistance requirements in section 473(d) of the Act. Therefore, we added the phrase ''the applicable provisions of section'' to precede the reference to section 473 of the Act for those title IV–E agencies that opt not to implement the kinship guardianship assistance program. In addition, we inserted the word ''section'' before ''475(3).''

We amended paragraph (b)(4) by inserting the phrase ''place of residence of'' in place of the phrase ''State of which'' in order to apply the regulatory provision equally to Indian Tribes that an adoption assistance agreement must remain in effect regardless of where the adoptive parents reside at any given time.

We amended paragraph (d) by replacing the term ''from one State to another State'' with ''from one place of residence to another'' to apply the requirement equally to Indian Tribes to clarify that if an adoptive family moves, the family can apply for social services on behalf of the adoptive child in the

new ''place of residence'', formerly referred to as ''State of residence.'' We are making additional changes to this paragraph by removing the obsolete phrase ''However, for agreements entered into on or after October 1, 1983'' since agreements entered into prior to this date have since expired. Hence, in all existing adoption assistance agreements the title IV–E agency that entered into the agreement is financially responsible to provide any specified social service even in the case that the adoptive family moves. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Commenters requested clarification regarding the requirements for placement of a child with an adoptive family outside of the jurisdiction of the title IV–E agency. Except for the requirements described in this paragraph for ensuring that assistance continues when a child moves to another jurisdiction and the overall obligation of the title IV–E agency not to delay or deny interjurisdictional placements based on that basis alone, there are no Federal title IV–E requirements unique to children being placed outside the title IV–E agency's jurisdiction. The Tribal title IV–E agency can effectuate an adoption across State lines or Tribal service area lines consistent with its own authorities and those of the State or Indian Tribe in which the child will be placed.

We made another conforming change to paragraph (e) by inserting the term ''or a Tribal service area'' after ''State'' to apply the paragraph equally to States and Indian Tribes with title IV–E plans.

A commenter requested clarification on whether an Indian Tribe can participate in the title IV–E adoption program while another requested clarification on whether an Indian Tribe must be responsible for adoption assistance under a title IV–E directly funded plan. The adoption assistance payments program is a mandatory component of an approvable title IV–E plan per section 471(a)(1) of the Act and as such the Indian Tribe with a title IV–E plan is obligated to provide adoption assistance on behalf of all children in the Indian Tribe's service area who are eligible for the program, with the exception of adopted children already receiving adoption assistance under a title IV–E agreement with a State. A Tribal title IV–E agency may claim allowable expenditures under the title IV–E adoption assistance program at the Tribal Federal Medical Assistance Percentages (FMAP) rate for adoption subsidies, 50 percent for administrative costs, and variable rates for training expenses per section 474(a) of the Act. A Tribal title IV–E agency may contract with outside providers or other public agencies to assist in the implementation of the adoption assistance program.

Another commenter requested that we mandate a standard adoption assistance subsidy level for all children in the program. This is not a request we can accommodate; the statute requires the agency to negotiate adoption assistance agreements and the payment with the adoptive family based on the needs and circumstances of the child and family (section 473(a)(3) of the Act).

Section 1356.41—Nonrecurring Expenses of Adoption

This section describes the requirements a title IV–E agency must follow to claim reimbursement for nonrecurring costs of adoption for adoptive parents.

We amended section 1356.41 throughout to make conforming changes to replace the term ''State agency'' with ''title IV–E agency.'' Through these conforming amendments, we apply the regulatory provisions for nonrecurring expenses of adoption equally to a Tribal title IV–E agency as they are applied to a State title IV–E agency as required by Public Law 110–351. In addition, we made the following conforming amendments to implement this section in the same manner for State and Tribal title IV–E agencies or to remove obsolete provisions. We believe that because this change is technical in nature that there is no need to go through the notice and comment process to update the regulation accordingly.

We amended paragraph (b) by inserting the term ''Tribal'' after ''State'' to apply the current regulatory provision equally to Indian Tribes that an agreement for nonrecurring expenses of adoption may be a separate document or part of an agreement for any type of adoption assistance, whether it is State, Tribal, or Federal. We also removed the last clause of paragraph (b) and its two subordinate paragraphs (b)(1) and (2) because they referred to outdated exceptions to the general requirement to have an agreement for nonrecurring costs in place prior to the final decree of adoption.

We amended paragraph (d) to make a conforming change by removing the term ''State and local'' before ''laws'' to indicate that a child's adoptive placement must be made in accordance with all applicable laws, whether they be State, Tribal, or local laws. We removed the last clause of paragraph (e)(1) and removed paragraph (e)(2) in its entirety because these provisions referred to actions a State title IV–E agency had to take after the effective date of the initial rule related to nonrecurring adoption expenses which was issued in 1988 (53 FR 50220). We renumbered paragraph (e)(3) as paragraph (e)(2), and removed most of the text because it also referred to obsolete provisions that were to occur pursuant to the 1988 rule. We retained the text that required that the agreement for the payment of nonrecurring expenses must be signed at the time of or prior to the final decree of adoption and that adoptive families must file claims for nonrecurring expenses with the title IV–E agency within two years of the date of the final decree of adoption. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

In paragraph (f)(2), we insert the term ''Tribal'' after ''consistent with State'' to apply existing State nonrecurring payment requirements equally to a Tribal title IV–E agency. We also inserted the term ''or Tribal service area'' after ''within the State,'' to allow Indian Tribes the same ability as States to set a lower maximum amount for nonrecurring adoption expenses in a special needs adoption as permitted by the paragraph.

In paragraph (h) we replace the term ''interstate placement'' with ''a placement outside the State or Tribal service area'' to apply equally to State and Tribal title IV–E agencies the requirement that the title IV–E agency that enters into an adoption assistance agreement is responsible for the reimbursement of nonrecurring adoption expenses even if the child is placed in an area outside of the State or Tribal service area. We also make conforming changes to the language so that the reference to ''State subsidy program'' is replaced with ''State or Tribal subsidy program,'' by inserting the term ''Tribal'' after ''Federal'' and replacing the term ''the State in which'' with ''the title IV–E agency in the jurisdiction in which.'' Consequently, if an adopted child who meets the requirements of section 473(c) is placed in a different jurisdiction without an adoption assistance agreement being entered into on his/her behalf, then the title IV–E agency in the jurisdiction in which the final adoption decree is issued is responsible for reimbursement of the nonrecurring expenses.

We made a conforming change to paragraph (i) in the definition of ''nonrecurring adoption expenses'' to exclude any expenses that are prohibited by applicable laws, whether

it is State, Tribal, or otherwise. Finally, we removed the first sentence in paragraph (j) which referred to an obsolete requirement for a State agency to enact legislation following the publication of the 1988 rule (53 FR 50220). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Section 1356.50—Withholding of Funds for Non-Compliance With the Approved Title IV–E Plan

Section 1356.50 describes the conditions for compliance with the title IV–E plan and directs the title IV–E agency to the applicable appeal procedures in section 1355.39 for challenges of an ACF determination of non-conformity with the title IV–E plan.

We amended the title of section 1356.50 and paragraphs (a) and (b) to make conforming changes by removing the term ''State'' or replacing it with ''title IV–E agency'' in appropriate places to apply the provisions for withholding funds for noncompliance equally to States and Indian Tribes with title IV–E plans pursuant to Public Law 110–351.

Section 1356.60—Fiscal Requirements (Title IV–E)

This section describes the fiscal requirements and available FFP for title IV–E costs. We amended the section throughout to replace references to ''State plan'' with ''title IV–E plan'' and ''States'' or ''State and local'' with ''title IV–E agencies'' so that the section applies equally to States and Tribes with title IV–E plans consistent with Public Law 110–351. In addition, we made the following conforming amendments.

Section 1356.60(a)—Federal Matching Funds for Foster Care Maintenance and Adoption Assistance Payments

We amended paragraph (a)(1) to remove an obsolete effective date, which noted that FFP was available to States as of October 1, 1980. To be inclusive of a Tribal title IV–E agency that has the opportunity to operate a title IV–E plan and receive FFP as of October 1, 2009, we deleted the reference to the obsolete 1980 date. In paragraph (a)(1)(i), we removed the obsolete reference to section 102(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). This citation was to provisions related to the original implementation of voluntary placement agreements in a State agency regarding children removed from their home prior to FY 1980 that are no longer relevant. As we explained earlier, both State and Tribal IV–E agencies have the ability to receive FFP for voluntary placement agreements that meet the requirements of the Act and 45 CFR 1356.22. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

We reference section 479B of the Act in paragraphs (a)(1)(i), (a)(1)(ii) and (a)(2) to make clear that FFP is authorized pursuant to Tribal title IV–E plans in addition to State title IV–E plans. In paragraph (a)(1)(ii) we made an additional change to provide for the applicable parts of section 473 of the Act to payments for adoption assistance. Adding the language ''applicable provisions of'' section 473 of the Act is intended to clarify that the provisions in section 473(d) of the Act that relate only to the kinship guardianship assistance program would not apply to receipt of FFP for the adoption assistance program. We also amended paragraph (a)(2) to add a reference to sections 474(a)(1) and (2) of the Act, which specifically authorize FFP at the Tribal FMAP rates to Indian Tribes with title IV–E plans and States with title IV–E agreements with Indian Tribes. These changes bring the regulations on fiscal requirements in line with the changes made by Public Law 110–351 to authorize direct payments to Indian Tribes with title IV–E plans.

Several commenters asked questions about the fiscal aspects of title IV–E that made it clear to us that we need to provide more clarity about this aspect of the program. Title IV–E funding is unavailable for activities outside of those required by title IV–E, including child abuse prevention or investigatory activities, social services, medical or education expenses. A title IV–E agency submits quarterly claims for Federal reimbursement and may send us adjusted claims, upwards or downwards, for up to two years after the expense is incurred. ACF reimburses a title IV–E agency for these expenses quarterly based on title IV–E agency reports provided to us. Title IV–E funding cannot be advanced to a title IV–E agency. In the absence of any agreement to which the State and Indian Tribe may be party which may include provisions for payment of funds, States are not obligated to provide title IV–E funding or matching funds to Indian Tribes who take placement and care responsibility for children who were once in a State's placement and care responsibility.

Under title IV–E, FFP is available at the FMAP rate per sections 1905(b), 474(a)(1) and (2) and 479B(d) of the Act to a title IV–E agency with an approved title IV–E plan for allowable costs in expenditures for foster care maintenance payments and adoption assistance payments. There is a unique FMAP rate established for a Tribal title IV–E agency that is at least as high as the FMAP rate of any State in which the Indian Tribe is located.

Additional FFP is available for administrative expenses at the 50 percent rate and training expenses at rates ranging from 55 to 75 percent, as indicated in section 474(a)(3) of the Act and section 203(b) of Public Law 110–351. The title IV–E agency may receive Federal reimbursement at the 75 percent rate for short or long term training of persons who are employed or preparing for employment with the title IV–E agency and are working on title IV–E activities under certain conditions. Such training can include educational programs that will lead to a baccalaureate or graduate degree in social work or a related field. FFP also is available at 75 percent for the title IV–E agency to provide short-term training of current or prospective foster or adoptive parents, the members of the staff of licensed or approved child care institutions providing care to title IV–E eligible foster and adopted children in ways that increase their ability to provide support and assistance to such children.

All title IV–E agencies must follow the provisions of section 474(a)(3)(A) and (B) of the Act regarding training expenses. We are not making changes in the regulation regarding the new groups of trainees for which training expenses may be claimed by a title IV–E agency as amended by Public Law 110–351 in this Interim Final Rule as they are not related to the Tribal provisions of section 301 of Public Law 110–351. However, section 474(a)(3)(B) of the Act allows FFP to be claimed at increasing rates, rising from 55 percent in FY 2009 to 75 percent in FY 2013, for short-term training of certain persons. These groups include title IV–E agency-licensed or approved child welfare agencies providing services to children receiving assistance under title IV–E, members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts. The training must be provided for the purpose of increasing such persons' ability to provide support and assistance to title IV–E foster and adopted children whether incurred directly by the IV–E agency or by contract. All training activities and costs

funded under title IV–E must be included in the title IV–E agency's training plan for title IV–B. Paragraph (b)(3) cross-references to 45 CFR 235.63 through 235.66(a) and therefore requires that all short and long-term training allocated to title IV–E must be provided in accordance with these regulations as well.

Some commenters wondered if workers receiving title IV–E educational stipends can fulfill the agency work requirement with the Tribal title IV–E agency and we note that this is permissible. As mentioned above, 45 CFR 1356.60(b) cross-references to 45 CFR 235.63 through 235.66(a). These regulations require that persons preparing for employment whose education costs are being paid for by a title IV–E agency must commit to work for the title IV–E agency for a period of time at least equal to the period for which financial assistance is provided to them if the title IV–E agency makes them an offer of employment within two months of completion of the training. One commenter wanted to know if Tribal colleges are recognized as qualifying schools while another requested that Tribal stipend recipients be able to use the stipend at the college of their choice. The regulations at 45 CFR 235.63(b)(4) state that persons preparing for employment may pursue education at an institution approved by the title IV–E agency, which can include Tribal colleges at the option of the title IV–E agency.

Section 1356.60(e)—Federal Matching Funds for SACWIS/TACWIS

We amended the title to section 1356.60(e) to include the acronym ''TACWIS'' (Tribal automated child welfare information systems). We also amended paragraph (e) to make a conforming change by adding a reference to a ''Tribal'' automated information system to accompany the reference to a ''Statewide'' automated system.

Section 1356.67—Title IV–E State Procedures for the Transfer of Placement and Care Responsibility of a Child to a Tribal Title IV–E Agency

This section provides procedures for the transfer of placement and care responsibility of a child from a State title IV–E agency to an Indian Tribe with a title IV–E agreement or an approved title IV–E plan consistent with section 301(e)(1) of Public Law 110–351. The law mandates that we regulate these procedures should an Indian Tribe wish to take placement and care responsibility in these situations.

Paragraph (a) describes the scope of the transfer procedures. The procedures apply to each State with a title IV–E plan approved under section 471 and 479B of the Act or an Indian Tribe with a title IV–E agreement. A State must establish procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement in a way that does not affect a child's eligibility, receipt of services, or payment under title IV–E or the Medicaid program operated under title XIX. The procedures will apply regardless of whether there is a federally-recognized Indian Tribe within the State's geographic boundaries or how the State exercises jurisdiction over Indian country pursuant to Public Law 83–280 (also known as Pub. L. 280). The procedures also will apply regardless of whether the State has within its geographic borders an Indian Tribe with an approved title IV–E plan or a title IV–E agreement. We chose broad applicability for these procedures as Public Law 110–351 seeks to ensure that an Indian child involved in a transfer retains his or her eligibility for title IV–E and Medicaid. We believe the ideal way to give this provision effect is to require any State with the potential to have an Indian child in its foster care system to have such procedures. However, we are affording States some flexibility to determine the most appropriate procedures that will ensure this protection in accordance with minimum elements that are described further below. A State must consult with Indian Tribes in developing the procedures so that the procedures are responsive to Indian Tribes who have a need for information on transfer procedures.

In paragraph (b), we establish the minimum elements for a State's procedures for transferring children to an Indian Tribe with a title IV–E agreement or a title IV–E plan. In paragraph (b)(1), we require the State title IV–E agency to determine, if this determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility of a child to a Tribal title IV–E agency or Indian Tribe with a title IV–E agreement. We believe that such a provision will ensure that the child's eligibility for title IV–E and Medicaid is clear at the time of the child's transfer to an Indian Tribe. This is most useful to the Indian Tribe or Tribal title IV–E agency in determining the child's AFDC status based on the State of removal as required by section 472 or 473 of the Act.

In paragraph (b)(2), we require the State title IV–E agency to provide essential documents and information necessary to continue a child's eligibility under title IV–E and Medicaid to the Tribal title IV–E agency or Indian Tribe with a title IV–E agreement. In the subparagraphs we specify the types of documents that must be provided. In paragraph (b)(2)(i), we require that the State provide copies of the judicial determinations regarding contrary to the welfare and reasonable efforts. These are essential because they are threshold documents used to establish a child's eligibility for title IV–E. It is important that States provide all judicial determinations regarding contrary to the welfare and reasonable efforts, and not just the most recent ones, so that the Indian Tribe has the ability to reconstruct eligibility as necessary or substantiate claims. In paragraph (b)(2)(ii), we require the State to provide any other documentation that relates to the child's eligibility for title IV–E. We do not specify in regulation all of the possible kinds of documentation that could fall into this category. For example, the documentation may include AFDC determinations or worksheets, findings related to whether the State considered the child to meet the special needs criteria pursuant to section 473(c) of the Act, or documentation that an 18-year-old is making progress towards completing secondary school. As part of this process, we strongly encourage the State title IV–E agency to consult with the State Medicaid agency to ensure a child's continuous eligibility under title XIX.

In paragraph (b)(2)(iii) we require the State to provide an Indian Tribe with any other information that relates to the child's potential or actual eligibility for other Federal benefits. Again, we do not specify in regulations specific documentation, but examples may include documentation of a child's eligibility for Supplemental Security Income (SSI), or indications that an application for SSI is on file. In addition, we encourage the State title IV–E agency to coordinate with the State title IV–D agency to address any existing child support case or assignment of rights to the State agency as it relates to the transfer of placement and care of the child to an Indian Tribe.

In paragraph (b)(2)(iv), we require the State to provide the child's case plan to the Indian Tribe, including the health and educational records that are required elements of those plans

consistent with section 475(1)(C) of the Act. The case plan contains critical information for determining the child's existing safety, permanency and well-being status, as well as the agency's future plans for the child. Further, the case plan also may contain information that supports factors of eligibility for the title IV–E programs or other Federal benefits, such as efforts the agency made to finalize permanency. Therefore, we believe it a critical item to transfer to the Indian Tribe. We note here that the State agency is not required to turn over the entire case record, although States may choose to do so as it may be useful for an Indian Tribe who is taking placement and care responsibility of a child.

Finally, in paragraph (b)(2)(v), we require a State to provide information and documentation related to the child's placement settings, including a copy of the most recent provider's license or approval. A transfer of a child to the Indian Tribe does not necessitate that the child move to a different provider, so the Indian Tribe will need information on whether the foster family home or child care institution the child is living in is licensed or approved for title IV–E eligibility purposes. Further, the Indian Tribe may need to contact past providers to gather information on the child's needs. Further, we encourage States and Indian Tribes to discuss during consultation the formats in which this information can be provided and/or accepted, i.e., through hardcopy, electronic transmissions, or by allowing Indian Tribes access to State child welfare case management systems.

One commenter requested that ''responsibility for a child'' be clearly defined in the regulation. To be eligible for FFP, section 472(a)(2)(B) of the Act requires that the responsibility for placement and care of the child is with the title IV–E agency administering the plan approved under section 471(a) of the Act, or any other public agency with whom the title IV–E agency administering or supervising the administration of the plan approved under section 471(a) of the Act has made an agreement which is in effect. We define the phrase ''placement and care responsibility'' in the CWPM Section 8.3A.12 at Q/A #4. Placement and care responsibility means that the title IV–E agency is legally accountable for the day-to-day care and protection of the child who has come into foster care through either a court order or a voluntary placement agreement. Placement and care responsibility allows the title IV–E agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child. It also ensures that the title IV–E agency provides the child with the mandated statutory and regulatory protections, including case plans, administrative reviews, permanency hearings, and updated health and education records.

We received many comments that provided recommendations and requested clarification on how a transfer procedure would be developed, the type of information that the State title IV–E agency should provide the Indian Tribe, ensuring continued Medicaid eligibility, and concerns about the confidentiality of information. For example, one Indian Tribe requested clarification regarding how we will develop a procedure for transfer, whether Indian Tribes would be included in the discussion, and if so, at what level. To maintain flexibility and develop a procedure that meets both the needs of the State and Indian Tribes, we specified in paragraph (b) the requirements for States, and that States are required to consult with Indian Tribes on such procedures.

Several commenters recommend that a State title IV–E agency make available all case-specific information requested by an Indian Tribe for the purpose of maintaining a child's title IV–E and Medicaid eligibility, in both electronic and paper format. Several commenters provide specific suggestions of the type of documents needed to continue a child's eligibility. We do not believe it is necessary to mandate that the State make available all information requested by an Indian Tribe, however, we have outlined in paragraph (b)(2) the minimum information that must be provided when a State title IV–E agency transfers placement and care responsibility of a child to an Indian Tribe. The list is not exhaustive, and the State title IV–E agency may provide additional information consistent with State and Federal laws. We also agree that the State title IV–E agency should provide the information to the Tribal title IV–E agency in a format most helpful to the Tribal title IV–E agency. However, we recognize that some Indian Tribes may have limited technical resources with which to develop or upgrade a data reporting system and technological barriers to receiving information in an electronic format. Therefore, to maintain flexibility, we did not mandate a specific format as long as the information shared accomplishes the goal of ensuring continued eligibility.

Several other commenters recommended that our regulations enhance ICWA guidelines to provide for an adequate transfer process because there is currently no uniform application of ICWA by States. The commenters requested clarification about what to do when a State court does not agree to transfer a child and requested that we develop an enforcement mechanism for States that do not comply with ICWA. We do not have authority to regulate changes directly to ICWA, provide additional guidance for implementation of ICWA or intervene in court actions regarding transferring jurisdiction of a child. Rather, ICWA provisions set forth procedures for the notification to Indian Tribes of Indian children in State custody and the assumption of jurisdiction over court procedures by Indian Tribes for such children. The Bureau of Indian Affairs, Department of Interior, issued guidelines regarding such transfers in ''Guidelines for State Courts-Indian Child Custody Proceedings'' (see 44 FR 67584, November 26, 1979). Such provisions remain in effect and are not affected by ACF's approval of a title IV–E plan for an Indian Tribe or the effectuation of a title IV–E agreement between a State and an Indian Tribe.

We received a number of comments that requested clarification on procedures for continuing Medicaid eligibility. Several commenters requested clarification as to whether we can encourage States to continue Medicaid services without interruption, and whether the child's Medicaid card can remain with the child until the State child welfare case is closed. The Centers for Medicare and Medicaid Services is the Federal agency with authority to regulate State actions with regard to Medicaid programs under title XIX consistent with the law rather than ACF. However, since a child who is receiving title IV–E foster care or who is subject to a title IV–E adoption assistance agreement consistent with sections 472(h)(1) and 473(b)(1) and (3) of the Act, is categorically eligible for Medicaid, the child's title XIX eligibility will continue as long as the child is receiving title IV–E foster care or title IV–E adoption assistance payments. If a title IV–E eligible child is moving from one State's geographic boundaries to another in the course of a transfer of placement and care responsibility to an Indian Tribe, the child is eligible for Medicaid in the State where the child lives, as specified in Medicaid regulations at 42 CFR 435.403(g). Again, we encourage State title IV–E agencies to coordinate with State Medicaid agencies to ensure continuous title XIX enrollment when a child eligible under

title IV–E is transferred to the placement and care of an Indian Tribe.

Several commenters cited confidentiality concerns and requested clarification regarding what information a State may share with a Tribal title IV–E agency. The State title IV–E agency may share information with the Tribal title IV–E agency pursuant to existing law and this regulation for the purpose of administering a Tribal title IV–E plan as necessary to establish eligibility, determine the amount of assistance and provide services. This is because title IV–E of the Act requires that the title IV–E agency provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV–E consistent with section 471(a)(8) of the Act. In addition, in accordance with 45 CFR 1355.30(p)(3), records maintained under title IV–E are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the title IV–E program to certain persons or agencies that require the information for specified purposes. One of those purposes identified in the law is the administration of the plan or program under title IV–B, IV–E, or XIX, or the SSI program established by title XVI when necessary to establish eligibility, determine the amount of assistance, and provide services for applicants and recipients. Section 8.4E of the CWPM provides additional information regarding confidentiality requirements of title IV–E.

One Indian Tribe recommended that the regulation pay special attention to the multi-jurisdictional aspects of transferring children from State custody to the Tribal title IV–E agency. Several commenters requested that we include regulatory procedures for inter-Tribal transfers of title IV–E eligible children. We are not regulating such inter-Tribal procedures for two reasons. First, the statutory language in Section 301(e) of Public Law 110–351 which requires us to issue interim final regulations is limited in scope and provides us authority to regulate only transfers from a State to an Indian Tribe. Second, we do not currently regulate transfer procedures between State governments for placement and care responsibility, and therefore, will not impose such a regulation between Tribal title IV–E agencies.

One nonprofit group recommended that the procedure developed in regulation recognize that Indian Tribes cannot become members of Interstate Compact for the Placement of Children (ICPC), and should not require them to comply with guidelines that they cannot meet. The ICPC is a State compact and thus we do not have the authority require a Tribal title IV–E agency to comply with the ICPC.

Section 1356.68—Tribal Title IV–E Agency Requirements for In-Kind Administrative and Training Contributions From Third-Party Sources

Section 1356.68 regulates title IV–E administrative and training cost sharing requirements for Indian Tribes with an approved title IV–E plan as they pertain to in-kind contributions from third-party sources.

Section 1356.68(a)—Option To Claim In-Kind Expenditures From Third-Party Sources for Non-Federal Share of Administrative and Training Costs

In paragraph (a), we establish that a Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative and training costs under sections 474(a)(3)(A) through (E) of the Act. This authority is specifically granted to Tribal title IV–E agencies in section 479B(c)(1)(D) of the Act and is not available to States, or by extension, those Indian Tribes with a title IV–E agreement. Please note that by cross-reference in 45 CFR 1355.30, existing Departmental regulations including 45 CFR 92.24 which addresses cost-sharing, apply to Indian Tribes who choose to use in-kind contributions from third-parties. Section 45 CFR 1356.60(b) provides examples of allowable training costs applicable to the title IV–E program and 45 CFR 1356.60(c)(2) provides specific examples of allowable administrative costs necessary for the administration of the title IV–E program. Additional information regarding allowable administrative costs for foster care and adoption assistance may be found in the CWPM at Section 8.1.

Section 1356.68(b)—In-Kind Expenditures for Fiscal Years 2010 and 2011

In paragraph (b), we apply the percentages of allowable in-kind expenditures from third-party sources that Indian Tribes can claim for FY 2010 and FY 2011, as required by section 479(B)(c)(1)(D)(ii) and (iii) of the Act. We explain the percentages of allowable in-kind expenditures from third-party sources as a portion of the total Tribal title IV–E agency expenditures for each FY quarter. We believe this clarifies the statutory references to ''fiscal year quarter'' expenditures and ''non-Federal shares'' because the method used to calculate the non-Federal share begins by determining the Tribal title IV–E agency's total expenditures. Once the total expenditures are provided, we determine the portion of total expenditures that the Indian Tribe may claim using in-kind contributions from third-party sources to meet the Tribal title IV–E agency's share of costs and the remaining Federal reimbursement.

In paragraph (b)(1), we specify that a Tribal title IV–E agency may claim in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act. This percentage limitation for FYs 2010 and 2011 is required by statute. We plan to address the requirement in section 479B(c)(1)(D)(ii)(1) of the Act for a Tribal title IV–E agency, for FYs 2010 and 2011, to list the sources of in-kind contributions in the title IV–E plans in upcoming guidance on the Tribal title IV–E claiming process.

In paragraph (b)(2), we specify that a Tribal title IV–E agency may claim in-kind expenditures from third-party sources of up to 12 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act. These percentage limitations for FYs 2010 and 2011 are required by statute. We also specify the allowable sources of in-kind contributions as mandated in section 479B(c)(1)(D) of the Act.

Section 1356.68(c)—In-Kind Expenditures for Fiscal Years 2012 and Thereafter

In paragraph (c), we specify that allowable in-kind expenditures from third-party sources can be used for the Indian Tribe's entire non-Federal share of administrative and training expenditures for FY 2012 and thereafter. Section 301(e)(2) of Public Law 110–351 and sections 479B(C)(1)(D)(iii) through (iv) of the Act require ACF to regulate, in consultation with Indian Tribes, the percentage of in-kind expenditures from third-party sources for Tribal title IV–E agencies beginning in FY 2012, or the opportunity to claim such contributions expires.

During consultation, most commenters encouraged us to interpret this provision as broadly as possible to allow Tribal title IV–E agencies the financial flexibility needed to operate a title IV–E program. We found these arguments compelling. Therefore, in FY 2012 and thereafter, we allow a Tribal title IV–E agency to claim the entire non-Federal share (Tribal match) of administration and training from in-

kind expenditures from third-party sources. We did not follow the structure set out in section 479B(c)(1)(D)(iii)(II) designed to address FYs 2012–2014 differently than FY 2015 and beyond in order to provide for a transition period for ''Early Approved Tribes.'' Because we are providing the maximum amount of flexibility for Indian Tribes beginning in FY 2012, no transition period is needed. We believe that this broad and flexible interpretation is justified by the unique circumstances of Indian Tribes and in recognition of the partnerships they may seek from third-parties to implement their title IV–E program.

At the same time, we recognize that even though we are allowing the total portion of the Indian Tribe's expenditures for training and administration to be in-kind contributions from third-party sources, there may be both practical and other regulatory barriers to a Tribal title IV–E agency reaching their total required non-Federal share from such contributions. In particular, it may be difficult given the nature of administrative costs to have an Indian Tribe's entire portion of expenditures as in-kind contributions from third-party sources. Further, Tribal title IV–E agencies must ensure that all of their claims, both in-kind and cash outlay, meet the applicable requirements of 45 CFR part 92 as well as the applicable cost allocation methodology.

Paragraph (c)(1) allows a Tribal title IV–E agency to claim allowable in-kind expenditures from third-party sources for up to 50 percent of its total administrative expenditures for FY 2012 and thereafter. This means that a Tribal title IV–E agency may claim in-kind expenditures from third-party sources for all of the required 50 percent match for administrative funds pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

Paragraph (c)(2) allows a Tribal title IV–E agency to claim allowable in-kind expenditures from third-party sources for up to all of its required portion of training funds pursuant to section 474(a)(3)(A) and (B) of the Act. During each quarter of fiscal year 2012, a Tribal title IV–E agency may claim up to 25 or 30 percent as applicable of the total training funds expended depending on the trainee group from allowable in-kind contributions from third-party sources depending on the trainee group. The 25 percent match is for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State/Tribal licensed or State/Tribal approved child care institutions pursuant to section 474(a)(3)(B) of the Act. The 30 percent match is for short-term training for relative guardians, staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem or other court-appointed special advocates representing children in proceedings of such courts. This difference in match rates is due to the phase-in provisions for the latter trainee groups as required by section 203(b) of Public Law 110–351.

After FY 2012, a Tribal title IV–E agency may claim 25 percent of allowable in-kind expenditures from the total training expenditures from third-party sources provided in section 474(a)(3)(A) and (B) of the Act. This is because after FY 2012, title IV–E agencies are only required to provide a 25 percent match of funds expended on the total training for all categories of training listed in section 474(a)(3)(B) of the Act.

In paragraph (c)(3), we permit Tribal title IV–E agencies to claim in-kind training expenditures for training funds from any allowable third-party source during or after FY 2012. Prior to FY 2012, the Act restricts third-party sources for training expenditures to a specified list provided in statute; therefore this regulatory provision provides additional flexibility in later years. We believe that allowing the Tribal title IV–E agency to use in-kind contributions from any source otherwise allowable provides the greatest degree of flexibility and supports successful operation of a Tribal title IV–E program.

Section 1356.71—Federal Review of the Eligibility of Children in Foster Care and the Eligibility of Foster Care Providers in Title IV–E Programs

Section 1356.71 describes the requirements governing Federal reviews of State and Tribal compliance with title IV–E eligibility provisions as they apply to children and foster care providers under section 472 of the Act. The purpose of the title IV–E foster care review is to validate the accuracy of a title IV–E agency's claims to assure that appropriate payments are made on behalf of eligible children, to eligible foster family homes and child care institutions. These determinations are made by an examination of a sample of records of children in foster care. By conducting title IV–E foster care eligibility reviews, ACF is fulfilling its financial and programmatic stewardship responsibilities in the administration of this program. Additional information on the reviews and the instruments used for the review can be found on the CB's Web site at *http://www.acf.hhs.gov/programs/cb/cwmonitoring/index.htm#title.*

Throughout section 1356.71 we removed references to ''State'' or ''States'' and in most cases, replaced them with ''title IV–E agency'' or ''title IV–E agencies'' to apply the requirements to States and Indian Tribes with a title IV–E plan equally as required by Public Law 110–351. However, title IV–E reviews for Indian Tribes cannot begin on a date certain as was the case with the reviews in States. Rather, an initial title IV–E eligibility review will be conducted for an Indian Tribe with a title IV–E plan when ACF determines there is a sufficient number of title IV–E foster care cases to review consistent with the existing sample protocol. Subsequent reviews will occur according to the regulated schedule in 45 CFR 1356.71(a) provided that there are enough sample cases to review. ACF will work with Indian Tribes that have an approved title IV–E plan to address scheduling reviews. To the extent that we made additional conforming changes to the title IV–E eligibility review regulations, they are described below.

In addition, we made a technical amendment to paragraph (j)(3) to reflect changes in regulatory citations by deleting the current citation and replacing it with ''45 CFR 30.18.'' On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

Section 1356.71(d)—Requirements Subject To Review

Paragraph (d) describes the requirements subject to the title IV–E eligibility reviews. In paragraph (d)(1)(iii), we made a conforming amendment to reference the section of the Act that requires the responsibility for placement and care of the child to be reviewed during the title IV–E eligibility review by adding ''per section 472(a)(2)(B) of the Act'' after ''agency.'' This means we will review whether a State or Tribal title IV–E agency (or other public agency under a title IV–E agreement with the State/Tribe) has placement and care responsibility of the child as an eligibility criterion.

We also made a conforming amendment in paragraph (d)(1)(v) to reference the sections of the Act that set forth the AFDC eligibility criteria a child must meet as part of title IV–E foster care eligibility. Specifically, we added the phrase ''per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate'' after ''July 16, 1996.'' This

means that we will review whether a State followed its title IV–A plan in effect in 1996 in determining whether a child met the AFDC criteria as required by section 472(a)(3) of the Act or whether a Tribal title IV–E agency followed the title IV–A plan in effect in the State of the child's removal in determining whether a child met the AFDC criteria as required by section 472(a)(3) of the Act.

In paragraph (d)(2) we added a reference to section ''479B(c)(2)'' of the Act to indicate that for Indian Tribes with a title IV–E plan, we will review whether payments were made to licensed or approved Tribal foster family homes or child care institutions, consistent with Tribal licensing authorities. All changes in paragraph (d) are made to ensure that the requirements subject to title IV–E eligibility reviews are applied in the same manner for Tribal and State title IV–E agencies consistent with Public Law 110–351, with appropriate allowances for provisions specific to Indian Tribes granted by law.

Section 1356.71(i)—Program Improvement Plans

Paragraph (i) sets forth the requirement for a title IV–E agency determined not to be in substantial compliance to develop a PIP. In paragraph (i)(1)(iii), we made conforming changes to apply the requirements for a PIP equally to Tribal and State title IV–E agencies. An Indian Tribe may extend the PIP timeframe beyond one year in the same way as a State, if legislation is required to implement and complete the plan.

Section 1356.83—Reporting Requirements and Data Elements

Section 1356.83 describes the reporting requirements and data elements for the National Youth in Transition Database (NYTD). We made a technical amendment in paragraph (g)(55) to bring the element response in line with NYTD Technical Bulletin #1 (revised June 29, 2010). Specifically, we deleted ''not applicable'' as a response option for Element 55 (Other health insurance coverage) because we believe that if a youth reports ''yes'' for the survey question related to data element 54 (Medicaid) and ''no'' for data element 56 (Health insurance type—Medical), then this is sufficient information to identify youth who solely participate in Medicaid for health insurance coverage.

In addition to the changes described above, we added a statement after the end of paragraph (h) providing that the information collection requirements in this section have been approved by the OMB and providing the applicable OMB Control Number.

Section 1356.86—Penalties for Non-Compliance

Section 1356.86 describes the Federal funds subject to penalties for noncompliance with the NYTD standards, the amount of those penalties, notification to agencies of penalties, the application of interest and appeals of penalties. We made a technical amendment to paragraph (e) to reflect changes in regulatory citations by deleting the current citation and replacing it with ''45 CFR 30.18.'' On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

Appendix A to Part 1356—NYTD Data Elements

Appendix A details the information that must be collected as NYTD Data Elements. We deleted ''not applicable'' as a response option for element 55 ''other health insurance coverage'' to bring the response options in line with those listed at 45 CFR 1356.83(g)(55) which do not include the response option of ''not applicable.'' We also added ''no'' as a response option for element 56 ''health insurance type—medical'' to bring the response options in line with those listed at 45 CFR 1356.83(g)(56) which include the response option of ''no.''

We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

Appendix B to Part 1356—NYTD Youth Outcome Survey

Appendix B details the information that must be collected from all youth surveyed for outcomes in NYTD, whether the youth are in foster care or not. We added ''no'' as a response option for topic/outcome ''Health insurance type—medical (56)''.

We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

VI. Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13175, and Executive Order 13132.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 directs the agency 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). The Department has determined that this interim final rule is consistent with the priorities and principles of these Executive Orders. We have determined that the costs to Indian Tribes as a result of this rule will not be significant in terms of the stated threshold. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act (RFA)

The Secretary certifies under 5 U.S.C. 605(b) as enacted by the RFA (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This rule does not affect small entities because it is applicable only to Indian Tribes that administer title IV–E and IV–B of the Act and States directly. For purposes of the RFA, States or Indian Tribes are not small entities subject to the Act. Therefore, the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that the agency assess anticipated costs and benefits before issuing any rule whose mandates require an annual expenditure of $100 million (adjusted annually for inflation). That threshold level is currently approximately $136 million. This interim final rule with comment period has no consequential effect on State, local, or Tribal governments or on the private sector that will result in an

annual expenditure of $100 million or more.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This interim final rule does not have federalism implications as defined in the Executive Order.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this interim final rule may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of direct access to title IV–E funding by Indian Tribes is to provide greater safety and permanency for Indian children and families. This rule is responsive to the needs of Indian Tribes and Tribal organizations within the structure of the law, and provides them the opportunity to operate programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal title IV–E programs will help strengthen the safety and stability of Indian families.

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104–13), all Departments are required to submit to the OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This interim final rule contains information collections in certain sections, all of which are currently authorized by the OMB. The sections that contain information collection requirements are:

- 1355.33(b)—Statewide assessment or Tribal assessment, 0970–0214
- 1355.33(c)—On-site review, 0970–0214
- 1355.35(a)—Program improvement plan (CFSR), 0970–0214
- 1355.38(b)—Corrective action and penalties for violations with respect to a person based on a court finding (Multiethnic Placement Act [MEPA]), 0970–0214
- 1355.40—Adoption and Foster Care Analysis and Reporting System (AFCARS), 0980–0267
- 1356.21(g)—Case plan, 0980–0140
- 1356.71(i)—Program improvement plan (title IV–E review), 0970–0214

In addition, there are information collection requirements in section 1356.20 related to the title IV–E plan pre-print (0980–0141). This interim final rule is not making any changes to the title IV–E pre-print. However, the most recent version of the title IV–E pre-print approved by OMB through October 2012 estimates that up to 20 Indian Tribes would submit a title IV–E plan, so we are carrying that estimate through to the information collections included in this interim final rule.

The first set of information collections (collectively referred to as OMB 0970–0214) is used by the Children's Bureau for various purposes. We use the first three parts of OMB 0970–0214 when we monitor child welfare programs through the CFSR. Title IV–E agencies use the fourth part of OMB 0970–0214, the Title IV–E PIP, to demonstrate how they will develop and implement a plan to correct areas of noncompliance with the applicable parts of title IV–E or the regulations. A title IV–E agency found to not be acting in accordance with section 471(a)(18) of the Act will use the fifth part of OMB 0970–0214, the MEPA corrective action plan, as a framework for demonstrating that it has changed its policies, practices and laws to conform to the applicable Federal laws.

We use AFCARS data (OMB 0980–0267) to calculate financial bonuses in the Adoption Incentive Payments program, describe child outcomes in the Child Welfare Outcomes Annual Report and CFSRs, and provide case samples for the title IV–E eligibility reviews and CFSRs. We also use the data to develop our budgets, inform policy and program decisions, and share information with the public and stakeholders about children in foster care and children being adopted.

OMB 0980–0140 pertains to the ACF requirement that title IV–E agencies use a case plan to describe the specific services offered and provided to meet the individualized needs of children and families; document compliance with requirements of titles IV–B and IV–E of the Act; report progress in achieving child safety, permanency and well-being; and provide for an assessment of service delivery and timeliness of decision-making.

Data for the Statewide or Tribal Assessment and On-site Review come from a title IV–E agency's information system, case review system, quality assurance system and other internal systems. If ACF requires a title IV–E agency to develop a CFSR PIP, MEPA corrective action plan and/or Title IV–E PIP, a title IV–E agency will use data from its internal records and files to complete the plan.

The regulations pertaining to AFCARS at 45 CFR 1355.40 require title IV–E agencies to electronically report certain data regarding children in foster care and adoption. The specific data elements are listed in the Appendix A and B of the regulations.

The case plan consists of a narrative description of the child's individualized program of care as required by the applicable Federal laws and regulations. ACF does not collect the information in the case plan or require it to be reported to us.

The respondents to all these information collections are State or Tribal government entities.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), ACF has submitted a copy of these sections to OMB for its review. This interim final rule changes the collection requirements of all of these information collections only by extending the requirements that previously applied only to States to Tribal title IV–E agencies. The new respondents to the information collections in this interim final rule are Indian Tribes, Tribal organizations and consortia that have an approved title IV–E plan, or children in the title IV–E agency's placement and care responsibility. We estimate that the total burden hours will increase from 2,443,205 to 2,568,445 (a 5% increase) as a result of the increased number of respondents as provided in this interim final rule.

The Department expands these collections of information to include Indian Tribes that have been approved to directly-operate a title IV–E program because, by law, the requirements of the title IV–E statute apply to such Indian Tribes ''in the same manner as this part applies to a State'' (section 479B(b) of the Act), with limited exceptions. This means that Indian Tribes operating title IV–E plans must adhere to existing statutory and regulatory title IV–E requirements in place for States unless the statute provides an exception.

The following are estimates:

Collection	Number of respondents (adding in the Indian Tribes)	Number of responses per respondent	Average burden per response	Total burden hours
1355.33(b)—Statewide or Tribal assessment 0970–0214	14	1	240	3,360
1355.33(c)—On-Site Review 0970–0214	14	1	1,170	16,380
1355.35(a)—Program Improvement Plan (CFSR) 0970–0214	14	1	240	3,360
1355.38(b)—Corrective Action Plan (MEPA) 0970–0214	1	1	780	780
1355.40—AFCARS 0980–0267	72	2	3,005	432,720
1356.21(g)—Case plan 0980–0140	639,735	1	3.3	2,111,125
1356.71(i) Program Improvement Plan (IV–E reviews) 0970–0214	8	1	90	720

Below we describe how we arrived at the estimated burden for each information collection:

CFSR—Given the complexities and issues involving conducting a CFSR for a Tribal title IV–E agency, or an Indian Tribe with an approved title IV–E plan, we estimate we will conduct a CFSR in one Indian Tribe during the first three year period after the effective date of the interim final rule. ACF has current OMB approval for 13 CFSRs.

On-site review—Given the complexities and issues involving conducting an on-site review for a Tribal title IV–E agency, or Indian Tribe with an approved title IV–E plan, we estimate we will review one Indian Tribe during the first three year period. ACF has current OMB approval for 13 on-site reviews.

CFSR PIP—Given the complexities and issues involved in developing a PIP for a Tribal title IV–E agency, or Indian Tribe with an approved title IV–E plan, we estimate at most one additional PIP will be developed during the first three year period. ACF has current OMB approval for 13 PIPs.

MEPA—In MEPA enforcement actions, the Office for Civil Rights and ACF work jointly to assist the title IV–E agency to develop and implement corrective action plans that are targeted to remedying the violations for which the agency was cited. There have been few of these corrective action plans required in previous years and it has taken several years for the issues involved to advance to the corrective action phase. We are estimating that the number of title IV–E agencies found to have compliance issues will continue to be the exceptional circumstance and are not adding any additional burden estimate at this time.

AFCARS—Indian Tribes with title IV–E plans, which we have previously estimated as 20, will be required to submit AFCARS data. ACF has current OMB approval for 52 AFCARS reports.

Case plan—We have only rough estimates of the numbers of children in foster care who may be served by a Tribal title IV–E agency or Indian Tribe with an approved title IV–E plan. We are using 50 children per Indian Tribe as a rough estimate based on our consultations with Indian Tribes and information from other sources but are very interested in hearing from Indian Tribes how accurate this estimate appears to be. We expect that it may be on the high side. ACF has current OMB approval for 638,735 respondents for the case plan and we are adding 1,000 more here.

Title IV–E PIP—We expect to begin these reviews within a four year period after an Indian Tribe's title IV–E plan is approved. Therefore, we estimate that at most one additional PIP will be developed during the first three year period. ACF has current OMB approval for 7 title IV–E PIPs.

ACF will consider comments by the public on these collections of information in the following areas:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection[s] of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision regarding the collection of information contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim final rule. Written comments to OMB on the information collections included in this interim final rule should be sent directly to the following: Office of Management and Budget, either by fax to (202) 395–5806 or by email to *OIRA_submission@omb.eop.gov.*

Please mark faxes and emails to the attention of the desk officer for ACF. To ensure that public comments have maximum effect, ACF urges that each comment clearly identify the specific information collection that the comment addresses and that comments be in the same order as the regulations. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

45 CFR Part 1356

Adoption and foster care, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance)

Dated: July 5, 2011.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

Approved: August 29, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

For the reason set out in the preamble, the Administration for Children and Families amends 45 CFR parts 1355 and 1356 as follows:

PART 1355—REQUIREMENTS APPLICABLE TO TITLE IV–B AND IV–E

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.,* 42 U.S.C. 1302.

■ 2. Amend § 1355.20(a) to:

■ a. Revise the definitions of *Adoption, Entity, Foster family home, Full review, Partial review* and *Statewide assessment;*
■ b. Remove the first sentence of the definition of *Child care institution* and add two sentences in its place;
■ c. Revise the second sentence of the definition of *Date a child is considered to have entered foster care;*
■ d. Revise paragraphs (1)(ii) and (v) and the third sentence in paragraph (2) in the definition of *Permanency hearing;*
■ e. Revise the first and third sentences of the definition of *Foster Care;* and
■ f. Add new definitions of *Title IV–E agency* and *Tribal agency* to read as follows:

§ 1355.20 Definitions.

(a) * * *

Adoption means the method provided by State law, or for a Tribal title IV–E agency, Tribal law, which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed ''adoption'' after the legal process is complete.

* * * * *

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the licensing authority responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. The licensing authority must be a State authority in the State in which the child care institution is located, a Tribal authority with respect to a child care institution on or near an Indian Reservation, or a Tribal authority of a Tribal title IV–E agency with respect to a child care institution in the Tribal title IV–E agency's service area. * * *

* * * * *

Date a child is considered to have entered foster care * * * A title IV–E agency may use a date earlier than that required in this definition, such as the date the child is physically removed from the home. * * *

* * * * *

Entity, as used in § 1355.38, means any organization or agency (e.g., a private child placing agency) that is separate and independent of the title IV–E agency; performs title IV–E functions pursuant to a contract or subcontract with the title IV–E agency; and, receives title IV–E funds. A State or Tribal court is not an ''entity'' for the purposes of § 1355.38 except if an administrative arm of the State or Tribal court carries out title IV–E administrative functions pursuant to a contract with the title IV–E agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV–E agency has placement and care responsibility. * * * A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

* * * * *

Foster family home means, for the purpose of title IV–E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The licensing authority must be a State authority in the State in which the foster family home is located, a Tribal authority with respect to a foster family home on or near an Indian Reservation, or a Tribal authority of a Tribal title IV–E agency with respect to a foster family home in the Tribal title IV–E agency's service area. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State or Tribal agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV–E eligibility requirements. Title IV–E agencies may, however, claim title IV–E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and title IV–E agency review of all federally-assisted child and family services programs, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the title IV–E agency's substantial conformity with the plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part. A full review consists of two phases, the statewide assessment (or for a Tribal title IV–E agency, an assessment of the service area) and a subsequent on-site review, as described in § 1355.33 of this part.

* * * * *

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State/Tribal review of one or more federally-assisted child and family services program(s), including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the title IV–E agency and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part;

(2) For the purpose of title IV–B and title IV–E State plan compliance issues that are outside the prescribed child and family services review format, e.g., compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State compliance; or

(3) For the purpose of title IV–E plan compliance issues for a Tribal title IV–E agency which are outside of the prescribed child and family services review format, a review of Tribal laws, policies, regulations, or other information appropriate to the nature of the concern, to determine plan compliance.

Permanency hearing means:

(1) * * *

(ii) Placed for adoption, with the title IV–E agency filing a petition for termination of parental rights;

* * * * *

(v) Placed in another planned permanent living arrangement, but only in cases where the title IV–E agency has documented to the State or Tribal court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) * * * The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the title IV–E agency. * * *

* * * * *

Statewide assessment (or Tribal assessment) means the initial phase of

a full review of all federally-assisted child and family services programs in the States (or for a Tribal title IV–E agency, in the service area), including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in § 1355.33(b) of this part, for the purpose of determining substantial conformity with the plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part.

Title IV–E agency means the State or Tribal agency administering or supervising the administration of the title IV–B and title IV–E plans.

Tribal agency means, for the purpose of title IV–E, the agency of the Indian Tribe, Indian Tribal organization (as those terms are defined in section 479B(a) of the Act) or consortium of Indian Tribes that is administering or supervising the administration of the title IV–E and title IV–B, subpart 1 plan.

■ 3. Amend § 1355.21 to revise the section heading, paragraphs (a) and (b) and the second sentence of paragraph (c) as follows:

§ 1355.21 Plan requirements for titles IV–E and IV–B.

(a) The plans for titles IV–E and IV–B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The plans for titles IV–E and IV–B must provide for compliance with the Department's regulations applicable to the State and/or Tribe as listed in 45 CFR 1355.30.

(c) * * * The title IV–E agency also must make available for public review and inspection the title IV–E Plan.

■ 4. Amend § 1355.30 to revise the introductory text, revise paragraphs (c), (d), (i), (k), and (m), revise the heading of paragraph (n), and revise paragraphs (n)(1) through (n)(4) and (o) to read as follows:

§ 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to State and Tribal programs funded under titles IV–B and IV–E of the Act.

* * * * *

(c) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(d) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

* * * * *

(i) 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Part 92 of this title is applicable to title IV–B programs and the John H. Chafee Foster Care Independence Program under Section 477 of the Act that are operated by States and/or Tribes. Part 92 of this title is applicable to title IV–E foster care and adoption assistance programs operated by a State title IV–E agency, except that section 92.24 Matching or cost sharing and section 92.41 Financial reporting do not apply. Part 92 of this title is applicable to title IV–E foster care and adoption assistance programs operated by a Tribal title IV–E agency pursuant to section 479B, except that section 92.41 and the sections specified in § 1356.68 do not apply to a Tribal title IV–E agency.

* * * * *

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). Part 95 of this title is applicable to State and Indian Tribe operated title IV–B and title IV–E programs, except:

(1) Notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to State and Indian Tribe-operated title IV–B (subparts 1 and 2) program and the John H. Chafee Foster Care Independence Program; and

(2) 45 CFR part 95 Subpart E, Cost Allocation Plans, is not applicable to Indian Tribe-operated title IV–E foster care and adoption assistance pursuant to section 479B of the Act (ACYF–CB–PI–10–13).

* * * * *

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans? This section is applicable to a State title IV–E agency only.

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. * * *

(1) § 201.5—Grants. Applicable to title IV–E foster care and adoption assistance only.

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. Applicable only to an unapprovable change in an approved plan, or the failure of the agency to change its approved plan to conform to a new Federal requirement for approval of plans.

(3) § 201.15—Deferral of claims for Federal financial participation. Applicable only to title IV–E foster care and adoption assistance.

(4) § 201.66—Repayment of Federal funds by installments. Applicable only to title IV–E foster care and adoption assistance.

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review. Applicable to State title IV–E agencies only.

* * * * *

■ 5. Revise § 1355.31 to read as follows:

§ 1355.31 Elements of the child and family services review system.

Scope. Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs under subparts 1 and 2 of title IV–B of the Act, and reviews of foster care and adoption assistance programs under title IV–E of the Act.

■ 6. Amend § 1355.32 to:

■ a. Add a second sentence to paragraph (a); and

■ b. Revise paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) introductory text, (c), the heading of paragraph (d) and paragraphs (d)(1) through (4) to read as follows:

§ 1355.32 Timetable for the reviews.

(a) *Initial reviews.* * * * Each Tribal title IV–E agency must complete an initial full review as described in § 1355.33 of this part, during the four-year period after the ACF determines that the Tribe has approved title IV–B, subpart 1 and 2 and title IV–E plans and has sufficient cases for ACF to apply the procedures in § 1355.33(c).

(b) * * * (1) A title IV–E agency found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

* * * * *

(ii) Submit a completed statewide assessment, or in the case of a Tribal title IV–E agency, a completed Tribal assessment of the service area, to ACF three years after the on-site review. The assessment will be reviewed jointly by the title IV–E agency and ACF to determine the State's or Indian Tribe's continuing substantial conformity with the plan requirements subject to review. No formal approval of this interim assessment by ACF is required.

(2) A program found not to be operating in substantial conformity during an initial or subsequent review will:

* * * * *

(c) *Reinstatement of reviews based on information that a title IV–E agency is not in substantial conformity.* (1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the title IV–E agency may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry

and require the title IV–E agency to submit additional data whenever ACF receives information that the title IV–E agency may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF's satisfaction that the title IV–E agency is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under § 1355.32(b).

(4) ACF may proceed with a full or partial review if the title IV–E agency does not provide the additional information as requested, or the additional information confirms that the title IV–E agency may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with plan requirements that are outside the scope of a child and family services review.* * * *

(1) Conduct an inquiry and require the title IV–E agency to submit additional data.

(2) If the additional information and inquiry indicates to ACF's satisfaction that the title IV–E agency is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the title IV–E agency does not provide the additional information as requested, or the additional information confirms that the title IV–E agency may not be in compliance.

(4) If the partial review determines that the title IV–E agency is not in compliance with the applicable plan requirement, the title IV–E agency must enter into a program improvement plan designed to bring the title IV–E agency into compliance, if the provisions for such a plan are applicable. The terms, action steps and time-frames of the program improvement plan will be developed on a case-by-case basis by ACF and the title IV–E agency. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the title IV–E agency's title IV–B or IV–E allocation. If the title IV–E agency remains out of compliance, the title IV–E agency will be subject to a penalty related to the extent of the noncompliance.

* * * * *

■ 7. In § 1355.33, revise paragraphs (a)(2) introductory text, (a)(2)(i), (ii) and (iv), paragraphs (b), (c)(1) through (3) and (c)(4)(iv), the last sentence of paragraph (c)(6), paragraph (d), the first sentence of paragraph (e), and paragraph (f) to read as follows:

§ 1355.33 Procedures for the review.

(a) * * *

(2) Be conducted by a team of Federal, and State or Tribal reviewers that includes:

(i) Staff of the child and family services agency, including the offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the title IV–E agency, in collaboration with the ACF Regional Office, from those with whom the title IV–E agency was required to consult in developing its CFSP, as described and required in 45 CFR 1357.15(l);

* * * * *

(iv) Other individuals, as deemed appropriate and agreed upon by the title IV–E agency and ACF.

(b) *Statewide or Tribal Assessment.* The first phase of the full review will be a statewide assessment, or for a Tribal title IV–E agency a service area assessment, conducted by the title IV–E agency's internal and external members of the review team. The assessment must:

(1) Address each systemic factor under review including the statewide/Tribal information system; case review system; quality assurance system; staff training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the title IV–E agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The title IV–E agency must also analyze and explain its performance in meeting the national standards for the statewide/Tribal service area data indicators;

(3) Assess the characteristics of the title IV–E agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the title IV–E agency's child and family services programs that require further examination through an on-site review;

(5) Include a listing of all the persons external to the title IV–E agency who participated in the preparation of the assessment pursuant to § 1355.33(a)(2)(ii) and (iv); and

(6) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the assessment to the title IV–E agency.

(c) * * *

(1) The on-site review will cover the title IV–E agency's programs under titles IV–B and IV–E of the Act, including in-home services and foster care. It will be jointly planned by the title IV–E agency and ACF, and guided by information in the completed assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions or jurisdictions of the title IV–E agency, as agreed upon by the ACF and the title IV–E agency; however, for a State title IV–E agency, a State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the title IV–E agency's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions or jurisdiction referenced in paragraph (c)(2) of this section.

(4) * * *

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's or Tribal title IV–E agency's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other individuals or bodies assigned responsibility for representing the best interests of the child.

* * * * *

(6) * * * The additional cases in the oversample not selected for the on-site review will form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide/Tribal assessment and the on-site review in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the assessment and the findings of the on-site portion of the review.* Discrepancies between the statewide or Tribal assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the title IV–E agency's option:

(1) The submission of additional information by the title IV–E agency; or

(2) ACF and the title IV–E agency will review additional cases using only those indicators in which the discrepancy occurred. ACF and the title IV–E agency will determine jointly the number of additional cases to be reviewed, not to

exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review.* A partial child and family services review, when required, will be planned and conducted jointly by ACF and the title IV–E agency based on the nature of the concern. * * *

(f) *Notification.* Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the assessment and the findings of the on-site portion of the review, ACF will notify the title IV–E agency in writing of whether the title IV–E agency is, or is not, operating in substantial conformity.

■ 8. In § 1355.34 revise paragraph (a) introductory text, (a)(1), (a)(3), (b)(1) introductory text, (b)(2) introductory text, (b)(2)(i), (b)(2)(ii)(C) through (F), (b)(3) introductory text, (b)(3)(i), the first sentence of (b)(3)(ii), (b)(4), the heading and introductory text of (c), paragraph (c)(1), (c)(2) introductory text, (c)(2)(i) through (v), (c)(3) introductory text, (c)(3)(i), (c)(4) introductory text, (c)(4)(i), (c)(4)(iv), (c)(4)(v), (c)(5) introductory text, (c)(5)(v), (c)(6)(i) and (iv), (c)(7)(i) through (v), and (d) to read as follows:

§ 1355.34 Criteria for determining substantial conformity.

(a) *Criteria to be satisfied.* ACF will determine a title IV–E agency's substantial conformity with title IV–B and title IV–E plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for the statewide/Tribal service area data indicators associated with specific outcomes for children and families;

* * * * *

(3) Its ability to meet criteria related to the title IV–E agency's capacity to deliver services leading to improved outcomes.

(b) * * * (1) A title IV–E agency's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

* * * * *

(2) A title IV–E agency's level of achievement with regard to each outcome reflects the extent to which a title IV–E agency has:

(i) Met the national standard(s) for the statewide/Tribal service area data indicator(s) associated with that outcome, if applicable; and,

(ii) * * *

(C) The requirements in section 422(b)(7) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances as required by section 422(b)(8)(B) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(9) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(10) of the Act regarding a title IV–E agency's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

* * * * *

(3) A title IV–E agency will be determined to be in substantial conformity if its performance on:

(i) Each statewide/Tribal service area data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as ''substantially achieved'' in 95 percent of the cases examined during the on-site review (90 percent of the cases for an initial review). * * *

(4) The Secretary may, using AFCARS and NCANDS, develop statewide/Tribal service area data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide/Tribal service area data indicator(s) when appropriate. To the extent practical and feasible, the statewide/Tribal service area data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105–89).

* * * * *

(c) *Criteria related to title IV–E agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the title IV–E agency also must satisfy criteria related to the delivery of services. Based on information from the assessment and onsite review, the title IV–E agency must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the plan requirements associated with the systemic factor must be in place, and no more than one of the plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section is rated on the basis of only one plan requirement. To be considered in substantial conformity, the plan requirement associated with statewide/Tribal information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide/Tribal information system:* The State/Tribal title IV–E agency is operating a statewide/Tribal information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section (422)(b)(8)(A)(i) of the Act);

(2) *Case review system:* The title IV–E agency has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parents' home where such placement is in the child's best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(A) of the Act);

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the title IV–E agency has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the title IV–E agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(8)(A)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and a right to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(8)(A)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The title IV–E agency has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State/Tribal service area where services included in the CFSP are provided;

* * * * *

(4) *Staff training:* The title IV–E agency is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the title IV–E agency's CFSP;

* * * * *

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive parents, and the staff of State/Tribal-licensed or State/Tribal-approved child care institutions providing care to foster and adopted children receiving assistance under title IV–E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the assessment and on-site review determines that the title IV–E agency has in place an array of services (45 CFR 1357.15(n) and section 422(b)(8)(A)(iii) and (iv) of the Act) that includes, at a minimum:

* * * * *

(v) Services that are accessible to families and children in all political subdivisions and/or the entire service area covered in the CFSP; and,

* * * * *

(6) * * *

(i) The title IV–E agency, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State/Tribal and county/local agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, Tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(3));

* * * * *

(iv) There is evidence that the services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) * * *

(i) The State or Tribe has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State or Tribe to every licensed or approved foster family home or child care institution receiving funds under title IV–E or IV–B of the Act (section 471(a)(10) of the Act);

(iii) The title IV–E agency complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The title IV–E agency has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State or Tribe for whom foster and adoptive homes are needed (section 422(b)(7) of the Act); and,

(v) The title IV–E agency has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(10) of the Act).

(d) *Availability of review instruments.* ACF will make available to the title IV–E agencies copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

■ 9. In § 1355.35 revise the first sentence of paragraph (a)(1) introductory text, paragraphs (a)(1)(i) through (ii), (iv) and (v), (a)(2), (b) introductory text, (b)(1) and (3), (c)(1), (3) and (4), the third sentence of (d)(3), the first sentence of (d)(4), the first sentence of (e) introductory text, (e)(1) through (3), (e)(4) introductory text, (e)(4)(i), and the first sentence of (f), and add a parenthetical OMB information collection statement at the end of the section, to read as follows:

§ 1355.35 Program improvement plans.

(a) * * * (1) Title IV–E agencies found not to be operating in substantial conformity shall develop a program improvement plan. * * *

(i) Be developed jointly by title IV–E agency and Federal staff in consultation with the review team;

(ii) Identify the areas in which the title IV–E agency's program is not in substantial conformity;

* * * * *

(iv) Set forth the amount of progress the statewide/Tribal data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the title IV–E agency's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

* * * * *

(2) In the event that ACF and the title IV–E agency cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a written rationale for assigning such content or degree of improvement.

(b) *Voluntary program improvement plan.* Title IV–E agencies found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The title IV–E agency and Regional Office agree that there are areas of the title IV–E agency's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

* * * * *

(3) No penalty will be assessed for the title IV–E agency's failure to achieve the goals described in the voluntary program improvement plan.

(c) * * *

(1) A title IV–E agency determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives the written notification from ACF that it is not operating in substantial conformity.

* * * * *

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the title IV–E agency will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the title IV–E agency does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of § 1355.36 of this part will begin.

(d) * * *

(3) * * * The title IV–E agency must provide compelling documentation of the need for such an extension. * * *

(4) Title IV–E agencies must provide quarterly status reports (unless ACF and the title IV–E agency agree to less frequent reports) to ACF. * * *

(e) * * * Program improvement plans will be evaluated jointly by the title IV–E agency and ACF, in collaboration with other members of the review team, as described in the title IV–E agency's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the title IV–E agency is operating in substantial conformity or has reached the negotiated standard with respect to statewide/Tribal service area data indicators that failed to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the title IV–E agency and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the title IV–E agency's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the title IV–E agency and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The title IV–E agency and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the title IV–E agency's program determined not to be in substantial conformity and/or achieve a standard for the statewide/Tribal service area data indicators that is acceptable to ACF;

* * * * *

(f) * * * The elements of the program improvement plan must be incorporated into the goals and objectives of the title IV–E agency's CFSP. * * *

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0214. In accordance with the Paperwork Reduction Act of 1995, 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.)

■ 10. In § 1355.36 revise paragraphs (a)(1) through (2), the first sentence of the introductory text of (b), (b)(1) through (4), (b)(6), the introductory text of (b)(7), (b)(7)(iii), the introductory text of (b)(8), (b)(8)(iii), the introductory text of (c)(1), (c)(1)(ii), the first sentence of (d), (e)(1), (e)(2)(i) and (iii), and (e)(3) through (5) to read as follows:

§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.

(a) * * *

(1) The term ''title IV–B funds'' refers to the title IV–E agency's combined allocation of title IV–B subpart 1 and subpart 2 funds; and

(2) The term ''title IV–E funds'' refers to the title IV–E agency's reimbursement for administrative costs for the foster care program under title IV–E.

(b) * * * ACF will determine the amount of title IV–B and IV–E funds to be withheld due to a finding that the title IV–E agency is not operating in substantial conformity, as follows:

(1) A title IV–E agency will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV–B and IV–E funds will not be withheld from a title IV–E agency if the determination of nonconformity was caused by the title IV–E agency's correct use of formal written statements of Federal law or policy provided the title IV–E agency by DHHS.

(3) A portion of the title IV–E agency's title IV–B and IV–E funds will be withheld by ACF for the year under review and for each succeeding year until the title IV–E agency either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV–B and title IV–E funds subject to withholding due to a determination that a title IV–E agency is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The title IV–E agency's allotment of title IV–B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the title IV–E agency's Federal claims for title IV–E foster care administrative costs for each of the years to which withholding applies;

* * * * *

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the title IV–E agency is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) Title IV–E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

* * * * *

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) Title IV–E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

* * * * *

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) * * *

(1) For title IV–E agencies determined not to be operating in substantial conformity, ACF will suspend the withholding of the title IV–E agencies'

title IV–B and title IV–E funds during the time that a program improvement plan is in effect, provided that:

* * * * *

(ii) The title IV–E agency is actively implementing the provisions of the program improvement plan.

* * * * *

(d) * * * For title IV–E agencies determined not to be in substantial conformity, ACF will terminate the withholding of the title IV–E agency's title IV–B and title IV–E funds related to the nonconformity upon determination by the title IV–E agency and ACF that the title IV–E agency has achieved substantial conformity or has successfully completed a program improvement plan. * * *

(e) * * *

(1) Title IV–E agencies determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV–B and title IV–E funds which are to be withheld.

(2) * * *

(i) If the title IV–E agency fails to submit status reports in accordance with § 1355.35(d)(4), or if such reports indicate that the title IV–E agency is not making satisfactory progress toward achieving goals or actions steps, funds will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

* * * * *

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the title IV–E agency to be in substantial conformity or the title IV–E agency successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the title IV–E agency is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

(4) A title IV–E agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV–B and title IV–E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The title IV–E agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.18.

■ 11. Revise § 1355.37 to read as follows:

§ 1355.37 Opportunity for public inspection of review reports and materials.

The title IV–E agency must make available for public review and inspection all statewide or Tribal assessments (§ 1355.33(b)), report of findings (§ 1355.33(e)), and program improvement plans (§ 1355.35(a)) developed as a result of a full or partial child and family services review.

■ 12. In § 1355.38 revise paragraphs (a)(2) introductory text, (a)(2)(iii), (a)(3), (b)(1), (b)(3), (b)(4), the heading of (c), (c)(1) and (3), (e), (f), (g)(1)(i) and (ii), (g)(2) through (g)(5), the first and third sentences of (h)(1), (h)(1)(i) through (iii), and (h)(2) through (4) to read as follows:

§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) * * *

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a title IV–E agency or an entity in the State/Tribe:

* * * * *

(iii) With respect to a title IV–E agency, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the title IV–E agency or entity with written notification of its determination.

* * * * *

(b) * * *

(1) A title IV–E agency or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A title IV–E agency or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The title IV–E agency may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

* * * * *

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV–E agency must revise and resubmit the plan for approval until it has an approved plan.

(4) A title IV–E agency or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgment once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a title IV–E agency's statute, regulation, policy, procedure, or practice.* (1) A title IV–E agency found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the title IV–E agency will have to complete the corrective action and come into compliance. If the title IV–E agency fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

* * * * *

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV–E agency must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the title IV–E agency does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

* * * * *

(e) *Evaluation of corrective action plan.* ACF will evaluate corrective action plans and notify the title IV–E agency (in writing) of its success or failure to complete the plan within 30 calendar days. If the title IV–E agency has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the title IV–E agency's title IV–E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term ''title IV–E funds'' refers to the amount

of Federal funds advanced or paid to the title IV–E agency for allowable costs incurred by a title IV–E agency for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV–E and includes the title IV–E agency's allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

(g) * * *

(1) * * *

(i) A determination that a title IV–E agency or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

(ii) After a title IV–E agency's failure to implement and complete a corrective action plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a title IV–E agency (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the title IV–E agency's title IV–E funds will be reduced for the fiscal quarter in which the title IV–E agency received written notification and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the entity is notified of the violation.

(3) For title IV–E agencies that fail to complete a corrective action plan within 6 months, title IV–E funds will be reduced by ACF for the fiscal quarter in which the title IV–E agency received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the title IV–E agency completes the corrective action plan and comes into compliance, whichever is earlier.

(4) If, as a result of a court finding, a title IV–E agency or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the title IV–E agency is notified (in writing) of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the court finding was made.

(5) The maximum number of quarters that a title IV–E agency will have its title IV–E funds reduced due to a finding of a title IV–E agency's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

* * * * *

(h) * * *

(1) Title IV–E agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. * * * Penalties will be levied for the quarter of the fiscal year in which the title IV–E agency is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the title IV–E agency comes into compliance with section 471(a)(18). * * *

(i) 2 percent of the title IV–E agency's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the title IV–E agency's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the title IV–E agency's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the title IV–E agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a title IV–E agency will be reduced by more than 5 percent of its title IV–E funds, as defined in paragraph (f) of this section, where the title IV–E agency has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The title IV–E agency or an entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.18.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0214. In accordance with the Paperwork Reduction Act of 1995, 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.)

■ 13. In § 1355.39 revise the introductory text, paragraph (b), and paragraph (c) to read as follows:

§ 1355.39 Administrative and judicial review.

A title IV–E agency determined not to be in substantial conformity with titles IV–B and IV–E plan requirements, or a title IV–E agency or an entity in violation of section 471(a)(18) of the Act:

* * * * *

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the title IV–E agency or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a title IV–E agency or an entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

■ 14. In § 1355.40 revise the first sentence of paragraph (a)(1), remove the second sentence of paragraph (a)(1), revise paragraph (a)(2), the first and fourth sentences of (a)(3), add a sentence to the end of paragraph (a)(3), revise the first sentence of (b)(1), revise the last sentence of (b)(2), revise paragraphs (b)(3), (b)(4), and (c)(2), remove paragraph (c)(3), revise paragraph (d) and (e) and add a parenthetical OMB information collection statement at the end of the section to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) * * *

(1) Each title IV–E agency which administers or supervises the administration of titles IV–B and IV–E must implement a system to collect data. * * *

(2) For the purposes of foster care reporting, each data transmission must include all children in foster care for whom the title IV–E agency has responsibility for placement, care, or

supervision. This includes American Indian children covered under the assurances in section 422(b)(8) of the Act on the same basis as any other child. For children in care less than 30 days, only a core set of information will be required, as noted in Appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, the title IV–E agency also will be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data. For children in the Tribal title IV–E agency's placement and care responsibility who are placed outside of the Tribal service area, the Indian Tribe placing the child and making foster care payments submits and continually updates the data for each such child.

(3) For the purposes of adoption reporting, data are required to be transmitted by the title IV–E agency on all adopted children who were placed by the title IV–E agency, and on all adopted children for whom the agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. * * * For a child adopted out-of-State, the title IV–E agency which placed the child submits the data. Similarly, the Tribal title IV–E agency which placed the child outside of the Tribal service area for adoption submits the data.

(b) * * *

(1) The title IV–E agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. * * *

(2) * * * Entry of this date constitutes title IV–E agency certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the title IV–E agency's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, the title IV–E agency must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the title IV–E agency's detailed submission for the reporting period.

* * * * *

(c) * * *

(2) Substantial noncompliance occurs when missing data exceed 10 percent for any one data element.

(d) *Timeliness of foster care data reports.* Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care) or the title IV–E agency will be found in substantial noncompliance.

(e) *Substantial Noncompliance.* Failure by a title IV–E agency to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV–E plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0267. In accordance with the Paperwork Reduction Act of 1995, 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.)

■ 15. Revise § 1355.50 to read as follows:

§ 1355.50 Purpose of this part.

This part sets forth the requirements and procedures title IV–E agencies must meet in order to receive Federal financial participation for the planning, design, development, installation and operation of statewide or Tribal automated child welfare information systems authorized under section 474(a)(3)(c) of the Act.

■ 16. In § 1355.52 revise the section heading and paragraphs (a) and (b) to read as follows:

§ 1355.52 Funding authority for statewide or Tribal automated child welfare information systems (SACWIS/TACWIS).

(a) Title IV–E agencies may receive Federal reimbursement at the 50 percent level for expenditures related to the planning, design, development and installation of a statewide or Tribal automated child welfare information system, to the extent such system:

(1) Provides for the title IV–E agency to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State or Tribal automated information system that collects information relating to the eligibility of individuals under title IV–A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a plan approved under title IV–B and title IV–E.

(b) Title IV–E agencies may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rate provided under paragraph (a) of this section.

* * * * *

■ 17. In § 1355.53 revise paragraph (a), paragraph (b)(2) introductory text, paragraph (b)(3), paragraph (e), paragraph (f) and paragraph (g) to read as follows:

§ 1355.53 Conditions for approval of funding.

(a) As a condition of funding, the SACWIS or TACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for a design which, when implemented, will produce a comprehensive system, which is effective and efficient, to improve the program management and administration of the plans for titles IV–B and IV–E as provided under this section.

(b) * * *

(2) Provide, for electronic exchanges and referrals, as appropriate, with the following systems within the State or Tribe, unless the title IV–E agency demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints:

* * * * *

(3) Support the provisions of section 422(a) by providing for the automated collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the title IV–E agency, including statewide data (or in the case of a Tribal title IV–E agency, service area data) from which the demographic characteristics, location, and goals for foster care children can be determined;

* * * * *

(e) If the cost benefit analysis submitted as part of the APD indicates that adherence to paragraphs (c) and (d) of this section would not be cost beneficial, final approval of the APD may be withheld until resolution is reached on the level of automation

appropriate to meet the title IV–E agency's needs.

(f) A Statewide or Tribal automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow title IV–E agencies to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the title IV–E agency's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which will support these enhancements on a phased basis.

(g) The system must perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements, State standards and where applicable, Tribal standards.

■ 18. Revise § 1355.54 to read as follows:

§ 1355.54 Submittal of advance planning documents.

The title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate official, in accordance with procedures specified by 45 CFR part 95, subpart F.

■ 19. In § 1355.55 revise paragraph (a) introductory text and add a parenthetical OMB information collection statement at the end of the section to read as follows:

§ 1355.55 Review and assessment of the system developed with enhanced funds.

(a) ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS or TACWIS to determine the extent to which such systems:

* * * * *

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0007. In accordance with the Paperwork Reduction Act of 1995, 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.)

■ 20. In § 1355.56 revise paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(1)(iv), (b)(2), and (b)(4) to read as follows:

§ 1355.56 Failure to meet the conditions of the approved APD.

(a) If ACF finds that the title IV–E agency fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

(b) * * *

(1) The title IV–E agency will be given written notice of the suspension. This notice shall state:

* * * * *

(iv) The actions required by the title IV–E agency for future enhanced funding.

(2) The suspension will be effective as of the date the title IV–E agency failed to comply with the approved APD;

* * * * *

(4) Should a title IV–E agency cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

■ 21. Revise § 1355.57 to read as follows:

§ 1355.57 Cost allocation.

(a) All expenditures of a title IV–E agency to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this part shall be treated as necessary for the proper and efficient administration of the title IV–E plan, without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the title IV–E plan.

(b) Cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 of this title and section 474(c) of the Act, if the SACWIS or TACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the plan approved under title IV–B or IV–E.

■ 22. Remove Appendix F and revise Appendices A through E to part 1355 to read as follows:

Appendix A to Part 1355—Foster Care Data Elements

Section I—Foster Care Data Elements

Data elements preceded by ''**'' are the only data elements required for children who have been in care less than 30 days. For children who entered care prior to October 1, 1995, data elements preceded by either ''**'' and ''***'' are the only data elements required. This means that, for these two categories of children, these are the only data elements to which the missing data standard will be applied.

I. General Information

**A. Title IV–E agency _____

**B. Report date ____ (mo.) ____ (yr.)

**C. Local Agency (County or Equivalent Jurisdiction) _____

**D. Record Number _____

**E. Date of Most Recent Periodic Review (if Applicable) ____ (mo.) ____ (day) ____ (yr.)

II. Child's Demographic Information

**A. Date of Birth ____ (mo.) ____ (day) ____ (yr.)

**B. Sex ____

Male: 1

Female: 2

C. Race/Ethnicity

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific Islander

e. White

f. Unable to Determine

Yes: 1

No: 2

Unable to Determine: 3

D. Has this child been clinically diagnosed as having a disability(ies)? ____

Yes: 1

No: 2

Not Yet Determined: 3

1. If yes, indicate *each* type of disability with a ''1''

Mental Retardation ____

Visually or Hearing Impaired ____

Physically Disabled ____

Emotionally Disturbed (DSM III)

Other Medically Diagnosed Condition Requiring Special Care ____

E. 1. Has this child ever been adopted? ____

Yes: 1

No: 2

Unable to Determine: 3

2. If yes, how old was the child when the adoption was legalized? ____

Less than 2 years old: 1

2 to 5 years old: 2

6 to 12 years old: 3

13 years or older: 4

Unable to determine: 5

III. Removal/Placement Setting Indicators

A. Removal Episodes

Date of First Removal From Home ____ (mo.) ____ (day) ____ (yr.)

Total Number of Removals From Home to Date ____

Date Child was Discharged From Last Foster Care Episode (if Applicable) ____ (mo.) ____ (day) ____ (yr.)

**; Date of Latest Removal From Home ____ (mo.) ____ (day) ____ (yr.)

**Transaction Date ____ (mo.) ____ (day) ____ (yr.)

B. Placement Settings

Date of Placement in Current Foster Care Setting ____ (mo.) ____ (day) ____ (yr.)

Number of Previous Placement Settings During This Removal Episode ____

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode ____

Voluntary: 1

Court Ordered: 2
Not Yet Determined: 3
B. Actions or Conditions Associated With Child's Removal: (Indicate all that apply with a ''1'')
Physical Abuse (Alleged/Reported) _____
Sexual Abuse (Alleged/Reported) _____
Neglect (Alleged/Reported) _____
Alcohol Abuse (Parent) _____
Drug Abuse (Parent) _____
Alcohol Abuse (Child) _____
Drug Abuse (Child) _____
Child's Disability _____
Child's Behavior Problem _____
Death of Parent(s) _____
Incarceration of Parent(s) _____
Caretaker's Inability to Cope Due to Illness or Other Reasons _____
Abandonment _____
Relinquishment _____
Inadequate Housing _____

**V. Current Placement Setting _____

**A. Pre-Adoptive Home: 1
Foster Family Home (Relative): 2
Foster Family Home (Non-Relative): 3
Group Home: 4
Institution: 5
Supervised Independent Living: 6
Runaway: 7
Tribal Home Visit: 8
**B. Is Current Placement Out-of-State/Tribal service area? _____
Yes (Out-of-State/Tribal service area Placement): 1
No (In State/Tribal service area Placement): 2***

VI. Most Recent Case Plan Goal _____

Reunify With Parent(s) or Principal Caretaker(s): 1
Live With Other Relative(s): 2
Adoption: 3
Long Term Foster Care: 4
Emancipation: 5
Guardianship: 6
Case Plan Goal Not Yet Established: 7

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
Unable to Determine: 5
B. Year of Birth
1st Principal Caretaker _____
2nd Principal Caretaker (If Applicable) __

VIII. Parental Rights Termination (If Applicable)

A. Mother ____ (mo.) ____ (day) ____ (yr.)
B. Legal or Putative Father ____ (mo.) ____ (day) ____ (yr.)

IX. Foster Family Home—Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)

A. Foster Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
1st Foster Caretaker _____
2nd Foster Caretaker (If Applicable) _____
C. Race/Ethnicity
1. Race of 1st Foster Caretaker
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of 1st Foster Caretaker ____
Yes: 1
No: 2
Unable to Determine: 3
3. Race of 2nd Foster Caretaker (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of 2nd Foster Caretaker (If Applicable)
Yes: 1
No: 2
Unable to Determine: 3

X. Outcome Information

**A. Date of Discharge From Foster Care ____ (mo.) ____ (day)____ (yr.)
**Transaction Date ____ (mo.) ____ (day) ____ (yr.)
**B. Reason for Discharge _____
Reunification With Parents or Primary Caretakers: 1
Living with Other Relative(s): 2
Adoption: 3
Emancipation: 4
Guardianship: 5
Transfer to Another Agency: 6
Runaway: 7
Death of Child: 8

XI. Source(s) of Federal Financial Support/Assistance for Child (Indicate all that apply with a ''1'')

Title IV–E (Foster Care) _____
Title IV–E (Adoption Assistance) _____
Title IV–A (Aid to Families with Dependent Children) _____
Title IV–D (Child Support) _____
Title XIX (Medicaid) _____
SSI or Other Social Security Act Benefits
None of the Above _____

XII. Amount of the monthly foster care payment (regardless of sources). ____

Section II—Definitions of and Instructions for Foster Care Data Elements

Reporting population. The population to be included in this reporting system includes all children in foster care under the responsibility of the title IV–E agency administering or supervising the administration of the title IV–B Child and Family Services plan and the title IV–E plan; that is, all children who are required to be provided the assurances of section 422(b)(8) of the Social Security Act.

This population includes all children supervised by or under the responsibility of another public agency with which the title IV–E agency has an agreement under title IV–E and on whose behalf the title IV–E agency makes title IV–E foster care maintenance payments.

Foster care is defined as 24 hour substitute care for children outside their own home. The reporting system includes all children who have or had been in foster care at least 24 hours. The foster care settings include, but are not limited to:

—Family foster homes
—Relative foster homes (whether payments are made or not)
—Group homes
—Emergency shelters
—Residential facilities
—Child care institutions
—Pre-adoptive homes

Foster care does not include children who are in their own homes under the responsibility of the title IV–E agency. However, children who are at home on a trial basis may be included even though they are not considered to be in foster care. If they are included, element number V. CURRENT PLACEMENT SETTING must be given the value of ''8''.

I. General Information

A. Title IV–E agency**—for a State, the U.S. Postal Service two letter abbreviation for the State submitting the report. For a Tribal title IV–E agency, the abbreviation provided by ACF.

B. Report Date**—the last month and year for the reporting period.

C. Local Agency**— Identity of the county or equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) must be used or other ACF-provided code.

D. Record Number**—The sequential number which the title IV–E agency uses to transmit data to the Department of Health and Human Services (DHHS) or a unique number which follows the child as long as he or she is in foster care. The record number cannot be linked to the child's case I.D. number except at the title IV–E agency level.

E. Date of Most Recent Periodic Review (if applicable)—For children who have been in care for seven months or longer, enter the month, day and year of the most recent administrative or court review, including dispositional hearing. For children who have been in care less than seven months, leave the field blank. An entry in this field certifies that the child's computer record is current up to this date.

II. Child's Demographic Information

A. Date of Birth**—Month, day and year of the child's birth. If the child is abandoned or the date of birth is otherwise unknown, enter an approximate date of birth. Use the 15th as the day of birth.

B. Sex**—Indicate as appropriate.

C. Race/Ethnicity**

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a through e) that apply with a ''1.'' For those that do not apply, indicate a ''0.'' Indicate ''f. Unable to Determine'' with a ''1'' if it applies and a ''0'' if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America

(including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer ''yes'' if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic or Latino. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

D. Has the child been clinically diagnosed as having a disability(ies)? ''Yes'' indicates that a qualified professional has clinically diagnosed the child as having at least one of the disabilities listed below. ''No'' indicates that a qualified professional has conducted a clinical assessment of the child and has determined that the child has no disabilities. ''Not Yet Determined'' indicates that a clinical assessment of the child by a qualified professional has not been conducted.

1. Indicate Each Type of Disability With a ''1''

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the development period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. The diagnosis is based on the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

E.1. Has this child ever been adopted? If this child has ever been legally adopted, enter ''yes.'' If the child has never been legally adopted, enter ''no''. Enter ''Unable to Determine'' if the child has been abandoned or the child's parent(s) are otherwise not available to provide the information.

2. If yes, how old was the child when the adoption was legalized? Enter the number which represents the appropriate age range. If uncertain, use an estimate. If no one is available to provide the information, enter ''Unable to Determine.''

III. Removal/Placement Setting Indicators

A. Removal Episodes—The removal of the child from his/her normal place of residence resulting in his/her placement in a foster care setting.

Date of First Removal From Home—Month, day and year the child was removed from home for the first time for purpose of placement in a foster care setting. If the current [1] removal is the first removal, enter the date of the current removal.[1]For children who have exited foster care, ''current'' refers to the most recent removal episode and the most recent placement setting.

Total Number of Removals from Home to Date—The number of times the child was removed from home, including the current removal.

Date Child was Discharged From Last Foster Care Episode (If Applicable)—For children with prior removals, enter the month, day and year they were discharged from care for the episode immediately prior to the current episode. For children with no prior removals, leave blank.

Date of Latest Removal From Home**—Month, day and year the child was last removed from his/her home for the purpose of being place in foster care. This would be the date for the current episode or, if the child has existed foster care, the date of removal for the most recent removal.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Latest Removal From Home'' was entered into the information system.

B. Placement Settings.

Date of Placement in Current Foster Care Setting—Month, day and year the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.

Number of Previous Placement Settings During This Removal Episode—Enter the number of places the child has lived, including the current setting, during the current removal episode. Do not include trial home visits as a placement setting.

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode.

Voluntary Placement Agreement—An official voluntary placement agreement has been executed between the caretaker and the agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in foster care.

Court Ordered—The court has issued an order which is the basis of the child's removal.

Not Yet Determined—A voluntary placement agreement has not been signed or a court order has not been issued. This will mostly occur in very short-term cases. When either a voluntary placement agreement is signed or a court order issued, the record should be updated to reflect the manner of removal at that time.

B. Actions or Conditions Associated With Child's Removal (indicate all that apply with a ''1''.)

Physical Abuse—Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

Sexual Abuse—Alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.

Neglect—Alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.

Alcohol Abuse (Parent)—Principal caretaker's compulsive use of alcohol that is not of a temporary nature.

Drug Abuse (Parent)—Principal caretaker's compulsive use of drugs that is not of a temporary nature.

Alcohol Abuse (Child)—Child's compulsive use of or need for alcohol. This element should include infants addicted at birth.

Drug Abuse (Child)—Child's compulsive use of or need for narcotics. This element should include infants addicted at birth.

Child's Disability—Clinical diagnosis by a qualified professional of one or more of the following: Mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed handicap. Include only if the disability(ies) was at least one of the factors which led to the child's removal.

Child's Behavior Problem—Behavior in the school and/or community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems. This would include the child's running away from home or other placement.

Death of Parent(s)—Family stress or inability to care for child due to death of a parent or caretaker.

Incarceration of Parent(s)—Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.

Caretaker's Inability to Cope Due to Illness or Other Reasons—Physical or emotional

illness or disabling condition adversely affecting the caretaker's ability to care for the child.

Abandonment—Child left alone or with others; caretaker did not return or make whereabouts known.

Relinquishment—Parent(s), in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.

Inadequate Housing—Housing facilities were substandard, overcrowded, unsafe or otherwise inadequate resulting in their not being appropriate for the parents and child to reside together. Also includes homelessness.

V. Current Placement Setting**

A. Identify the type of setting in which the child currently lives.

Pre-Adoptive Home—A home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.

Foster Family Home (Relative)—A licensed or unlicensed home of the child's relatives regarded by the title IV–E agency as a foster care living arrangement for the child.

Foster Family Home (Non-Relative)—A licensed foster family home regarded by the title IV–E agency as a foster care living arrangement.

Group Home—A licensed or approved home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.

Institution—A child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: Child care institutions; residential treatment facilities; maternity homes; etc.

Supervised Independent Living—An alternative transitional living arrangement where the child is under the supervision of the agency but without 24 hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care.

Runaway—The child has run away from the foster care setting.

Trial Home Visit—The child has been in a foster care placement, but, under title IV–E agency supervision, has been returned to the principal caretaker for a limited and specified period of time.

B. Is current placement setting outside of the State or Tribal service area?

''Yes'' indicates that the current placement setting is located outside of the State or the Tribal service area of the Tribal title IV–E agency making the report.

''No'' indicates that the child continues to reside within the State or the Tribal service area of the Tribal title IV–E agency making the report.

Note: Only the title IV–E agency with placement and care responsibility for the child should include the child in this reporting system.

VI. Most Recent Case Plan Goal***

Indicate the most recent case plan goal for the child based on the latest review of the child's case plan—whether a court review or an administrative review. If the child has been in care less than six months, enter the goal in the case record as determined by the caseworker.

Reunify With Parents or Principal Caretaker(s)—The goal is to keep the child in foster care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering foster care in order to reestablish a stable family environment.

Live With Other Relatives—The goal is to have the child live permanently with a relative or relatives other than the ones from whom the child was removed. This could include guardianship by a relative(s).

Adoption—The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.

Long Term Foster Care—Because of specific factors or conditions, it is not appropriate or possible to return the child home or place her or him for adoption, and the goal is to maintain the child in a long term foster care placement.

Emancipation—Because of specific factors or conditions, it is not appropriate or possible to return the child home, have a child live permanently with a relative or have the child be adopted; therefore, the goal is to maintain the child in a foster care setting until the child reaches the age of majority.

Guardianship—The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering foster care, and whom a court of competent jurisdiction has designated as legal guardian.

Case Plan Goal Not Yet Established—No case plan goal has yet been established other then the care and protection of the child.

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the type of adult caretaker(s) from whom the child was removed for the current foster care episode. Enter ''Unable to Determine'' if the child has been abandoned or the child's caretakers are otherwise unknown.

B. Year of Birth—Enter the year of birth for up to two caretakers. If the response to data element VII. A—Caretaker Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

VIII. Parental Rights Termination

Enter the month, day and year that the court terminated the parental rights. If the parents are known to be deceased, enter the date of death.

IX. Family Foster Home—Parent(s) Data

Provide information only if data element in Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2, or 3.

A. Foster Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the foster parents with whom the child is living in the current foster care episode.

B. Year of Birth—Enter the year of birth for up to two foster parents. If the response to data element IX. A.—Foster Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race—Indicate the race for each of the foster parent(s). See instructions and definitions for the race categories under data element II.C.1. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her race. Hispanic or Latino Ethnicity—Indicate the ethnicity for each of the foster parent(s). See instructions and definitions under data element II.C.2. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her ethnicity.

X. Outcome Information

Enter data only for children who have exited foster care during the reporting period.

A. Date of Discharge From Foster Care**—Enter the month, day and year the child was discharged from foster care. If the child has not been discharged from care, leave blank.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Discharge from Foster Care'' was entered into the information system.

B. Reason for Discharge**.

Reunification With Parents or Primary Caretakers—The child was returned to his or her principal caretaker(s)' home.

Living With Other Relatives—The child went to live with a relative other than the one from whose home he or she was removed.

Adoption—The child was legally adopted.

Emancipation—The child reached majority according to the law by virtue of age, marriage, etc.

Guardianship—Permanent custody of the child was awarded to an individual.

Transfer to Another Agency—Responsibility for the care of the child was awarded to another agency—either in or outside of the State or Tribal service area.

Runaway—The child ran away from the foster care placement.

Death of Child—The child died while in foster care.

XI. Source(s) of Federal Support/Assistance for Child (Indicate All That Apply With a ''1''.)

Title IV–E (Foster Care)—Title IV–E foster care maintenance payments are being paid on behalf of the child.

Title IV–E (Adoption Subsidy)—Title IV–E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized.

Title IV–A (Aid to Families With Dependent Children)—Child is living with relative(s) whose source of support is an AFDC payment for the child.

Title IV–D (Child Support)—Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.

Title XIX (Medicaid)—Child is eligible for and may be receiving assistance under title XIX.

SSI or Other Social Security Act Benefits—Child is receiving support under title XVI or

other Social Security Act titles not included in this section.

None of the Above—Child is receiving support only from the title IV–E agency, or from some other source (Federal or non-Federal) which is not indicated above.

XII. Amount of the Monthly Foster Care Payment (Regardless of Sources)

Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV–E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

Appendix B to Part 1355—Adoption Data Elements

Section I—Adoption Data Elements

I. General Information
A. Title IV–E agency____
B. Report Date ____(mo.) ____(day) ____(yr.)
C. Record Number____
D. Did the Title IV–E Agency Have any Involvement in This Adoption? ____
Yes: 1
No: 2

II. Child's Demographic Information

A. Date of Birth ____(mo) ____(day) ____(yr.)
B. Sex ____
Male: 1
Female: 2
C. Race/Ethnicity
1. Race
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity____
Yes: 1
No: 2
Unable to determine: 3

III. Special Needs Status

A. Has the title IV–E agency determined that this child has special needs? ____
Yes: 1
No: 2
B. If yes, indicate the primary basis for determining that this child has special needs ____
Racial/Original Background: 1
Age: 2
Membership in a Sibling Group to be Placed for Adoption Together: 3
Medical Conditions or Mental, Physical or Emotional Disabilities: 4
Other: 5
1. If III. B was ''4,'' indicate with a ''1'' the type(s) of disability(ies)
Mental Retardation ____
Visually or Hearing Impaired ____
Physically Disabled ____
Emotionally Disturbed (DSM III) ____
Other Medically Diagnosed Condition Requiring Special Care ____

IV. Birth Parents

A. Year of Birth ____
Mother, If known ____
Father (Putative or Legal), if known ____
B. Was the mother married at the time of the child's birth? ____
Yes: 1
No: 2
Unable to Determine: 3

V. Court Actions

A. Dates of Termination of Parental Rights
Mother ____(mo.) ____(day) ____(yr.)
Father ____(mo.) ____(day) ____(yr.)
B. Date Adoption Legalized ____(mo.) ____(day) ____(yr.)

VI. Adoptive Parents

A. Family Structure ____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
Mother (if Applicable) ____
Father (if Applicable) ____
C. Race/Ethnicity
1. Adoptive Mother's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of Mother (If Applicable)____
Yes: 1
No: 2
Unable to Determine: 3
3. Adoptive Father's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of Father (If Applicable)____
Yes: 1
No: 2
Unable to Determine: 3
D. Relationship of Adoptive Parent(s) to the Child (Indicate with a ''1'' all that apply)
Stepparent
Other Relative of Child by Birth or Marriage ____
Foster Parent of Child ____
Non-Relative ____

VII. Placement Information

A. Child Was Placed From ____
Within State/Tribal Service Area: 1
Another State/Tribal Service Area: 2
Another Country: 3
B. Child Was Placed by ____
Public Agency: 1
Private Agency: 2
Tribal Agency: 3
Independent Person: 4
Birth Parent: 5

VIII. Financial Adoption Support

A. Is a monthly financial subsidy being paid for this child? ____
Yes: 1
No: 2
B. If yes, the monthly amount ____
C. If VIII. A is yes, is the subsidy paid under Title IV–E adoption assistance? ____
Yes: 1
No: 2

Section II—Definitions of Instructions for Adoption Data Elements

Reporting Population

The title IV–E agency must report on all children who are adopted in the State or Tribal service area during the reporting period and in whose adoption the title IV–E agency has had any involvement. Failure to report on these adoptions will result in assessed finding of noncompliance. Reports on all other adoptions are encouraged but are voluntary. Therefore, reports on the following are mandated:

(a) All children adopted who had been in foster care under the responsibility and care of the child welfare agency and who were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) All special needs children who were adopted in the State or Tribal service area, whether or not they were in the public foster care system prior to their adoption and for whom non-recurring expenses were reimbursed; and

(c) All children adopted for whom an adoption assistance payment or service is being provided based on arrangements made by or through the title IV–E agency.

These children must be identified by answering ''yes'' to data element I.D. Children who are reported by the title IV–E agency, but for whom there has not been any title IV–E agency involvement, and whose reporting, therefore, has not been mandated, are identified by answering ''no'' to element I.D.

I. General Information

A. Title IV–E agency—For a State, the U.S. Postal Service two letter abbreviation for the State submitting the report. For a Tribal title IV–E agency, the two letter abbreviation provided by ACF.

B. Report Date—The last month and the year for the reporting period.

C. Record Number—The sequential number which the title IV–E agency uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child except at the title IV–E agency level.

D. Did the title IV–E Agency Have Any Involvement in This Adoption?

Indicate whether the title IV–E agency had any involvement in this adoption, that is, whether the adopted child belongs to one of the following categories:

- A child who had been in foster care under the responsibility and care of the child welfare agency and who was subsequently adopted whether special needs or not and whether a subsidy was provided;
- A special needs child who was adopted in the State or Tribal service area, whether or not he/she was in the public foster care system prior to his/her adoption and for whom non-recurring expenses were reimbursed; or

• A child for whom an adoption assistance payment or service is being provided based on arrangements made by or through the title IV–E agency.

II. Child's Demographic Information

A. Date of Birth—Month and year of the child's birth. If the child was abandoned or the date of birth is otherwise unknown, enter an approximate date of birth.

B. Sex—Indicate as appropriate.

C. Race/Ethnicity

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a-e) that apply with a ''1.'' For those that do not apply, indicate a ''0.'' Indicate ''f. Unable to Determine'' with a 1'' if it applies and a ''0'' if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer ''yes'' if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic or Latino. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

III. Special Needs Status

A. Has the title IV–E Agency Determined That the Child has Special Needs? Use the title IV–E agency definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV–E.

B. Primary Factor or Condition for Special Needs—Indicate only the primary factor or condition for categorization as special needs and only as it is defined by the title IV–E agency. Racial/Original Background—Primary condition or factor for special needs is racial/original background as defined by the title IV–E agency.

Age—Primary factor or condition for special needs is age of the child as defined by the title IV–E agency.

Membership in a Sibling Group to be Placed for Adoption Together—Primary factor or condition for special needs is membership in a sibling group as defined by the title IV–E agency.

Medical Conditions of Mental, Physical, or Emotional Disabilities—Primary factor or condition for special needs is the child's medical condition as defined by the title IV–E agency, but clinically diagnosed by a qualified professional.

When this is the response to question B, then item 1 below must be answered.

1. Types of Disabilities—Data are only to be entered if response to III.B was ''4.'' Indicate with a ''1'' the types of disabilities.

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. Diagnosis is based on the *Diagnostic and Statistical Manual of Mental Disorders (Third Edition)* (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

IV. Birth Parents

A. Year of Birth—Enter the year of birth for both parents, if known. If the child was abandoned and no information was available on either one or both parents, leave blank for the parent(s) for which no information was available.

B. Was the Mother Married at the Time of the Child's Birth?

Indicate whether the mother was married at time of the child's birth; include common law marriage if legal in the State or Tribe. If the child was abandoned and no information was available on the mother, enter ''Unable to Determine.''

V. Court Actions

A. Dates of Termination of Parental Rights—Enter the month, day and year that the court terminated parental rights. If the parents are known to be deceased, enter the date of death.

B. Date Adoption Legalized—Enter the date the court issued the final adoption decree.

VI. Adoptive Parents

A. Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the adoptive parent(s) family structure.

B. Year of Birth—Enter the year of birth for up to two adoptive parents. If the response to data element IV.A—Family Structure, was 1 or 2, enter data for two parents. If the response was 3 or 4, enter data only for the appropriate parent. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race/Ethnicity—Indicate the race/ethnicity for each of the adoptive parent(s). See instructions and definitions for the race/ethnicity categories under data element II.C. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her race or ethnicity.

D. Relationship to Adoptive Parent(s)—Indicate the prior relationship(s) the child had with the adoptive parent(s).

Stepparent—Spouse of the child's birth mother or birth father.

Other Relative of Child by Birth or Marriage—A relative through the birth parents by blood or marriage.

Foster Parent of Child—Child was placed in a non-relative foster family home with a family which later adopted him or her. The initial placement could have been for the purpose of adoption or for the purpose of foster care.

Non-Relative—Adoptive parent fits into none of the categories above.

VII. Placement Information

A. Child Was Placed From: Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

Within State or Tribal service area—Responsibility for the child resided with an individual or agency within the State or service area of the Tribal title IV–E agency filing the report.

Another State or Tribal service area—Responsibility for the child resided with an individual or agency in another State, Tribal service area, or territory of the United States.

Another Country—Immediately prior to the adoptive placement, the child was residing in another country and was not a citizen of the United States.

B. Child Was Placed By: Indicate the individual or agency which placed the child for adoption.

Public Agency—A unit of State or local government.

Private Agency—A for-profit or non-profit agency or institution.

Tribal Agency—A unit within one of the federally recognized Indian Tribes, Indian Tribal organizations, or Indian Tribal consortia.

Independent Person—A doctor, a lawyer or some other individual.

Birth Parent—The parent(s) placed the child directly with the Adoptive parent(s).

VIII. Adoption Support

A. Is The Child Receiving a Monthly Subsidy?

Enter ''yes'' if this child was adopted with an adoption assistance agreement under which regular subsidies (Federal, State, or Tribal) are paid.

B. Monthly Amount—Indicate the monthly amount of the subsidy. The amount of the subsidy should be rounded to the nearest dollar. Indicate ''0'' if the subsidy includes only benefits under titles XIX or XX of the Social Security Act.

C. If VIII.A is ''Yes,'' is Child Receiving Title IV–E Adoption Subsidy?

If VIII.A is ''yes,'' indicate whether the subsidy is claimed by the title IV–E agency for reimbursement under title IV–E. Do not include title IV–E non-recurring costs in this item.

Appendix C to Part 1355—Electronic Data Transmission Format

All AFCARS data to be sent from title IV–E agencies to the Department are to be in electronic form. In order to meet this general specification, the Department will offer as much flexibility as possible. Technical assistance will be provided to negotiate a method of transmission best suited to the title IV–E agency's environment.

There will be four semi-annual electronic data transmissions from the title IV–E agency to the Administration for Children and Families (ACF).

Regardless of the electronic data transmission methodology selected, certain criteria must be met by the title IV–E agency:

(1) Records must be written using ASCII standard character format.

(2) All elements must be comprised of integer (numeric) value(s). Element character length specifications refer to the maximum number of numeric values permitted for that element. See Appendix D.

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

(4) All title IV–E agencies must inform the Department, in writing, of the method of transfer they intend to use.

Appendix D to Part 1355—Foster Care and Adoption Record Layouts

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) All data must be numeric. Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month order (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 8, 11–15, 26–40, 52, 54 and 59–65, which are ''select all that apply'' elements, enter a ''1'' for each element that applies, enter a zero for non-applicable elements.

(4) Transaction Date—is a computer generated date indicating when the datum (Elements 21 or 55) is entered into the title IV–E agency's automated information system.

(5) Report the status of all children in foster care as of the last day of the reporting period. Also, provide data for all children who were discharged from foster care at any time during the reporting period, or in the previous reporting period, if not previously reported.

c. Foster Care Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix A data element	Data element description	Number of numeric characters
01	I.A	Title IV–E agency	2
02	I.B	Report period ending date	6
03	I.C	Local Agency FIPS code (county or equivalent jurisdiction) or other ACF assigned code.	5
04	I.D	Record number	12
05	I.E	Date of most recent periodic review	8
06	II.A	Child's date of birth	8
07	II.B	Sex	1
08	II.C.1	Race	
08a		American Indian or Alaska native	1
08b		Asian	1
08c		Black or African American	1
08d		Native Hawaiian or Other Pacific Islander	1
08e		White	1
08f		Unable to Determine	1
09	II.C.2	Hispanic or Latino Ethnicity	1
10	II.D	Has this child been clinically diagnosed as having a disability(ies)	1
		Indicate each type of disability of the child with a ''1'' for elements 11–15 and a zero for disabilities that do not apply.	
11	II.D.1.a	Mental retardation	1
12	II.D.1.b	Visually or hearing impaired	1
13	II.D.1.c	Physically disabled	1
14	II.D.1.d	Emotionally disturbed (DSM III)	1
15	II.D.1.e	Other medically diagnosed condition requiring special care	1
16	II.E.1	Has this child ever been adopted	1
17	II.E.2	If yes, how old was the child when the adoption was legalized?	1
18	III.A.1	Date of first removal from home	8
19	III.A.2	Total number of removals from home to date	2
20	III.A.3	Date child was discharged from last foster care episode	8
21	III.A.4	Date of latest removal from home	8
22	III.A.5	Removal transaction date	8
23	III.B.1	Date of placement in current foster care setting	8
24	III.B.2	Number of previous placement settings during this removal episode	2
25	IV.A	Manner of removal from home for current placement episode	1
		Actions or conditions associated with child's removal: Indicate with a ''1'' for elements 26–40 and a zero for conditions that do not apply.	

Element No.	Appendix A data element	Data element description	Number of numeric characters
26	IV.B.1	Physical abuse (alleged/reported)	1
27	IV.B.2	Sexual abuse (alleged/reported)	1
28	IV.B.3	Neglect (alleged/reported)	1
29	IV.B.4	Alcohol abuse (parent)	1
30	IV.B.5	Drug abuse (parent)	1
31	IV.B.6	Alcohol abuse (child)	1
32	IV.B.7	Drug abuse (child)	1
33	IV.B.8	Child's disability	1
34	IV.B.9	Child's behavior problem	1
35	IV.B.10	Death of parent(s)	1
36	IV.B.11	Incarceration of parent(s)	1
37	IV.B.12	Caretaker's inability to cope due to illness or other reasons	1
38	IV.B.13	Abandonment	1
39	IV.B.14	Relinquishment	1
40	IV.B.15	Inadequate housing	1
41	V.A	Current placement setting	1
42	V.B	Out of State/Tribal service area placement	1
43	VI	Most recent case plan goal	1
44	VII.A	Caretaker family structure	1
45	VII.B.1	Year of birth (1st principal caretaker)	4
46	VII.B.2	Year of birth (2nd principal caretaker)	4
47	VIII.A	Date of mother's parental rights termination	8
48	VIII.B	Date of legal or putative father's parental rights	8
49	IX.A	Foster family structure	1
50	IX.B.1	Year of birth (1st foster caretaker)	4
51	IX.B.2	Year of birth (2nd foster caretaker)	4
52	IX.C.1	Race of 1st foster caretaker	
52a		American Indian or Alaska Native	1
52b		Asian	1
52c		Black or Asian American	1
52d		Native Hawaiian or Other Pacific Islander	1
52e		White	1
52f		Unable to Determine	1
53	IX.C.2	Hispanic or Latino ethnicity of 1st foster caretaker	1
54	IX.C.3	Race of 2nd foster caretaker	
54a		American Indian or Alaska Native	1
54b		Asian	1
54c		Black or African American	1
54d		Native Hawaiian or Other Pacific Islander	1
54e		White	1
54f		Unable to Determine	1
55	IX.C.4	Hispanic or Latino ethnicity of 2nd foster caretaker	1
56	X.A.1	Date of discharge from foster care	8
57	X.A.2	Foster care discharge transaction date	8
58	X.B	Reason for discharge	1
		Sources of Federal support/assistance for child; indicate with a "1" for elements 58–64 and a zero for sources that do not apply.	
59	XI.A	Title IV–E (Foster Care)	1
60	XI.B	Title IV–E (Adoption Assistance)	1
61	XI.C	Title IV–A (Aid to Families With Dependent Children)	1
62	XI.D	Title IV–D (Child Support)	1
63	XI.E	Title XIX (Medicaid)	1
64	XI.F	SSI or other Social Security Act benefits	1
65	XI.G	None of the above	1
66	XII	Amount of monthly foster care payment (regardless of source)	5
		Total characters	197

2. Foster Care Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter date values in year, month order (YYYYMM), e.g.,199912 for December 1999.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	Number of characters
01	Number of records	8

Element No.	Summary data file	Number of characters
02	Report period ending date (YYYYMM)	6
03	Children in care under 1 year	8
04	Children in care 1 year old	8
05	Children in care 2 years old	8
06	Children in care 3 years old	8
07	Children in care 4 years old	8
08	Children in care 5 years old	8
09	Children in care 6 years old	8
10	Children in care 7 years old	8
11	Children in care 8 years old	8
12	Children in care 9 years old	8
13	Children in care 10 years old	8
14	Children in care 11 years old	8
15	Children in care 12 years old	8
16	Children in care 13 years old	8
17	Children in care 14 years old	8
18	Children in care 15 years old	8
19	Children in care 16 years old	8
20	Children in care 17 years old	8
21	Children in care 18 years old	8
22	Children in care over 18 years old	8
	Record Length	174

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

a. The record will consist of 37 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 7, 11–15, 25, 27 and 29–32 which are ''select all that apply'' elements, enter a ''1'' for each element that applies; enter a zero for non-applicable elements.

c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	Number of numeric characters
01	I.A	Title IV–E agency	2
02	I.B	Report period ending date	6
03	I.C	Record number	6
04	I.D	Title IV–E agency involvement	1
05	II.A	Date of birth	6
06	II.B	Sex	1
07	II.C.1	Race	
07a		American Indian or Alaska Native	1
07b		Asian	1
07c		Black or African American	1
07d		Native Hawaiian or Other Pacific Islander	1
07e		White	1
07f		Unable to Determine	1
08	II.C.2	Hispanic or Latino ethnicity	1
09	III.A	Has the title IV–E agency determined that this child has special needs	1
10	III.B	Primary basis for special needs	1
		Indicate a primary basis of special needs with a ''1'' for elements 11–15. Enter a zero for special needs that do not apply.	
11	III.B.1.a	Mental retardation	1
12	III.B.1.b	Visually or hearing impaired	1
13	III.B.1.c	Physically disabled	1
14	III.B.1.d	Emotionally disturbed (DSM III)	1
15	III.B.1.e	Other medically diagnosed condition requiring special care	1
16	IV.A.1	Mother's year of birth	4
17	IV.A.2	Father's (Putative or legal) year of birth	4
18	IV.B	Was the mother married at time of child's birth	1
19	V.A.1	Date of mother's termination of parental rights	8
20	V.A.2	Date of father's termination of parental rights	8
21	V.B	Date adoption legalized	8
22	VI.A	Adoptive parents family structure	1
23	VI.B.1	Mother's year of birth (if applicable)	4
24	VI.B.2	Father's year of birth (if applicable)	4
25	VI.C.1	Adoptive mother's race	
25a		American Indian or Alaska Native	1
25b		Asian	1

Element No.	Appendix B data element	Data element description	Number of numeric characters
25c		Black or African American	1
25d		Native Hawaiian or Other Pacific Islander	1
25e		White	1
25f		Unable to Determine	1
26	VI.C.2	Hispanic or Latino Ethnicity	1
27	VI.C.3	Adoptive father's race	
27a		American Indian or Alaska Native	1
27b		Asian	1
27c		Black or African American	1
27d		Native Hawaiian or Other Pacific Islander	1
27e		White	1
27f		Unable to Determine	1
28	VI.C.4	Hispanic or Latino Ethnicity	1
		Indicate each type of relationship of adoptive parent(s) to the child with a "1" for elements 29–32. Enter a zero for relationships that do not apply below.	
29	VI.D.1	Stepparent	1
30	VI.D.2	Other relative of child by birth or marriage	1
31	VI.D.3	Foster parent of child	1
32	VI.D.4	Other non-relative	1
33	VII.A	Child was placed from	1
34	VII.B	Child was placed by	1
35	VIII.A	Is this child receiving a monthly subsidy	1
36	VIII.B	If VIII.B is "yes." What is the monthly amount	5
37	VIII.C	If VII.B is "yes." Is the child receiving title IV–E adoption assistance?	1
		Total Characters	

2. Adoption Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter data values in year, month order (YYYYMM), e.g., 199912 for December 1999.

c. Adoption Semi-Annual Summary Data Element Record Layout follows:

Element No.	Summary data file	Number of characters
01	Number of records	8
02	Report period ending date (YYYYMM)	6
03	Children adopted Under 1 year old	8
04	Children adopted 1 year old	8
05	Children adopted 2 years old	8
06	Children adopted 3 years old	8
07	Children adopted 4 years old	8
08	Children adopted 5 years old	8
09	Children adopted 6 years old	8
10	Children adopted 7 years old	8
11	Children adopted 8 years old	8
12	Children adopted 9 years old	8
13	Children adopted 10 years old	8
14	Children adopted 11 years old	8
15	Children adopted 12 years old	8
16	Children adopted 13 years old	8
17	Children adopted 14 years old	8
18	Children adopted 15 years old	8
19	Children adopted 16 years old	8
20	Children adopted 17 years old	8
21	Children adopted 18 years old	8
22	Children adopted over 18 years old	8
	Record Length	174

Appendix E to Part 1355—Data Standards

All data submissions will be evaluated to determine the completeness and internal consistency of the data. Four types of assessments will be conducted on both the foster care and adoption data submissions. The results of these assessments will determine the applicability of a substantial noncompliance determination with the title IV–E plan.

The four types of assessments are:

• Comparisons of the detailed data to summary data;

• Internal consistency checks of the detailed data;
• An assessment of the status of missing data; and
• Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Summary Data Elements Submission Standards

A summary file must accompany the Detailed Data Elements submission. Both transmissions must be sent through electronic means (see appendix C for details). This summary will be used to verify basic counts of records on the detailed data received.

a. The summary file must be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D. section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the title IV–E agency. The two summary files (the one submitted by the title IV–E agency and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the title IV–E agency within 24 hours of the time the title IV–E agency has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data File Submission Standards

a. Internal Consistency Validations.

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, a child cannot be discharged from foster care before he or she has been removed from his or her home. Thus, the Date of Latest Removal From Home data element must be a date prior to the Date of Discharge. If this is not the case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Foster Family Structure has only a single parent, then the appropriate sex of the Single Female/Male element in the ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zero's or, for dates, left blank.

The internal consistency validations that will be performed on the foster care detailed data are as follows:

(1) The Local Agency must be the county or a county equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) or other ACF assigned code must be used.

(2) If Date of Latest Removal From Home (Element 21) is less than nine months prior to the Report Period Ending Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) may be left blank.

(3) If Date of Latest Removal From Home (Element 21) is greater than nine months from Report Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) must not be more than nine months prior to the Report Date (Element 2).

(4) If a child is identified as having a disability(ies) (Element 10), at least one Type of Disability Condition (Elements 11–15) must be indicated. Enter a zero (0) for disabilities that do not apply.

(5) If the Total Number of Removals From Home to Date (Element 19) is one (1), the Date Child was Discharged From Last Foster Care Episode (Element 20) must be blank.

(6) If the Total Number of Removals From Home to Date (Element 19) is two or more, then the Date Child was Discharged From Last Foster Care Episode (Element 20) must not be blank.

(7) If Date Child was Discharged From Last Foster Care Episode (Element 20) exists, then this date must be a date prior to the Date of Latest Removal From Home (Element 21).

(8) The Date of Latest Removal From Home (Element 21) must be prior to the Date of Placement in Current Foster Care Setting (Element 23).

(9) At least one element between elements 26 and 40 must be answered by selecting a ''1''. Enter a zero (0) for conditions that do not apply.

(10) If Current Placement Setting (Element 41) is a value that indicates that the child is not in a foster family or a pre-adoptive home, then elements 49–55 must be zero (0).

(11) At least one element between elements 59 and 65 must be answered by selecting a ''1''. Enter a zero for sources that do not apply.

(12) If the answer to the question, ''Has this child ever been adopted?'' (Element 16) is ''1'' (Yes), then the question, ''How old was the child when the adoption was legalized?'' (Element 17) must have an answer from ''1'' to ''5.''

(13) If the Date of Most Recent Periodic Review (Element 5) is not blank, then Manner of Removal From Home for Current Placement Episode (Element 25) cannot be option 3, ''Not Yet Determined.''

(14) If Reason for Discharge (Element 58) is option 3, ''Adoption,'' then Parental Rights Termination dates (Elements 46 and 47) must not be blank.

(15) If the Date of Latest Removal From Home (Element 21) is present, the Date of Latest Removal From Home Transaction Date (Element 22) must be present and must be later than or equal to the Date of Latest Removal From Home (Element 21).

(16) If the Date of Discharge From Foster Care (Element 56) is present, the Date of Discharge From Foster Care Transaction Date (Element 57) must be present and must be later than or equal to the Date of Discharge From Foster Care (Element 56).

(17) If the Date of Discharge From Foster Care (Element 56) is present, it must be after the Date of Latest Removal From Home (Element 21).

(18) In Elements 8, 52, and 54, race categories (''a'' through ''e'') and ''f. Unable to Determine'' cannot be coded ''0,'' for it does not apply. If any of the race categories apply and are coded as ''1'' then ''f. Unable to Determine'' cannot also apply.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable responses to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in Appendix A, Section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Not Yet Determined'' or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)–(18) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below:

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	Title IV–E agency.
02	Report date.
03	Local agency FIPS code or other ACF assigned code.
04	Record number.

(2) Less Than Ten Percent Missing Data.

The data for the elements listed below cannot have ten percent or more missing data without incurring a finding of substantial noncompliance with the title IV–E plan.

Element No.	Element description
05	Date of most recent periodic, review.
06	Child's date of birth.
07	Child's sex.
08	Child's race.
09	Child's Hispanic or Latino Ethnicity.
10	Does child have a disability(ies)?
11–15	Type of disability (at least one must be selected).
16	Has child been adopted?
17	How old was child when adoption was legalized?

Element No.	Element description
18	Date of first removal from home.
19	Total number of removals from home to date.
20	Date child was discharged from last foster care.
21	Date of latest removal from home.
22	Removal transaction date.
23	Date of placement in current foster care setting.
24	Number of previous placement settings during this removal episode.
25	Manner of removal from home for current placement episode.
26–40	Actions or conditions associated with child's removal (at least one must be selected).
41	Current placement setting.
42	Out of State/Tribal service area placement.
43	Most recent case plan goal.
44	Caretaker family structure.
45	Year of birth of 1st principal caretaker.
46	Year of birth of 2nd principal caretaker.
47	Date of mother's parental rights termination.
48	Legal or putative father parental rights termination date.
49	Foster family structure.
50	Year of birth of 1st foster caretaker.
51	Year of birth of 2nd foster caretaker.
52	Race of 1st foster caretaker.
53	Hispanic or Latino Ethnicity of 1st foster caretaker.
54	Race of 2nd foster caretaker.
55	Hispanic or Latino Ethnicity of 2nd foster caretaker.
56	Date of discharge from foster care.
57	Foster care discharge transaction date.
58	Reason for discharge.
59–65	Sources of Federal support/assistance for child (at least one must be selected).
66	Amount of monthly foster care payment (regardless of source).

c. Determination of substantial noncompliance with the title IV–E plan.

Missing data are a major factor in determining substantial noncompliance with the title IV–E plan.

(1) Selection Rules.

All data elements will be used in calculating missing data unless one of the following limiting rules applies to the detailed case record.

(a) If Date of Latest Removal From Home (Element 21) and the Date of Discharge From Foster Care (Element 56) is less than 30 days, then the following date elements are the only ones to be used in evaluating the missing data provisions for purposes of a determination of substantial noncompliance with the title IV–E plan:

Elements
1 to 4
6 to 9
21 and 22
41 and 42
56 to 58

(b) If Date of Latest Removal From Home (Element 18) is prior to October 1, 1995, then the following data elements are the only ones to be used in evaluating the missing data provisions for purposes of a determination of substantial noncompliance with the title IV–E plan:

Elements
1 to 4
6 to 9
21 and 22
41 and 43
56 to 58

(2) Determination of substantial noncompliance with the title IV–E plan.

The percentage calculation will be performed for each data element. The total number of detailed records that are included by the selection rules in 3.c.(1), will serve as the denominator. The number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The determination of substantial noncompliance with the title IV–E plan is made when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Foster Care Data Reports

Title IV–E agencies are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

Computer generated transaction dates indicate the date when key foster care events are entered into the title IV–E agency's computer system. The intent of these transaction dates is to ensure that information about the status of children in foster care is recorded and, thus, reported in a timely manner.

a. Date of Latest Removal From Home.

The Date of Latest Removal From Home Transaction Date (Element 22) must not be more than 60 days after the Date of Latest Removal From Home (Element 21) event.

b. The Date of Discharge From Foster Care Transaction Data (Element 57) must not be more than 60 days after the Date of Discharge From Foster Care (Element 56) event.

For purposes of a determination of substantial noncompliance with the title IV–E plan, ninety percent of the records in a detailed data submission, must indicate that:

(1) The difference between the Date of Latest Removal From Home Transaction Date (Element 22) and the Date of Latest Removal From Home (Element 21) event is 60 days or less;

and, where applicable,

(2) The difference between the Date of Discharge From Foster Care Transaction Date (Element 57), and the Date of Discharge From Foster Care (Element 56) event is 60 days or less.

B. Adoption

1. Summary Data Elements File Submission Standards

A summary file must accompany the detailed Data Elements File submission. Both files must be sent through electronic means (see appendix C for details). This summary will be used to verify the completeness of the Detailed Data File submission received.

a. The summary file should be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D, section B.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the title IV–E agency. The two summary files (the one submitted by the title IV–E agency and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See section B.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the title IV–E agency within 24 hours of the time the title IV–E agency has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data Elements File Submission Standards

a. Internal Consistency Validations

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, an adoption cannot be finalized until parental rights have been terminated. Thus, the dates of Mother/Father Termination of Parental Rights, elements must be present and the dates must be prior to the ''Date Adoption Legalized.'' If this is not the case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Adoptive Parent is single, then the appropriate sex of the single female/male element in the ''Family Structure,'' ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zeros or left blank.

The internal consistency validations that will be performed on the adoption detailed data are as follows:

(1) The Child's Date of Birth (Element 5) must be later than both the Mother's and Father's Year of Birth (Elements 16 and 17) unless either of these is unknown.)

(2) If the title IV–E agency has determined that the child is a special needs child (Element 9), then ''the primary basis for determining that this child has special needs'' (Element 10) must be completed. If ''the primary basis for determining that this child has special needs'' (Element 10) is answered by option ''4,'' then at least one element between Elements 11–15, ''Type of Disability,'' must be selected. Enter a zero (0) for disabilities that do not apply.

(3) Dates of Parental Rights Termination (Elements 19 and 20) must be completed and must be prior to the Date Adoption Legalized (Element 21).

(4) If ''Is a monthly financial subsidy being paid for this child'' (Element 35) is answered negatively, ''2'', then Element 36 must be zero (0) and ''Is the subsidy paid under Title IV–E adoption assistance'' (Element 37) must be a ''2''.

(5) If the ''Child Was Placed By'' (Element 34) is answered with option 1, ''Public Agency,'' then the question, ''Did the title IV–E Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(6) If the ''Relationship of Adoptive Parent(s) to the Child,'' ''Foster Parent of Child'' (Element 31) is selected, then the question, ''Did the title IV–E Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(7) If ''Is a monthly financial subsidy being paid for this child?'' (Element 35) answered ''1,'' then the question, ''Did the title IV–E Agency Have any Involvement in This Adoption'' (Element 4) must be ''1.''

(8) If the ''Family Structure'' (Element 22) is option 3, Single Female, then the Mother's Year of Birth (Element 23), the ''Adoptive Mother's Race'' (Element 25) and ''Hispanic or Latino Ethnicity'' (Element 26) must be completed. Similarly, if the ''Family Structure'' (Element 22) is option 4, Single Male, then the Father's Year of Birth (Element 24), the Adoptive Father's Race'' (Element 27) and ''Hispanic or Latino Ethnicity'' (Element 28) must be completed. If the ''Family Structure'' (Element 22) is option 1 or 2, then both Mother's and Father's ''Year of Birth,'' ''Race'' and ''Hispanic or Latino Ethnicity'' must be completed.

(9) In Elements 7, 25, and 27, race categories (''a'' through ''e'') and ''f. Unable to Determine'' cannot be coded ''0,'' for it does not apply. If any of the race categories apply and are coded as ''1'' then ''f. Unable to Determine'' cannot also apply.

b. Out-of-Range Standards

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable response to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in appendix B, section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Other'' or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(9) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below.

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	Title IV–E agency.
02	Report date.
03	Record number.
04	Did the title IV–e agency have any involvement in this adoption?

(2) Less Than Ten Percent Missing Data

The data for the elements listed below cannot have ten percent or more missing data without incurring a determination of substantial noncompliance with the title IV–E plan.

Element No.	Element name
05	Child's date of birth.
06	Child's sex.
07	Child's race.
08	Is the child of Hispanic or Latino ethnicity?
09	Does child have special needs?
10	Indicate the primary basis for determining that the child has special needs. (If Element 09 is yes, you must answer this question.)
11–15	Type of special need (at least one must be selected.)
16	Mother's year of birth.
17	Father's year of birth.
18	Was mother married at time of child's birth?
19	Date of mother's termination of parental rights.
20	Date of father's termination of parental rights.
21	Date adoption legalized.
22	Adoptive parent(s)' family structure.
23	Mother's year of birth.
24	Father's year of birth.
25	Adoptive mother's race.
26	Hispanic or Latino ethnicity of mother.
27	Adoptive father's race.
28	Hispanic or Latino ethnicity of father.
29–32	Relationship of adoptive parent(s) to child (at least one must be selected.)
33	Child placed from.
34	Child placed by.
35	Is a monthly financial subsidy paid for this child?
36	If yes, the monthly amount is?
37	Is the child receiving Title IV–E adoption assistance? (If Element 35 is a ''1'' (Yes) an answer to this question is required.)

c. Determination of substantial noncompliance with the title IV–E plan.

Missing data are a major factor in determining substantial noncompliance with the title IV–E plan.

(1) Selection Rules.

Only the adoption records with a ''1'' (Yes) answer in Element 4, ''Did the title IV–E Agency have any Involvement in this adoption'' will be subject to a determination of substantial noncompliance with the title IV–E plan.

(2) Determination of substantial noncompliance with the title IV–E plan.

The percentage calculation will be performed for each data element. The total number of detailed records will serve as the denominator and the number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The determination of substantial noncompliance with the title IV–E plan is made when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Adoption Reports

The title IV–E agency is required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

For determinations of substantial noncompliance with the title IV–E plan purposes, however, no specific timeliness of data standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

The desired approach to reporting adoption data is that adoptions should be reported during the reporting period in which the adoption is legalized. Or, at the title IV–E agency's option, they can be reported in the following reporting period if the adoption is legalized within the last 60 days of the reporting period.

Negative reports must be submitted for any semi-annual period in which no adoptions have been legalized.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

■ 23. The authority citation for part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.,* 42 U.S.C. 1302.

■ 24. Revise § 1356.10 to read as follows:

§ 1356.10 Scope.

This part applies to title IV–E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV–E of the Act.

■ 25. Revise § 1356.20 to read as follows:

§ 1356.20 Title IV–E plan document and submission requirements.

(a) To be in compliance with the title IV–E plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster

care maintenance payments and adoption assistance under this part, a title IV–E agency must have a plan approved by the Secretary that meets the requirements of this part, part 1355, section 471(a) of the Act and for Tribal title IV–E agencies, section 479B(c) of the Act. The title IV–E plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the title IV–E agency.

(b) Failure by a title IV–E agency to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the title IV–E agency in complying with the plan.

(c) The following procedures for approval of plans and amendments apply to the title IV–E program:

(1) *Plan.* The plan consists of written documents furnished by the title IV–E agency to cover its program under part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* Plans and revisions of the plans are submitted first to the State governor or his/her designee, or the Tribal leader or his/her designee for review and then to the regional office, ACYF. Title IV–E agencies are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of plans and amendments. They also initiate discussion with the title IV–E agency on clarification of significant aspects of the plan which come to their attention in the course of this review. Plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the title IV–E agency.

(4) *Action.* ACYF has the authority to approve plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Regional Office, ACYF, formally notifies the title IV–E agency of the actions taken on plans or revisions.

(5) *Basis for approval.* Determinations as to whether plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of plans.* The determination as to whether a plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved plan may, at the option of the title IV–E agency, be considered as a submission of a new plan. If the title IV–E agency requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period. In absence of request by a title IV–E agency that an amendment of an approved plan shall be considered as a submission of a new plan, the procedures under § 201.6(a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis or, in the case of a Tribal title IV–E agency, in operation in the Tribal title IV–E agency's entire service area. The same applies with respect to plan amendments.

(d) Once the title IV–E plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

■ 26. In 1356.21 revise paragraphs (a), (b) introductory text, (b)(2)(i), (b)(3) introductory text, (b)(3)(i), the first sentence of (c), paragraphs (d)(2) and (3), paragraph (f), the first sentence of paragraph (g) introductory text, (g)(1) and (2), the second sentence of (g)(5), (h)(1), (h)(3) introductory text, paragraphs (i)(1) introductory text, (i)(1)(i) introductory text, (i)(1)(i)(D), the first sentence of (i)(1)(ii), paragraphs (i)(2) introductory text, (i)(2)(i), the first sentence of (i)(2)(ii), paragraphs (i)(2)(iii), (i)(3), (k)(2), paragraph (l) introductory text, paragraph (m) introductory text, paragraph (n) and paragraph (o) to read as follows:

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV–E plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a title IV–E agency must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5), 475(6), and for a Tribal title IV–E agency section 479(B)(c)(1)(C)(ii)(II) of the Act.

(b) *Reasonable efforts.* The title IV–E agency must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the ''reasonable efforts'' requirements of section 471(a)(15) (as implemented through section 472(a)(2) of the Act), the title IV–E agency must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the paramount concern.

* * * * *

(2) * * *

(i) The title IV–E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in

accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

* * * * *

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the title IV–E agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State, or for a Tribal title IV–E agency, Tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

* * * * *

(c) *Contrary to the welfare determination.* Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. * * *

(d) * * *

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV–E agency for the first 12 months that agency's title IV–E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

* * * * *

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each title IV–E agency's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) * * * In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the title IV–E agency must promulgate policy materials and instructions for use by staff to determine the appropriateness of and necessity for the foster care placement of the child. * * *

(1) Be a written document, which is a discrete part of the case record, in a format determined by the title IV–E agency, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the title IV–E agency, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

* * * * *

(5) * * * When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, Tribal, regional, and national adoption exchanges including electronic exchange systems.

(h) * * *

(1) To meet the requirements of the permanency hearing, the title IV–E agency must, among other requirements, comply with section 475(5)(C) of the Act.

* * * * *

(3) If the title IV–E agency concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the title IV–E agency must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) * * *

(1) Subject to the exceptions in paragraph (i)(2) of this section, the title IV–E agency must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the title IV–E agency for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the title IV–E agency:

* * * * *

(D) Need only apply section 475(5)(E) of the Act to a child once if the title IV–E agency does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State or for a Tribal title IV–E agency, Tribal law). * * *

* * * * *

(2) The title IV–E agency may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the title IV–E agency, the child is being cared for by a relative;

(ii) The title IV–E agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. * * *

(iii) The title IV–E agency has not provided to the family, consistent with the time period in the case plan, services that the title IV–E agency deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the title IV–E agency files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

* * * * *

(k) * * *

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the title IV–E agency.

* * * * *

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act, all of the conditions under section 472(a)(3), and for Tribal title IV–E agencies section 479B(c)(1)(C)(ii)(II) of the Act, one of the two following situations must apply:

* * * * *

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the title IV–E agency must review at reasonable, specific, time-limited periods to be established by the agency:

* * * * *

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law or Tribal law by statute, code, resolution, Tribal proceedings or administrative regulation with the force of law.

(o) *Notice and right to be heard.* The title IV–E agency must provide the

foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case.

■ 27. In § 1356.22 revise paragraphs (a) introductory text, (a)(2) and (c) to read as follows:

§ 1356.22 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the title IV–E agency must meet the requirements of:

* * * * *

(2) Sections 422(b)(8) and 475(5) of the Act;

* * * * *

(c) The title IV–E agency must establish and maintain a uniform procedure or system, consistent with State or Tribal law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

■ 28. In § 1356.30, revise paragraphs (a), (b) introductory text, and (c) introductory text, remove and reserve paragraph (d) and revise paragraph (e) to read as follows:

§ 1356.30 Safety requirements for foster care and adoptive home providers.

(a) The title IV–E agency must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The title IV–E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV–E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV–E agency finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

* * * * *

(c) The title IV–E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV–E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV–E agency finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

* * * * *

(d) [Reserved]

(e) In all cases where the State opted out of the criminal records check requirement, as permitted prior to the amendments made by section 152 of Public Law 109–248, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

* * * * *

■ 29. In § 1356.40 revise paragraphs (a), (b)(4), (d), (e) and (f) to read as follows:

§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

(a) To implement the adoption assistance program provisions of the title IV–E plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the title IV–E agency must meet the requirements of this section and section 471(a), applicable provisions of section 473, and section 475(3) of the Act.

(b) * * *

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the place of residence of the adoptive parents at any given time.

* * * * *

(d) In the event an adoptive family moves from one place of residence to another, the family may apply for social services on behalf of the adoptive child in the new place of residence. If a needed service(s) specified in the adoption assistance agreement is not available in the new place of residence, the title IV–E agency making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A title IV–E agency may make an adoption assistance agreement with adopting parent(s) who reside in another State or a Tribal service area. If so, all provisions of this section apply.

(f) The title IV–E agency must actively seek ways to promote the adoption assistance program.

■ 30. In § 1356.41 revise the first sentence of paragraph (a), paragraph (b), paragraphs (d), (e), paragraphs (f)(1) and (2), the second sentence of paragraph (g), paragraph (h), the first sentence of paragraph (i), paragraphs (j) and (k) to read as follows:

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the title IV–E agency administering the program. * * *

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State, Tribal, or Federal adoption assistance payments or services.

* * * * *

(d) For purposes of payment of nonrecurring expenses of adoption, the title IV–E agency must determine that the child is a ''child with special needs'' as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The title IV–E agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services.

(2) The agreement for nonrecurring expenses must be signed at the time of or prior to the final decree of adoption. Claims must be filed with the title IV–E agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the title IV–E agency under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV–E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for title IV–E agency expenditures up to $2,000, for any adoptive placement.

(2) Title IV–E agencies may set a reasonable lower maximum which must be based on reasonable charges,

consistent with State, Tribal, and local practices, for special needs adoptions within the State or Tribal service area. The basis for setting a lower maximum must be documented and available for public inspection.

* * * * *

(g) * * * Payments for nonrecurring expenses shall be made either directly by the title IV–E agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves a placement outside the State or Tribal service area, the title IV–E agency that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State or Tribal subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is placement outside the State or Tribal service area but no agreement for other Federal, Tribal, or State adoption assistance, the title IV–E agency in the jurisdiction in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State, Tribal or Federal law, and which have not been reimbursed from other sources or other funds. * * *

(j) Failure to honor all eligible claims will be considered non-compliance by the title IV–E agency with title IV–E of the Act.

(k) A title IV–E expenditure is considered made in the quarter during which the payment was made by a title IV–E agency to a private nonprofit agency, individual or vendor payee.

■ 31. In § 1356.50 revise the section heading and paragraphs (a) and (b) to read as follows:

§ 1356.50 Withholding of funds for non-compliance with the approved title IV–E plan.

(a) To be in compliance with the title IV–E plan requirements, a title IV–E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV–E plan requirements, a title IV–E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

* * * * *

■ 32. In § 1356.60 revise paragraphs (a)(1)(i) and (a)(2), the heading of paragraph (b), paragraphs (b)(1)(i), (b)(2), (c) introductory text, and (e) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

(a) * * *

(1) Federal financial participation (FFP) is available to title IV–E agencies under an approved title IV–E plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30, section 472 of the Act, and for a Tribal title IV–E agency, section 479B of the Act;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40, applicable provisions of section 473, section 475(3) and, for a Tribal title IV–E agency, section 479B of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), 474(a)(1) and (2) and 479B(d) of the Act as applicable, definitions, and pertinent regulations as promulgated by the Secretary, or his designee.

(b) *Federal matching funds for title IV–E agency training for foster care and adoption assistance under title IV–E.*

(1) * * *

(i) Training personnel employed or preparing for employment by the title IV–E agency administering the plan, and;

* * * * *

(2) All training activities and costs funded under title IV–E shall be included in the agency's training plan for title IV–B.

* * * * *

(c) *Federal matching funds for other title IV–E agency administrative expenditures for foster care and adoption assistance under title IV–E.* Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV–E plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

* * * * *

(e) *Federal matching funds for SACWIS/TACWIS.* All expenditures of a title IV–E agency to plan, design, develop, install and operate the Statewide or Tribal automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the title IV–E plan without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

■ 33. Add new § 1356.67 and § 1356.68 to read as follows:

§ 1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement.

(a) Each State with a title IV–E plan approved under section 471 of the Act must establish and maintain procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement in a way that does not affect a child's eligibility for, or payment of, title IV–E and the child's eligibility for medical assistance under title XIX of the Act.

(b) The procedures must, at a minimum, provide for the State to:

(1) Determine, if the eligibility determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility of a child to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement.

(2) Provide essential documents and information necessary to continue a child's eligibility under title IV–E and Medicaid programs under title XIX to the Tribal title IV–E agency, including, but not limited to providing:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;

(ii) Other documentation the State has that relates to the child's title IV–E eligibility under sections 472 and 473 of the Act;

(iii) Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;

(iv) The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and

(v) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

§ 1356.68 Tribal title IV–E agency requirements for in-kind administrative and training contributions from third-party sources.

(a) *Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs.* A Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative or training costs subject to paragraphs (b) through (d) of this section.

(b) *In-kind expenditures for fiscal years 2010 and 2011*—(1) *Administrative costs.* A Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV–E agency may claim in-kind training expenditures of up to 12 percent of the total training funds expended during a fiscal year quarter pursuant to section 474(a)(3)(A) and (B) of the Act, but only from the following sources:

(i) A State or local government;

(ii) An Indian Tribe, Tribal organization, or Tribal consortium other than the Indian Tribe, organization, or consortium submitting the title IV–E plan;

(iii) A public institution of higher education;

(iv) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)); and

(v) A private charitable organization.

(c) *In-kind expenditures for fiscal years 2012 and thereafter*—(1) *Administrative costs.* A Tribal title IV–E agency may claim in-kind expenditures from third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV–E agency may claim in-kind training expenditures of up to 25 percent (or 30 percent consistent with section 203(b) of Pub. L. 110–351) of the total training funds expended during each quarter of fiscal year 2012 pursuant to section 474(a)(3)(A) and (B) of the Act. For fiscal year 2013 and thereafter, a Tribal title IV–E agency may claim in-kind training expenditures of up to 25 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act.

(3) *Third-party sources.* A Tribal title IV–E agency may claim in-kind training expenditures for training funds from any allowable third-party source.

■ 34. In § 1356.71 revise paragraphs (a)(1) and (a)(2), (a)(3)(i), the heading and first sentence of (a)(3)(ii), (b)(1) and (b)(2), (c)(1), the second and fourth sentence of paragraph (c)(4), the first sentence of (c)(5), paragraph (d) introductory text, paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(v), (d)(2), paragraph (g)(1) introductory text, paragraphs (g)(2) and (3), (h)(1), (h)(3), (h)(4), (i)(1) introductory text, paragraph (i)(1)(i) and (i)(1)(ii), the second and third sentences of paragraph (i)(1)(iii), (i)(2) through (4), paragraph (j) introductory text, the first sentence of paragraph (j)(1) and paragraphs (j)(2) through (4) to read as follows:

§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV–E programs.

(a) * * *

(1) This section sets forth requirements governing Federal reviews of compliance with the title IV–E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to title IV–E agencies that receive Federal payments for foster care under title IV–E of the Act.

(3) * * *

(i) *Title IV–E agencies in substantial compliance.* Title IV–E agencies determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) *Title IV–E agencies not in substantial compliance.* Title IV–E agencies that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of noncompliance. * * *

(b) * * *

(1) The review team must be composed of representatives of the title IV–E agency, and ACF's Regional and Central Offices.

(2) The title IV–E agency must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) * * *

(1) The list of sampling units in the target population (*i.e.,* the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the title IV–E agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a title IV–E agency's most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by ACF in conjunction with the title IV–E agency.

* * * * *

(4) * * * When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the title IV–E agency will be considered in substantial compliance. * * * A title IV–E agency which meets this standard is considered to be in ''substantial compliance'' (see paragraph (h) of this section). * * *

(5) A title IV–E agency which has been determined to be in ''noncompliance'' (*i.e.,* not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. * * *

* * * * *

(d) *Requirements subject to review.* Title IV–E agencies will be reviewed against the requirements of title IV–E of the Act regarding:

(1) * * *

(i) Judicial determinations regarding ''reasonable efforts'' and ''contrary to the welfare'' in accordance with § 1356.21(b) and (c), respectively;

* * *

(iii) Responsibility for placement and care vested with the title IV–E or other public agency per section 472(a)(2)(B) of the Act;

* * *

(v) Eligibility for AFDC under such State plan as it was in effect on July 16, 1996 per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c), and 479B(c)(2) of the Act and § 1356.30.

* * * * *

(g) * * *

(1) For each case being reviewed, the title IV–E agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or

letter of approval, for each of the providers in the following categories:

* * * * *

(2) The licensing file must contain documentation that the title IV–E agency has complied with the safety requirements for foster and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the title IV–E agency may provide supplemental information from other sources (*e.g.,* a computerized database).

(h) * * *

(1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a title IV–E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

* * * * *

(3) ACF will notify the title IV–E agency in writing within 30 calendar days after the completion of the review of whether the title IV–E agency is, or is not, operating in substantial compliance.

(4) Title IV–E agencies which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) * * *

(1) Title IV–E agencies which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by title IV–E agency and Federal staff;

(ii) Identify the areas in which the title IV–E agency's program is not in substantial compliance;

(iii) * * * A title IV–E agency will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State/Tribal legislative action is required. In such instances, an extension may be granted with the title IV–E agency and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first legislative session after the date of the program improvement plan; and

* * * * *

(2) Title IV–E agencies determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a title IV–E agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the title IV–E agency, the title IV–E agency's progress in completing the prescribed action steps in the program improvement plan.

(4) If a title IV–E agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a title IV–E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) Title IV–E agencies which are found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. * * *

(2) Title IV–E agencies which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the title IV–E agency's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent, the title IV–E agency is not in compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period (*i.e.,* all title IV–E funds expended for a case during the quarter(s) that case is ineligible, including administrative costs). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The title IV–E agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.18.

(4) Title IV–E agencies may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR part 16.

■ 35. In § 1356.83 revise the fifth and sixth sentences of paragraph (g)(55) and add a parenthetical OMB information collection statement at the end of the section, to read as follows:

§ 1356.83 Reporting requirements and data elements.

* * * * *

(g) * * *

(55) * * * Indicate ''yes'', ''no'', or ''don't know'' as appropriate. If the youth does not answer this question, indicate ''declined.''

* * * * *

(This requirement has been approved by the Office of Management and Budget under OMB Control Number OMB 0970–0340. In accordance with the Paperwork Reduction Act of 1995, 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.)

■ 36. In § 1356.86 revise paragraph (e) to read as follows:

§ 1356.86 Penalties for noncompliance.

* * * * *

(e) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.18.

* * * * *

■ 37. Revise Appendixes A and B to Part 1356 to read as follows:

Appendix A to Part 1356—NYTD Data Elements

Element No.	Element name	Responses options	Applicable population
1	State	2 digit FIPS code.	
2	Report date	CYYMM.	

Element No.	Element name	Responses options	Applicable population
		CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12).	
3	Record number	Encrypted, unique person identification number.	
4	Date of birth	CCYYMMDD. CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD= day (01–31).	
5	Sex	Male. Female.	
6	Race—American Indian or Alaska Native	Yes No.	All youth in served, baseline and follow-up populations.
7	Race—Asian	Yes. No.	
8	Race—Black or African American	Yes. No.	
9	Race—Native Hawaiian or Other Pacific Islander.	Yes. No.	
10	Race—White	Yes. No.	
11	Race—Unknown	Yes. No.	
12	Race—Declined	Yes. No.	
13	Hispanic or Latino Ethnicity	Yes. No. Unknown. Declined.	
14	Foster care status—services	Yes No.	Served population only.
15	Local agency	FIPS code(s). Centralized unit.	
16	Federally-recognized tribe	Yes. No.	
17	Adjudicated delinquent	Yes. No.	
18	Education level	Less than 6th grade 6th grade. 7th grade. 8th grade. 9th grade. 10th grade. 11th grade. 12th grade. Postsecondary education or training. College, at least one semester.	Served population only.
19	Special education	Yes. No.	
20	Independent living needs assessment	Yes. No.	
21	Academic support	Yes. No.	
22	Post-secondary educational support	Yes. No.	
23	Career preparation	Yes. No.	
24	Employment programs or vocational training.	Yes. No.	
25	Budget and financial management	Yes. No.	
26	Housing education and home management training.	Yes. No.	
27	Health education and risk prevention	Yes. No.	
28	Family Support/Healthy Marriage Education.	Yes. No.	
29	Mentoring	Yes.	

Element No.	Element name	Responses options	Applicable population
		No.	
30	Supervised independent living	Yes.	
		No.	
31	Room and board financial assistance	Yes.	
		No.	
32	Education financial assistance	Yes.	
		No.	
33	Other financial assistance	Yes.	
		No.	
34	Outcomes reporting status	Youth Participated	Baseline and follow-up populations (with the exception of the response option ''not in sample'' which is applicable to 19-year olds in the follow-up only).
		Youth Declined.	
		Parent Declined.	
		Youth Incapacitated.	
		Incarcerated.	
		Runaway/Missing.	
		Unable to locate/invite.	
		Death.	
		Not in sample.	
35	Date of outcome data collection	CCYYMMDD	Baseline and follow-up populations.
		CC = century year (i.e., 20).	
		YY = decade year (00–99).	
		MM = month (01–12).	
		DD = day (01–31).	
36	Foster care status-outcomes	Yes.	
		No.	
37	Current full-time employment	Yes.	
		No.	
		Declined.	
38	Current part-time employment	Yes.	
		No.	
		Declined.	
39	Employment-related skills	Yes.	
		No.	
		Declined.	
40	Social Security	Yes.	
		No.	
		Declined.	
41	Educational aid	Yes.	
		No.	
		Declined.	
42	Public financial assistance	Yes	Follow-up population not in foster care.
		No.	
		Not applicable.	
		Declined.	
43	Public food assistance	Yes.	
		No.	
		Not applicable.	
		Declined.	
44	Public housing assistance	Yes.	
		No.	
		Not applicable.	
		Declined.	
45	Other financial support	Yes	Baseline and follow-up population.
		No.	
		Declined.	
46	Highest educational certification received	High school diploma/GED.	
		Vocational certificate.	
		Vocational license.	
		Associate's degree.	
		Bachelor's degree.	
		Higher degree.	
		None of the above.	
		Declined.	
47	Current enrollment and attendance	Yes.	
		No.	
		Declined.	
48	Connection to adult	Yes.	
		No.	
		Declined.	
49	Homelessness	Yes.	
		No.	
		Declined.	
50	Substance abuse referral	Yes.	
		No.	

Element No.	Element name	Responses options	Applicable population
51	Incarceration	Declined. Yes. No.	
52	Children	Declined. Yes. No.	
53	Marriage at child's birth	Declined. Yes. No.	
54	Medicaid	Not applicable. Declined. Yes. No.	
55	Other health insurance	Don't know. Declined. Yes No.	Baseline and follow-up population.
56	Health insurance type—medical	Don't know. Declined. Yes. No.	
57	Health insurance type—mental health	Don't know. Not Applicable. Declined. Yes. No.	
58	Health insurance type—prescription drugs.	Don't know. Not applicable. Declined. Yes. No. Don't know. Not applicable. Declined.	

Appendix B to Part 1356—NYTD Youth Outcome Survey

Topic/element No.	Question to youth and response options	Definition
INFORMATION TO COLLECT FROM ALL YOUTH SURVEYED FOR OUTCOMES, WHETHER IN FOSTER CARE OR NOT		
Current full-time employment (37)	Currently are you employed full-time? __Yes __No __Declined	"Full-time" means working at least 35 hours per week at one or multiple jobs.
Current part-time employment (38)	Currently are you employed part-time? __Yes __No __Declined	"Part-time" means working at least 1–34 hours per week at one or multiple jobs.
Employment-related skills (39)	In the past year, did you complete an apprenticeship, internship, or other on-the-job training, either paid or unpaid? __Yes __No __Declined	This means apprenticeships, internships, or other on-the-job trainings, either paid or unpaid, that helped the youth acquire employment-related skills (which can include specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment).
Social Security (40)	Currently are you receiving social security payments (Supplemental Security Income (SSI, Social Security Disability Insurance (SSDI), or dependents' payments)? __Yes __No __Declined	These are payments from the government to meet basic needs for food, clothing, and shelter of a person with a disability. A youth may be receiving these payments because of a parent or guardian's disability, rather than his/her own.

Topic/element No.	Question to youth and response options	Definition
Educational Aid (41)	Currently are you using a scholarship, grant, stipend, student loan, voucher, or other type of educational financial aid to cover any educational expenses? __Yes __No __Declined	Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. ''Student loan'' means a government-guaranteed, low-interest loan for students in post-secondary education.
Other financial support (45)	Currently are you receiving any periodic and/or significant financial resources or support from another source not previously indicated and excluding paid employment? __Yes __No __Declined	This means periodic and/or significant financial support from a spouse or family member (biological, foster or adoptive), child support that the youth receives or funds from a legal settlement. This does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child or other financial help that does not benefit the youth directly in supporting himself or herself.
Highest educational certification received (46).	What is the highest educational degree or certification that you have received? __High school diploma/GED __Vocational certificate __Vocational license __Associate's degree (e.g., A.A.) __Bachelor's degree (e.g., B.A. or B.S.) __Higher degree __None of the above __Declined	''Vocational certificate'' means a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology. ''Vocational license'' means a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business. An Associate's degree is generally a two-year degree from a community college, and a Bachelor's degree is a four-year degree from a college or university. ''Higher degree'' indicates a graduate degree, such as a Masters or Doctorate degree. ''None of the above'' means that the youth has not received any of the above educational certifications.
Current enrollment and attendance (47).	Currently are you enrolled in and attending high school, GED classes, post-high school vocational training, or college? __Yes __No __Declined	This means both enrolled in and attending high school, GED classes, or postsecondary vocational training or college. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session (e.g., Spring break, summer vacation, etc.).
Connection to adult (48)	Currently is there at least one adult in your life, other than your caseworker, to whom you can go for advice or emotional support? __Yes __No __Declined	This refers to an adult who the youth can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship to share personal achievements. This can include, but is not limited to, adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. The adult must be easily accessible to the youth, either by telephone or in person.
Homelessness (49)	Have you ever been homeless? OR __In the past two years, were you homeless at any time? __Yes __No __Declined	''Homeless'' means that the youth had no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.
Substance abuse referral (50)	Have you ever referred yourself or has someone else referred you for an alcohol or drug abuse assessment or counseling? OR In the past two years, did you refer yourself, or had someone else referred you for an alcohol or drug abuse assessment or counseling? __Yes __No __Declined	This includes either self-referring or being referred by a social worker, school staff, physician, mental health worker, foster parent, or other adult for an alcohol or drug abuse assessment or counseling. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use.
Incarceration (51)	Have you ever been confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? OR	This means that the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with a crime (misdemeanor or felony) allegedly committed by the youth.

Topic/element No.	Question to youth and response options	Definition
	In the past two years, were you confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? __Yes __No __Declined	
Children (52)	Have you ever given birth or fathered any children that were born? OR In the past two years, did you give birth to or father any children that were born? __Yes __No __Declined	This means giving birth to or fathering at least one child that was born. If males do not know, answer ''No.''
Marriage at Child's Birth (53)	If you responded yes to the previous question, were you married to the child's other parent at the time each child was born? __Yes __No __Declined	This means that when every child was born the youth was married to the other parent of the child.
Medicaid (54)	Currently are you on Medicaid [or use the name of the State's medical assistance program under title XIX]? __Yes __No __Don't know __Declined	Medicaid (or the State medical assistance program) is a health insurance program funded by the government.
Other Health insurance Coverage (55).	Currently do you have health insurance, other than Medicaid? __Yes __No __Don't know __Declined	''Health insurance'' means having a third party pay for all or part of health care. Youth might have health insurance such as group coverage offered by employers or schools, or individual policies that cover medical and/or mental health care and/or prescription drugs, or youth might be covered under parents' insurance. This also could include access to free health care through a college, Indian Tribe, or other source.
Health insurance type—medical (56).	Does your health insurance coverage include coverage for medical services? __Yes __No __Don't know __Not Applicable __Declined	This means that the youth's health insurance covers at least some medical services or procedures. This question is for only those youth who responded ''yes'' to having health insurance.
Health insurance type—mental health (57).	Does your health insurance include coverage for mental health services? __Yes __No __Don't know Not Applicable __Declined	This means that the youth's health insurance covers at least some mental health services. This question is for only those youth who responded ''yes'' to having health insurance with medical coverage.
Health insurance type—prescription drugs (58).	Does your health insurance include coverage for prescription drugs? __Yes __No __Don't know __Declined	This means that the youth's health insurance covers at least some prescription drugs. This question is for only those youth who responded ''yes'' to having health insurance with medical coverage.

Topic/element No.	Question to youth and response options	Definition
ADDITIONAL OUTCOMES INFORMATION TO COLLECT FROM YOUTH OUT OF FOSTER CARE		
Public financial assistance (42)	Currently are you receiving ongoing welfare payments from the government to support your basic needs? [The State may add and/or substitute the name(s) of the State's welfare program]. __Yes __No __Declined	This refers to ongoing welfare payments from the government to support your basic needs. Do not consider payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance in this category.
Public food assistance (43)	Currently are you receiving public food assistance? __Yes __No __Declined	Public food assistance includes food stamps, which are government-issued coupons or debit cards that recipients can use to buy eligible food at authorized stores. Public food assistance also includes assistance from the Women, Infants and Children (WIC) program.
Public housing assistance (44)	Currently are you receiving any sort of housing assistance from the government, such as living in public housing or receiving a housing voucher? __Yes __No __Declined	Public housing is rental housing provided by the government to keep rents affordable for eligible individuals and families, and a housing voucher allows participants to choose their own housing while the government pays part of the housing costs. This does not include payments from the child welfare agency for room and board payments.

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40 CFR Parts 9, 63 and 65

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; National Uniform Emission Standards for Heat Exchange Systems; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 63 and 65

[EPA–HQ–OAR–2003–0146, EPA–HQ–OAR–2010–0870, EPA–HQ–OAR–2011–0002; FRL–9502–9]

RIN 2060–AP84

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; National Uniform Emission Standards for Heat Exchange Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the heat exchange system requirements of the national emission standards for hazardous air pollutants (NESHAP) for petroleum refineries in response to a petition for reconsideration filed by the American Petroleum Institute on the maximum achievable control technology standards we promulgated on October 28, 2009. We also are creating national uniform standards for heat exchange systems, largely based on the heat exchange system provisions that we adopted for petroleum refineries, and accompanying general provisions. We are proposing to revise the existing Petroleum Refinery NESHAP to cross-reference the uniform standard to allow an alternative option for complying with the standards for heat exchange systems. The proposed uniform standards would allow refiners to reduce monitoring frequency and burden by meeting a lower leak definition. If finalized, these national uniform standards would also be referenced, as appropriate, as we revise in the future NESHAP or new source performance standards for individual source categories that have heat exchange systems. Establishing a uniform standard for heat exchange systems is consistent with the objectives of Executive Order 13563, *Improving Regulation and Regulatory Review,* issued on January 18, 2011. We are also proposing other clarifications and technical corrections to the Petroleum Refineries NESHAP.

DATES: *Comments.* Written comments must be received on or before March 6, 2012.

Public Hearing. If anyone contacts the EPA by January 23, 2012 requesting to speak at a public hearing, a public hearing will be held on February 6, 2012.

ADDRESSES: All technical comments pertaining to the petroleum refinery amendments (40 CFR part 63, subpart CC) should be marked ''Attention Docket ID No. EPA–HQ–OAR–2003–0146.'' All technical comments pertaining to the Heat Exchange System Uniform Standards (40 CFR part 65, subpart L) should be marked ''Attention Docket ID No. EPA–HQ–OAR–2011–0002.'' Comments regarding the proposed Uniform Standards General Provisions (40 CFR part 65, subpart H) or comments that are applicable to the uniform standards approach, such as general policy or legal comments, should be marked ''Attention Docket ID No. EPA–HQ–OAR–2010–0870.'' Submit your comments, identified by the appropriate Docket ID No., by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Comments may be sent by electronic mail (email) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2003–0146; EPA–HQ–OAR–2011–0002; or EPA–HQ–OAR–2010–0870 (as appropriate).
- *Fax:* Fax your comments to: (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2003–0146; EPA–HQ–OAR–2011–0002; or EPA–HQ–OAR–2010–0870 (as appropriate).
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2003–0146; EPA–HQ–OAR–2011–0002; or EPA–HQ–OAR–2010–0870 (as appropriate). Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2003–0146; EPA–HQ–OAR–2011–0002; or EPA–HQ–OAR–2010–0870 (as appropriate). Such deliveries are accepted only during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: All submissions must include agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0146, EPA–HQ–OAR–2011–0002, or EPA–HQ–OAR–2010–0870 (as appropriate). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the dockets 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 EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina

27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; email address: *shine.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this proposed action include:

Category	NAICS [1] code	Examples of regulated entities
Industry	324110	Petroleum refineries located at a major source that are subject to 40 CFR part 63, subpart CC.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. To determine whether your petroleum refinery would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.640 of subpart CC (National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries). If you have any questions regarding the applicability of this action to a particular entity, contact either the air permit authority for the entity or your EPA regional representative, as listed in 40 CFR 63.13 of subpart A (General Provisions).

The provisions of the proposed uniform standards would apply initially only to the facilities subject to 40 CFR part 63, subpart CC (petroleum refineries), which are the subject of this rulemaking. However, we expect in future rulemaking actions to propose that new source performance standards (NSPS) and NESHAP for other source categories will also reference and require compliance with uniform standards, as appropriate. Examples of categories and entities potentially affected in the future by the proposed uniform standards for heat exchange systems include:

Category	NAICS [1] code	Examples of regulated entities
Industry	325	Manufacturing industries, particularly petrochemical, chemical, polymers, plastics and specialty chemicals manufacturing.

[1] North American Industry Classification System.

This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities the EPA anticipates are likely to be potentially affected by this action through a future, separate rulemaking action. The entities listed in the above table are not affected by this action unless and until the EPA proposes in a separate notice to apply the uniform standards for heat exchange systems to a specific source category. The list of categories and entities potentially affected by this proposed action in the future is provided solely to inform owners and operators of facilities in those categories of the potential for future rulemaking and to solicit comments from these entities at this time. If, in a future rulemaking, the EPA proposes to apply these uniform standards to a particular source category, you would have another opportunity to comment on the specific application to your industry. Because we feel that establishing uniform standards for types of equipment found in a variety of industries will be efficient for facilities, state, local and tribal governments and the public, we seek broad input at this time. In the future, you would determine whether your facility, company, business or organization would be regulated by a proposed action by examining the applicability criteria in the referencing subpart. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative, as listed in the referencing subpart.

B. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Send or deliver information as

CBI only to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, U.S. EPA Mailroom (C404–02), Attn: Mr. Roberto Morales, Document Control Officer, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0146; EPA–HQ–OAR–2011–0002; or EPA–HQ–OAR–2010–0870 (as appropriate). 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 the 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 procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the World Wide Web through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

The EPA has created a redline document comparing the existing regulatory text of 40 CFR part 63, subpart CC and the proposed amendments to aid the public's ability to comment on the regulatory text. This document has been placed in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2003–0146).

D. When would a public hearing occur?

If anyone contacts the EPA requesting to speak at a public hearing concerning the proposed amendments by January 23, 2012, we will hold a public hearing on February 6, 2012. If you are interested in attending the public hearing, contact Brenda Shine at (919) 541–3608 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information

A. General Background

In this action, we are proposing as ''uniform standards'' control requirements for hydrocarbon emissions from heat exchange systems, including emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP). The proposed uniform standards reflect the EPA's regulatory experience from previous NESHAP and NSPS rulemakings involving similar kinds of sources and emission points, and they incorporate our review of the most current technology and emission reduction practices, as detailed in section IV.B of this preamble. These proposed uniform standards would be set forth in a newly created subpart L to 40 CFR part 65 and would then be referenced, as appropriate, from NSPS or NESHAP for individual source categories. The uniform standards would not apply to a source category addressed in an NSPS or NESHAP until the EPA completes a notice-and-comment rulemaking to make it apply to that source category. Thus, if this rulemaking is finalized, the uniform standard would apply, at that time only, to petroleum refineries under 40 CFR Part 63, subpart CC. We anticipate undertaking additional rulemakings in the future to propose that subpart L apply to other NSPS and NESHAP. This action is consistent with the EPA's interest in promoting efficient use of public and private sector resources and in improving consistency, compliance and enforceability of NSPS and NESHAP standards, consistent with Executive Order 16563. Additional details about the purpose and benefits of proposing uniform standards are provided in section IV.B of this preamble.

As stated above, in this action we are also proposing to amend 40 CFR part 63, subpart CC to remove the detailed requirements and, instead, reference these requirements as they would be included in the newly created 40 CFR part 65, subpart L. Finally, we are proposing clarifications to 40 CFR part 63, subpart CC. The statutory authority for the portion of this proposal concerning the refinery MACT standard is contained in section 112 of the Clean Air Act (CAA), while the authority for the uniform standards is provided by sections 111 and 112 of the CAA, as amended (42 U.S.C. 7401, 7411, 7412, 7414, 7416 and 7601).

B. What is the statutory authority and regulatory background for this proposal?

1. Amendments to 40 CFR Part 63, Subpart CC

Section 112 of the CAA lists HAP and directs the EPA to develop rules to address emissions of HAP from stationary sources. After the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate NESHAP for those sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year, or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts), and are commonly referred to as maximum achievable control technology (MACT) standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements. See CAA section 112(d)(3). Specifically, for new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts and energy requirements.

We published the final MACT standards for petroleum refineries (40 CFR part 63, subpart CC) on August 18, 1995 (60 FR 43620). These standards are commonly referred to as the ''Refinery MACT 1'' standards because certain process vents were excluded from this source category and subsequently regulated under a second MACT standard specific to these petroleum refinery process vents (40 CFR part 63, subpart UUU, referred to as ''Refinery MACT 2''). We published final MACT standards for heat exchange systems at petroleum refineries in amendments to Refinery MACT 1 on October 28, 2009

(74 FR 55670). This action proposes amendments to 40 CFR part 63, subpart CC for heat exchange systems at petroleum refineries, and does not amend 40 CFR part 63, subpart UUU.

2. Uniform Standards

This action proposes uniform standards for heat exchange systems (40 CFR part 65, subpart L). We are proposing to establish the uniform standards under 40 CFR part 65 and anticipate, through future notice-and-comment rulemaking, to cross-reference subpart L from source category emission standards within at least two different parts of title 40 of the CFR, parts 60 and 63, which establish NSPS and MACT standards according to CAA sections 111 and 112, respectively.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions that (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT). Section 111(b)(1)(B) of the CAA requires the EPA to periodically review, and, as appropriate, revise the standards of performance to reflect improvements in methods for reducing emissions.

Once the EPA has established MACT standards for source categories under CAA section 112(d), as described in section II.A.1 of this preamble, the EPA is required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6).

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices, and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that may have many small businesses.

Uniform standards would be referenced, as appropriate, by future NESHAP for major or area source categories in new proposed 40 CFR part 63 subparts or revisions to existing individual subparts in 40 CFR part 61 and 40 CFR part 63. Additionally, we expect to promulgate or revise NSPS in individual subparts in 40 CFR part 60 in the future, which would reference, as appropriate, promulgated uniform standards. The rationale for each determination of whether the uniform standards in proposed 40 CFR part 65, subpart L are consistent with the applicable statutory requirements for which we were undertaking rulemaking action would be presented in that rulemaking for the individual source category. At that time, the public would be provided with an opportunity to comment on whether the specific requirements of the uniform standards should apply, as promulgated, or should be revised for purposes of the specific source category at issue in that rulemaking action. For example, if the uniform standards for heat exchange systems are finalized, then, when reviewing NSPS for a specific source category that includes heat exchange systems, we would consider whether the uniform standards include the current best demonstrated technology for heat exchange systems in that source category and the public would be provided an opportunity to comment on our proposed conclusion that either the uniform standards or alternative standards are the best demonstrated technology. Additionally, we would evaluate and take comment on whether the recordkeeping, reporting and other requirements were appropriate. If we take final action determining for that source category that the uniform standard is the best demonstrated technology, we would amend the NSPS to reference the uniform standards rather than duplicating the requirements in the section of the CFR addressing the NSPS for that source category.

C. What source category is affected by this action?

This action directly affects only the petroleum refineries source category. Petroleum refineries are facilities engaged in refining and producing products made from crude oil or unfinished petroleum derivatives. Based on the Energy Information Administration's Refinery Capacity Report 2009, there are 152 operable petroleum refineries in the United States (U.S.) and the U.S. territories, all of which are expected to be major sources of HAP and VOC emissions. Petroleum refineries are located in 35 states, as well as Puerto Rico and the U.S. Virgin Islands. Texas, Louisiana and California are the states with the most petroleum refining capacity (with 27 percent, 18 percent and 11 percent of U.S. capacity, respectively).[1]

This action specifically affects heat exchange systems at petroleum refineries. Heat exchange systems include closed-loop recirculation systems with cooling towers and once-through systems that receive non-contact cooling water from a heat exchanger for the purposes of cooling the water prior to returning the water to the heat exchanger or discharging the water to another process unit, waste management unit, or to a receiving water body. Cooling towers typically at refineries and chemical plants employ mechanical draft cooling towers that use large fans to force air through or across the cooling water to cool the water. Heat exchangers occasionally develop leaks which result in process fluids entering the cooling water. The hydrocarbons (which may include VOC and air toxics) in these process fluids are then emitted to the atmosphere due to stripping. Cooling tower emissions resulting from the addition of chemicals to the cooling water to prevent fouling or to decontaminate the water are not covered by this standard, but are instead covered under the Industrial Process Cooling Tower NESHAP (40 CFR part 63, subpart Q).

This action may affect other source categories with heat exchange systems if the EPA takes action in the future to propose to apply the uniform standards for heat exchange systems to one or more other source categories. However, EPA will determine applicability of the uniform standards for heat exchange systems in another source category through notice-and-comment rulemaking. In such a rulemaking, we will explain that all or a portion of subpart L is consistent with the CAA requirements at issue in such rulemaking. For example, in the context of an NSPS rulemaking, we could determine that subpart L is BDT for the source category at issue or, alternatively, we could determine that different emission standards should apply, but that recordkeeping, reporting and other requirements of subpart L are appropriate. As another example, for heat exchange systems in a source

[1] Energy Information Administration, Refinery Capacity Data, From Form EIA–820, *Annual Refinery Report,* January, 2011.

category already subject to regulation (*e.g.,* facilities subject to National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (''HON,'' 40 CFR part 63, subpart F)), a review of the existing requirements may result in a determination that the subpart L requirements constitute a development in processes, practices or control technologies since the original standard was issued. Before amending any specific standard to reference 40 CFR part 65, subpart L, we would evaluate the appropriateness of the subpart L requirements for the source category in light of the specific statutory obligation(s) at issue, and, if the subpart L requirements are appropriate, cross-reference those standards. As previously noted, any such evaluation would take place through notice-and-comment rulemaking.

D. What is the EPA's response to petitions for reconsideration on Refinery MACT 1 (40 CFR part 63, subpart CC)?

As mentioned previously in this preamble, we published final MACT standards for heat exchange systems at petroleum refineries in amendments to Refinery MACT 1 on October 28, 2009 (74 FR 55670). On December 23, 2009, the American Petroleum Institute (API) requested an administrative reconsideration under CAA section 307(d)(7)(B) of certain provisions of 40 CFR part 63, subpart CC that they had identified in an April 7, 2009, letter to the EPA. Specifically, API requested that the EPA reconsider: (1) The compliance schedule and applicability provisions in 40 CFR 63.640(h); (2) the definition of ''heat exchange system'' in 40 CFR 63.641 as it relates to once-through heat exchange systems and refinery process units; (3) the monitoring procedures for once-through heat exchange systems in 40 CFR 63.654(c); (4) the determination of the cooling water flow rate in 40 CFR 63.654(g); (5) the overlap provisions for storage vessels in 40 CFR 63.640(n); (6) the deck fitting control requirements for storage vessel internal floating roofs in 40 CFR 63.646; (7) reports required for storage vessels also subject to 40 CFR part 61, subpart Y; (8) the definition of ''heat exchange system'' in 40 CFR 63.641 as it relates to cooling towers; (9) the monitoring procedures for once-through heat exchange systems in 40 CFR 63.654(e); and (10) the application of the rule to heat exchanger systems which use salt water. In addition, API identified eight incorrect references and other typographical errors that they requested the EPA correct.

In this action, the EPA is granting reconsideration on petitioner's Issues Nos. 2, 3 and 4. In addition, with regard to petitioner's Issue No. 1, we are granting reconsideration on the use of the promulgation date to describe the applicability for new sources in 40 CFR 63.640(h)(1). Section 307(d)(7)(B) of the CAA provides that the EPA shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate: (1) That it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period, but within the time specified for judicial review (*i.e.,* within 60 days after publication of the final rulemaking notice in the **Federal Register**), and (2) that the objection is of central relevance to the outcome of the rule. We are granting reconsideration on these specific issues because the grounds for petitioner's objections arose after the public comment period (but within the time specified for judicial review) and the objections are of central relevance to the outcome of the final rule pursuant to CAA section 307(d)(7)(B).

The EPA is denying API's request for reconsideration on petitioner's Issue Nos. 5, 6 and 7 identified in the previous paragraph, and on the incorrect references and other typographical errors that were identified in sections describing specific requirements for storage vessels. The regulatory text that API reviewed when developing their April 7, 2009, letter was included in a final rule that was signed, but never published in the **Federal Register**. On October 28, 2009, the EPA proposed to withdraw the portions of that signed rule that includes the regulatory text identified in Issue Nos. 5, 6 and 7 and that included the incorrect references and typographical errors related to storage vessels (see 74 FR 55505). The agency recently published a final action on the proposed withdrawal of the amendments to the Refinery MACT 1 rule storage vessel requirements (see 76 FR 42052, July 18, 2011). Therefore, reconsideration of these provisions is not necessary.

The EPA is also denying API's request for reconsideration of certain language that we finalized as proposed, including: (1) The definition of ''heat exchange system'' as it relates to cooling towers (Issue No. 8 above), and (2) the ability to perform additional monitoring to verify that a leak is in a heat exchanger in HAP service at 40 CFR 63.654(e) (Issue No. 9 above). These issues could have been raised during the public comment period for the rule. API did not submit comments on this issue during the comment period on the proposal, nor did API's petition show why these issues could not have been presented during the comment period, either because it was impracticable to raise the issue during that time, or because the grounds for the issue arose after the comment period. Nevertheless, we did attempt to address some of these issues where we felt it was important to do so.

Similarly, the EPA is denying the request for reconsideration of the application of the rule to heat exchanger systems which use salt water (Issue No. 10 above). The proposed rule language required monitoring for all heat exchange systems in HAP service. API's petition for reconsideration did not explain why suggestions to limit the applicability of the rule to certain types of heat exchange systems were not and could not have been raised during the public comment period.

However, we note that, while we are not granting reconsideration on these issues, the proposed uniform standards in 40 CFR part 65, subpart L and our proposed amendments to the Refinery MACT 1, as described below, do attempt to clarify some of these issues and concerns where it is appropriate to do so.

Finally, the EPA is not granting reconsideration on the miscellaneous incorrect references and other typographical errors that API identified in their petition. We note that four of the incorrect references and other typographical errors identified by API were corrected in a corrections notice published on June 30, 2010 (75 FR 37730). Although we are not granting reconsideration on the remaining incorrect references and typographical errors identified by API, because these corrections are not issues of central relevance to the outcome of the final rule, we are, nevertheless, proposing to correct those errors in this notice where appropriate.

III. Summary of the Proposed Standards and Amendments

A. What amendments are we proposing for Refinery MACT 1 (40 CFR part 63, subpart CC)?

1. Structural Changes

We are proposing to remove from Refinery MACT 1 the general monitoring, delay of repair, recordkeeping, and reporting requirements that we are proposing to add to 40 CFR part 65, subpart L, as described in section III.B of this preamble. In their place, we would include in 40 CFR 63.654 and 40 CFR

63.655 of Refinery MACT 1 cross-references to the requirements as specified in subpart L. Thus, this change would maintain these requirements for heat exchange systems at petroleum refineries, but the specifics of the requirements would be included in a different subpart. We would retain in 40 CFR 63.654 the requirements for heat exchange systems that are specific to the petroleum refining industry. Specifically, Refinery MACT 1 would continue to specify the monitoring frequency and the leak action level for existing and new sources. Refinery MACT would also continue to specify the delay of repair action level. These action levels would continue to be specified in 40 CFR 63.654 because they are specific levels established in our final rule for Refinery MACT 1 sources. 74 FR 55669.

We are proposing to restructure 40 CFR 63.640(h)(1) to remove the reserved paragraphs and renumber the remaining paragraphs. These paragraphs are not directly referenced anywhere else in Refinery MACT 1, so we are not proposing any other amendments related to this restructuring. We are also proposing to reword newly renumbered 40 CFR 63.640(h)(1)(i) and (ii) to clarify that the compliance and applicability dates in those paragraphs refer to the new source at which a heat exchange system is located. These proposed changes address the relevant portions of API's reconsideration Issue No. 1 to clearly reflect our intent regarding the compliance schedule and, specifically, the applicability of new source requirements for heat exchange systems. The previously promulgated language could have been interpreted to mean that heat exchange systems themselves could be considered new sources, which is inconsistent with the description of an affected source at 40 CFR 63.640(c), that includes all emission points located at a single plant site.

We are proposing to clarify the applicability date in 40 CFR 63.640(h)(1)(ii), based on CAA section 112(a)(4), which defines ''new source'' as a source that commences construction or reconstruction ''after the Administrator first proposes regulations under [section 112] establishing an emission standard applicable to such source.'' Because the referenced provision applies to new sources, we are proposing to correct the date to be the date we first proposed regulations establishing emissions standards, rather than the compliance date for such standards. These changes also address reconsideration issue No. 1 to clearly and properly reflect our intent with regard to the compliance schedule and applicability provisions.

Finally, we are proposing to add clarity to 40 CFR 63.640(a). Section 63.640(a) states that ''[t]his subpart applies to petroleum refining process units and to related emission points specified in paragraphs (c)(5) through (8) of this section * * *'' However, upon review, we have determined that there is not a clear distinction between petroleum refining process units and related emission points. Specifically, paragraph (c)(1) through (4) could also be considered ''related emission points.'' Therefore, we are proposing to revise 40 CFR 63.640(a) to read: ''This subpart applies to petroleum refining process units and to related emission points specified in paragraphs (c)(1) through (8) of this section * * *'' As amended, this statement more clearly reflects that Refinery MACT 1 addresses all emissions points described in paragraphs (c)(1) though (8).

We are also proposing to remove the definitions of ''cooling tower return line'' and ''heat exchange exit line'' from the Refinery MACT 1 regulations (40 CFR 63.641). All references to these terms would appear in 40 CFR part 65, subpart L, so the definitions are no longer needed in Refinery MACT 1. We note that the phrase ''in regulated material service'' is defined in Refinery MACT 1 as ''in organic HAP service.'' The proposed uniform standard in subpart L is designed so that both NESHAP and NSPS can point to it. As such, the proposed uniform standard includes a definition of ''in regulated material service.'' However, since the Refinery MACT 1 uses the term, ''in organic HAP service,'' to determine whether certain equipment is subject to the MACT standards, we are retaining that term for refineries and not relying on the more general term in the proposed uniform standard. The existing Refinery MACT 1 definition would continue to apply to heat exchange systems at Refinery MACT 1 sources for determining whether a heat exchange system is in regulated material service.

2. Substantive Revisions

Refinery MACT 1 would continue to specify that, when monthly monitoring is conducted, the leak action level for existing sources is 6.2 parts per million by volume (ppmv) total strippable hydrocarbons (as methane) in the stripping gas collected via the Texas Commission on Environmental Quality's (TCEQ) Modified El Paso Method, Revision Number One, dated January 2003,[2] and the leak action level for new sources is 3.1 ppmv total strippable hydrocarbons (as methane) collected via the Modified El Paso Method. We are also proposing to include alternative leak action levels for direct water sampling. For existing sources, the proposed leak action level is 80 parts per billion by weight (ppbw) of total strippable hydrocarbons in the cooling water collected and analyzed according to either a combination SW–846 Methods 5030B and 8260C[3] or ASTM Method D5790–95[4] and for new sources, the proposed leak action level is 40 ppbw of total strippable hydrocarbons in the cooling water collected and analyzed according to SW–846 Methods 5030B and 8260C or ASTM Method D5790–95. The delay of repair action level would be either 62 ppmv total strippable hydrocarbons (as methane) collected via the Modified El Paso Method, as currently required, or an alternative of 800 ppbw of total strippable hydrocarbons in the cooling water collected and analyzed according to SW–846 Methods 5030B and 8260C or ASTM Method D5790–95.

Based on an expanded technology review and impacts analysis we performed to determine whether to apply this proposed uniform standard to heat exchange systems at petroleum refineries, we have determined that quarterly monitoring using a lower leak definition would achieve equivalent emissions reductions (see technical memorandum, *Revised Impacts for Heat Exchange Systems at Petroleum Refineries,* in Docket ID No. EPA–HQ–OAR–2003–0146). Therefore, we are proposing to allow affected facilities an alternative compliance option: To monitor quarterly, using a leak action level of either 3.1 ppmv total strippable hydrocarbons (as methane) in the stripping gas collected via the Modified El Paso Method, or 40 ppbw of total strippable hydrocarbons in the cooling water collected and analyzed according to SW–846 Methods 5030B and 8260C or ASTM Method D5790–95. The owner

[2] *Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,* Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by TCEQ, January 31, 2003 (incorporated by reference—see § 65.265).

[3] SW–846 Method 5030B, *Purge-and-Trap for Aqueous Samples,* and SW–846 Method 8260C, *Aromatic and Halogenated Volatiles by Gas Chromatography Using Photoionization and/or Electrolytic Conductivity Detectors,* dated December 1996 (incorporated by reference—see § 65.265).

[4] ASTM Method D5790–95, *Standard Test Method for Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,* reapproved 2006, incorporated by reference—see § 65.265).

or operator would select which alternative they will use to monitor each heat exchange system; different monitoring alternatives may be selected for different heat exchange systems at the facility.

In Refinery MACT 1, we finalized a definition of ''heat exchange system'' as follows, ''a device or series of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the heat exchange system consists of a cooling tower, all heat exchangers that are serviced by that cooling tower, and all water lines to and from the heat exchanger(s). For once through systems, the heat exchange system consists of one or more heat exchangers servicing an individual process unit and all water lines to and from the heat exchanger(s). Intentional direct contact with process fluids results in the formation of a wastewater.'' This definition covers both heat exchange systems that recirculate the cooling water within the plant, relying on a cooling tower to cool the water after it has passes through the process areas, as well as once-through systems that bring in cooling water from a water body and then return the water back to the water body after it has passed through the process. We are proposing to revise that definition of ''heat exchange system'' from what was finalized for Refinery MACT 1 and replace the word ''series'' with ''collection'' to avoid any confusion that heat exchangers must be arranged in a series configuration (as opposed to a parallel configuration). This edit was requested in the reconsideration petition (Issue No. 8) and, although we did not grant reconsideration on it specifically, we believe it is appropriate to clarify the definition to reflect our intent. The proposed definition in the uniform standard (40 CFR part 65, subpart L) includes this same definition.

B. What requirements for heat exchange systems are we proposing to include in 40 CFR part 65, subpart L?

We are proposing to add to 40 CFR part 65 a new subpart L, which would include requirements for monitoring, recordkeeping and reporting for heat exchange systems subject to a facility-specific referencing subpart. These requirements are the same as the monitoring, recordkeeping and reporting requirements issued as part of the revisions to the Refinery MACT 1 standard, which established the MACT floor for heat exchange systems at petroleum refineries (74 FR 55670, October 28, 2009). The preamble to the final rule and the preamble to the supplemental proposal (73 FR 66694, November 10, 2008) provide more detail on the basis for those requirements.

We are proposing default leak action levels, delay of repair action levels and monitoring frequencies in the uniform standards that would apply if the referencing subpart does not specify these details. These default action levels and monitoring frequencies are based on our general technology review for heat exchange systems (see technical memorandum, *Technology Review for Heat Exchange Systems,* in Docket ID No. EPA–HQ–OAR–2011–0002) and represent a heat exchange system monitoring program that is expected to be cost effective in a wide variety of applications. The default leak action level is either 3.1 ppmv total strippable hydrocarbons (as methane) in the stripping gas collected via the Modified El Paso Method, or 40 ppbw of total strippable hydrocarbons in the cooling water collected and analyzed according to SW–846 Methods 5030B and 8260C or ASTM Method D5790–95 and the monitoring frequency is quarterly. However, we anticipate that these action levels and the monitoring frequency may vary for heat exchanger systems in different source categories. In those cases, the action levels and monitoring frequencies would be defined in the appropriate referencing subpart.

We are not proposing to specify a compliance timeline in 40 CFR part 65, subpart L because the compliance timeline may vary for different source categories. Instead, we expect that the compliance timeline would be specified in each source-specific subpart whenever that subpart is amended.

We are proposing that owners and operators of heat exchange systems that are ''in regulated material service'' (as defined by either the referencing subpart, if it provides a definition of that term, or in 40 CFR part 65, subpart L) at an affected source would be required to conduct sampling and analyses using the Modified El Paso Method, or SW–846 Methods 5030B and 8260C or ASTM Method D5790–95.

We are also including provisions specifying the frequency of sampling and analyses; however, a referencing subpart could specify alternative provisions for the frequency of sampling and analyses which would apply in place of those provisions in 40 CFR part 65, subpart L. For each NSPS or MACT rule that, after notice-and-comment rulemaking, we determine will cross-reference subpart L, this limit would apply unless an alternative limit is established in the cross-referencing subpart through that rulemaking process. The proposed standards under subpart L would require the repair of leaks in heat exchangers in regulated material service within 45 days of the sampling event in which the leak is detected, unless a delay in repair is allowed. Delay in repair of the leak would be allowed until the next shutdown if the repair of the leak requires the process unit served by the leaking heat exchanger to be shut down and if the total strippable hydrocarbon concentration is less than the delay of repair action level, which would be, as a default level, 62 ppmv total strippable hydrocarbons (as methane) collected via the Modified El Paso Method or 800 ppbw of total strippable hydrocarbons in the cooling water collected and analyzed according to SW–846 Methods 5030B and 8260C or ASTM Method D5790–95. Delay in repair of the leak would also be allowed for up to 120 days if the total strippable hydrocarbon concentration is less than the delay of repair action level, and if critical parts or personnel are not available. The owner or operator would be required to continue monitoring, at least monthly, and to repair the heat exchanger within 30 days if sampling results show that the leak exceeds the delay of repair action level.

We are proposing different sampling locations for heat exchange systems based on whether the system includes a cooling tower or is a once-through heat exchange system. We are granting reconsideration on these issues (Issue Nos. 2 and 3) identified by API. We are proposing to clarify these requirements in 40 CFR part 65, subpart L and we are proposing that 40 CFR part 63, subpart CC would cross-reference these provisions for heat exchange systems at refineries. For heat exchange systems that include a cooling tower (*i.e.,* closed-loop recirculation systems), we are proposing that sampling would be conducted at the combined cooling tower inlet water location prior to exposure to the atmosphere or, alternatively, that sampling would be conducted in the return or ''exit'' lines (*i.e.,* water lines returning the water from the heat exchangers to the cooling tower) from an individual heat exchanger or bank of heat exchangers. That is, if the cooling tower services multiple heat exchangers, the owner or operator could choose among several sampling locations: (1) Monitor only the heat exchangers ''in regulated material

service''; (2) monitor at branch points that combine several heat exchanger exit lines; or (3) monitor at the combined stream for the entire closed-loop recirculation system. If a leak is detected (*i.e.,* the measured concentration exceeds the applicable leak action level) at an individual heat exchanger ''in regulated material service,'' that leak would need to be repaired (*i.e.,* appropriate action taken to reduce the hydrocarbon concentration to less than the applicable leak action level). If a leak is detected at the combined cooling tower inlet, the owner or operator could either fix the leak or leaks so that the hydrocarbon concentration measured at the combined cooling tower inlet is less than the applicable leak action level or sample heat exchanger exit lines for each individual or combination of heat exchangers ''in regulated material service,'' as necessary, to document that the leak is not originating from any heat exchanger within the closed-loop recirculation systems that is ''in regulated material service.'' If a leak is detected in an individual heat exchanger ''in regulated material service'' during this process, that leak would need to be repaired. We are also proposing to clarify the regulatory text we are moving from 40 CFR 63.654(g)(4)(ii) of subpart CC to 40 CFR 65.640(g)(4)(ii) of subpart L to indicate that the flow rate for calculation of emissions from heat exchanger leaks may be based on direct measurement, pump curves, heat balance calculations or other engineering methods (reconsideration Issue No. 4).

We are proposing to define a once-through heat exchange system as a system that ''consists of one or more heat exchangers servicing an individual process unit and all water lines to and from the heat exchanger(s).'' This definition has not been substantively changed from the Refinery MACT 1 definition. We are not adopting the petitioner's suggested edits to say ''one or more individual process units.'' Rather, we are proposing that sampling for once-through heat exchange systems must be conducted in exit lines from individual heat exchangers, or a group of heat exchangers ''in regulated material service'' associated with a single process unit. In closed-loop recirculation heat exchange systems, the potential dilution of the leak by including cooling waters from other processes is minimized due to the physical limitations of the quantity of water that can be processed by a single cooling tower. If once-through heat exchange systems are not limited by definition to a single process unit, then a once-through heat exchange system could include all heat exchangers at the entire facility. The potential to aggregate all cooling water at a facility (as opposed to a single process unit) prior to sampling for a once-through system would greatly reduce the effectiveness of the leak monitoring methods and would allow HAP or VOC leaks to remain undetected, based solely on the dilution effect from the vast quantity of water processed at the facility. We request comment on the proposed definition and sampling method for once-through heat exchange systems. Commenters are encouraged to provide additional information and suggestions for sampling alternatives that would allow flexibility, but would include a small enough number of individual heat exchangers to provide meaningful measurements in once-through systems.

In addition, we are proposing to allow the owner or operator of a once-through heat exchange system to monitor both the inlet and outlet of an individual heat exchanger or group of heat exchangers associated with a single process unit and compare the difference between those two measurements to the leak action level to determine if a leak is detected. This provision was contained in 40 CFR 63.654(c)(1), but has been clarified in proposed 40 CFR part 65, subpart L. The use of a differential leak is provided for once-through systems because the water supply for these systems (often river water or ocean water) may contain higher background concentrations of hydrocarbons than the purchased water that is used in closed-loop recirculation systems.

We propose to define ''in regulated material service'' in 40 CFR part 65, subpart L and to include procedures for determining whether a heat exchanger is ''in regulated material service'' in 40 CFR 65.275 of the Uniform Standards General Provisions (40 CFR part 65, subpart H) (see section III.C of this preamble for more detail on the Uniform Standards General Provisions).

All affected sources with a heat exchange system in regulated material service would be required to maintain records of: (1) All heat exchangers at the facility and which of those heat exchangers are in regulated material service subject to 40 CFR part 65, subpart L; (2) the cooling towers and once-through systems associated with heat exchangers in regulated material service; (3) all monitoring results; and (4) information documenting the reasons for any delays in repair of a leak. These requirements are the same as the requirements finalized for refinery heat exchange systems.

As proposed, 40 CFR part 65, subpart L specifies a default monitoring frequency of quarterly. This default monitoring frequency is based on a general analysis of the costs of monitoring at various frequencies. The initial equipment costs associated with the Modified El Paso sampling method are about $14,000, but one stripping column can be used to monitor several heat exchange systems at the facility. For continuous monitoring, a stripping column and hydrocarbon analyzer would be required for each affected heat exchange system, which would increase the costs if more than one heat exchange system exists at a given facility. We note that the monitoring frequency is a minimum required frequency; an owner or operator conducting more frequent monitoring than required would still be in compliance with subpart L or the source-specific subpart that establishes an alternative monitoring frequency.

C. What general provisions for uniform standards are we proposing to include in 40 CFR part 65, subpart H?

We are proposing to include general provisions in 40 CFR part 65, subpart H that would apply to all sources subject to uniform standards. We note that these general provisions are not intended to take the place of the general provisions provided in subpart A of 40 CFR part 63 for NESHAP and that are referenced in many MACT standards. Similarly, these general provisions are not intended to take the place of the general provisions provided in subpart A of 40 CFR part 60 for NSPS. The specific provisions we are proposing to include in 40 CFR part 65, subpart H are described below.

Proposed 40 CFR 65.270 is a centralized section for incorporations by reference, such as test methods. This provision would be similar to provisions in other general provision subparts (*e.g.,* 40 CFR 63.14). We anticipate that we would add methods to this section as we propose new uniform standards.

Proposed 40 CFR 65.275 describes procedures for determining whether a source is ''in regulated material service.'' We anticipate some of the uniform standards, including 40 CFR part 65, subpart L, would include requirements for regulated sources ''in regulated material service.'' In many cases, referencing subparts would define the ''regulated material'' and explain how to determine whether a source is ''in regulated material service'' for the source category addressed by that referencing subpart. However, in the event that a referencing subpart does not provide an explanation of how to determine whether a source is ''in

regulated material service,'' we are proposing procedures for making that determination under the proposed 40 CFR part 65, subpart H. The proposed requirements are based on the procedures in 40 CFR 63.180(d), and are provided for clarification for the sources subject to the uniform standards.

Proposed 40 CFR 65.280 contains requirements for determining compliance with periodic requirements. The proposed requirements specify that weekly, monthly and annually refer to the standard calendar periods and sources would have to complete periodic requirements within each standard calendar period with a minimum amount of time or ''reasonable interval'' between each event. We have also included a provision clarifying that the reasonable interval requirement would not prevent a source from conducting the periodic requirement more frequently. In other words, if a source is required to monitor quarterly, but elects to monitor monthly instead, it would still be considered in compliance with the requirement to monitor quarterly.

Finally, proposed 40 CFR 65.295 includes definitions for terms that we expect will be used across multiple uniform standard subparts, so that those terms are defined consistently. In this action, we are proposing to define ''owner or operator,'' ''regulated material,'' and ''regulated source.'' We intend to propose other definitions for inclusion in this section, as needed, when we propose requirements for other uniform standards.

IV. Rationale for Proposed Heat Exchange System Uniform Standards and Petroleum Refinery Amendments

A. What is the rationale for the amendments to the heat exchange system requirements and the amendments to Refinery MACT 1?

When we developed the MACT requirements for heat exchange systems at petroleum refineries, we primarily evaluated permits in order to identify the MACT floor monitoring requirements for heat exchange systems at new and existing sources. We then developed impacts for the monitoring alternatives identified during the permit review process. In evaluating monitoring alternatives for the uniform standards, we developed a more detailed modeling approach to better understand the relative impacts of the monitoring frequency, leak action level, delay of repair threshold and other model variables. Through this analysis, we discovered that the leak action level is often more critical to achieving emission reductions than the monitoring frequency. The relative importance of the monitoring frequency versus leak action level depends on the baseline monitoring frequency and action level to which one is comparing results, but the results clearly indicate that more frequent monitoring at a high leak action level is not as effective at reducing emissions as less frequent monitoring at a low leak action level. Based on the generalized heat exchange system analysis (see technical memorandum, *Technology Review for Heat Exchange Systems,* in Docket ID No. EPA–HQ–OAR–2011–0002), quarterly monitoring at a leak action level of 40 ppbw in the cooling water (which is equivalent to 3.1 ppmv hydrocarbons as methane in the stripping gas) is as or more effective at reducing emissions as monthly monitoring at a leak action level of 80 ppbw in the cooling water (or 6.2 ppmv hydrocarbons as methane in the stripping gas) for individual heat exchange systems.

We then evaluated these two monitoring options specifically for heat exchange systems located at petroleum refineries, and determined that these two monitoring options are expected to achieve equivalent emission reductions. That is, we determined that a quarterly monitoring program using a leak action level of 40 ppbw would achieve the same emission limitation achieved by a monthly monitoring program using a leak action level of 80 ppbw; therefore, we believe it is equivalent to the MACT floor for existing sources. Based on our analysis, quarterly monitoring at the lower leak action level would result in a net cost savings compared to monthly monitoring, so we anticipate that, if given the option, most refineries would elect to use the quarterly monitoring alternative.[5] Therefore, we are proposing to revise the existing MACT standard to include, as an alternative for existing sources, quarterly monitoring with a leak action level of 40 ppbw. To ensure each monitoring program is implemented as intended, the refinery owner or operator would choose the monitoring program with which they would comply at all times for each heat exchange system and notify the Administrator of that choice. The refinery owner or operator would notify the Administrator if a change in monitoring alternative is desired, but all ''leaks'' identified prior to changing monitoring alternatives would be required to be repaired regardless of the change in leak definition for the newly elected alternative. Thus, the refinery owner or operator could not elect quarterly monitoring at 40 ppbw, identify a leak of 60 ppbw and then change the monitoring frequency to monthly with an action level of 80 ppbw.

In addition to fulfilling the mandate in CAA section 112(d)(2) and (3) that sources be subject to requirements at least as stringent as the MACT floor, this revision is responsive to Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011, which directs each federal agency to ''periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.'' As discussed previously, we have determined that quarterly monitoring using a lower leak action level of either 3.1 ppmv total strippable hydrocarbons (as methane) in the stripping gas collected via the Modified El Paso Method, or 40 ppbw of total strippable hydrocarbons in the cooling water collected and analyzed according to SW–846 Methods 5030B and 8260C or ASTM Method D5790–95 would achieve equivalent emissions reductions as the monthly monitoring with a leak action level of 6.2 ppmv total strippable hydrocarbons (as methane) that is currently in the Refinery MACT 1 rule for existing sources. This proposed alternative will increase flexibility for the regulated industry, and reduce the cost and administrative burden, while maintaining at least equivalent level of environmental and public health protection.

In developing the uniform standards for heat exchange systems, we also considered more broadly the variety of heat exchange systems in use and whether the Modified El Paso Method should be the sole monitoring system identified in the uniform standard at this time. For some source categories, a limited number of compounds may be present in the process stream for which analytical methods are available that can detect these compounds at low concentrations. Additionally, for streams containing highly chlorinated organic compounds, these alternative methods may provide lower detection limits and better sensitivity than using the Modified El Paso Method (which uses a flame ionization detector). Our review indicated that the specific analytical method used was not critical

[5] However, we know that several refineries in Texas are currently required to monitor monthly using the higher leak action level and may desire to keep their current monitoring program.

to the emission limitations achieved, provided that the method could accurately quantify pollutant concentrations at levels far enough below the leak action level that the method could accurately indicate whether or not a leak exists. As such, we are proposing to include a direct water analysis method in the uniform standards. As previously stated, each referencing subpart could include different or alternative analytical methods if they are determined to be appropriate in the rulemaking on that referencing subpart.

For petroleum refineries, we considered whether direct water sampling should be included as an alternative. Proponents of the Modified El Paso Method note that volatile compounds can be lost during the direct water sampling process, so that the Modified El Paso Method would be more accurate for samples that contain volatile compounds, such as those typically found at a petroleum refinery. However, in using direct water sampling, there are sampling methods for volatile or for highly reactive volatile compounds that, if followed, should minimize volatile loss during sampling and storage. Another potential issue with direct water sampling is that not all of the pollutants will be fully emitted from the cooling water and the concentrations of these chemicals will tend to build up in closed-loop recirculation heat exchange systems. For these reasons, a difference in the inlet and outlet of the cooling tower (or heat exchanger) is often proposed as the appropriate measure by which to define a leak. While the inlet and outlet measurements may provide a better estimate of the actual emissions, the fact that hydrocarbons are accumulating in the cooling water is evidence that there is a leak. Furthermore, our analysis indicates that small leaks are generally cost effective to repair. Thus, we are proposing to include language in the uniform standard that would allow direct water sampling as an alternative to the Modified El Paso Method, provided that the analysis can fully characterize all volatile compounds that could enter the cooling water from the process fluid in the heat exchanger. We are also proposing to reference this language from Refinery MACT 1. Where direct water sampling is used, we are proposing to require the determination of a leak to be based only on the concentration in the cooling tower return line or selected heat exchanger exit line(s) prior to exposure to the atmosphere (*i.e.,* we would not allow determination of a leak as the difference from inlet to outlet for closed-loop recirculation systems). We anticipate that most petroleum refinery owners or operators would elect to use the Modified El Paso Method, but there may be certain process streams that have a limited number of volatile compounds where the direct water sampling approach would be a cost effective alternative.

Finally, one of the issues for which API requested reconsideration (Issue No. 4) was the uncertainty in the requirements for monitoring cooling water flow or recirculation rates. This parameter is required as a means to determine the potential emissions during a delay of repair. As we indicated in the preamble to the final rule (74 FR 55675), ''[i]t is anticipated that facilities will monitor at locations where the flow rate is known based on pump curves, heat balance calculations or other engineering methods. A continuous flow monitor is not required, but a flow rate at the monitoring location is needed to assess the potential mass emissions associated with a leak.'' Although this issue was discussed in the preamble to the final rule, the rule language was silent on the allowable methods to determine the flow rate for the required calculation. Therefore, we are proposing to clarify our original intent by specifying in the regulatory text for the uniform standards for heat exchange systems that ''the flow rate may be based on direct measurement, pump curves, heat balance calculations, or other engineering methods.'' This provision would be cross-referenced for purposes of Refinery MACT 1.

B. What is the rationale for the proposed uniform standards?

In a number of cases, the EPA has established CAA standards for different source categories that regulate materials from the same kind of emission point. Standards for a given type of emission point may require application of controls with similar control efficiencies and include similar design, equipment or operating standards, even though these emission points may be located at different types of sources or facilities. Although many of the characteristics may be the same, some requirements may need to vary among the various source categories.

To avoid duplicative or disjointed requirements, and to promote consistency among technical requirements for similar emission points in different source categories, the EPA has established several common control requirement subparts describing testing, monitoring, recordkeeping and reporting requirements for certain emission points and emission controls that can be referenced from multiple source categories. For instance, we promulgated standard requirements for selected emission points (*i.e.,* containers, surface impoundments, oil-water separators and organic-water separators, tanks, individual drain systems) in individual subparts under the Off-Site Waste and Recovery Operations NESHAP (61 FR 34158, July 1, 1996) (referred to as the OSWRO MACT) and we promulgated subparts for other selected emission points (*i.e.,* closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process; equipment leaks; and storage vessels) as part of the Generic MACT program (64 FR 34854, June 29, 1999). The Generic MACT standards for selected emission points, which were promulgated under 40 CFR part 63, subparts SS, TT, UU and WW, were then referenced in NESHAP requirements for individual source categories.

Consolidation of compliance requirements under these subparts allowed for ease of reference, provided administrative convenience and assured consistency in the technical requirements, where appropriate, of the air emission control requirements applied to similar emission points located at sources regulated under different source category regulations. The 40 CFR part 63, subparts SS, TT, UU and WW are emission point- and emissions control-specific. They specify monitoring, recordkeeping, and reporting requirements, but generally do not specify emissions reduction performance requirements or applicability thresholds. Instead, the referencing subpart specifies the emissions reduction performance requirements and applicability thresholds.

By establishing these emission point- and emissions control-specific subparts, other source-category-specific regulations were able to reference a common set of design, operating, testing, inspection, monitoring, repair, recordkeeping and reporting requirements for air emissions controls. This eliminated the potential for duplicative or conflicting technical requirements, and assured consistency of the air emission requirements applied to similar emission points, while allowing the specific emission standard to be set within the context of the source-specific regulations. Additionally, creating emission point-specific and emissions control-specific subparts ensured that all regulations that cross-referenced these subparts

could be amended in a consistent manner through one regulatory action.

This action proposes uniform standards for heat exchange systems (40 CFR part 65, subpart L). We are proposing to establish the uniform standards under 40 CFR part 65 and anticipate, through future notice-and-comment rulemaking, to cross-reference subpart L from source category emission standards within at least two different parts of title 40 of the CFR, parts 60 and 63, which establish NSPS and MACT standards, respectively. We anticipate that we will see the same benefits for this uniform standard as we have seen for previous emission point- and emissions control-specific subparts, as described above, including the ability to reference a common set of standards for the same type of emission point located at sources within different source categories, which will maximize consistency between source categories for that type of emission point.

As with the common control requirement subparts previously promulgated, we are proposing that 40 CFR part 65, subpart L would include technical requirements and would not specify applicability cutoffs or emissions reduction performance requirements, because these requirements are more properly established in source-specific rules. However, we are proposing a default leak action level and monitoring frequency that would apply if the referencing subpart does not specify these parameters. In the rulemaking actions revising standards to cross-reference subpart L, we would address whether the referencing subpart should cross-reference subpart L in its entirety or only a subset of subpart L. For those provisions not cross-referenced by the source-specific subpart, the requirement would be specifically addressed in the source-specific subpart. Moreover, for those provisions that are cross-referenced, we could consider whether the source-specific subpart should include more stringent requirements. For example, the referencing subpart could specify continuous monitoring rather than periodic monitoring if it is determined that continuous monitoring is appropriate for the heat exchange systems in that source category.

As we revise or promulgate source-specific standards that have sources addressed by a uniform standard, we would propose whether and to what extent we reference the uniform standards; in making that decision we would consider the applicable CAA requirements, analyses of the individual source category and the similarity of emission characteristics and applicable controls. We would consider factors such as: (1) The volume and concentration of emissions; (2) the type of emissions; (3) the similarity of emission points; (4) the cost and effectiveness of controls for one source category relative to the cost and effectiveness of controls for the other source category; (5) whether a source has unusual characteristics that might require different analytical methods; and (6) whether any of the sources have existing emission controls that are dissimilar and more stringent than controls required for similar sources outside the source category. These factors would be considered on a source category-specific basis to ensure that sources are appropriately similar, and that emissions control technologies and reductions demonstrated outside of a source category are achievable for new and existing sources in an applicable source category.

As we noted previously in this preamble, the rationale for each determination that some or all of the provisions of 40 CFR part 65, subpart L should be cross-referenced for an individual referencing subpart in light of the applicable CAA requirements would be addressed in the rulemaking for the individual subpart at the time of proposal and we would provide an opportunity for public comment. Likewise, for each review of an existing standard that results in a determination that some or all of the provisions in subpart L should be cross-referenced and that it would be consistent with the applicable CAA requirements to do so, a description of the analyses performed as part of that review would be presented in the rulemaking for the individual subpart at the time of proposal and we would provide an opportunity for public comment. We would also conduct an assessment of the costs, emission reduction, economic and other impacts as they relate to the specific source category at issue at that time.

We are aware that there are heat exchange systems at facilities other than just petroleum refineries (*e.g.,* some chemical manufacturing facilities) in which the process fluid contains hydrocarbons that can leak into the cooling water. Some of these heat exchange systems are subject to the same state requirements as heat exchange systems at petroleum refineries (*e.g.,* many cooling towers in Texas that are subject to the TCEQ Highly Reactive VOC rule are associated with ethylene production units). Therefore, we believe there are indications that the uniform requirements included in proposed 40 CFR part 65, subpart L could be appropriate requirements for other source categories. We note that the Modified El Paso Method has been demonstrated at numerous sources as an effective means of identifying leaks in heat exchange systems and the method has been used extensively for over 20 years.

C. What is the rationale for the proposed general provisions to the uniform standards?

We are currently proposing general provisions for the uniform standards in 40 CFR part 65, subpart H. The existing General Provisions of subpart A of 40 CFR part 65 would be renamed to reflect applicability only to the current *Consolidated Federal Air Rules,* which comprise subparts A through G of part 65. The Uniform Standards General Provisions would apply to sources that must comply with the uniform standards for heat exchange systems in 40 CFR part 65, subpart L, if finalized, as well as sources that must comply with any future uniform standards promulgated under 40 CFR part 65.

The General Provisions of 40 CFR part 65, subpart H would define the applicability of the uniform standards for proposed 40 CFR part 65, subpart L and for any other uniform standards that may be codified in the future in 40 CFR part 65, subparts I through M. These provisions would include requirements or definitions that we anticipate would apply to two or more subparts of the uniform standards. The General Provisions of subpart H would apply when another subpart references the use of the uniform standards under subparts I through M. As proposed, subpart H also clarifies that the General Provisions applicable to the referencing subpart (*i.e.,* subpart A of 40 CFR part 60 or 40 CFR part 63) would continue to apply to sources as specified in the referencing subpart and that we are not proposing to include specific requirements already addressed in the General Provisions of 40 CFR part 60 or 40 CFR part 63 in the General Provisions of subpart H. In creating each of the uniform standards, we would determine which provisions in the General Provisions in subpart H should be referenced by that uniform standard.

The proposed 40 CFR part 65, subpart H also contains requirements for determining compliance with periodic requirements established in a uniform standard in 40 CFR part 65, subpart I through M. Consistent with the HON (40 CFR 63.100(k)(9)), we are proposing that terms such as weekly, monthly and annually refer to the standard calendar periods and that the owner or operator

would have to complete periodic requirements within each standard calendar period.

We are also proposing that there must be a ''reasonable interval'' between completion of two instances of the same task. This is necessary because an owner or operator could theoretically comply with monthly requirements by completing the task at the beginning of one month, the end of the next month and the beginning of a third month (which could be only a day after the end of the second month). This is not consistent with our intention in requiring the task to be completed monthly. The time periods we are proposing as reasonable intervals are consistent with the reasonable intervals for batch processes at 40 CFR 60.482–1(f)(3) (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; 40 CFR part 60, subpart VV) and 40 CFR 63.100(k)(9)(ii)(A). The proposed language ensures that periodic requirements are conducted on a consistent and relatively uniform schedule from one period to the next, while also providing some degree of flexibility. We are not proposing to specify a reasonable interval for requirements that occur less frequently than annually; instead, if a uniform standard imposes a periodic requirement that must be performed less frequently than annually, that uniform standard would include requirements for determining compliance with that periodic obligation.

We also note that the reasonable interval provisions are not intended to imply that periodic requirements cannot be conducted more frequently than required. For example, if a source is required to monitor a piece of equipment quarterly, but the owner or operator elects to monitor monthly or a state provision requires more frequent monitoring, the source is still in compliance with the quarterly monitoring requirement. Even though some of the monitoring events occur closer together than the reasonable interval, there would still be a reasonable interval between the monitoring events that could be relied on to meet the monitoring requirement. For the same reason, if a source has a continuous monitor in place, the source is still considered to be in compliance with the periodic monitoring requirement.

Finally, we are proposing common definitions for terms that we expect will be used in two or more of the uniform standards. We have defined the term ''regulated source'' to mean the stationary source, the group of stationary sources or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to a referencing subpart. Because we intend to propose rulemakings that would reference the uniform standards from 40 CFR part 60 and/or 40 CFR part 63, we have proposed a definition of ''regulated material'' that is more inclusive of potential pollutants that would be regulated than previous definitions of this term (*e.g.,* subpart SS of part 63). Specifically, we are proposing to define ''regulated material'' as chemicals or groups of chemicals (such as VOC or HAP) that are regulated by the referencing subpart.

V. Summary of Impacts

This action will have no cost, environmental, energy, or economic impacts beyond those impacts presented in the October 2009 final rule for heat exchange systems at petroleum refineries and may result in a cost savings for refiners who select the proposed alternative monitoring frequency. The only sources affected by this action would be petroleum refineries and there would be no additional impacts for heat exchange systems at petroleum refineries beyond those presented in the October 2009 final rule that established these requirements. This action largely moves those requirements from 40 CFR part 63, subpart CC, which is specific to petroleum refineries, to 40 CFR part 65, subpart L, which would be cross-referenced by subpart CC. The intention is that subpart L would provide uniform standards such that other MACT standards, as well as NSPS, could cross-reference those requirements for heat exchangers through future regulatory action. In addition to this structural change, we are proposing to provide an additional monitoring alternative for quarterly monitoring at a leak action level of total strippable hydrocarbons of 3.1 ppmv in the stripping air (or 40 ppbw in the cooling water). Sources could elect this monitoring alternative in place of the monitoring requirement that is currently provided. This alternative is expected to lower the costs associated with the October 2009 requirements, while achieving the same environmental impacts. Finally, the clarifications and other changes we are proposing in response to reconsideration are cost neutral.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are proposing to move the information collection requirements from the Petroleum Refinery NESHAP (40 CFR part 63, subpart CC) to the Heat Exchange System Uniform Standards (40 CFR part 65, subpart L), but we are not proposing to change the information collection requirements themselves. The other proposed amendments to 40 CFR part 63, subpart CC would not affect the information collection requirements for petroleum refineries. Therefore, we have not revised the information collection request (ICR) for the existing petroleum refinery rule, nor have we developed an ICR for the Heat Exchange System Uniform Standards. However, OMB has previously approved the information collection requirements in the existing regulations (40 CFR part 63, subpart CC) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* and assigned OMB control numbers 2060–0340 and 2060–0619. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9. The EPA is proposing to amend the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements for heat exchange systems subject to the NESHAP for petroleum refineries promulgated October 28, 2009 (74 FR 55670).

The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the agency's regulations, and in each CFR volume containing the EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements and the

current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed action on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (a firm having no more than 1,500 employees); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments to 40 CFR part 63, subpart CC, and proposed uniform standards in 40 CFR part 65, subpart L would not change the existing heat exchange system requirements for any entity; therefore, they will not have a significant economic impact on any entity, including small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector, because it does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or to the private sector in any one year. As discussed earlier in this preamble, these amendments have no impact on costs. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This proposed action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed action contains no requirements that apply to such governments, and imposes no obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It would not modify existing responsibilities or create new responsibilities among the EPA Regional offices, states or local enforcement agencies. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed action imposes no requirements on tribal governments and will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action,'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes to use ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003 and will incorporate the method by reference (see 40 CFR 65.265). This method is available at *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002-12-HGB/02046sipapp_ado.pdf* or from the Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas 78711–3087, telephone number (512) 239–0028. This method was chosen because it is an effective means to determine leaks from heat exchangers and it is the method used in the best-performing facilities. This TCEQ method uses a dynamic or flow-through system for air stripping a sample of the water and analyzing the resultant off-gases for VOC using a common flame ionization detector analyzer. While direct water analyses, such as purge and trap analyses of water samples using gas chromatography and/or mass spectrometry techniques, have been shown to be effective for cooling tower measurements of heavier molecular weight hydrocarbons with relatively high boiling points, it has

been determined that this approach may be ineffective for capture and measurement of VOC with lower boiling points, such as ethylene, propylene, 1,3-butadiene and butenes. The VOC with a low molecular weight and boiling point are generally lost in the sample collection step of purge/trap type analyses. Consequently, this TCEQ air stripping method is used for cooling tower and other applicable water matrix emission measurements of VOC with boiling points below 140 °Fahrenheit.

To test water samples for purgeable VOC, the EPA proposes to use SW–846 Method 5030B, *Purge-and-Trap for Aqueous Samples,* and SW–846 Method 8260C, *Aromatic and Halogenated Volatiles by Gas Chromatography Using Photoionization and/or Electrolytic Conductivity Detectors,* dated December 1996, and will incorporate these methods by reference (see 40 CFR 65.265). These methods are available at *http://www.epa.gov/waste/hazard/testmethods/sw846/online/index.htm* or the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847 or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. A VCS, ASTM Method D5790–95, Standard Test Method for Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry, reapproved 2006, is an acceptable alternative to SW–846 Methods 5030B and 8260C and will be incorporated by reference (see 40 CFR 65.265). This method is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (610) 832–9585 or (877) 909–2786 or at *http://www.astm.org/index.shtml.*

These methods were chosen because purge-and-trap analyses of water samples using gas chromatography and/or mass spectrometry techniques, have been shown to be effective for cooling tower measurements of heavier molecular weight hydrocarbons with boiling points as low as −13 °Celsius (9 °Fahrenheit). These methods measure a wide range of VOC, and we expect that these methods are applicable for analysis of the majority of compounds that will need to be analyzed at the facilities covered by this subpart.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the NESHAP General Provisions or under 40 CFR 60.13(i) of the NSPS General Provisions, as applicable, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the proposed rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

The EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment. The proposed action would not relax the control measures on regulated sources and therefore, would not cause emissions increases from these sources.

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; National Uniform Emission Standards for Heat Exchange Systems

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 65

Environmental protection, Air pollution control, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: November 30, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135, *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. The table in § 9.1 is amended by revising the entry for 63.655 under the heading, ''National Emission Standards for Hazardous Air Pollutants for Source Categories,'' to read as follows:

§ 9.1 OMB Approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * * * *	
63.655	2060–0340, 2060–0619

40 CFR citation	OMB control No.
* * * * * * *	
* * * * * * *	

[3] The ICR referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

3. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

4. Section 63.14 is amended by removing and reserving paragraph (n)(1).

Subpart CC—[Amended]

5. Section 63.640 is amended by:

a. Revising paragraph (a) introductory text and

b. Revising paragraph (h)(1) to read as follows:

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(1) through (8) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(h) * * *

(1) Except as provided in paragraphs (h)(1)(i) and (ii) of this section, new sources that commence construction or reconstruction after July 14, 1994, shall be in compliance with this subpart upon initial startup or August 18, 1995, whichever is later.

(i) At new sources that commence construction or reconstruction after July 14, 1994, but on or before September 4, 2007, heat exchange systems shall comply with the existing source requirements for heat exchange systems specified in § 63.654 no later than October 29, 2012.

(ii) At new sources that commence construction or reconstruction after September 4, 2007, heat exchange systems shall be in compliance with the new source requirements in § 63.654 upon initial startup or October 28, 2009, whichever is later.

* * * * *

6. Section 63.641 is amended by:

a. Removing the definitions of ''Cooling tower return line'' and ''Heat exchanger exit line'' and

b. Revising the definition of ''Heat exchange system'' to read as follows:

§ 63.641 Definitions.

* * * * *

Heat exchange system means a device or collection of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the *heat exchange system* consists of a cooling tower, all heat exchangers that are serviced by that cooling tower and all water lines to and from the heat exchanger(s). For once-through systems, the *heat exchange system* consists of one or more heat exchangers servicing an individual process unit and all water lines to and from the heat exchanger(s). Intentional direct contact with process fluids results in the formation of a wastewater.

* * * * *

7. Section 63.654 is revised to read as follows:

§ 63.654 Heat exchange systems.

(a) The owner or operator of a heat exchange system that meets the criteria in § 63.640(c)(8) must comply with the requirements of § 65.610 as specified in paragraphs (b) through (e) of this section.

(b) For purposes of compliance with § 65.610, the following terms have the meanings specified in paragraphs (b)(1) and (2).

(1) ''Regulated material'' means any ''hazardous air pollutant'' as defined by § 63.641 of this subpart.

(2) ''In regulated material service'' means ''in organic hazardous air pollutant service'' as defined by § 63.641 of this subpart.

(c) For a heat exchange system at an existing source, the owner or operator must comply with the monitoring frequency and leak definition as defined in paragraph (c)(1) of this section or comply with the monitoring frequency and leak definition as defined in paragraph (c)(2) of this section. The owner or operator of an affected heat exchange system may choose to comply with paragraph (c)(1) for some heat exchange systems at the petroleum refinery and comply with paragraph (c)(2) for other heat exchange systems. However, for each affected heat exchange system, the owner or operator of an affected heat exchange system must elect one monitoring alternative that will apply at all times. If the owner or operator intends to change the monitoring alternative that applies to a heat exchange system, the owner or operator must notify the Administrator 30 days in advance of such a change. All ''leaks'' identified prior to changing monitoring alternatives must be repaired.

(1) Monitor monthly using a leak action level defined as either a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 parts per million by volume or a total strippable hydrocarbon concentration in the cooling water of 80 parts per billion by weight.

(2) Monitor quarterly using a leak action level defined as either a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 parts per million by volume or a total strippable hydrocarbon concentration in the cooling water of 40 parts per billion by weight.

(d) For a heat exchange system at a new source, the owner or operator must monitor monthly using a leak action level defined as either a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 parts per million by volume or a total strippable hydrocarbon concentration in the cooling water of 40 parts per billion by weight.

(e) For the purposes of § 65.610(f), the delay of repair action level is a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 parts per million by volume or a total strippable hydrocarbon concentration in the cooling water of 800 parts per billion by weight.

8. Section 63.655 is amended by:

a. Revising paragraph (f)(1)(vi);

b. Revising paragraph (g)(9);

c. Adding paragraph (h)(7); and

d. Revising paragraph (i)(4) to read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) * * *

(1) * * *

(vi) For each heat exchange system, identification of the heat exchange systems that are subject to the requirements of this subpart. For heat exchange systems at existing sources,

the owner or operator shall indicate whether monitoring will be conducted as specified in § 63.654(c)(1) or § 63.654(c)(2).

* * * * *

(g) * * *

(9) For heat exchange systems, Periodic Reports must include the information specified in § 65.620.

(h) * * *

(7) The owner or operator of a heat exchange system at an existing source must notify the Administrator at least 30 calendar days prior to changing from one of the monitoring options specified in § 63.654(c) to the other.

* * * * *

(i) * * *

(4) The owner or operator of a heat exchange system subject to the monitoring requirements in § 63.654 shall comply with the recordkeeping requirements in § 65.625.

* * * * *

PART 65—[AMENDED]

9. The authority citation for part 65 continues to read as follows:

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

10. Part 65 is amended by adding subpart H to read as follows.

Subpart H—National Uniform Emission Standards General Provisions

Sec.
65.200 What is the purpose of this subpart?
65.265 What methods are incorporated by reference for subparts I through M of this part?
65.270 How do I determine what regulated sources are in regulated material service?
65.280 How do I determine compliance with periodic requirements?
65.295 What definitions apply to subparts H through M of this part?

Subpart H—National Uniform Emission Standards General Provisions

§ 65.200 What is the purpose of this subpart?

These provisions apply to you if a subpart of part 60, 61 or 63 of this chapter references the use of this subpart. The General Provisions applicable to the referencing subpart (subpart A of part 60, 61 or 63) apply to this subpart as specified in the referencing subpart. The General Provisions for the Consolidated Federal Air Rule (subpart A of this part) do not apply to subparts I through M of this part.

§ 65.265 What methods are incorporated by reference for subparts I through M of this part?

The materials listed in this section are incorporated by reference in the corresponding sections. These incorporations by reference (IBR) were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St. SW., Washington, DC, and at the EPA Library (C267–01), U.S. EPA, Research Triangle Park, North Carolina. 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.*

(a) The following material is available from the Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas 78711–3087, telephone number (512) 239–0028 or at *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002-12-HGB/02046sipapp_ado.pdf:*

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003, IBR approved for §§ 65.610(a)(3)(i) and (g)(4)(i) and for § 65.625(d)(4) of this subpart.

(2) [Reserved]

(b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847 or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800 or at *http://www.epa.gov/waste/hazard/testmethods/sw846/online/index.htm.* The following methods as published in the test methods compendium known as ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Third Edition. A suffix of ''A'' in the method number indicates revision one (the method has been revised once). A suffix of ''B'' in the method number indicates revision two (the method has been revised twice).

(1) SW–846 Method 5030B, ''Purge-and-Trap for Aqueous Samples,'' dated December 1996, IBR approved for §§ 65.610(a)(3)(ii) and 65.625(d)(5) of this subpart, and

(2) SW–846 Method 8260C, ''Aromatic and Halogenated Volatiles by Gas Chromatography Using Photoionization and/or Electrolytic Conductivity Detectors,'' dated December 1996, IBR approved for §§ 65.610(a)(3)(ii) and 65.625(d)(5) of this subpart.

(c) The following materials are available for purchase from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428, (610) 832–9585 or (877) 909–2786 or at *http://www.astm.org/index.shtml:*

(1) ASTM Method D5790–95, ''Standard Test Method for Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,'' reapproved 2006, IBR approved for §§ 65.610(a)(3)(ii) and 65.625(d)(5) of this subpart.

(2) [Reserved]

§ 65.270 How do I determine what regulated sources are in regulated material service?

If you are subject to a uniform standard that includes requirements for regulated sources ''in regulated material service,'' you must determine if regulated sources or equipment are in regulated material service using either paragraph (a) or (b) of this section, as applicable.

(a) If the referencing subpart includes a procedure or definition of ''in regulated material service,'' you must use the procedure or definition of ''in regulated material service'' in the referencing subpart.

(b) If the referencing subpart does not include a procedure or definition of ''in regulated material service,'' you must use the procedures specified in paragraphs (b)(1) through (3) of this section.

(1) Regulated sources or equipment that can reasonably be expected to be in regulated material service are presumed to be in regulated material service unless you demonstrate that the regulated sources or equipment are not in regulated material service.

(2) Except as provided in paragraph (b)(1) and (3) of this section, you must use Method 18 of 40 CFR part 60, appendix A–6 if the material is in the gas phase or either a combination of SW–846 Methods 5030B and 8260C or ASTM Method D5790–95 if the material in the liquid phase and either of the methods specified in paragraphs (b)(2)(i)

or (b)(2)(ii) of this section to demonstrate that regulated sources or equipment are not in regulated material service.

(i) Determine the weight percent regulated material content of the process fluid that is contained in or contacts the regulated source as the arithmetic sum of the weight percent concentration of each compound defined as regulated material. Demonstrate that the regulated material concentration is less than 5 weight percent on an annual average basis.

(ii) Demonstrate that the non-regulated material content exceeds 95 percent by weight on an annual average basis.

(3) You may use good engineering judgment rather than the procedures in paragraph (b)(1) or (b)(2) of this section to determine if regulated sources or equipment are not in regulated material service. However, when you and the Administrator do not agree on whether the regulated sources or equipment are in regulated material service, you must use the procedures in paragraph (b)(2) of this section to resolve the disagreement.

§ 65.280 How do I determine compliance with periodic requirements?

Except as specified in paragraph (c) of this section, if you are subject to a requirement in subpart I through M of this part to complete a particular task on a periodic basis, you must comply as described in paragraphs (a) and (b) of this section.

(a) All terms in subparts I through M of this part that define a period of time for completion of required tasks (*e.g.,* weekly, monthly, quarterly, annually), refer to the standard calendar periods.

(b) You may comply with such periodic requirements by completing the required task any time within the standard calendar period, provided there is a reasonable interval between completion of two instances of the same task. Reasonable intervals are described in paragraphs (b)(1) through (5) of this section.

(1) Tasks that you are required to complete weekly must be separated by at least 3 calendar days.

(2) Tasks that you are required to complete monthly must be separated by at least 14 calendar days.

(3) Tasks that you are required to complete quarterly must be separated by at least 30 calendar days.

(4) Tasks that you are required to complete semiannually (*i.e.,* once every 2 quarters) must be separated by at least 60 calendar days.

(5) Tasks that you are required to complete annually must be separated by at least 120 calendar days.

(c) *Exceptions.* (1) Paragraphs (a) and (b) of this section do not apply to reports that you are required to submit under the General Provisions applicable to the referencing subpart (*e.g.,* subpart A of part 60, 61 or 63).

(2) If the paragraph in subpart I, J, K, L or M that imposes a periodic requirement specifies a different schedule for complying with that requirement, you must follow that schedule instead of the requirements in paragraphs (a) and (b) of this section.

(3) Nothing in paragraphs (a) and (b) of this section shall be construed as prohibiting you from conducting a periodic task at a more frequent interval than required.

§ 65.295 What definitions apply to subparts H through M of this part?

All terms used in subparts H through M of this part shall have the meaning given them in the Clean Air Act and in this section.

Owner or operator means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

Referencing subpart means the subpart that refers you to one or more applicable uniform standards (subparts I through M of this part). A *referencing subpart* for one uniform standard may also be a *referencing subpart* for another uniform standard as long as the *referencing subpart* specifically refers you to each of those uniform standards.

Regulated material means chemicals or groups of chemicals (such as volatile organic compounds or hazardous air pollutants) that are regulated by the referencing subpart.

Regulated source means the stationary source, the group of stationary sources or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to a referencing subpart.

11. Part 65 is amended by adding subpart L to read as follows.

Subpart L—National Uniform Emission Standards for Heat Exchange Systems

What This Subpart Covers

Sec.
65.600 What is the purpose of this subpart?
65.605 Am I subject to this subpart?

Work Practice Standards

65.610 What monitoring and repair requirements must I meet?

Notifications, Reports and Records

65.615 What notifications must I submit and when?
65.620 What reports must I submit and when?
65.625 What records must I keep?

Other Requirements and Information

65.630 What parts of the General Provisions apply to me?
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Subpart L—National Uniform Emission Standards for Heat Exchange Systems

What This Subpart Covers

§ 65.600 What is the purpose of this subpart?

The provisions of this subpart apply to the control of air emissions from heat exchange systems for which another subpart references the use of this subpart for such air emission control.

§ 65.605 Am I subject to this subpart?

These air emission standards for heat exchange systems apply to you only if you own or operate a facility subject to a referencing subpart that specifies the use of this subpart.

Work Practice Standards

§ 65.610 What monitoring and repair requirements must I meet?

(a) Except as provided in paragraph (b) of this section, you must perform monitoring to identify leaks of total strippable hydrocarbons from each heat exchange system subject to the requirements of this subpart according to the procedures in paragraphs (a)(1) through (4) of this section.

(1) *Monitoring locations for closed-loop recirculation heat exchange systems.* For each closed loop recirculating heat exchange system, you must collect and analyze a sample from the location(s) described in either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) Each cooling tower return line prior to exposure to air for each heat exchange system in regulated material service.

(ii) Selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers in regulated material service within a heat exchange system is covered by the selected monitoring location(s).

(2) *Monitoring locations for once-through heat exchange systems.* For each once-through heat exchange system, you must collect and analyze a sample from the location(s) described in paragraph (a)(2)(i) of this section. You may also elect to collect and analyze an additional sample from the location(s) described in paragraph (a)(2)(ii) of this section.

(i) Selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers in regulated material

service within a heat exchange system is covered by the selected monitoring location(s).

(ii) The inlet water feed line for a once-through heat exchange system prior to any heat exchanger. If multiple heat exchange systems use the same water feed (*i.e.,* inlet water from the same primary water source), you may monitor at one representative location and use the monitoring results for that sampling location for all heat exchange systems that use that same water feed.

(3) *Monitoring method.* You must determine the total strippable hydrocarbon concentration (or surrogate pollutant concentration, as specified in the referencing subpart) at each monitoring location using any of the analytical methods specified in paragraphs (a)(3)(i) through (iii) of this section.

(i) Determine the total strippable hydrocarbon concentration (in parts per million by volume (ppmv) as methane) from the air stripping testing system using ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 65.265) using a flame ionization detector (FID) analyzer.

(ii) Determine the total strippable hydrocarbon concentration (in parts per billion by weight (ppbw)) in the cooling water using a combination of SW–846 Method 5030B, ''Purge-and-Trap for Aqueous Samples'' and SW–846 Method 8260C, ''Aromatic and Halogenated Volatiles by Gas Chromatography Using Photoionization and/or Electrolytic Conductivity Detectors,'' dated December 1996 (incorporated by reference—see § 65.265) or ASTM Method D5790–95, ''Standard Test Method for Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,'' reapproved 2006 (incorporated by reference—see § 65.265). Unless otherwise specified by the referencing subpart, the target list of compounds shall be generated based on a pre-survey sample and analysis by gas chromatography/mass spectrometry and process knowledge, to include all compounds that can potentially leak into the cooling water. If SW–846 Methods 5030B and 8260C or ASTM Method D5790–95 are not applicable for all compounds that can potentially leak into the cooling water for a given heat exchange system, you cannot use these monitoring methods for that heat exchange system.

(iii) Determine the total strippable hydrocarbon concentration or surrogate pollutant concentration as specified in the referencing subpart (in ppbw) in the cooling water using the analytical methods specified in the referencing subpart.

(4) *Monitoring frequency.* You must determine the total strippable hydrocarbon concentration (or surrogate pollutant concentration as specified in the referencing subpart) at each monitoring location at the frequencies specified in paragraphs (a)(4)(i) through (iii) of this section, unless otherwise provided in the referencing subpart.

(i) For heat exchange systems for which you have not delayed repair of any leaks, monitor at least quarterly.

(ii) For heat exchange systems for which you have delayed repair as provided in paragraph (f) of this section, monitor at least monthly.

(iii) If you elect to monitor the inlet water feed line for a once-through heat exchange system as provided in paragraph (a)(2)(ii) of this section, you must monitor the inlet water feed line at least quarterly.

(b) A heat exchange system is exempt from the monitoring requirements in paragraph (a) of this section if it meets any one of the criteria in paragraphs (b)(1) through (3) of this section.

(1) All heat exchangers that are in regulated material service within the heat exchange system operate with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(2) The heat exchange system does not contain any heat exchangers that are in regulated material service, as defined in this subpart or as defined in the referencing subpart, as applicable.

(3) The heat exchange system has a maximum cooling water flow rate of 10 gallons per minute or less.

(c) Unless otherwise specified by the referencing subpart, the leak action level is either a total strippable hydrocarbon concentration (as methane) in the stripping gas of 3.1 ppmv or a total strippable hydrocarbon concentration in the cooling water of 40 ppbw. A leak is defined as described in paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) For once-through heat exchange systems for which you monitor the inlet water feed as described in paragraph (a)(2)(ii) of this section, a leak is detected if the difference in the measurement value of the sample taken from a location specified in paragraph (a)(2)(i) of this section and the measurement value of the corresponding sample taken from the location specified in paragraph (a)(2)(ii) of this section equals or exceeds the leak action level.

(2) For all other heat exchange systems, a leak is detected if a measurement value taken according to the requirements in paragraph (a) of this section equals or exceeds the leak action level.

(d) If a leak is detected pursuant to the monitoring provisions of paragraph (a), you must repair the leak to reduce the measured concentration to below the applicable action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in paragraphs (e) and (f) of this section. Repair includes re-monitoring as specified in paragraph (a) of this section to verify that the measured concentration is below the applicable action level. Actions that you can take to achieve repair include, but are not limited to:

(1) Physical modifications to the leaking heat exchanger, such as welding the leak or replacing a tube;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid;

(4) Replacing the heat exchanger or heat exchanger bundle; or

(5) Isolating, bypassing, or otherwise removing the leaking heat exchanger from service until it is otherwise repaired.

(e) If you detect a leak when monitoring a cooling tower return line or heat exchanger exit line under paragraph (a) of this section, you may conduct additional monitoring following the requirements in paragraph (a) of this section to further isolate each heat exchanger or group of heat exchangers in regulated material service within the heat exchange system for which the leak was detected. If you do not detect any leaks when conducting additional monitoring for each heat exchanger or group of heat exchangers in regulated material service, the heat exchange system is excluded from the repair requirements in paragraph (d) of this section.

(f) Unless otherwise specified by the referencing subpart, the delay of repair action level is defined as either a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or a total strippable hydrocarbon concentration in the cooling water of 800 ppbw. If the repair action level is exceeded as specified under the referencing subpart or this paragraph, and unless specified otherwise in the referencing subpart, you may delay the repair of a leaking heat exchanger when

one of the conditions in paragraphs (f)(1) or (f)(2) of this section is met. You must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable hydrocarbon concentration is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, you may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monitoring, the total strippable hydrocarbon concentration is equal to or greater than the delay of repair action level, you must repair the leak within 30 days of the monitoring event in which the total strippable hydrocarbon was equal to or exceeded the delay of repair action level.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable hydrocarbon concentration (as methane) is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, you may delay the repair for a maximum of 120 calendar days from the day the leak was first identified. You must demonstrate that the necessary equipment, parts, or personnel were not available. If, during subsequent monthly monitoring, the total strippable hydrocarbon concentration is equal to or greater than the delay of repair action level, you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the total strippable hydrocarbon delay of repair action level.

(g) Unless otherwise specified in the referencing subpart, to delay the repair under paragraph (f) of this section, you must record the information in paragraphs (g)(1) through (4) of this section.

(1) The reason(s) for delaying repair.

(2) A schedule for completing the repair as soon as practical.

(3) The date and concentration of the leak as first identified and the results of all subsequent monitoring events during the delay of repair.

(4) An estimate of the potential emissions from the leaking heat exchange system following the procedures in paragraphs (f)(4)(i) and (ii) of this section.

(i) Determine the total strippable hydrocarbon concentration in the cooling water, in ppbw, using equation 7–1 from ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 65.265).

(ii) Calculate the emissions for the leaking heat exchange system by multiplying the hydrocarbon concentration in the cooling water, ppbw, by the flow rate of the cooling water at the selected monitoring location and by the expected duration of the delay. The flow rate may be based on direct measurement, pump curves, heat balance calculations or other engineering methods.

Notifications, Reports and Records

§ 65.615 What notifications must I submit and when?

If the referencing subpart requires that a notification of compliance status be filed, then, at a minimum, you must include the information specified in paragraphs (a) and (b) of this section in the notification of compliance status. The notification of compliance status shall be transmitted to the EPA's Central Data Exchange by using either electronic reporting software available from the EPA or in an electronic file format specified by the EPA. The notification of compliance status shall also be submitted to the delegated authority in the form and/or format specified by the delegated authority. The notification of compliance status must be signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard.

(a) The information specified in the referencing subpart.

(b) Identification of the heat exchange systems that are subject to the requirements of the referencing subpart.

§ 65.620 What reports must I submit and when?

Unless otherwise specified in the referencing subpart, you must report the information specified in paragraphs (a) through (f) of this section, as applicable, in the periodic report specified in the referencing subpart.

(a) The number of heat exchange systems in regulated material service.

(b) The number of heat exchange systems in regulated material service found to be leaking.

(c) A summary of the monitoring data that indicate a leak, including the number of leaks determined to be equal to or greater than the leak definitions specified in the referencing subpart.

(d) If applicable, the date a leak was identified, the date the source of the leak was identified and the date of repair.

(e) If applicable, a summary of each delayed repair, including the original date and reason for the delay and the date of repair, if repaired during the reporting period.

(f) If applicable, an estimate of total strippable hydrocarbon emissions for each delayed repair over the reporting period.

§ 65.625 What records must I keep?

Unless otherwise specified in the referencing subpart, for a heat exchange system subject to the requirements of this subpart, you must keep the records specified in paragraphs (a) through (f) of this section and you must retain these records for 5 years.

(a) Identification of all heat exchangers at the facility and the measured or estimated average annual regulated material concentration of process fluid or intervening cooling fluid processed in each heat exchanger.

(b) Identification of all heat exchange systems that are in regulated material service. For each heat exchange system that is subject to this subpart, you must include identification of all heat exchangers within each heat exchange system, identification of the individual heat exchangers in regulated material service within each heat exchange system and for closed-loop recirculation systems, the cooling tower included in each heat exchange system.

(c) Identification of all heat exchange systems that are exempt from the monitoring requirements according to the provisions in § 65.610(b) and the provision under which the heat exchange system is exempt.

(d) Results of the following monitoring data for each monitoring event:

(1) Date/time of event.

(2) Heat exchange exit line flow or cooling tower return line flow at the sampling location, gallons/minute.

(3) Monitoring method employed.

(4) If the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 65.265) is used according to § 65.610(a)(3)(i):

(i) Barometric pressure.

(ii) El Paso air stripping apparatus water flow milliliter/minute (ml/min) and air flow, ml/min, and air temperature, °Celsius.

(iii) FID reading (ppmv).

(iv) Length of sampling period.

(v) Sample volume.

(vi) Calibration information identified in Section 5.4.2 of the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 65.265).

(5) If SW–846 Methods 5030B and 8260C or ASTM Method D5790–95 is used according to § 65.610(a)(3)(ii):

(i) The type of detector used.

(ii) The list of target analytes.

(iii) The measured cooling water concentration for each of target analyte (ppbw).

(iv) The method detection limit for each analyte.

(v) Calibration and surrogate recovery information identified in the corresponding method.

(6) If an alternative method is used according to § 65.610(a)(3)(iii):

(i) Specific citation for the test method used.

(ii) Analysis technique.

(iii) The list of target analytes.

(iv) The measured cooling water concentration for each of target analyte (ppbw).

(v) Calibration and surrogate recovery information identified in test method used.

(vi) Other records regarding the monitoring method or results as specified in the referencing subpart.

(e) The date when a leak was identified and the date when the heat exchanger was repaired or taken out of service.

(f) If a repair is delayed, the reason for the delay, the schedule for completing the repair and the estimate of potential emissions for the delay of repair.

Other Requirements and Information

§ 65.630 What parts of the General Provisions apply to me?

The General Provisions applicable to the referencing subpart apply to this subpart as specified in the referencing subpart. The provisions of subpart H of this part (General Provisions—Uniform Standards) also apply to this subpart. The provisions of subpart A of this part (General Provisions—Consolidated Federal Air Rule) do not apply to this subpart.

§ 65.635 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA). If the EPA Administrator has delegated authority to a state, local or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a state, local or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the EPA Administrator and are not transferred to the state, local or tribal agency.

(1) Approval of alternatives to the requirements in § 65.610, under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90 and as required in this subpart.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90 and as required in this subpart.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90 and as required in this subpart.

§ 65.640 What definitions apply to this subpart?

All terms used in this subpart shall have the meaning given them in the Clean Air Act and in this section.

Cooling tower means a heat removal device used to remove the heat absorbed in circulating cooling water systems by transferring the heat to the atmosphere using natural or mechanical draft.

Cooling tower return line means the main water trunk lines at the inlet to the cooling tower before exposure to the atmosphere.

Heat exchange system means a device or collection of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the *heat exchange system* consists of a cooling tower, all heat exchangers that are serviced by that cooling tower and all water lines to and from the heat exchanger(s). For once-through systems, the *heat exchange system* consists of one or more heat exchangers servicing an individual process unit and all water lines to and from the heat exchanger(s). Intentional direct contact with process fluids results in the formation of a wastewater.

Heat exchanger exit line means the cooling water line from the exit of one or more heat exchangers (where cooling water leaves the heat exchangers) to either the entrance of the cooling tower return line or prior to exposure to the atmosphere or mixing with non-cooling water streams, in, as an example, a once-through cooling system, whichever occurs first.

In regulated material service means, unless specified otherwise in the referencing subpart, a heat exchanger that either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of regulated material (as defined in the referencing subpart) as determined according to the provisions of § 65.270 of this part.

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Part V

Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1 and 3

Changes To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act; Proposed Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 3

[Docket No. PTO–P–2011–0074]

RIN 0651–AC68

Changes To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) proposes changes to the existing rules of practice to implement the inventor's oath or declaration provisions of the Leahy-Smith America Invents Act. The Office proposes to revise and clarify the rules of practice relating to the inventor's oath or declaration, including reissue oaths or declarations, assignments containing oath or declaration statements from inventors, and oaths or declarations signed by parties other than the inventors. In order to better facilitate processing of patent applications, the Office further proposes to revise and clarify the rules of practice for power of attorney and prosecution of an application by an assignee.

DATES: Written comments must be received on or before March 6, 2012.

ADDRESSES: Comments should be sent be electronic mail message over the Internet addressed to: *oath_declaration@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Hiram H. Bernstein, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((571) 272–7707), Senior Legal Advisor, or Eugenia Jones ((571) 272–7727), Senior Legal Advisor, or Terry J. Maciejewski ((571) 272–7730), Technical Writer-Editor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284 (2011). Section 4 of the Leahy-Smith America Invents Act amends 35 U.S.C. 115 and 118 to change the practice regarding an inventor's oath or declaration. Section 20 of the Leahy-Smith America Invents Act amends 35 U.S.C. 116, 184, 251, and 256 (and other statutes) to remove the ''without any deceptive intention'' provision. This notice proposes changes to the rules of practice to implement the provisions of Section 4 of the Leahy-Smith America Invents Act and the changes in Section 20 of the Leahy-Smith America Invents Act that relate to the removal of the ''without any deceptive intention'' language from 35 U.S.C. 116, 184, 251, and 256.

More specifically, Section 4(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 115 to change the requirements for an inventor's oath or declaration.

35 U.S.C. 115(a) provides that an application filed under 35 U.S.C. 111(a) or that commences the national stage under 35 U.S.C. 371 must include, or be amended to include, the name of the inventor for any invention claimed in the application. 35 U.S.C. 115(a) also provides that, except as otherwise provided in 35 U.S.C. 115, each individual who is the inventor or a joint inventor of a claimed invention in an application must execute an oath or declaration in connection with the application.

35 U.S.C. 115(b) provides that an oath or declaration under 35 U.S.C. 115(a) must contain statements that the application was made or was authorized to be made by the affiant or declarant, and the individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application. There is no longer a requirement in the statute that the inventor must state his country of citizenship and that the inventor believes himself or herself to be the ''first'' inventor of the subject matter (process, machine, manufacture, or composition of matter) sought to be patented.

35 U.S.C. 115(c) provides that the Director may specify additional information relating to the inventor and to the invention that is required to be included in an oath or declaration under 35 U.S.C. 115(a).

35 U.S.C. 115(d)(1) provides that, in lieu of execution of an oath or declaration by an inventor under 35 U.S.C. 115(a), the applicant for patent may provide a substitute statement under the circumstances described in 35 U.S.C. 115(d)(2) and such additional circumstances as the Director specifies by regulation. The circumstances set forth in 35 U.S.C. 115(d)(2) in which the applicant may provide a substitute statement are limited to the situations where an individual is unable to file the oath or declaration under 35 U.S.C. 115(a) because the individual is deceased, under legal incapacity, or cannot be found or reached after diligent effort, or an individual is under an obligation to assign the invention but has refused to make the oath or declaration required under 35 U.S.C. 115(a). Therefore, while an assignee, an obligated assignee, or a person who otherwise shows sufficient proprietary interest in the matter may make an application for patent as provided for in 35 U.S.C. 118, an oath or declaration (or an assignment containing the required statements) by each of the inventors is still required, except in the circumstances set forth in 35 U.S.C. 115(d)(2) and in any additional circumstances specified by the Director in the regulations. The contents of a substitute statement are set forth in 35 U.S.C. 115(d)(3). Specifically, the substitute statement must identify the individual to whom the statement applies, set forth the circumstances for the permitted basis for filing the substitute statement in lieu of the oath or declaration under 35 U.S.C. 115(a), and contain any additional information,

including any showing, required by the Director.

35 U.S.C. 115(e) provides for making the statements required under 35 U.S.C. 115(b) and (c) in an assignment of record and specifically permits an individual who is under an obligation of assignment of an application to include the required statements in the assignment executed by the individual, in lieu of filing the statements separately.

35 U.S.C. 115(f) provides that a notice of allowance under 35 U.S.C. 151 may be provided to an applicant only if the applicant has: (1) Filed each required oath or declaration under 35 U.S.C. 115(a); (2) filed a substitute statement under 35 U.S.C. 115(d); or (3) recorded an assignment meeting the requirements of 35 U.S.C. 115(e). 35 U.S.C. 111(a)(2), however, continues to require that an application filed under 35 U.S.C. 111(a) include an oath or declaration as prescribed by 35 U.S.C. 115, and 35 U.S.C. 111(a)(3) continues to permit the oath or declaration to be submitted after the filing date of the application, but within such period and under the conditions prescribed by the Director, including payment of a surcharge. Likewise, 35 U.S.C. 371(c) continues to require an oath or declaration complying with the requirements of 35 U.S.C. 115 for an international application to enter the national stage, and 35 U.S.C. 371(d) continues to require the oath or declaration to be submitted within the period prescribed by the Director, and with the payment of a surcharge if required by the Director and not submitted by the date of the commencement of the national stage. Thus, the change to 35 U.S.C. 115 does not alter the statutory authorization in 35 U.S.C. 111(a) and 371 for requiring the oath or declaration to be submitted prior to examination of the application, and requiring a surcharge for the submission of an oath or declaration after the filing date of the application under 35 U.S.C. 111(a) or by the date of the commencement of the national stage in an international application entering the national stage under 35 U.S.C. 371.

35 U.S.C. 115(g)(1) provides that the requirements under 35 U.S.C. 115 shall not apply to an individual named as the inventor or a joint inventor in an application that claims benefit under 35 U.S.C. 120, 121, or 365(c) of an earlier-filed application, if: (1) An oath or declaration meeting the requirements of 35 U.S.C. 115(a) was executed by the individual and was filed in connection with the earlier-filed application; (2) a substitute statement meeting the requirements of 35 U.S.C. 115(d) was filed in connection with the earlier-filed application with respect to the individual; or (3) an assignment meeting the requirements of 35 U.S.C. 115(e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application. 35 U.S.C. 115(g)(2) provides that the Director may still require a copy of the executed oath or declaration, the substitute statement, or the assignment filed in connection with the earlier-filed application to be filed in the later-filed application.

35 U.S.C. 115(h)(1) provides that any person making a statement under 35 U.S.C. 115 may withdraw, replace, or otherwise correct the statement at any time. 35 U.S.C. 115(h)(1) also provides that if a change is made in the naming of an inventor requiring the filing of one or more additional statements, the Director shall establish regulations under which such additional statements may be filed. 35 U.S.C. 115(h)(2) provides that if an individual has executed an oath or declaration meeting the requirements of 35 U.S.C. 115(a) or an assignment meeting the requirements of 35 U.S.C. 115(e), then the Director cannot require that individual to subsequently make any additional oath, declaration, or other equivalent statement in connection with the application or any patent issuing thereon. 35 U.S.C. 115(h)(3) provides that a patent shall not be invalid or unenforceable based upon the failure to comply with a requirement under this section if the failure is remedied as provided under 35 U.S.C. 115(h)(1).

35 U.S.C. 115(i) provides that any declaration or statement filed pursuant to 35 U.S.C. 115 must contain an acknowledgement that any willful false statement made in the declaration or statement is punishable under 18 U.S.C. 1001 by fine or imprisonment of not more than 5 years, or both. This is similar to the provision in current 37 CFR 1.68.

Section 4(a)(2) of the Leahy-Smith America Invents Act amends 35 U.S.C. 121 to eliminate the sentence that provided for the Director to dispense with the signing and execution of an oath or declaration or equivalent statement by the inventor in a divisional application when the divisional application is directed solely to subject matter described and claimed in the original application as filed. This amendment to 35 U.S.C. 121 is consistent with 35 U.S.C. 115(g)(1) because the inventor named in a divisional application would not need to execute an oath or declaration or equivalent statement for the divisional application regardless of whether the divisional application is directed solely to subject matter described and claimed in the original application.

Section 4(a)(3) of the Leahy-Smith America Invents Act amends 35 U.S.C. 111(a) to insert ''or declaration'' after ''and oath.''

Section 4(b)(1) of the Leahy-Smith America Invents Act amends 35 U.S.C. 118 to change the practice regarding the filing of an application by a person other than the inventor. First, 35 U.S.C. 118 is amended to provide that a person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. Second, 35 U.S.C. 118 is amended to provide that a person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of, and as agent for, the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. Finally, 35 U.S.C. 118 is amended to provide that if a patent is granted on an application filed under 35 U.S.C. 118, the patent shall be granted to the real party in interest. Under amended 35 U.S.C. 118, the Director may continue to provide whatever notice to the inventor that the Director considers to be sufficient.

The changes to 35 U.S.C. 115 and 118 do not mean that a person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent in all circumstances. They do, however, recognize that an assignee or a person to whom the inventor is obligated to assign can execute the oath or declaration. In those circumstances set forth in 35 U.S.C. 115(d)(2), an assignee or person to whom the inventor is under an obligation to assign, or a legal representative of the dead or legally incapacitated inventor, is the applicant as is currently set forth in 37 CFR 1.41(b).

Section 4(b)(2) of the Leahy-Smith America Invents Act includes a conforming amendment to 35 U.S.C. 251 to provide for the filing of a reissue application by an assignee of the entire interest if the application for the original patent was filed by the assignee of the entire interest.

Section 4(c) of the Leahy-Smith America Invents Act amends 35 U.S.C. 112 to change, *inter alia,* the undesignated paragraphs to subsections. Section 4(d) makes conforming amendments to 35 U.S.C. 111(b) to make reference to the subsections of 35 U.S.C. 112.

Section 4(e) of the Leahy-Smith America Invents Act provides that the amendments made by Section 4 shall take effect on September 16, 2012, and

shall apply to any patent application filed on or after September 16, 2012.

Section 20 of the Leahy-Smith America Invents Act amends 35 U.S.C. 116, 184, 251, and 256 to eliminate the ''without any deceptive intention'' clauses from each portion of the statute. This change should not be taken as an endorsement for applicants and inventors to act with ''deceptive intention'' in proceedings before the Office. As discussed previously, 35 U.S.C. 115(i) requires that any declaration or statement filed pursuant to 35 U.S.C. 115 must contain an acknowledgement that any willful false statement made in the declaration or statement is punishable under 18 U.S.C. 1001 by fine or imprisonment of not more than 5 years, or both.

Section 20(l) of the Leahy-Smith America Invents Act provides that the amendments made by Section 20 shall take effect on September 16, 2012, and shall apply to proceedings commenced on or after September 16, 2012.

General discussion regarding implementation: 35 U.S.C. 115 as amended permits the required inventor statements to be made in an oath or declaration under 35 U.S.C. 115(a), a substitute statement under 35 U.S.C. 115(d), or an assignment under 35 U.S.C. 115(e). Since 35 U.S.C. 115 no longer contains a requirement that the inventor identify his country of citizenship, the Office will no longer require this information in the oath or declaration. The other requirements for oaths or declarations currently provided in 37 CFR 1.63 would be retained.

In view of 35 U.S.C. 115(d), the Office is proposing to permit an assignee, a party to whom the inventor is legally obligated to assign the invention, and a party who otherwise has a sufficient proprietary interest to provide a substitute statement with respect to an inventor who is deceased, is legally incapacitated, cannot be found or reached after diligent effort, or refuses to sign the oath or declaration, even when there are other inventors who are signing the oath, declaration, or assignment with the required statements. This would provide an alternative to the current procedure in which a legal representative (*e.g.,* executor, administrator, guardian, or conservator) must sign the oath or declaration for a deceased or legally incapacitated inventor, and, if joint inventors are signing the oath or declaration, the joint inventors must sign the oath or declaration on behalf of an inventor who cannot be found or reached after diligent effort or who refuses to sign the oath or declaration.

In view of 35 U.S.C. 115(e), the Office will permit inventors to make the required statements in an assignment executed by the inventor and recorded in the Office. When the inventors choose to do so, the Office is proposing to require that the assignment cover sheet identify such an assignment as also being an oath or declaration. 35 U.S.C. 111(a)(2)(C) provides that the application ''shall include an oath or declaration as prescribed by section 115 of this title.'' Therefore, the Office is proposing to require that a copy of any recorded assignment submitted pursuant to 35 U.S.C. 115(e) as the inventor oath or declaration be filed in the application, rather than merely making reference to its recording in regard to the application.

Under 35 U.S.C. 115(f), the Office is permitted to delay requiring an oath or declaration until an application is in condition for allowance. The Office considered this option, but considers it better for the examination process and patent pendency to continue to require the oath or declaration during pre-examination.

The Office needs to know who the inventors are to prepare patent application publications and publish applications at eighteen months from their earliest filing date. The Office also needs to know who the inventors are to conduct examination (under conditions of patentability in effect today as well as in effect under the Leahy-Smith America Invents Act). For instance, the Office must know the identity of the inventors to determine what prior art may be applied against the claimed invention or whether to issue a double patenting rejection. The inventorship in an application is not set until an oath or declaration is filed. *See* 37 CFR 1.41(a)(1) (the inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by 37 CFR 1.63, with certain exceptions).

In addition, delaying the requirement for an oath or declaration until allowance would also significantly add to overall patent pendency. The current practice for completing applications (*i.e.,* obtaining any outstanding oath or declaration and filing fees) does not have a noticeable effect on patent pendency because it takes place during pre-examination when the application would otherwise be awaiting a first Office action by the examiner and applications are placed in the queue for examination by filing date order regardless of the date on which they are completed. No Technology Center (other than designs) had average first action pendency lower than twenty months to first action at the end of fiscal year 2011. *See United States Patent and Trademark Office Performance and Accountability Report Fiscal Year 2011,* at 162 (table 4) (2011). Thus, the current practice of completing applications during pre-examination avoids any noticeable impact on first action pendency and overall pendency. Stated differently, forwarding applications for examination without an oath or declaration would not change the first action pendency either under current first action pendency or when the Office reaches a ten-month first action.

Changing the practice of completing applications during pre-examination such that an oath or declaration is not required until an application is otherwise in condition for allowance would require the Office to issue some type of action (*e.g.,* an action under *Ex parte Quayle,* 1935 Dec. Comm'r Pat. 11 (1935)) to obtain an oath or declaration before the Office is able to issue a notice of allowance under 35 U.S.C. 151. This would require an extra action during the examination process in any application in which an oath or declaration is not present before examination. About 33 percent of applications do not contain an oath or declaration on filing. In addition, based upon data for fiscal year 2011 in the Patent Application Location and Monitoring (PALM) database system, the average time taken for applicants to reply to an *Ex parte Quayle* action was 52 days, and the average time taken by examiners to respond to an applicant's reply to an *Ex parte Quayle* action was 32 days. Thus, a change in practice to permit an oath or declaration to be filed after the Office is ready to mail a notice of allowance could increase the total pendency for allowed applications by between one and three months (depending upon whether only 33 percent of applicants or all applicants delayed submission of an oath or declaration). This is also why identification of the inventor(s) in the application itself to be followed after the notice of allowance with the oath or declaration is insufficient.

The approach that will allow for an efficient publication and examination process while minimizing the impact on patent pendency is for an application to be completed prior to examination. Assignees should consider getting the oath or declaration and any assignment document executed concurrently or in the common declaration-assignment document provided for in 35 U.S.C. 115(e) before filing an application. The Office also plans to streamline its practices to permit an assignee or an obligated assignee to readily execute an oath or declaration, or a person who

otherwise shows sufficient proprietary interest to be able to readily execute an oath or declaration on behalf of an inventor, when such inventor is not able, willing, or available to execute the oath or declaration. Finally, for those few applicants who actually need more time than is permitted for completing applications during pre-examination, the Office has practices that would permit an extended period for completing an application (*Pilot Program for Extended Time Period To Reply to a Notice To File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010)), and will be proposing other ways to permit applicants to have additional time to complete an application for examination (see Track III of the *Enhanced Examination Timing Control Initiative,* 75 FR 31763 (June 4, 2010)).

The Office also considered discontinuing the practice of charging a surcharge for an application in which the oath or declaration is not present on filing. Applications that are not complete on filing (*e.g.,* are filed without an oath or declaration, or without the filing fee) require special processing on the part of the Office. The Office appreciates that some applications need to be filed to avoid a loss of rights before all of the formal documents or fees are ready, but the Office thinks that the cost of the special processing required for such applications should be borne by those applicants who require special processing and not by applicants whose applications are complete on filing.

Consistent with 35 U.S.C. 115(g), the Office will permit applicants who executed an oath or declaration in a prior application, where appropriate, to use a copy of that oath or declaration in all continuing applications, including continuation-in-part applications, with the caveat that any added inventors in the continuing application must execute an original oath or declaration.

While the Office recognizes the ability of any person making a statement under 35 U.S.C. 115 to correct the statement at any time, including after issuance of the patent, as provided in 35 U.S.C. 115(h), the Office will not review the submission of such a document if it is not timely presented during prosecution of the application, except where there is a correction of inventorship in a patent made pursuant to 35 U.S.C. 256 and 37 CFR 1.324.

Consistent with the amendments made to 35 U.S.C. 115 and 251, the Office proposes changes to reissue practice to: (1) Delete the requirement for a reissue oath or declaration to include a statement that all errors arose without any deceptive intent on the part of the applicant; (2) eliminate the requirement for a supplemental oath or declaration when a claim is amended, and require a corrected oath or declaration only where all errors previously identified in the reissue oath or declaration are no longer being relied upon as the basis for reissue; (3) require applicants to specifically identify any broadening of a patent claim, rather than merely provide an alternative statement that applicant is correcting an error of either claiming more or less than a patentee was entitled to claim; and (4) clarify that a single claim containing both a broadening and a narrowing of the claimed invention is to be treated as a broadening. These changes will provide for more efficient processing of reissue applications and improve the quality of patents, in accordance with the intent of the Leahy-Smith America Invents Act. In order to implement the conforming amendment made to 35 U.S.C. 251 in Section 4(b)(2) of the Leahy-Smith America Invents Act, the Office is also proposing to amend the rules to permit an assignee of the entire interest who filed an application under 35 U.S.C. 118 that was patented to sign the reissue oath or declaration in a reissue application of such patent (even if the reissue application is a broadening reissue).

Where the Director grants a patent on an application filed under amended 35 U.S.C. 118 by a person other than the inventor, the Office must grant the patent to the real party in interest. Therefore, the Office proposes to require applicants other than the inventor to notify the Office of any change in ownership of the application no later than payment of the issue fee. Absent any such notification, the Office will presume no change in ownership of the application has occurred.

The Office, under the authority provided by 35 U.S.C. 2(b)(2), also proposes changes to the rules of practice for power of attorney, prosecution of an application by an assignee, and foreign priority claims to facilitate prosecution of applications and improve the quality of patents. Juristic entities who seek to take over prosecution of an application will need to do so via a registered practitioner. Juristic entity includes entities such as corporations or other non-human entities created by law and given certain legal rights. This practice is consistent with the general rule in Federal courts that a juristic entity must be represented by counsel admitted to practice before the court. *See, e.g., Osborn* v. *Bank of United States,* 22 U.S. (9 Wheat.) 738, 830 (1824) (a corporation can appear in court only by attorney); *Richdel, Inc.* v. *Sunspool Corp.,* 699 F.2d 1366 (Fed.Cir.1983) (corporation must be represented in court by an attorney); *Southwest Express Co., Inc.* v. *Interstate Commerce Commission,* 670 F.2d 53, (5th Cir. 1982) (a corporation or partnership must be represented in court by an attorney). The Office's experience is that the vast majority of juristic entities act via a registered practitioner, but a small number attempt to prosecute applications ''*pro se.*''

Other proposed changes include: providing for the carryover of a power of attorney in continuation and divisional applications, and in continuation-in-part applications where the inventorship is the same as in the immediate prior application; permitting practitioners who have acted only in a representative capacity in an application to change the correspondence address after a patent has issued; accepting the signature of a practitioner of record on a statement under 37 CFR 3.73(b) on behalf of an assignee without requiring further evidence of the practitioner's authority to act on behalf of the assignee; providing a procedure for handling conflicts between different purported assignees attempting to control prosecution; and harmonizing the practice regarding foreign priority claims with the practice regarding domestic benefit claims by requiring both types of claims to be set forth in an application data sheet.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.1: Section 1.1(e) is proposed to be amended to update the mail stop designation for communications relating to patent term extensions under 35 U.S.C. 156 to make it consistent with the Office's list of mail stops. Mail stops assist the Office in routing correspondence to the office or area assigned with treating it. Use of mail stops is not required but is strongly recommended, even where the documents are submitted via the Office's electronic filing system-Web (EFS-Web). A mail stop designation can help the Office more quickly identify the type of document where applicant did not select the correct document code when uploading a document through EFS-Web. For this reason, use of mail stops is encouraged.

Applicants are reminded that initial requests for patent term extension may not be submitted via EFS-Web and must be filed in paper. These initial requests are handled differently by Office

personnel than other types of official patent correspondence. Therefore, the use of a mail stop will help ensure that initial requests are properly recognized and processed in a timely manner.

Section 1.4: Section 1.4(e) is proposed to be amended to require that a payment by credit card in patent cases may only be submitted with an original handwritten signature personally signed in permanent dark ink or its equivalent. This change is proposed to avoid possible controversies regarding use of an S-signature (§ 1.4(d)(2)) instead of a handwritten signature (§ 1.4(d)(1)) for credit card payments, *e.g.,* a request for refund where there is a change of purpose by the applicant and the request is based on use of an S-signature rather than a handwritten signature.

Section 1.31: Section 1.31 is proposed to be amended to create paragraphs (a) and (b). Section 1.31(a) would retain the subject matter of the first sentence of current § 1.31 with the second sentence of current § 1.31 being placed in paragraph (b). Section 1.31(a) is proposed to be amended, under the authority provided by 35 U.S.C. 2(b)(2), to include a provision that a juristic entity must be represented by a patent practitioner. An additional clarification is provided that prosecution by a juristic entity is governed by § 3.71(a), and the taking of action by an assignee is governed by § 3.73. See also the discussion of § 1.33(f).

Section 1.32: Section 1.32(d) is proposed to be added to address the filing in a continuing application of powers of attorney from the parent application. Proposed § 1.32(d) provides that a power of attorney from a prior application for which benefit is claimed under 35 U.S.C. 120, 121, or 365(c) in a continuing application may have effect in the continuing application if the inventorship of the continuing application is the same as the prior application or one or more inventors from the prior application has been deleted in the continuing application, and if a copy of the power of attorney from the prior application is filed in the continuing application. Current § 1.63(d)(4) (proposed to be deleted in this notice) provides that, when filing continuation and divisional applications and including a copy of a declaration from the parent application, applicants should ''identify'' in the continuation or divisional any change in power of attorney that occurred after the filing of the parent application. The requirement in § 1.63(d)(4) to ''identify'' the change in power of attorney has been interpreted differently by applicants causing confusion for the Office as to who has the power of attorney. For example, some applicants have filed a copy of the power of attorney from the parent, while others have filed a copy of only the notice of acceptance of power of attorney or just made a statement about the power of attorney in a transmittal letter that accompanied the continuation or divisional application. Because of these past inconsistencies in ''identifying'' a change in power of attorney, specifically requiring a copy of the power of attorney from the prior application to be filed in the continuing application (even where a change in power did not occur in the prior application) will make the record clear with respect to who has power of attorney.

The Office does not recommend that practitioners use a combined declaration and power of attorney document and no longer provides a combined declaration and power of attorney form on its Internet Web site. The power of attorney should be from the assignee where one exists. Otherwise, the assignee may be paying the bill, while the inventor is providing the power of attorney, thereby possibly raising an issue as to who is the practitioner's client. Additionally, relationships between an assignee and the inventors may deteriorate. It is not uncommon in these situations for inventors to stop cooperating, and in some cases, file powers of attorney in an attempt to control prosecution of the application.

Section 1.32(e) is proposed to be added to clarify that, where a power of attorney has been granted by all of the inventors (as opposed to the assignee), the addition of an inventor pursuant to a request granted under § 1.48 results in the loss of that power of attorney unless the added inventor provides a power of attorney consistent with the existing power of attorney from the other inventors. This provision does not preclude a practitioner from acting pursuant to § 1.34, if applicable.

A power of attorney is a written document by which a principal (*i.e.,* the applicant for patent or assignee of entire interest) authorizes one or more patent practitioners or joint inventors to act on his or her behalf. *See* § 1.32(a). Where a power of attorney from the inventors is already present in the application file, and a request is filed to add one or more inventors pursuant to § 1.48, the grant of the § 1.48 request results in the power of attorney of record being signed by less than all of the inventors. The *Manual of Patent Examining Procedure* specifies that papers giving a power of attorney in an application will not be accepted when signed by less than all of the inventors unless accompanied by a petition under § 1.183 and fee under § 1.17(f) demonstrating the extraordinary situation where justice requires the waiver of the requirement in § 1.32(b)(4) that all of the inventors sign the power of attorney. *See Manual of Patent Examining Procedure* (MPEP) § 402.10 (8th ed. 2001) (Rev. 8, July 2010). Because the inventive entity changes upon grant of the § 1.48 request, the power of attorney of record can no longer be effective in the application.

It should be noted that a practitioner may only act in a representative capacity on behalf of *all* of the applicants or owners of a patent application, unless a petition is granted in accordance with MPEP § 402.10. Section 1.34 does not authorize a practitioner to take action in a patent application where he or she has authority or a power of attorney from less than all of the inventors or owners, and is not provided as a means to subvert the petition requirements set forth in MPEP § 402.10. Where a power of attorney was already of record in the file prior to the filing and grant of the § 1.48 request, and the practitioner cannot secure a power of attorney from each added inventor, the procedures set forth in MPEP § 402.10 must be followed, unless a power of attorney from the assignee of the entire right, title, and interest, or from partial assignees who collectively make up the entire right, title, and interest (after ownership is established pursuant to § 3.71) is filed.

Section 1.33: Section 1.33(a) is proposed to be amended to specify that if an applicant provides more than one correspondence address in a single paper or in multiple papers submitted on one day, the Office will select one of the specified addresses for use as the correspondence address and, if given, may select the correspondence address associated with a Customer Number over a typed correspondence address. This proposal addresses the problem that arises when applicants provide multiple correspondence addresses in a single paper (*e.g.,* providing both a typed correspondence address and a Customer Number in a single paper) or multiple papers (*e.g.,* an oath or declaration, a transmittal letter, and a preliminary amendment that each includes a different correspondence address) on one day, and the Office inadvertently did not select the correspondence address actually desired by applicant. The Office may then need to re-mail papers to the desired address. This proposed change does not affect the hierarchy provided in § 1.76(d) for inconsistencies between an application data sheet and other documents. The

proposed change is intended to encourage applicants to carefully review their submissions to ensure that the Office receives clear instructions regarding the correspondence address.

Section 1.33(b)(3) is proposed to be removed and reserved in view of changes proposed in § 1.33(f), which provides that a juristic entity may prosecute a patent application *only* through a patent practitioner. See the discussion of proposed § 1.33(f), below.

Section 1.33 is proposed to be amended to add a new § 1.33(f) to provide that an assignee may only conduct prosecution of an application in accordance with §§ 1.31 and 3.71. Thus, all papers submitted on behalf of a juristic entity must be signed by a patent practitioner. This change is proposed because juristic entities have been attempting to prosecute patent applications before the Office *pro se* and consequently requesting additional assistance from the examiner. Juristic entities attempting to prosecute patent applications before the Office *pro se* also make more procedural errors that result in delays in prosecution. Accordingly, this proposal will facilitate a reduction in the Office backlog by reducing the delays.

Section 1.33 is proposed to be amended to add a new § 1.33(g) to replace § 1.63(d)(4) with respect to the correspondence address. Where application papers from a prior application are used in a continuing application and the correspondence address was changed during the prosecution of the prior application, an application data sheet or separate paper identifying the updated correspondence address to be used for the continuing application must be submitted. Otherwise, the Office may not recognize the change of correspondence address effected during the prosecution of the prior application. Where copies of submitted papers, *e.g.,* an oath or declaration, contain an outdated address (that was changed during prosecution of the prior application), an application data sheet or separate paper identifying the updated correspondence address to be used must be submitted. Presently, some applicants file continuing applications with copies of papers from the prior application that include correspondence addresses to former law firms or that are no longer current. The proposal would facilitate the processing of patent applications by the Office by making it easier to determine the correct correspondence address and reduce the number of instances where the Office mails correspondence to an incorrect address.

Section 1.33 is proposed to be amended to add a new § 1.33(h) to provide that a practitioner acting in a representative capacity in an application may change the correspondence address after the patent has issued, provided that the change of correspondence address is accompanied by a statement that notice has been given to the applicant or owner. Proposed § 1.33(h) is intended to provide a means for practitioners acting in a representative capacity in an application to effect a change in correspondence address after the patent has granted but would not provide authority to a practitioner acting under § 1.34 to change the correspondence address in an application after a § 1.63 oath or declaration by any of the inventors has been filed. *See* § 1.33(a)(2).

Practitioners that file and prosecute an application in a representative capacity, pursuant to § 1.34, usually provide their business address as the correspondence address of record. Once the patent issues, some practitioners attempt to withdraw as attorney or agent by filing a petition, and also attempt to change the correspondence address to direct correspondence to the applicant's or owner's address. Such attempts are not successful as the current rules do not permit the correspondence address to be changed by a practitioner acting in a representative capacity, nor will the Office grant withdrawal where a practitioner is not of record. *See Change in Procedure for Requests to Withdraw from Representation In a Patent Application,* 1329 *Off. Gaz. Pat. Office* 99 (Apr. 8, 2008). There have been instances where practitioners acting in a representative capacity have indicated that they have repeatedly requested that the client change the correspondence address, but the client has refused to submit the change of correspondence address to the Office. Proposed § 1.33(h) would permit practitioners to change the correspondence address after a patent has issued where practitioners have provided notice to the applicants or owners.

Section 1.41: Section 1.41(a)(3) is proposed to be amended to delete the language regarding provision of the citizenship of each person believed to be an inventor when the application papers for a nonprovisional application are filed without an oath or declaration as prescribed by § 1.63, or when application papers for a provisional application are filed without a cover sheet as prescribed by § 1.51(c)(1). Thus, only the name and residence of each person believed to be an inventor should be provided when nonprovisional application papers are filed without an oath or declaration or provisional application papers are filed without a cover sheet.

Section 1.41(a)(4) is proposed to be amended to simplify correction of inventorship in a national stage application under 35 U.S.C. 371. Under the current provision of § 1.41(a)(4), to correct inventorship, applicants must either: (1) File an oath or declaration executed by the inventors identified in the international phase and then follow the procedures under § 1.48(b) or (c) to correct inventorship due to claim amendments; or (2) file a request to correct inventorship under § 1.497(d), where inventorship was erroneously identified in the international phase. The proposed amendment to § 1.41(a)(4) treats national stage applications as analogous to applications filed under 35 U.S.C. 111(a) in that the first submission of an executed oath or declaration acts to correct the earlier identification of inventorship. *See* current § 1.48(f)(1).

Section 1.41(c) is proposed to be amended to differentiate between the mere delivery of a patent application and other correspondence to the Office and the signing of official correspondence. Proposed § 1.41(c) would provide that any person may physically or electronically deliver an application for patent and related correspondence, including fees, to the Office on behalf of the inventor(s), except that an oath or declaration (§ 1.63) can only be made in accordance with § 1.64. Proposed § 1.41(c) would also provide that amendments and other papers must be signed in accordance with § 1.33(b). This is consistent with the language of current § 1.33(b).

Section 1.42: Section 1.42 is proposed to be amended to set forth the procedures for satisfying the oath or declaration provisions of 35 U.S.C. 115 for deceased and legally incapacitated inventors in paragraphs (a) through (c). Current § 1.42 provides that in the case of the death of an inventor, the legal representative (*e.g.,* executor, administrator, *etc.*) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent. Current § 1.43 provides that in the case of an inventor who is legally incapacitated, the legal representative (*e.g.,* guardian, conservator, *etc.*) of the legally incapacitated inventor may make the necessary oath or declaration, and apply for and obtain the patent. 35 U.S.C. 115(d) sets forth the permitted circumstances in which the applicant for patent may provide a substitute statement in lieu of executing an oath or declaration under 35 U.S.C. 115(a). Specifically, the permitted

circumstances in which a substitute statement may be made with respect to an individual include: (1) Where the individual is deceased; (2) where the individual is legally incapacitated; (3) where the individual cannot be found or reached after diligent effort; or (4) where the individual is under an obligation to assign the invention but has refused to make the oath or declaration required under 35 U.S.C. 115(a). Proposed § 1.42 would cover the first two permitted circumstances, while proposed § 1.47 would cover the last two permitted circumstances. It is noted that 35 U.S.C. 115(d) also gives the Director the authority to specify additional circumstances by regulation.

Amended 35 U.S.C. 118 provides for a person to whom the inventor has assigned or is under an obligation to assign the invention to make an application for patent, and for a person who otherwise shows sufficient proprietary interest in the matter to make an application for patent on behalf of, and as agent for, the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. Accordingly, the Office is proposing amendments to § 1.42 to provide for the ability of the assignee, a party to whom the inventor is under an obligation to assign the invention, or a party who otherwise shows sufficient proprietary interest to execute the oath or declaration under § 1.63 in the case of a deceased or legally incapacitated inventor, in addition to the legal representative of such an inventor. This oath or declaration, together with any necessary showing, constitutes the substitute statement provided for in 35 U.S.C. 115(d). The Office is interpreting the term ''person'' as used in 35 U.S.C. 118 as including juristic persons.

Proposed § 1.42(a) provides that in the case of the death or legal incapacity of the inventor, the legal representative (*e.g.,* executor, administrator, guardian, or conservator) of the deceased or incapacitated inventor, the assignee, a party to whom the inventor is under an obligation to assign the invention or a party who otherwise shows sufficient proprietary interest in the matter may execute the oath or declaration under § 1.63. Proposed § 1.42(a) further provides that the oath or declaration must comply with §§ 1.63(a) and (b) and identify the inventor who is deceased or legally incapacitated. Proposed § 1.42(a) further provides that a party who shows sufficient proprietary interest in the matter executes the oath or declaration on behalf of the deceased or incapacitated inventor.

Proposed § 1.42(b) provides that a party to whom the inventor is under an obligation to assign the invention or a party who otherwise has sufficient proprietary interest in the matter who is taking action under § 1.42 must file a petition, accompanied by the fee set forth in § 1.17(g) and a showing, including proof of pertinent facts, either that: (1) The deceased or incapacitated inventor is under an obligation to assign the invention to the party; or (2) the party has sufficient proprietary interest in the matter to execute the oath or declaration on behalf of the deceased or incapacitated inventor and that such action is necessary to preserve the rights of the parties. Legal representatives of deceased or incapacitated inventors would be able to execute the oath or declaration for such an inventor without the need for a petition, consistent with the practice under current §§ 1.42 and 1.43. In addition, assignees would now be able to execute the oath or declaration for a deceased or incapacitated inventor without the need for a petition. However, a party to whom the inventor is under an obligation to assign or a party who otherwise has sufficient proprietary interest would need to file a petition as set forth in proposed § 1.42(b) in order to execute the oath or declaration for a deceased or incapacitated inventor. The proof required would be similar to the current proof required when an assignee, a party to whom an inventor has agreed in writing to assign the invention, or a party who otherwise shows sufficient proprietary interest in the matter files a petition under current § 1.47(b). The proof required to show proprietary interest and to show that the action is necessary to preserve the rights of the parties in a petition under current § 1.47(b) is discussed in MPEP §§ 409.03(f) and (g). The language ''or to prevent irreparable damage'' contained in current § 1.47(b) has not been included in proposed § 1.42(b) because 35 U.S.C. 118, as amended by the Leahy-Smith America Invents Act, does not contain this language.

Proposed § 1.42(c) contains language similar to current § 1.42 (second sentence) with the addition of the term ''assignee'' and the limitation that the intervention must be ''pursuant to this section.'' Thus, where an inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative or the assignee upon proper intervention under § 1.42.

Section 1.43: Section 1.43 is proposed to be removed and reserved. The provisions relating to inventors who are legally incapacitated are proposed to be moved to § 1.42 and revised as discussed above.

Section 1.47: Section 1.47 is proposed to be amended to revise the procedures for when an inventor refuses to sign the oath or declaration or cannot be reached after diligent effort to sign the oath or declaration. Current § 1.47(a) provides a petition procedure for when an inventor refuses to sign the oath or declaration or cannot be reached after diligent effort, which requires each of the available inventors to sign the oath or declaration on behalf of himself or herself and the nonsigning inventor, a petition including proof of the pertinent facts, the petition fee in § 1.17(g), and the last known address of the nonsigning inventor. Current § 1.47(b) provides a petition procedure for when all inventors are refusing to sign the oath or declaration or cannot be reached after diligent effort and thus no inventors are available to sign the oath or declaration. In this situation, current § 1.47(b) permits a person to whom the inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter, to sign the oath or declaration on behalf of and as agent for all the inventors. Current § 1.47(b) requires a petition including proof of pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the petition fee set forth in § 1.17(g), and the last known address of all inventors. Thus, under the current rule, the assignee, a party to whom the inventor has agreed in writing to assign the invention, or a party who otherwise shows sufficient proprietary interest in the matter can only sign the oath or declaration for a nonsigning inventor under § 1.47(b), when there are no inventors available to sign the oath or declaration.

Proposed § 1.47(a) provides that if an inventor or a legal representative of a deceased or incapacitated inventor refuses to execute the oath or declaration, or cannot after diligent effort be found or reached to execute the oath or declaration, then the assignee of the nonsigning inventor, a party to whom the inventor is obligated to assign the invention, or a party who otherwise shows sufficient proprietary interest may execute the oath or declaration. Proposed § 1.47(a) further provides that a party who shows sufficient interest in the matter executes the oath or declaration on behalf of the nonsigning inventor. This expands the situations in which an assignee, a party to whom the inventor is obligated to assign, or a party who otherwise shows sufficient

proprietary interest can execute the oath or declaration beyond what is permitted in current § 1.47(b). Thus, even if other inventors are signing the oath or declaration, the assignee of the nonsigning inventor, a party to whom the inventor is obligated to assign, or a party who otherwise shows sufficient proprietary interest would be able to execute the oath or declaration for the nonsigning inventor, accompanied by the petition under proposed § 1.47(a).

Proposed § 1.47(b) provides that if a joint inventor or legal representative of a deceased or incapacitated joint inventor refuses to execute the oath or declaration, or cannot be found or reached after diligent effort, the remaining inventor(s) may execute the oath or declaration on behalf of himself or herself and the nonsigning inventor. This is similar to the practice in current § 1.47(a) where the available inventor(s) can execute the oath or declaration on behalf of himself of herself and the nonsigning inventor. Current § 1.47(a) and (b) also apply to nonsigning legal representatives, although not expressly stated in the rule. Proposed § 1.47(a) and (b) make it explicit in the rule that the provisions apply to nonsigning legal representatives of deceased or incapacitated inventors.

Proposed § 1.47(c) provides that any oath or declaration executed pursuant to § 1.47 must comply with the requirements of § 1.63(a) and (b) and be accompanied by a petition that: (1) Includes the petition fee set forth in § 1.17(g); (2) identifies the nonsigning inventor, and includes the last known address of the nonsigning inventor; and (3) states either that the inventor or legal representative cannot be reached after a diligent effort was made, or has refused to execute the oath or declaration when presented with a copy of the application papers, with proof of the pertinent facts. The proof required to show that the inventor refuses to execute the oath or declaration, or cannot be found or reached after diligent effort, is the same level of proof currently required for § 1.47 petitions and is discussed in MPEP § 409.03(d).

In addition, proposed § 1.47(c)(4) requires a party to whom the nonsigning inventor is under an obligation to assign the invention, or a party who has sufficient proprietary interest in the matter acting under § 1.47(a) to also provide a showing, including proof of the pertinent facts, either that: (1) The nonsigning inventor is under an obligation to assign the invention to the party; or (2) the party has sufficient proprietary interest in the matter to execute the oath or declaration on behalf of the nonsigning inventor and that such action is necessary to preserve the rights of the parties. The proof required would be similar to the current proof required when an assignee, a party to whom an inventor has agreed in writing to assign the invention, or a party who otherwise shows sufficient proprietary interest in the matter files a petition under current § 1.47(b). As noted above in the discussion regarding proposed § 1.42, the proof required to show proprietary interest and to show that the action is necessary to preserve the rights of the parties is discussed in MPEP § 409.03(f) and (g). The language ''or to prevent irreparable damage'' contained in current § 1.47(b) has not been included in proposed § 1.47(c) because amended 35 U.S.C. 118 does not contain this language.

Proposed § 1.47(d) contains language similar to current § 1.47(c). Specifically, proposed § 1.47(d) provides that the Office will publish notice of the filing of the application in the *Official Gazette,* and the Office may send notice of the filing of the application to the nonsigning inventors at the address(es) provided in the petition under § 1.47. The option to give notice via publication in the *Official Gazette* helps the Office to reach nonsigning inventors, particularly when the Office knows that such notice, if sent to the address(es) provided in the petition, would only be returned to the Office as being undeliverable. Proposed § 1.47(d) also permits the Office to dispense with the notice provision in a continuing application (including a continuation-in-part), not just a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor such as by publication in the *Official Gazette.*

Proposed § 1.47(e) provides that a nonsigning inventor or legal representative may subsequently join in the application by submitting an oath or declaration under § 1.63 subsequent to a § 1.47 petition being granted. This is similar to language contained in current § 1.47(a) and (b) that provides for a nonsigning inventor to subsequently join in the application by filing an executed oath or declaration complying with § 1.63. Proposed § 1.47(e) also provides that the submission of an oath or declaration by a nonsigning inventor or legal representative after a § 1.47 petition has been granted will not permit the nonsigning inventor or legal representative to revoke or grant a power of attorney. This is not a change in practice but is merely a clarification of power of attorney practice.

Section 1.48: Section 1.48 is proposed to be amended to add paragraph (k) to provide for a simplified procedure for correcting inventorship in a national stage application. As discussed below, current § 1.497(d) and (e), which include provisions for correcting inventorship in a national stage application, are proposed to be deleted. The corrective procedure in proposed § 1.48(k) has been simplified in light of the amendment to 35 U.S.C. 116 eliminating the requirement that the error in inventorship ''arose without any deceptive intention'' on the part of the inventor being added or the inventor being deleted. Proposed § 1.48(k) provides that the procedure in § 1.48(a) may also be used for correcting an error in inventorship in a national stage application under 35 U.S.C. 371 prior to becoming a nonprovisional application, and for correcting an error in the inventive entity set forth in an executed declaration submitted under PCT Rule 4.17(iv).

Section 1.48 is also proposed to be amended to eliminate the ''without deceptive intention'' requirement (as this requirement has been eliminated from 35 U.S.C. 116), and delete the reference to § 1.43 (as § 1.42 is proposed to be amended to include the subject matter of § 1.43).

Section 1.53: Section 1.53(f)(4) is proposed to be amended by revising reference to § 1.63(d) consistent with the proposed change in § 1.63(d). Specifically, the terms ''continuation'' and ''divisional'' in paragraph (f)(4) would be replaced by ''continuing'' to reflect that proposed § 1.63(d) also covers continuation-in-part applications.

Section 1.55: Sections 1.55(a)(1)(i), (c), and (d)(1)(ii) are proposed to be amended to require a foreign priority claim be identified in an application data sheet (§ 1.76), or a supplemental application data sheet, as is appropriate. The revision is intended to make clear what may be a confusing practice to practitioners. Currently, a foreign priority claim may be located anywhere in an application for § 1.55 compliance, while compliance with current § 1.63(c) requires the foreign priority claim must be supplied in an application data sheet or identified in the oath or declaration. Thus, it is possible for an applicant's foreign priority claim to comply with § 1.55, but not § 1.63(c). The proposed amendment establishes a single location for the foreign priority claim in the application data sheet, which would facilitate application processing by providing practitioners with a clear location for the foreign priority claim, and the Office with one location to quickly locate the foreign priority claim.

35 U.S.C. 119(b) does not specify the particular location in the application for setting forth a claim to the benefit of a prior foreign application. However, 35 U.S.C. 119(b) provides that the foreign application is identified by specifying the application number, country or intellectual property authority, and filing date of each foreign application for which priority is claimed. In addition, 37 CFR 1.55(a)(1)(i) requires identification of any foreign application having a filing date before that of the application for which priority is claimed. Providing this information in the application data sheet constitutes the claim for foreign priority as required by 35 U.S.C. 119(b) and § 1.55(a).

Providing this information in a single location will facilitate more efficient processing of applications, as the Office will only have to look at one location for the priority claim and the most recent application data sheet will govern. Currently, the Office must look at the specification, amendments to the specification, the oath or declaration, the application data sheet (if provided), and elsewhere to determine the priority claim. When applicants provide inconsistent information relating to the claim for foreign priority, the Office must then determine which priority claim governs.

Additionally, providing this information in a single location will facilitate review of patents and patent application publications, because applications frequently provide a benefit and/or foreign priority claim in the first sentence(s) of the specification, which is superseded by an application data sheet that includes a different benefit or foreign priority claim, and thus the benefit claim and/or foreign priority information included in the first sentence(s) of the specification is different from the benefit claim and/or foreign priority information contained on the front page of the patent or patent application publication. While the benefit and/or foreign priority claim on the front page of the patent or patent application publication is usually correct, anyone (including an examiner, a practitioner, or the public) reviewing the patent or patent application publication must review the file history of the application to verify this to be correct.

Since most applications are filed with an application data sheet, requiring the benefit and/or foreign priority claims to be included in the application data sheet will not require most practitioners to change their practice.

Section 1.63: Section 1.63(a) is proposed to be amended to recite applicability of the paragraph to both 35 U.S.C. 111(a) national applications and 35 U.S.C. 371 national stage applications of international PCT applications. Section 1.63(a)(1) is proposed to be amended to delete the statement relating to a lack of a minimum age requirement as unnecessary in view of the later requirement, proposed § 1.63(a)(6) (reformatted from current § 1.63(b)(2)), that the person signing has reviewed and understands the contents of the application.

Section 1.63(a)(2) is proposed to be amended to simplify the requirement for the inventor name to be his or her full name without reference to a family or given name, but an initial may only be provided for the middle name. The requirement for a full name is sufficient, given that individuals do not always have both a family name and a given name, or have varying understandings of what a ''given'' name requires.

Section 1.63(a)(3) is proposed to be amended to delete the requirement for identifying the country of citizenship for each inventor, as this information has been deleted as a requirement from 35 U.S.C. 115. Section 1.63(a)(3) would also be amended to set forth a requirement to identify the application to which the oath or declaration is directed (currently set forth in § 1.63(b)(1)).

Section 1.63(a)(4) is proposed to be amended to delete the requirement that the person executing the oath or declaration state that he or she is believed to be the ''first'' inventor consistent with the language in 35 U.S.C. 115(b)(2) and with the statutory change to a first-inventor-to-file system from a first-to-invent system. Additionally, § 1.63(a)(4) is proposed to be clarified by adding the term ''joint'' before inventors and referring to the submission of the oath or declaration rather than referring to a patent being sought.

Section 1.63(a)(5) is proposed to be added to contain the requirement from 35 U.S.C. 115(b)(1) that the oath or declaration state that the application was made or was authorized to be made by the inventor.

Section 1.63(a)(6) is proposed to be added to contain the requirement from current § 1.63(b)(2) that the person making the oath or declaration has reviewed and understands the application. Sections 1.63(a)(4) and (a)(6), as proposed, also require that the averments therein be applicable in any application for which the oath or declaration is being submitted such as a continuing application.

Section 1.63(a)(7) is proposed to be added to contain the requirement from current § 1.63(b)(3) regarding the § 1.56 duty being acknowledged.

Section 1.63(b) is proposed to be amended by reciting the requirements for the mailing address and the residence of an inventor (transferred from current § 1.63(c)(1)), and adds the alternative of using an application data sheet (transferred from current § 1.63(c)). The mailing address requirement would be further clarified by noting that it is the address where the inventor ''customarily receives mail,'' which may encompass an address where the inventor works, a post office box, or other address where mail is received, even if it is not the main mailing address of the inventor. The mailing address is for the benefit of the inventor in the event that the Office needs to contact the inventor directly. Accordingly, care should be taken in identifying the mailing address, but the requirement is not one that the Office would investigate or confirm its accuracy. Current §§ 1.63(b)(1) through (b)(3) are proposed to be deleted as the requirements are moved to other portions of proposed § 1.63 (*i.e.,* current paragraph (b)(1) is moved to paragraph (a)(3), current paragraph (b)(2) is moved to paragraph (a)(6), and current paragraph (b)(3) is moved to paragraph (a)(7)).

Section 1.63(c) and (c)(1) are proposed to be amended by moving the current requirements to paragraph (b). Current § 1.63(c)(2) is proposed to be amended by deleting the current requirement for identifying the claim for foreign priority under § 1.55 in the oath or declaration. This amendment reflects the Office's desire to harmonize presentation of a claim for foreign priority under § 1.55 and of a claim for domestic benefit under § 1.78. The current requirement that the domestic claim for benefit be placed in the first sentence(s) of the specification or an application data sheet (§ 1.76), while requiring that a foreign priority claim be identified in an oath or declaration or application data sheet has led to confusion by applicants as to the proper placement of these priority or benefit claims and to Office processing issues of such claims. As Section 3 of the Leahy-Smith America Invents Act has placed foreign priority claims on equal footing as domestic benefit claims regarding what may be relied upon as a prior art date, it is important that there be one unified place that the Office and the public can rely upon in determining the presence of these claims. Accordingly, §§ 1.55 and 1.78 are proposed to be amended to provide for a unified way in the application data sheet to present foreign priority and domestic benefit

claims for inclusion in a printed patent or a patent application publication.

Sections 1.63(c)(1)(i) and (ii) are proposed to provide for the use of assignments to also include the oath or declaration as provided in 35 U.S.C. 115(e). Proposed §§ 1.63(c)(1)(i) and (ii) would provide that the inventor can, when executing an assignment of his or her invention, include the information and statements that would be required under §§ 1.63(a) and (b). Section 1.63(c)(1)(ii) would require that the assignment be made of record by recording the assignment, and filing the copy of the assignment in the application for which it is being used as an oath or declaration. If the assignment has not been recorded prior to its reliance in an application, the assignment may be sent for recording at the same time it is being submitted in the application, provided applicant makes a statement to that effect. Applicants need to be mindful of the proposed amendment in § 3.31 requiring a conspicuous indication, such as by use of a check-box on the assignment cover sheet, to alert the Office that an assignment submitted with an application is submitted for a dual purpose: recording in the assignment database, such as to support a power of attorney, and for use in the application as the oath or declaration. Assignments cannot be recorded unless an application number is provided against which the assignment is to be recorded.

Currently, when an assignment is submitted for recording along with a paper application, the assignment is separated from the paper application and forwarded to the Assignment Recordation Branch for recording in its database at the time when the application is assigned an application number. The assignment in such case does not become part of the application file.

Under the proposed new permitted use of an assignment as including an oath or declaration, the Office, when it receives an assignment with a paper application filing, will continue to forward the assignment to the Assignment Recordation Branch without making it part of the application file, unless the check-box is used on the assignment cover sheet to indicate the intended use of the assignment to comply with the oath or declaration requirement. Where the check-box is used, the Office will make a copy of the assignment to scan the assignment into the Image File Wrapper (IFW) file for the application before forwarding it to the Assignment Recordation Branch. Failure to utilize the check-box will result in a Notice to File Missing Parts of Nonprovisional Application for an oath or declaration, as the assignment will not be made part of the application file and the Office will not recognize compliance with the § 1.63 oath or declaration requirement. A copy of the assignment would need to be submitted in reply to the Notice along with the surcharge for the late submission of the oath or declaration.

The Office has considered not requiring use of a check-box and automatically scanning an assignment into the IFW file for the application, but the Office believes that applicants should be provided with the option of submitting an assignment only for recordation purposes without such assignment becoming part of the IFW file.

For EFS-Web filing of application papers, EFS-Web does not accept assignments for recording purposes when filing an application. *See Legal Framework for Electronic Filing System—Web (EFS-Web),* 74 FR 55200, 55202 (Oct. 27, 2009). Recording of assignments may only be done electronically in EPAS (Electronic Patent Assignment System), notwithstanding the existence of a link from EFS-Web to EPAS that can be utilized to file an assignment after the application is filed. Accordingly, for EFS-Web submissions, all assignments submitted on filing of the application or later submitted will be made of record in the application (entered into the Image File Wrapper (IFW)), and will not be forwarded to the Assignment Recordation Branch for recordation by the Office. Thus, an assignment must be separately submitted to the Assignment Recordation Branch, and in the application file where the assignment is to be used for a dual purpose. It is the intention of the Office to develop a system whereby one submission of an assignment can be electronically treated for the dual purpose.

The Office considered whether a clarifying amendment to § 1.12(b) should be made to state that a recorded assignment should be available to the public where it is used as the oath or declaration. However, assignment records are available to the public whenever the related application is available to the public. As proposed, a copy of the recorded assignment document would become part of the application file and would be available to the public when the application becomes available to the public.

Section 1.63(c)(2) is proposed to provide that any reference to an oath or declaration pursuant to § 1.63 would include the assignment as provided for in § 1.63.

Section 1.63(d)(1) is proposed to be amended to provide that a newly executed oath or declaration in an application claiming benefit under 35 U.S.C. 120, 121, or 365(c) is not required in a later-filed application where the oath or declaration in the earlier-filed application is compliant with § 1.78. Section 1.63(d)(1) is also proposed to be amended to add a reference to § 1.497(a).

The Office considered whether to restrict the use of a copy of an oath or declaration to one from an ''immediate'' earlier-filed application, but determined that an oath or declaration copy could be used from any earlier-filed application in a chain of benefit claims so long as the oath or declaration continues to be appropriate. This interpretation reflects the breadth of the language utilized by the statute.

35 U.S.C. 115(g)(1)(A) provides an exception to the requirement for an oath or declaration for applications where the application claims the benefit under 35 U.S.C. 120, 121, or 365(c) of the filing of an earlier-filed application. As a claim for benefit under 35 U.S.C. 120 includes continuation-in-part (CIP) applications, it is also proposed to extend the use of copies of oaths or declarations to CIP applications where appropriate, in addition to the current continuations and divisional applications, by the use of the term ''continuing.'' Applicants are advised that it would not be proper to submit any paper, *e.g.,* a copy of a declaration, in a continuing application that contains misstatements relative to the continuing application. Sections 1.63(a)(4) and (a)(6) are proposed to require that their statements (that the person executing the oath or declaration believes the named inventor or joint inventors to be the original inventor or original joint inventors of the claimed invention in the application, and that the person making the oath or declaration has reviewed and understands the contents of the application) be applicable to the ''application for which the oath or declaration is being submitted,'' which includes any continuing application for which a copy of an oath or declaration is being submitted under 35 U.S.C. 115(g) and § 1.63(d). Thus, the following statements in the oath or declaration must be true for the continuing application in order for an oath or declaration from a prior application to be properly submitted in the continuing application under 35 U.S.C. 115(g) and § 1.63(d): (1) That the person executing the oath or declaration believes the named inventor or joint inventors to be the original inventor or original joint

inventors of the claimed invention in the application for which the oath or declaration is being submitted (*i.e.,* the oath or declaration states the correct inventorship for the continuing application); (2) that the person making the oath or declaration has reviewed and understands the contents of the application for which the oath or declaration is being submitted, including the claims, as amended by any amendment specifically referred to in the oath or declaration; and (3) that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

Section 1.63(d)(1)(i) is proposed to be simplified by eliminating the word ''nonprovisional'' as unnecessary since provisional applications do not require an oath or declaration, and by referring to compliance with the section as opposed to individual paragraphs of the section. Section 1.63(d)(1)(ii) is proposed to contain the requirement set forth in current § 1.63(d)(1)(iv) relating to the oath or declaration copy showing the signature or an indication thereon that it was signed. The requirement of current § 1.63(d)(1)(ii), relating to deleting inventors, is proposed to be moved to proposed § 1.63(d)(2). The requirement of current § 1.63(d)(1)(iii) is proposed to be deleted in view of the applicability of proposed § 1.63(d) to continuing applications, including continuation-in-part applications. Current § 1.63(d)(1)(iv) subject matter, relating to the presence of a signature, is proposed to be moved to proposed § 1.63(d)(1)(ii). Section 1.63(d)(1)(iii) is proposed to require that any new inventors named in the continuing application provide an executed oath or declaration in compliance with this section.

Section 1.63(d)(2) is proposed to contain the requirements set forth in current §§ 1.63(d)(1)(ii) and 1.63(d)(2) relating to the continuing application seeking to name fewer inventors and a statement requesting deletion of the name or names of the person who are not inventors. It is also proposed to require that such a statement requesting deletion be signed pursuant to § 1.33(b). Additionally, proposed § 1.63(d)(2) applies to continuing applications to include continuation-in-part applications, rather than just continuation and divisional applications.

Section 1.63(d)(3) is proposed to contain the requirements of current § 1.63(d)(3), (d)(3)(i), and (d)(3)(ii) in simplified form. The provision for submission of a copy of an oath or declaration where the earlier-filed application has been accorded status under § 1.47 has been expanded to cover § 1.42 situations relating to a deceased or legally incapacitated inventor.

Current § 1.63(d)(4) is proposed to be deleted. The power of attorney in a continuing application would be covered in proposed § 1.32. The correspondence address in a continuing application would be treated in proposed § 1.33(g).

Section 1.63(d)(5) is proposed to be deleted. Whether a newly executed declaration by an added inventor is required in a continuing application would be covered by § 1.63(d)(1).

Section 1.63(e) is proposed to be revised in that the current requirement for a newly executed declaration in (CIP) applications would be covered by § 1.63(d)(1). It is proposed that § 1.63(e) be amended to cover the submission of oaths or declarations pursuant to 35 U.S.C. 115(h)(1). 35 U.S.C. 115(h)(1) provides that any person making a statement under this section may at any time ''withdraw, replace, or otherwise correct the statement at any time.'' Section 1.63(e) as proposed would acknowledge that an oath or declaration submitted at any time pursuant to 35 U.S.C. 115(h)(1) would be placed in the file record of the application or patent, but may not be reviewed by the Office in view of the open ended time frame that the statute provides. Oaths or declarations submitted pursuant to 35 U.S.C. 115(h)(1) that are timely submitted during prosecution of an application would continue to be reviewed for compliance. A reminder is set forth that mere submission of an oath or declaration pursuant to 35 U.S.C. 115(h)(1) would not, however, act to correct inventorship as compliance with § 1.48 in an application and § 1.324 in a patent is required.

Section 1.64: Section 1.64(b) is proposed to be amended to eliminate the requirement that the oath or declaration must state the citizenship of the legal representative who is signing the oath or declaration for a deceased inventor. Since the requirement for an inventor to state his country of citizenship in the oath or declaration has been eliminated from 35 U.S.C. 115, there is no basis to require the legal representative of an inventor to state the legal representative's citizenship. Section 1.64(b) is also proposed to be amended to change the phrase ''deceased inventor'' to ''deceased or legally incapacitated inventor'' in the second sentence. This change would require both a legal representative of a deceased inventor and a legal representative of an incapacitated inventor to state that the person is a legal representative. Additionally, the residence and mailing address of the legal representative would also be required, but § 1.64 is proposed to be amended to permit such information to be provided in an application data sheet. This will permit the submission of such information without requiring additional contact with the legal representative of a deceased or legally incapacitated inventor. Section 1.64(b) is also proposed to be amended to delete the reference to § 1.43 since § 1.43 is proposed for combination with § 1.42.

Section 1.67: The title of § 1.67 is proposed to be amended to ''Noncompliant oath or declaration'' to better focus on the purpose of the rule. 35 U.S.C. 115(h) limits the situations in which the Office may require a supplemental oath or declaration. Section 1.67 is amended to address the manner in which deficiencies in an oath or declaration can be corrected.

Section 1.67(a) is proposed to be amended to refocus the language therein away from a supplemental oath or declaration to an oath or declaration that complies with the requirements of 35 U.S.C. 115 and § 1.63 or 1.162. Sections 1.67(a)(1) and (2) are proposed to be amended to conform to the changes to the title and § 1.67(a) by replacing the term ''supplemental'' with ''in compliance,'' and to delete reference to § 1.43 as § 1.43 is being proposed to be combined with § 1.42. Section 1.67(a)(3) is proposed to be amended by deleting the explanatory parentheses as unnecessary in view of the cross-reference to § 1.63 and updating the reference to recite § 1.63(b). Additionally, it is proposed to refer to a supplemental application data sheet in place of application data sheet, as a § 1.76 submission submitted after filing of the application must be a supplemental application data sheet and not an application data sheet even though it is the first § 1.76 submission.

Section 1.67(b) is proposed to retain the material from current § 1.67(b) relating to no new matter by deleting the term ''supplemental,'' as revised § 1.67 is clarified to be directed towards noncompliant oaths or declarations correcting deficiencies or inaccuracies.

Section 1.76: Section 1.76(a) is proposed to be amended to clarify that an application data sheet may be submitted in an international application entering the national stage under 35 U.S.C. 371. Section 1.76(a) is also proposed to be amended to require that an application data sheet must be submitted to claim priority to or the benefit of a prior-filed application under

35 U.S.C. 119, 120, 121, or 365 for consistency with the proposed changes to §§ 1.55 and 1.78.

Section 1.76(c)(1) is proposed to be amended to clarify that after an application has been filed, a supplemental application data sheet, not an application data sheet, is required. Section 1.76(c)(2) is proposed to be amended to require that changes to the information must be indicated by underlining for insertions of text, and strike-through or brackets for deletions of text.

The revision is intended to make clear the difference between an application data sheet and a supplemental application data sheet. When an application data sheet is provided, the application data sheet becomes part of the application as filed and thus it does not have to be signed by the applicant, unless it is a form such as PTO/SB/14 and a nonpublication request is being made by the applicant on the form. When a supplemental application data sheet is provided, the supplemental application data sheet is an amendment to the application, and therefore the supplemental application data sheet must be signed in accordance with § 1.33(b). Applicants are also encouraged and reminded to use and submit an application data sheet (PTO/SB/14) as an EFS-Web Fillable Form, rather than a scanned PDF image, to benefit from having the data loaded directly into USPTO electronic systems (there is no Office form for a supplemental application data sheet). Use of an application data sheet benefits both the Office and patent practitioners as the data is loaded directly into the USPTO electronic systems, thus the data is accurately captured, reducing time that is needed to review the Filing Receipt.

Representative information including the registration number of each practitioner, or the customer number, appointed with a power of attorney or authorization of agent in the application may be provided on an application data sheet. Providing this information in the application data sheet does not constitute a power of attorney or authorization of agent in the application (*see* §§ 1.76(b)(4), 1.34).

Section 1.76(d) continues to set forth the procedure for resolving inconsistencies between application data sheets and other documents. The Office contemplated clarifying this subsection to address the situation where inconsistent information regarding a benefit claim and/or foreign priority is supplied by the application data sheet and the specification as filed, and provide that the application data sheet will govern. In view of the proposed changes to §§ 1.55 and 1.78, which state that benefit and/or foreign priority claims must be in an application data sheet, there is no need for this further clarification.

Section 1.76(d)(1) is proposed to be amended to exclude foreign priority claims in accordance with § 1.55(a)(1) and benefit claims in accordance with §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii) from this subsection of the rule, which indicates which information will govern when inconsistent information is provided in an application. With the amendments to §§ 1.55(a)(1), 1.78(a)(2)(iii), and 1.78(a)(5)(iii), the foreign priority claim and/or benefit claim must be in the application data sheet. Thus, an amendment to the specification will not govern over a foreign priority claim or benefit claim in an application data sheet.

Section 1.78: Section 1.78(a)(2)(iii) is proposed to be amended such that the reference requirement for a benefit claim to a prior-filed nonprovisional application or international application designating the United States of America by a later-filed nonprovisional application must be in an application data sheet or a supplemental application data sheet.

Sections 1.78(a)(5)(iii) is proposed to be amended such that the reference requirement for a benefit claim to a prior-filed provisional application by a later-filed nonprovisional application must be in an application data sheet or a supplemental application data sheet.

Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120. The patent statute requires that a claim to the benefit of a provisional (35 U.S.C. 119(e)(1)) or nonprovisional (35 U.S.C. 120) be in the application by specific reference thereto. Since the application data sheet (if provided) is considered part of the application, the specific reference to an earlier filed provisional or nonprovisional application in the application data sheet meets the ''specific reference'' requirement of 35 U.S.C. 119(e)(1) or 120.

Providing this information in a single location will facilitate more efficient processing of applications, as the Office will only have to look at one location for the benefit claim and the most recent application data sheet will govern. Currently, the Office must look at the specification, amendments to the specification, and the application data sheet if provided to determine the benefit claim. When applicants provide inconsistent information between the three sources, the Office must then determine which benefit claim governs in accordance with the rule.

Providing this information in a single location will also facilitate review of patents and patent application publications, because applications frequently provide a benefit and/or foreign priority claim in the first sentence(s) of the specification, which is amended by an application data sheet that includes a different benefit or foreign priority claim, and thus the benefit claim and/or foreign priority information included in the first sentence(s) of the specification is different from the benefit claim and/or foreign priority information contained on the front page of the patent or patent application publication. While the benefit and/or foreign priority claim on the front page of the patent or patent application publication is usually correct, anyone (including an examiner, a practitioner, or the public) reviewing the patent or patent application publication must review the file history of the application to verify this to be correct.

Since most applications are filed with an application data sheet, requiring benefit and/or foreign priority claims to be included in the application data sheet will not require most practitioners to change their practice.

Section 1.172: Section 1.172 is proposed to be amended in its title to delete the duplicative reference to assignees, as assignees may be an applicant in some circumstances for a reissue application. Section 1.172 is proposed to be reformatted to clarify who may sign, and what documents must accompany, a reissue oath or declaration. Section 1.172(a) is proposed to be amended to continue to require that the reissue oath or declaration must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent. Current subject matter in § 1.172(a) relating to not enlarging the scope of the claims would be transferred to paragraph (b) and the assignment information transferred to paragraph (c). Section 1.172(b) is proposed to be amended to focus on signing of the oath or declaration and includes paragraph titles to distinguish between who may sign the reissue oath or declaration for a nonbroadening reissue (proposed § 1.172(b)(1)(i) through (b)(1)(iii)) versus a broadening reissue (§ 1.172(b)(2)(i) and (b)(2)(ii)). Current subject matter in § 1.172(b) would be moved to proposed § 1.172(d). Section 1.172(b)(2)(ii) is proposed to authorize the assignee of the entire interest to sign the reissue oath or declaration for a broadening reissue filed on or after September 16,

2012, where the application for the original patent was filed by the assignee of the entire interest (*i.e.,* the oath or declaration was executed by the assignee under § 1.42 or § 1.47).

Section 1.172(c) includes the language already present in current § 1.172(a) and clarifies that all assignees, including partial assignees, who consent to the reissue must establish their ownership in the patent. Section 1.172(d) repeats the language found in current § 1.172(b).

Section 1.175: Section 1.175(a) is proposed to be amended to clarify the requirement that an applicant identify in the reissue oath or declaration each applicable reason that forms the basis for reissue. The reasons include: (1) A defective specification or drawing (§ 1.175(a)(1)); (2) the patentee claiming more than the patentee had a right to claim in the patent (§ 1.175(a)(2)); and (3) the patentee claiming less than the patentee had the right to claim in the patent (§ 1.175(a)(3)). Proposed § 1.175(a)(3) also requires identification of a broadened claim and a broadened portion of the specification, if a change thereto is the basis for the claim broadening.

Section 1.175(a) retains the requirement from current § 1.175(a)(1) that the reissue oath or declaration identify at least one error that is being relied upon as the basis for reissue and recites the statutory basis for reissue, 35 U.S.C. 251. Examples of proper error statements are discussed in MPEP § 1414, II. The reissue oath or declaration may identify more than one specific error that forms the basis of the reissue, but at least one error must be identified.

Section 1.175(b) is proposed to be amended to clarify that a claim broadened in any respect must be treated and identified as a broadened claim. In addition, § 1.175(b) is proposed to be further amended to delete the requirement for supplemental reissue oaths or declarations in view of the change to 35 U.S.C. 251 in Section 20 of the Leahy-Smith America Invents Act (*i.e.,* removal of the ''without any deceptive intention'' provision). A claim that is broadened in any respect is a broadened claim for purposes of 35 U.S.C. 251. *See Tillotson, Ltd.* v. *Walbro Corp.,* 831 F.2d 1033, 1037 n.2 (Fed. Cir. 1987), *In re Ruth,* 278 F.2d 729, 730 (CCPA 1960), and *In re Rogoff,* 261 F.2d 601, 603 (CCPA 1958). The requirement that a claim broadened in any respect be treated as a broadened claim is important to distinguish who can sign the reissue oath or declaration. It also is important because a reissue application that broadens the scope of the original patent may only be filed within two years from the grant of the original patent. See MPEP § 1412.03 for the meaning of a ''broadened reissue claim'' and examples.

An application that does not seek to broaden the scope of the original patent may be filed with a reissue oath or declaration that is executed by the assignee of the entire right, title, and interest. However, if the reissue application broadens one or more of the claims in any respect, the reissue oath or declaration must be executed by the inventors, the legal representatives of deceased or legally incapacitated inventors, or a § 1.47 applicant for a nonsigning inventor (proposed § 1.172(b)(2)(i)). As discussed above, the assignee of the entire interest may sign the reissue oath or declaration for a broadening reissue filed on or after September 16, 2012, where the application for the original patent was filed by the assignee of the entire interest (proposed § 1.172(b)(2)(ii)), that is, the oath or declaration was executed by the assignee under §§ 1.42 or 1.47.

Section 1.175(c) is proposed to be amended to clarify that where all errors identified in the reissue oath or declaration pursuant to proposed § 1.175(a) are no longer being relied upon as the basis for reissue, a reissue oath or declaration that identifies a new error currently being relied upon as the basis for reissue must be filed. The elimination of supplemental reissue oaths or declarations in current § 1.175(b) is directed towards lack of deceptive intent regarding the error being corrected, and not the statutory requirement of identification of at least one error. Section 1.175(c) is also proposed to be amended to clarify that the reissue oath or declaration that identifies the new error currently being relied upon as the basis for reissue need only address the new error and need not identify any prior error identified in a reissue oath or declaration. This requirement is consistent with the discussion in MPEP § 1414.01, I.

The reissue oath or declaration must identify a proper error that forms the basis for reissue. If the specified error is no longer being corrected in the reissue application, then a new error must be identified in the reissue oath or declaration so that the record is clear in identifying a proper basis for reissue. The latest reissue oath or declaration need not identify each specific error that was identified in any earlier reissue oath or declaration; it must only identify an error that is currently being relied upon or corrected.

Section 1.175(e) is proposed to be amended to provide a title to identify the paragraph's applicability to continuing applications, MPEP 1414, II, and to clarify in the rule the ability to file copies of reissue oaths or declarations from prior reissue applications in continuing applications consistent with § 1.63(d). Section 1.175(e) would now consist of paragraphs (e)(1), (e)(2), (e)(2)(i) and (ii).

Section 1.175(e)(1) is proposed to provide that where a continuing reissue application replaces a prior reissue application, the requirement for a reissue oath or declaration pursuant to § 1.172 may be satisfied by a copy of the reissue oath or declaration from the prior reissue application it replaces. The concept of a ''prior application,'' in this paragraph and in paragraph (e)(2), is intended to be broader than an immediate prior application but to stay within the bounds of § 1.63(d) and require a prior application that is within the chain of benefit claim.

Section 1.175(e)(2) is proposed to provide that where a continuing reissue application does not replace a prior reissue application, the requirement for a reissue oath or declaration pursuant to § 1.172 may be satisfied by a newly executed oath or declaration that identifies at least one error in the original patent which has not been corrected in a prior reissue application, § 1.175(e)(2)(i), or how an identified error is currently being corrected in a manner different than in a prior reissue application, § 1.175(e)(2)(ii).

Under current practice, a new oath or declaration is required in a continuing reissue application notwithstanding that there is no change in the error being corrected. In certain circumstances, such as set forth in the following examples, applicants request that they be allowed to use a copy of the declaration from prior reissue application. Some situations currently need to be addressed via a petition for waiver under § 1.183 with a $400 fee, that the Office would grant in appropriate circumstances, such as set forth in the following example 2. The rule as now proposed recognizes the unnecessary processing delay and expense engendered by this practice, which would be rectified by this proposed change.

Accordingly, a copy of a reissue oath or declaration from a prior reissue application may be submitted in a continuing reissue application where the continuing application replaces a prior reissue application.

Also, a copy of a reissue oath or declaration from a prior reissue application may be submitted in a continuing application where the continuing application does not replace a prior application, but only where the

identified error was not corrected and therefore would continue to apply in the continuing reissue application, or where the identified error is currently to be corrected in the continuing application in a manner different than in the prior application. However, to do so would also require a statement to either effect. Otherwise, a reissue oath or declaration that identifies a new error that is the basis for reissue must be filed. The following are examples where a copy may be used:

Example 1: A reissue application is filed with a declaration under § 1.175 that lists more than one error that properly supports reissue. The declaration can be used to file a continuing reissue application, even if applicant is no longer attempting to correct some of the originally listed errors, provided that at least one of the originally listed errors remains that was not corrected in the prior application. Under the current and proposed § 1.175, a copy may be used.

Example 2: A reissue application is filed to amend Claim 4 to limit the general pump means to a centrifugal pump, and to eliminate the recitation of a refrigeration means. The reissue oath or declaration must state that the applicant believes the original patent to be wholly or partly inoperative or invalid by reason of patentee claiming more than the patentee had the right to claim in the patent (§ 1.175(a)(2)), and patentee claiming less than patentee had the right to claim, and identify Claim 4 (§ 1.175(a)(3)). An identification that the defect was that the patentee claimed ''more or less'' than patentee had a right to claim would not comply with proposed § 1.175. Moreover, the identification that Claim 4 is being broadened under proposed § 1.175(a)(3) would not be sufficient to specifically identify at least one error under proposed § 1.175(a). Applicant must clearly specify the defect or error in the language that renders the original patent wholly or partly inoperative or invalid. The reissue oath or declaration must also provide a specific identification of one of the errors, *e.g.,* Claim 4 was unduly limited by the inclusion of ''refrigeration means'' and is being amended to eliminate this recitation. Under the current rule, a petition under § 1.183 is required for a copy to be used. Under proposed § 1.175, a petition is not required for a copy to be used.

The reference in current § 1.175(e) to paragraph (a)(1) of § 1.175 would be deleted as it would be unnecessary in view of the proposed changes.

Section 1.175(f) is proposed to be added to provide that a reissue oath or declaration may be filed at any time pursuant to 35 U.S.C. 115(h)(1), and will be placed in the file record of the reissue application but may not be reviewed by the Office in view of the open ended time frame that the statute provides. Oaths or declarations submitted pursuant to 35 U.S.C. 115(h)(1) that are timely submitted during prosecution of an application would continue to be reviewed for compliance. Proposed § 1.175(f) is consistent with the language of proposed § 1.63(e).

Section 1.311: Section 1.311 is proposed to be amended by adding a new paragraph (c) to implement the requirement of 35 U.S.C. 118 that ''[i]f the Director grants a patent on an application filed under [35 U.S.C. 118] by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.'' Proposed § 1.311(c) provides that where an assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter has filed an application under §§ 1.42, or 1.47, the applicant must notify the Office of any change in ownership of the application no later than payment of the issue fee. The Office will treat the absence of such a notice as an indication that there has been no change in ownership of the application. Proposed § 1.311(c) does not cover assignees or persons who otherwise show sufficient proprietary interest, unless the application is filed pursuant to §§ 1.42 or 1.47.

Section 3.81 currently provides that an ''application may issue in the name of the assignee'' ''where a request for such issuance is submitted with payment of the issue fee.'' This is accomplished by providing the assignee information in box 3 of the issue fee transmittal form, form 85B. The use of box 3 would be required where ownership of the application changed from the filing of the application and the application was filed pursuant to §§ 1.42 or 1.47.

Section 1.497: Section 1.497 is proposed to be amended to be consistent with the amendments to 35 U.S.C. 115 and the proposed amendments to § 1.63. Under the current provisions of § 1.497, while an oath or declaration in a national stage application under 35 U.S.C. 371 must comply with the requirements of § 1.63, it will be accepted as sufficient for purposes of entering the U.S. national stage if certain minimum requirements are met. *See* § 1.497(c). The proposed amendment to § 1.497(a) through (c) maintains this practice. The reference to § 1.43 in current § 1.497(b)(1) and (2) would be deleted from the subject matter now found in the proposed § 1.497(b)(6).

Current § 1.497(d) through (e) are proposed to be deleted. A simplified procedure for correcting inventorship in a national stage application is proposed to be added to § 1.48, as new subsection § 1.48(k), since § 1.48 covers correction of inventorship in patent applications (other than reissue). The corrective procedure has been simplified in light of the amendment to 35 U.S.C. 116 eliminating the requirement that the error in inventorship ''arose without any deceptive intent'' on the part of the inventor being removed or added. Current § 1.497(f) is proposed to be deleted because of the amendment to 35 U.S.C. 115. Current § 1.497(g) is proposed to be deleted in view of the proposed amendment to § 1.63 eliminating foreign priority claims from the oath or declaration.

Section 3.31: Section 3.31 is proposed to be amended by the addition of new paragraph (h) that would implement 35 U.S.C. 115(e) permitting use of an assignment in lieu of an oath or declaration to meet the oath or declaration requirements of § 1.63. Section 3.31(h) is proposed to provide that an assignment cover sheet must contain a conspicuous indication of an intent to utilize the assignment as the required oath or declaration under § 1.63. For the importance of complying with this provision, see the discussion of § 1.63(c).

Section 3.71: Section 3.71(a) is proposed to be amended to be consistent with proposed § 1.33, which limits prosecution by juristic entities. The rule is also proposed to be amended to make it clear that conflicts between purported assignees are handled in accordance with § 3.73(c)(4).

Section 3.73: Section 3.73(b) is proposed to be amended to clarify who may sign a statement under § 3.73(b) in new paragraph (b)(2)(iii). Under § 3.73(b), an assignee must establish its ownership of an application to the satisfaction of the Director in order to request or take action in a patent or trademark matter. Current § 3.73(b)(2) specifies that the submission establishing ownership must either include a statement that the person signing the submission is authorized to act on behalf of the assignee (§ 3.73(b)(2)(i)) or be signed by a person who has apparent authority to sign on behalf of the assignee (§ 3.73(b)(2)(ii)).

Section 3.73(b)(2)(iii) is proposed to provide that a patent practitioner of record pursuant to § 1.32 could sign a statement under § 3.73(b). A patent practitioner can be considered ''of record'' for purposes of this section where the statement under § 3.73(b) is accompanied by a power of attorney that appoints the practitioner (see 37 CFR 3.73(b)(1)). Currently, a power of attorney to a patent practitioner to prosecute a patent application executed

by the applicant or assignee of the entire interest does not make that practitioner an official of the assignee or empower the practitioner to sign the submission on behalf of the assignee. MPEP § 324, V. Patent practitioners who signed statements under § 3.73(b) merely on the basis of having been appointed in a power of attorney document have done so improperly.

Section 3.73(b)(3) is proposed to clarify that any subsequent statement under § 3.73(b) must provide a complete chain of title. Current § 3.73(b)(1)(i) requires documentary evidence of a chain of title. The submission of a subsequent statement under § 3.73(b) that only identifies the latest ''link'' in the ownership chain would be incomplete and deemed insufficient to establish ownership of the application.

Section 3.73(c)(2) is proposed to be amended to better clarify how to identify to the Office the entire ownership interest. When establishing ownership of the application under § 3.73(b), one needs to be cognizant of the distinction between 100 percent ownership of the right, title, and interest in the invention from a single inventor and 100 percent ownership of the entire right, title, and interest in the invention from all of the inventors. This provision is applicable such as when one assignee owns 100 percent interest from one inventor and another assignee owns 100 percent interest from a different inventor. To comply with the requirement that the entire right, title, and interest be identified, both assignees would need to set forth their ownership interest by percentage (100 percent of the entire right, title, and interest) § 3.73(c)(2)(i), or both assignees would need to provide a statement that all parties owning an interest (without identification of percentage) have been identified, § 3.73(c)(2)(ii). Where a sole inventor assigns all rights to companies A and B, but the assignment does not specify percentages of ownership, the statement under § 3.73(b) would need to identify that companies A and B together own 100 percent of the entire right, title, and interest without specific individual percentages for company A and company B. Otherwise, the Office may refuse to accept the submission as an establishment of ownership.

Section 3.73(c)(3) is proposed to provide that, for a statement under § 3.73(b) from the prior application to have effect in a continuation or divisional application, or a continuation-in-part application with the same inventors or fewer, a copy of the statement under paragraph (b) of this section from the prior application for which benefit is claimed under 35 U.S.C. 120, 121, or 365(c), must be filed in the continuing application.

Section 3.73(c)(4) is proposed to be added to provide that, where two or more purported assignees file conflicting statements under paragraph (b) of this section, the Director will determine which, if any, purported assignee will be permitted to control prosecution of the application. As proposed, § 3.73(c)(4) provides in the rule the Office's practice for treating two or more conflicting statements under § 3.73(b), currently discussed in MPEP § 324, IX.

Sections 1.51, 1.53, 1.57, 1.78, 41.37, 41.67, and 41.110 are proposed to be amended to substitute references to 35 U.S.C. 112(a), (b), and (f), for the current references to 35 U.S.C. 112, first, second, and sixth paragraphs. Sections 1.45 and 1.48 are proposed to be amended to reflect the change regarding 35 U.S.C. 116. Section 1.173 is proposed to be amended to reflect the change regarding 35 U.S.C. 251. Sections 1.48, 1.324, 1.530, and 5.25 are proposed to be amended to delete the provisions pertaining to a lack of deceptive intent. Sections 1.41, 1.46, 1.64, 1.76, 1.131, and 1.162 are proposed to be amended to delete the references to § 1.43. Section 1.76 is proposed to be amended to delete the reference to an inventor's citizenship to reflect the change regarding 35 U.S.C. 115.

Rulemaking Considerations

A. *Administrative Procedure Act:* The primary changes proposed in this notice implement the inventor's oath or declaration provisions of the Leahy-Smith America Invents Act. This notice proposes changes to the rules of practice that concern the process for applying for a patent, namely, the statements required in the oath or declaration required by 35 U.S.C. 115 for a patent application (including the oath or declaration for a reissue application), the manner of presenting claims for priority to or the benefit of prior-filed applications under 35 U.S.C. 119, 120, 121, or 365, and the procedures for prosecution of an application by an assignee. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve rules of agency practice and procedure, and/or interpretive rules. *See Bachow Commuc'ns., Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 242, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law) and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

In addition, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This notice proposes changes to the rules of practice to implement sections 4 and 20 of the Leahy-Smith America Invents Act, which provides changes to the inventor's oath or declaration. The primary impact of the changes in this notice is the streamlining of the requirements for oaths and declarations and the simplification of the filing of an application by the assignee when an inventor cannot or will not execute the oath or declaration. The burden to all entities, including small entities, imposed by these rules is a minor addition to that of the current regulations concerning the inventor's oath or declaration. The change to the manner of presenting claims for priority to or the benefit of prior-filed applications under 35 U.S.C. 119, 120, 121, or 365 will not have a significant economic impact on a substantial number of small entities as an application data sheet is easy to prepare and use, and the majority of patent

applicants already submit an application data sheet with the patent application. The change to reissue oath or declaration will not have a significant economic impact on a substantial number of small entities as reissue is sought by the patentee for fewer than 1,200 of the 1.2 million patents in force each year, and a reissue applicant already needs to know whether claims are being broadened to comply with the requirements of 35 U.S.C. 251. The change to the procedures for prosecution of an application by an assignee will not have a significant economic impact on a substantial number of small entities as it is rare for a juristic entity to attempt to prosecute a patent application *pro se.* Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

C. *Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. *Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. *Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. *Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. *Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. *Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. *Executive Order 12630 (Taking of Private Property):* This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. *Unfunded Mandates Reform Act of 1995:* The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. *National Environmental Policy Act:* This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. *Paperwork Reduction Act:* This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rulemaking has been reviewed and previously approved by OMB under OMB Control Numbers 0651–0032 and 0651–0035. The primary impact of the changes in this notice is the streamlining of the requirements for oaths and declarations and the simplification of the filing of an application by the assignee when an inventor cannot or will not execute the oath or declaration. The Office is not resubmitting an information collection package to OMB for its review and approval, because the changes in this rulemaking do not change patent fees or change the information collection requirements (the estimated number of respondents, time per response, total annual respondent burden hours, or total annual respondent cost burden) associated with the information collections approved under OMB Control Numbers 0651–0032 and 0651–0035.

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

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

For the reasons set forth in the preamble, 37 CFR parts 1 and 3 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.1 is amended by revising paragraph (e) to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

* * * * *

(e) *Patent term extension.* All applications for extension of patent term under 35 U.S.C. 156 and any communications relating thereto intended for the United States Patent and Trademark Office should be additionally marked ''Mail Stop Hatch-Waxman PTE.'' When appropriate, the communication should also be marked to the attention of a particular individual, such as where a decision has been rendered.

* * * * *

3. Section 1.4 is amended by revising paragraph (e) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(e) Correspondence requiring a person's signature and relating to payment by credit card in patent cases or registration to practice before the Patent and Trademark Office in patent cases, enrollment and disciplinary investigations, or disciplinary proceedings must be submitted with an original handwritten signature personally signed in permanent dark ink or its equivalent by that person.

* * * * *

4. Section 1.31 is revised to read as follows:

§ 1.31 Applicant may be represented by one or more patent practitioners or joint inventors.

(a) An applicant for patent may file and prosecute his or her own case, or he or she may give a power of attorney to be represented by one or more patent practitioners or joint inventors, except that a juristic entity must be represented by a patent practitioner. Prosecution by a juristic entity is governed by § 3.71(a), and the taking of action by any assignee is governed by § 3.73.

(b) The United States Patent and Trademark Office cannot aid in the selection of a patent practitioner.

5. Section 1.32 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.32 Power of attorney.

* * * * *

(d) A power of attorney from a prior application for which benefit is claimed under 35 U.S.C. 120, 121, or 365(c) in a continuing application may have effect in the continuing application if the inventorship of the continuing application is the same as the prior application or one or more inventors from the prior application have been deleted in the continuing application, and if a copy of the power of attorney from the prior application is filed in the continuing application.

(e) If a power of attorney has been granted by all of the inventors and not an assignee, the addition of an inventor pursuant to § 1.48 results in the loss of that power of attorney upon grant of the § 1.48 request, unless the added inventor provides a power of attorney consistent with the power of attorney provided by the other inventors. This provision does not preclude a practitioner from acting pursuant to § 1.34, if applicable.

6. Section 1.33 is amended by removing and reserving paragraph (b)(3), revising the introductory text of paragraph (a), and adding new paragraphs (f), (g), and (h) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) *Correspondence address and daytime telephone number.* When filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing. If no correspondence address is specified, the Office may treat the mailing address of the first named inventor (if provided, see §§ 1.76 (b)(1) and 1.63 (c)(2)) as the correspondence address. The Office will direct, or otherwise make available, all notices, official letters, and other communications relating to the application to the person associated with the correspondence address. For correspondence submitted via the Office's electronic filing system, however, an electronic acknowledgment receipt will be sent to the submitter. The Office will generally not engage in double correspondence with an applicant and a patent practitioner, or with more than one patent practitioner, except as deemed necessary by the Director. If more than one correspondence address is specified in a single paper or in multiple papers submitted on one day, the Office will select one of the specified addresses for use as the correspondence address and, if given, may select the address associated with a Customer Number over a typed correspondence address. For the party to whom correspondence is to be addressed, a daytime telephone number should be supplied in a clearly identifiable manner and may be changed by any party who is authorized to change the correspondence address. The correspondence address may be changed as follows:

* * * * *

(b) * * *

(3) [Reserved]

* * * * *

(f) An assignee may only conduct prosecution of an application in accordance with §§ 1.31 and 3.71 of this chapter. Unless otherwise specified, all papers submitted on behalf of a juristic entity must be signed by a patent practitioner.

(g) Where application papers from a prior application are used in a continuing application and the correspondence address was changed during the prosecution of the prior application, an application data sheet or separate paper identifying the updated correspondence address to be used for the continuing application must be submitted. Otherwise, the Office may not recognize the change of correspondence address effected during the prosecution of the prior application.

(h) A patent practitioner acting in a representative capacity whose correspondence address is the correspondence address of record in an application may change the correspondence address after the patent has issued, provided that the change of correspondence address is accompanied by a statement that notice has been given to the patentee or owner.

7. Section 1.41 is amended by revising paragraphs (a)(3), (a)(4) and (c) to read as follows:

§ 1.41 Applicant for patent.

(a) * * *

(3) In a nonprovisional application filed without an oath or declaration as prescribed by § 1.63 or in a provisional

application filed without a cover sheet as prescribed by § 1.51(c)(1), the name and residence of each person believed to be an actual inventor should be provided when the application papers pursuant to § 1.53(b) or § 1.53(c) are filed.

(4) The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the first submission of an executed declaration under PCT Rule 4.17(iv) or oath or declaration under § 1.497, except as provided in § 1.63(d). If neither an executed declaration under PCT Rule 4.17(iv) nor executed oath or declaration under § 1.497 is filed during the pendency of the national stage application, the inventorship is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92bis.

* * * * *

(c) Any person authorized by the applicant may physically or electronically deliver an application for patent and related correspondence, including fees, to the Office on behalf of the inventor or inventors and provide a correspondence address pursuant to § 1.33(a), but an oath or declaration (§ 1.63) can only be made in accordance with § 1.64 and amendments and other papers must be signed in accordance with § 1.33(b).

* * * * *

8. Section 1.42 is revised to read as follows:

§ 1.42 When the inventor is deceased or legally incapacitated.

(a) In the case of the death or legal incapacity of the inventor, the legal representative (*e.g.,* executor, administrator, guardian, or conservator) of the deceased or incapacitated inventor, the assignee, or a party to whom the inventor is under an obligation to assign the invention or party who otherwise shows sufficient proprietary interest in the matter may execute the oath or declaration under § 1.63, provided that the oath or declaration complies with the requirements of § 1.63(a) and (b) and identifies the inventor who is deceased or legally incapacitated. A party who shows sufficient proprietary interest in the matter executes the oath or declaration on behalf of the deceased or incapacitated inventor.

(b) A party to whom the inventor is under an obligation to assign the invention or a party who otherwise has sufficient proprietary interest in the matter taking action under this section must do so by way of a petition that is accompanied by the fee set forth in § 1.17(g) and a showing, including proof of pertinent facts, either that:

(1) The deceased or incapacitated inventor is under an obligation to assign the invention to the party; or

(2) The party has sufficient proprietary interest in the matter to execute the oath or declaration pursuant to § 1.63 on behalf of the deceased or incapacitated inventor and that such action is necessary to preserve the rights of the parties.

(c) If the inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative or assignee upon proper intervention pursuant to this section.

9. Section 1.43 is removed and reserved.

§ 1.43 [Reserved]

10. Section 1.47 is revised to read as follows:

§ 1.47 When an inventor refuses to sign or cannot be reached.

(a) If an inventor or legal representative thereof (§ 1.42) refuses to execute the oath or declaration under § 1.63, or cannot be found or reached after diligent effort, the assignee of the nonsigning inventor, a party to whom the inventor is obligated to assign the invention, or a party who otherwise shows sufficient proprietary interest in the matter may execute the oath or declaration under § 1.63. A party who shows sufficient proprietary interest in the matter executes the oath or declaration on behalf of the nonsigning inventor.

(b) If a joint inventor or legal representative thereof (§ 1.42) refuses to execute the oath or declaration under § 1.63 or cannot be found or reached after diligent effort, the remaining inventor(s) may execute the oath or declaration under § 1.63 on behalf of himself or herself and the nonsigning inventor.

(c) Any oath or declaration executed pursuant to this section must comply with the requirements of § 1.63(a) and (b) and be accompanied by a petition that:

(1) Includes the fee set forth in § 1.17(g);

(2) Identifies the nonsigning inventor, and includes the last known address of the nonsigning inventor;

(3) States either the inventor or legal representative cannot be reached after a diligent effort was made, or has refused to execute the oath or declaration under § 1.63 when presented with a copy of the application papers, with proof of the pertinent facts; and

(4) For a party to whom the nonsigning inventor is under an obligation to assign the invention, or has sufficient proprietary interest in the matter acting under paragraph (a) of this section, a showing, including proof of pertinent facts, either that:

(i) The nonsigning inventor is under an obligation to assign the invention to the party; or

(ii) The party has sufficient proprietary interest in the matter to execute the oath or declaration pursuant to § 1.63 on behalf of the nonsigning inventor and that such action is necessary to preserve the rights of the parties.

(d) The Office will publish notice of the filing of the application in the Official Gazette, and may send notice of filing of the application to the nonsigning inventor at the address(es) provided in the petition under this section. The Office may dispense with this notice provision in a continuing application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

(e) A nonsigning inventor or legal representative may subsequently join in the application by submitting an oath or declaration under § 1.63. The submission of an oath or declaration by a nonsigning inventor or legal representative after the grant of a petition under this section will not permit the nonsigning inventor or legal representative to revoke or grant a power of attorney.

11. Section 1.48 is amended by revising the section heading and adding new paragraph (k) to read as follows:

§ 1.48 Correction of inventorship in a patent application, other than a reissue application.

* * * * *

(k) *National stage application under 35 U.S.C. 371.* The procedure set forth in paragraph (a) of this section for correcting an error in inventorship is also applicable to international applications entering the national stage under 35 U.S.C. 371 prior to becoming nonprovisional applications (§ 1.9(a)(3)), and to correct an error in the inventive entity set forth in an executed declaration submitted under PCT Rule 4.17(iv).

12. Section 1.53 is amended by revising paragraph (f)(4) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(f) * * *

(4) This paragraph applies to continuation or divisional applications

under paragraphs (b) or (d) of this section and to continuation-in-part applications under paragraph (b) of this section. See § 1.63(d) concerning the submission of a copy of the oath or declaration from the prior application for a continuing application under paragraph (b) of this section.

* * * * *

13. Section 1.55 is amended by revising the introductory text of paragraph (a)(1)(i), the introductory text of paragraph (c), and paragraph (d)(1)(ii) to read as follows:

§ 1.55 Claim for foreign priority.

(a) * * *

(1)(i) In an original application filed under 35 U.S.C. 111(a), the claim for priority must be presented in an application data sheet (§ 1.76(b)(6)) or a supplemental application data sheet (§ 1.76(c)) during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. This time period is not extendable. The claim must identify the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time periods in this paragraph do not apply in an application under 35 U.S.C. 111(a) if the application is:

* * * * *

(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) not presented in an application data sheet (§ 1.76(b)(6)) or a supplemental application data sheet (§ 1.76(c)) within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country (or intellectual property authority), and the day, month, and year of its filing was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) must be accompanied by:

* * * * *

(d)(1) * * *

(ii) The foreign application is identified in an application data sheet (§ 1.76(b)(6)) or a supplemental application data sheet (§ 1.76(c)); and

* * * * *

14. Section 1.63 is revised to read as follows:

§ 1.63 Oath or declaration.

(a) A nonprovisional application for patent filed under 35 U.S.C. 111(a) or which entered the national stage under 35 U.S.C. 371 shall include, or be amended to include, an oath or declaration. The oath or declaration under this section must:

(1) Be executed (*i.e.,* signed) in accordance with either § 1.66 or § 1.68;

(2) Identify each inventor by his or her full name without any abbreviation (except for a middle initial);

(3) Identify the application to which it is directed;

(4) Include a statement that the person executing the oath or declaration believes the named inventor or joint inventors to be the original inventor or original joint inventors of the claimed invention in the application for which the oath or declaration is being submitted;

(5) State that the application was made or was authorized to be made by the inventor;

(6) State that the person making the oath or declaration has reviewed and understands the contents of the application for which the oath or declaration is being submitted, including the claims, as amended by any amendment specifically referred to in the oath or declaration; and

(7) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

(b) Unless such information is supplied on an application data sheet in accordance with § 1.76, the oath or declaration must also identify for each inventor a mailing address where the inventor customarily receives mail, and residence, if the inventor lives at a location different from the mailing address.

(c)(1) An assignment may also include the oath or declaration required by this section if:

(i) The assignment contains the information and statements required under paragraphs (a) and (b) of this section; and

(ii) A copy of the assignment is filed in the application and recorded as provided for in part 3 of this chapter.

(2) Any reference to an oath or declaration under § 1.63 includes an assignment as provided for in this paragraph.

(d)(1) A newly executed inventor oath or declaration under § 1.63 is not required under § 1.51(b)(2) and § 1.53(f) or § 1.497(a) in an application that claims the benefit under 35 U.S.C. 120, 121, or 365(c) in compliance with § 1.78 of an earlier-filed application, provided that:

(i) An executed oath or declaration in compliance with this section was filed in the earlier-filed application;

(ii) A copy of such oath or declaration, showing the signature or an indication thereon that it was executed, is submitted in the continuing application; and

(iii) Any new inventors named in the continuing application provide an executed oath or declaration in compliance with this section.

(2) If applicable, the copy of the executed oath or declaration submitted under this paragraph must be accompanied by a statement signed pursuant to § 1.33(b) requesting the deletion of the name or names of the person or persons who are not inventors in the continuing application.

(3) If the earlier-filed application has been accorded status via a petition under § 1.42 or § 1.47, the copy of the executed oath or declaration must be accompanied by a copy of the decision granting the petition in the earlier-filed application, unless all inventors or legal representatives subsequently joined in the earlier-filed application. If one or more nonsigning inventor(s) or legal representative(s) subsequently joined in the earlier-filed application, the copy of the executed oath or declaration must be accompanied by a copy of the executed oath or declaration filed by the inventor or legal representative to join in the application.

(e) An oath or declaration filed at any time pursuant to 35 U.S.C. 115(h)(1) will be placed in the file record of the application or patent, but may not be reviewed by the Office. Any request for correction of the named inventorship must comply with § 1.48 in an application and § 1.324 in a patent.

15. Section 1.64 is amended by revising paragraph (b) to read as follows:

§ 1.64 Person making oath or declaration.

* * * * *

(b) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.47, or 1.67), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor is required to state. If the person signing the oath or declaration is the legal representative of a deceased or legally incapacitated inventor, the oath or

declaration shall also state that the person is a legal representative and, unless such information is supplied on an application data sheet in accordance with § 1.76, the residence and mailing address of the legal representative.

16. Section 1.67 is revised to read as follows:

§ 1.67 Noncompliant oath or declaration.

(a) Where an oath or declaration does not comply with a requirement of 35 U.S.C. 115, or a requirement of § 1.63 or 1.162, the Office may require, or the inventors and applicants may submit, an oath or declaration meeting the requirements of § 1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier-filed oath or declaration.

(1) Deficiencies or inaccuracies relating to all the inventors or applicants (§ 1.42 or § 1.47) may be corrected with an oath or declaration in compliance with 35 U.S.C. 115 and § 1.63 or 1.162 signed by all the inventors or applicants.

(2) Deficiencies or inaccuracies relating to fewer than all of the inventor(s) or applicant(s) (§ 1.42 or § 1.47) may be corrected with an oath or declaration in compliance with 35 U.S.C. 115 and § 1.63 or 1.162 identifying the entire inventive entity but signed only by the inventor(s) or applicant(s) to whom the error or deficiency relates.

(3) Deficiencies or inaccuracies due to the failure to meet the requirements of § 1.63(b) in an oath or declaration may be corrected with a supplemental application data sheet in accordance with § 1.76.

(b) No new matter may be introduced into a nonprovisional application after its filing date, even if an oath or declaration is filed to correct deficiencies or inaccuracies present in the earlier-filed oath or declaration.

17. Section 1.76 is amended by revising paragraphs (a), (c), and (d)(1) to read as follows:

§ 1.76 Application data sheet.

(a) *Application data sheet:* An application data sheet is a sheet or sheets, that may be submitted in a provisional application, a nonprovisional application, or an international application entering the national stage under 35 U.S.C. 371, and must be submitted to claim priority to or the benefit of a prior-filed application under 35 U.S.C. 119, 120, 121, or 365. An application data sheet contains bibliographic data, arranged in a format specified by the Office. An application data sheet must be titled ''Application Data Sheet'' and must contain all of the section headings listed in paragraph (b) of this section, with any appropriate data for each section heading. If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.

* * * * *

(c) *Supplemental application data sheets.* Supplemental application data sheets:

(1) May be supplied only after filing of the application, regardless of whether an application data sheet under paragraph (a) of this section was submitted on filing, and until payment of the issue fee, either to correct or update information in a previously submitted application data sheet, or an oath or declaration under § 1.63 or § 1.67, except that inventorship changes are governed by § 1.48, and correspondence changes are governed by § 1.33(a); and

(2) Must be titled ''Supplemental Application Data Sheet,'' include all of the section headings listed in paragraph (b) of this section, include all appropriate data for each section heading, be signed in accordance with § 1.33(b), and identify the information that is being changed, with underlining for insertions of text, and strike-through or brackets for deletions of text.

(d) * * *

(1) The most recent submission will govern with respect to inconsistencies as between the information provided in an application data sheet, an amendment to the specification, a designation of a correspondence address, or by a § 1.63 or § 1.67 oath or declaration, except that the most recent oath or declaration (§ 1.63 or § 1.67) will govern with respect to the naming of inventors (§ 1.41(a)(1)), and that the most recent application data sheet will govern with respect to foreign priority (§ 1.55) or domestic benefit (§ 1.78) claims;

* * * * *

18. Section 1.78 is amended by revising paragraphs (a)(2)(iii) and (a)(5)(iii) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(2) * * *

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76(b)(5)) or a supplemental application data sheet (§ 1.76(c)).

* * * * *

(5) * * *

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76(b)(5)) or a supplemental application data sheet (§ 1.76(c)).

* * * * *

19. Section 1.172 is revised to read as follows:

§ 1.172 Applicants.

(a) A reissue applicant must submit an oath or declaration accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent.

(b) *Oath or declaration:*

(1) *Nonbroadening reissues:* If the application does not seek to enlarge the scope of the claims of the original patent, the oath or declaration must be signed by:

(i) The inventor or inventors, including the legal representatives of deceased or legally incapacitated inventors or a § 1.47 applicant for a nonsigning inventor;

(ii) An assignee of the entire interest; or

(iii) All partial assignees together with all inventors who have not assigned their rights, including the legal representatives of deceased or legally incapacitated inventors or a § 1.47 applicant for a nonsigning inventor.

(2) *Broadening reissues:* If the applicant seeks to enlarge the scope of the claims of the original patent, the oath or declaration must be signed by:

(i) The inventor or inventors, including the legal representatives of deceased or legally incapacitated inventors or a § 1.47 applicant for a nonsigning inventor; or

(ii) For a reissue application filed on or after September 16, 2012, the assignee of the entire interest where the application for the original patent was filed by the assignee of the entire interest (*i.e.,* the oath or declaration was executed by the assignee under § 1.42 or § 1.47).

(c) *Assignee ownership:* All assignees consenting to the reissue must establish their ownership in the patent by filing in the reissue application a submission in accordance with the provisions of § 3.73(b).

(d) A reissue will be granted to the original patentee, his legal representatives or assigns as the interest may appear.

20. Section 1.175 is amended by revising paragraphs (a), (b), (c), and (e), and adding paragraph (f), to read as follows:

§ 1.175 Reissue oath or declaration.

(a) The reissue oath or declaration, in addition to complying with the

requirements of § 1.63, must also specifically identify at least one error pursuant to 35 U.S.C. 251 being relied upon as the basis for reissue and state that the applicant believes the original patent to be wholly or partly inoperative or invalid by reason of each one of the following reasons that are applicable:

(1) A defective specification or drawing;

(2) The patentee claiming more than the patentee had the right to claim in the patent; or

(3) The patentee claiming less than the patentee had the right to claim in the patent and identify a broadened claim and a broadened portion of the specification if a change thereto is the basis for the claim broadening;

(b) A claim broadened in any respect must be treated and identified as a broadened claim pursuant to paragraph (a)(3) of this section.

(c) Where all errors previously identified in the reissue oath or declaration pursuant to paragraph (a) of this section are no longer being relied upon as the basis for reissue, a new error currently being relied upon as the basis for reissue must be identified in a reissue oath or declaration under this section, which statement need only address the new error.

* * * * *

(e) *Continuing reissue applications:*

(1) Where a continuing reissue application replaces a prior reissue application, the requirement for a reissue oath or declaration pursuant to § 1.172 may be satisfied by a copy of the reissue oath or declaration from the prior reissue application it replaces.

(2) Where a continuing reissue application does not replace a prior reissue application, the requirement for a reissue oath or declaration pursuant to § 1.172 may be satisfied by:

(i) A newly executed reissue oath or declaration that identifies at least one error in the original patent which has not been corrected by a prior reissue application; or

(ii) A copy of the reissue oath or declaration from a prior reissue application within the chain of the benefit claim, accompanied by a statement that explains either that an identified error was not corrected in a prior reissue application, or how an identified error is currently being corrected in a manner different than in a prior reissue application.

(f) A reissue oath or declaration filed at any time pursuant to 35 U.S.C. 115(h)(1) will be placed in the file record of the reissue application, but may not be reviewed by the Office.

21. Section 1.311 is amended by adding new paragraph (c) to read as follows:

§ 1.311 Notice of allowance.

* * * * *

(c) Where an assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter has filed an application under §§ 1.42, or 1.47, the applicant must notify the Office of any change in ownership of the application no later than payment of the issue fee. The Office will treat the absence of such a notice as an indication that there has been no change in ownership of the application.

22. Section 1.497 is revised to read as follows:

§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

(a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, the applicant must file an oath or declaration in accordance with § 1.63.

(b) An oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4) and § 1.495(c) for purposes of entering the national stage under 35 U.S.C. 371 if it:

(1) Is executed in accordance with either §§ 1.66 or 1.68;

(2) Identifies the application to which it is directed;

(3) Identifies each inventor;

(4) States that the person executing the oath or declaration believes the named inventor or inventors to be the original inventor or an original joint inventor of a claimed invention in the application;

(5) States that the application was made or was authorized to be made by the inventor; and

(6) Where the oath or declaration is not made by the inventor, complies with the applicable requirements of §§ 1.42 and 1.47.

(c) If the oath or declaration meeting the requirements of § 1.497(b) does not also meet the requirements of § 1.63, an oath or declaration in compliance with § 1.63 or a supplemental application data sheet will be required in accordance with § 1.67.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

24. Section 3.31 is amended by adding new paragraph (h) to read as follows:

§ 3.31 Cover sheet content.

* * * * *

(h) The assignment cover sheet required by § 3.28 must contain a conspicuous indication of an intent to utilize the assignment as the required oath or declaration under § 1.63 of this chapter.

25. Section 3.71 is amended by revising paragraph (a) to read as follows:

§ 3.71 Prosecution by assignee.

(a) *Patents—conducting of prosecution on behalf of assignee.* Subject to the requirements of §§ 1.31 and 1.33(f), one or more assignees as defined in paragraph (b) of this section may, after becoming of record pursuant to paragraph (c) of this section, conduct prosecution of a national patent application or a reexamination proceeding to the exclusion of either the inventive entity or the assignee(s) previously entitled to conduct prosecution. Conflicts between purported assignees are handled in accordance with § 3.73(c)(4).

* * * * *

26. Section 3.73 is amended by revising the section heading, paragraphs (b)(2)(ii) and (c)(2), and adding new (b)(2)(iii), (b)(3), (c)(3) and (c)(4) to read as follows:

§ 3.73 Establishing right of assignee to request or take action in a trademark or patent matter.

* * * * *

(b) * * *

(2) * * *

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee; or

(iii) Being signed by a patent practitioner of record pursuant to § 1.32 of this chapter.

(3) In any one application or proceeding, a subsequent statement must provide a complete chain of title.

(c) * * *

(2) If the submission is by an assignee of less than the entire right, title, and interest (*e.g.,* more than one assignee exists), the Office may refuse to accept the submission as an establishment of ownership unless:

(i) Each assignee establishes the extent (by percentage) of its ownership

interest, so as to account for the entire right, title, and interest in the application or patent by all parties including inventors; or

(ii) Each assignee submits a statement identifying the parties including inventors who together own the entire right, title, and interest and stating that all the identified parties own the entire right, title, and interest.

(3) A statement under paragraph (b) of this section from a prior application for which benefit is claimed under 35 U.S.C. 120, 121, or 365(c) in a continuing application may have effect in the continuing application if the inventorship of the continuing application is the same as the prior application or one or more inventors from the prior application have been deleted in the continuing application, and a copy of the statement under paragraph (b) of this section from the prior application is filed in the continuing application.

(4) Where two or more purported assignees file conflicting statements under paragraph (b) of this section, the Director will determine which, if any, purported assignee will be permitted to control prosecution of the application.

Dated: December 30, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–33815 Filed 1–5–12; 8:45 am]

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