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WHEN: Tuesday, February 7, 2012
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Presidential Documents

Title 3—

The President

Proclamation 8775 of January 31, 2012

American Heart Month, 2012

By the President of the United States of America

A Proclamation

Every year, heart disease takes the lives of over half a million Americans, and it remains the leading cause of death in the United States. This devastating epidemic leaves no one untouched; its victims are fathers and daughters, grandparents and siblings, cherished friends and community members across our country. This month, we remember the steps each of us can take to reduce the risk of heart disease and recommit to better heart health for all Americans.

While genetic or hereditary factors play a part in many instances of cardiovascular disease, high cholesterol, high blood pressure, physical inactivity, obesity, tobacco use, and alcohol abuse are major risk factors that can be prevented or controlled. To take action against heart disease, I encourage all Americans to make balanced and nutritious meal choices, maintain a healthy weight, and get active. Avoiding tobacco, moderating alcohol consumption, and working with a health care provider can also help prevent or treat conditions that can lead to heart disease. Additional resources on how to reduce the risk of cardiovascular disease are available at: www.CDC.gov/HeartDisease.

To help win the fight against heart disease, my Administration is working to ensure individuals and communities have the tools they need to make real gains in this critical effort. Last September, we launched the Million Hearts initiative, which is coordinating programs across Federal agencies and forging new public-private partnerships to prevent one million heart attacks and strokes over the next 5 years. Resources on how to join the initiative are available at: MillionHearts.HHS.gov. To secure our children's heart health and end childhood obesity within a generation, First Lady Michelle Obama's *Let's Move!* initiative is encouraging healthy eating habits and promoting physical activity among families and young people. The National Institutes of Health is pursuing cutting-edge research to unlock new treatments for cardiovascular disease. And the Centers for Disease Control and Prevention is working in communities across our country to help reduce risk factors and prevent heart disease.

During American Heart Month, we also highlight *The Heart Truth*, a national awareness campaign that urges women of all ages to know their risk for heart disease. In recognition of this vital task, I encourage men and women across America to observe National Wear Red Day on Friday, February 3, and to show their support by wearing red or the campaign's Red Dress Pin. To learn more about *The Heart Truth* or National Wear Red Day, visit: www.HeartTruth.gov.

In acknowledgement of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim February 2012 as American Heart Month,

and I invite all Americans to participate in National Wear Red Day on February 3, 2012. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and reaffirming our commitment to fighting cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–2592
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Presidential Documents

Proclamation 8776 of January 31, 2012

National African American History Month, 2012

By the President of the United States of America

A Proclamation

The story of African Americans is a story of resilience and perseverance. It traces a people who refused to accept the circumstances under which they arrived on these shores, and it chronicles the generations who fought for an America that truly reflects the ideals enshrined in our founding documents. It is the narrative of slaves who shepherded others along the path to freedom and preachers who organized against the rules of Jim Crow, of young people who sat-in at lunch counters and ordinary men and women who took extraordinary risks to change our Nation for the better. During National African American History Month, we celebrate the rich legacy of African Americans and honor the remarkable contributions they have made to perfecting our Union.

This year's theme, ''Black Women in American Culture and History,'' invites us to pay special tribute to the role African American women have played in shaping the character of our Nation—often in the face of both racial and gender discrimination. As courageous visionaries who led the fight to end slavery and tenacious activists who fought to expand basic civil rights to all Americans, African American women have long served as champions of social and political change. And from the literary giants who gave voice to their communities to the artists whose harmonies and brush strokes captured hardships and aspirations, African American women have forever enriched our cultural heritage. Today, we stand on the shoulders of countless African American women who shattered glass ceilings and advanced our common goals. In recognition of their legacy, let us honor their heroic and historic acts for years to come.

The achievements of African American women are not limited to those recorded and retold in our history books. Their impact is felt in communities where they are quiet heroes who care for their families, in boardrooms where they are leaders of industry, in laboratories where they are discovering new technologies, and in classrooms where they are preparing the next generation for the world they will inherit. As we celebrate the successes of African American women, we recall that progress did not come easily, and that our work to widen the circle of opportunity for all Americans is not complete. With eyes cast toward new horizons, we must press on in pursuit of a high-quality education for every child, a job for every American who wants one, and a fair chance at prosperity for every individual and family across our Nation.

During National African American History Month, we pay tribute to the contributions of past generations and reaffirm our commitment to keeping the American dream alive for the next generation. In honor of those women and men who paved the way for us, and with great expectations for those to follow, let us continue the righteous cause of making America what it should be—a Nation that is more just and more equal for all its people.

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 February 2012 as

National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

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Proclamation 8777 of January 31, 2012

National Teen Dating Violence Awareness and Prevention Month, 2012

By the President of the United States of America

A Proclamation

In America, an alarming number of young people experience physical, sexual, or emotional abuse as part of a controlling or violent dating relationship. The consequences of dating violence—spanning impaired development to physical harm—pose a threat to the health and well-being of teens across our Nation, and it is essential we come together to break the cycle of violence that burdens too many of our sons and daughters. This month, we recommit to providing critical support and services for victims of dating violence and empowering teens with the tools to cultivate healthy, respectful relationships.

Though we have made substantial progress in the fight to reduce violence against women, dating violence remains a reality for millions of young people. In a 12 month period, one in 10 high school students nationwide reported they were physically hurt on purpose by their boyfriend or girlfriend, and still more experienced verbal or emotional abuse like shaming, bullying, or threats. Depression, substance abuse, and health complications are among the long-term impacts that may follow in the wake of an abusive relationship. Tragically, dating violence can also lead to other forms of violence, including sexual assault. These outcomes are unacceptable, and we must do more to prevent dating violence and ensure the health and safety of our Nation's youth.

The path toward a future free of dating violence begins with awareness. As part of my Administration's ongoing commitment to engaging individuals and communities in this important work, Vice President Joe Biden launched the *1is2many* initiative last September. In concert with awareness programs occurring across Federal agencies, the initiative calls on young men and women to take action against dating violence and sexual assault and help advance public understanding of the realities of abuse. The National Dating Abuse Helpline offers information and support to individuals struggling with unhealthy relationships. For immediate and confidential advice and referrals, I encourage concerned teens and their loved ones to contact the Helpline at 1–866–331–9474, text ''loveis'' to 77054, or visit: www.LoveIsRespect.org. Additional resources are available at: www.CDC.gov/features/datingviolence.

My Administration continues to promote new and proven strategies to target teen dating violence. Last November, we announced the winners of the Apps Against Abuse technology challenge, concluding a national competition to develop innovative new tools that will empower young Americans and help prevent dating violence and sexual assault. As we move forward, we will continue to collaborate with both public and private partners to bring new violence prevention strategies to individuals and communities across our Nation. To learn more, visit: www.WhiteHouse.gov/1is2many.

Reducing violence against teens and young adults is an important task for all of us. This month, we renew our commitment to breaking the silence

about dating abuse and fostering a culture of respect in our neighborhoods, our schools, and our homes.

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 February 2012 as National Teen Dating Violence Awareness and Prevention Month. I call upon all Americans to support efforts in their communities and schools, and in their own families, to empower young people to develop healthy relationships throughout their lives and to engage in activities that prevent and respond to teen dating violence.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–2634
Filed 2–2–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 23
Friday, February 3, 2012

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. #AMS–CN–10–0073; CN–10–005]

RIN 0581–AD16

Revision of Cotton Futures Classification Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the procedures for cotton futures quality classification services by using Smith-Doxey classification data in the cotton futures classification process. In addition, references to a separate and optional review of cotton futures certification are being eliminated to reflect current industry practices. These changes in procedures for cotton futures quality classification services, as well as proposed conforming changes, reflect advances in cotton fiber quality measurement and data processing made since the regulations were last updated in 1992.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

AMS Cotton and Tobacco Programs is revising procedures for providing services related to the classification of cotton futures as authorized by Act by using Smith-Doxey classification data in the cotton futures classification process. The Act requires USDA-certified quality measurements for each bale included in futures contracts for the purpose of verifying that each bale meets the minimum quality requirements for cotton futures trading.

USDA was first directed to provide cotton classification services to producers of cotton under the Smith-Doxey Act of April 13, 1937 (Pub. L. 75–28). Therefore, the original classification of a cotton bale's sample and quality data which results from this classification is commonly referred to as the Smith-Doxey classification or Smith-Doxey data. While cotton classification is not mandatory, practically every cotton bale grown in the United States today is classed by USDA under the authority of the Cotton Statistics and Estimates Act (7 U.S.C. 471–476) and the U.S. Cotton Standards Act (7 U.S.C. 51–65) and under regulations found in 7 CFR part 28—Cotton Classing, Testing, and Standards. The U.S. cotton industry uses Smith-Doxey classification data to assign quality-adjusted market values to U.S. cotton and market U.S. cotton both domestically and internationally. Although the Smith-Doxey classification and the futures classification are independent measures of cotton quality that serve different purposes, the Smith-Doxey data is used by the cotton merchant community to indicate which bales may be tenderable against a cotton futures contract.

USDA's cotton classification capabilities have dramatically improved as a result of the extensive technological progress, increasing data accuracy and operational efficiency. In addition to the increased accuracy and reliability of Smith-Doxey data, improvements in data management and the desire to increase operational efficiencies have prompted the Cotton and Tobacco Programs to propose the use of Smith-Doxey classification data in the cotton futures classification process.

Currently, the futures classification process is a two-step process that occurs after the Smith-Doxey classification in which an initial futures classification is immediately verified by a review—commonly referred to as a final futures classification. When verified by a futures classification, Smith-Doxey classification data will serve as the initial futures classification with the verifying futures classification serving as the final futures classification, reducing the number of futures classifications required in many instances. Verification of Smith-Doxey classing data is necessary because certain quality characteristics—especially color—are known to change over time and when cotton is subjected to certain environmental conditions.

In cases where the comparison of Smith-Doxey data and futures classification data fail to pass pre-established tolerances, a second futures classification will be required. The use of Smith-Doxey classification data will significantly reduce the need for yet another cotton futures classification. The proposed changes would improve operational efficiency while potentially improving the integrity and accuracy of classification data provided to the cotton industry.

For the reasons set forth above, this rule amends 7 CFR part 27—Cotton Classification Under Cotton Futures Legislation, which establishes the procedures for determining cotton classification for cotton submitted for futures certification. Specific changes required to implement the revised futures classification procedure include the elimination of outdated procedures in sections 27.61–27.67, 27.69 and 27.72 used to guide optional reviews of futures classifications and the elimination of references to fees charged for ''initial classification and certification'', ''review classification and certification'' and ''combination services'' in section 27.80. Conforming changes remove references to eliminated sections 27.9, 27.14, 27.21., 27.36 and 27.47 and apply current organizational terminology in paragraph (h) of section 27.2 and section 27.39.

As stated above, the cotton futures classification includes a process by which an initial futures classification is followed up by a futures final classification. While not mandatory, this two-stage process has been deemed appropriate by the industry. Therefore, sections 27.61–27.67, 27.69 and 27.72, which address optional reviews of futures classifications, are irrelevant. Furthermore, reference to ''initial classification and certification'' fees in paragraph (a) of section 27.80 are removed to avoid confusion with Smith-Doxey classifications and to reflect that initial classification fees are already specified in paragraph (b) of 7 CFR 28.909. Likewise, reference to ''review classification and certification'' fees in paragraph (b) of section 27.80 are removed since fees for review classifications are already specified in 7 CFR 28.911.

The term ''combination services'' in paragraph (d) of section 27.80 reflects the current practice of performing an ''initial'' futures classification and an immediate ''review'' futures classification. Since Smith-Doxey classification data serves as the initial futures classification when verified by a ''review'' futures classification, these services are simply defined as ''futures classification services.''

Summary of Comments

A proposed rule was published on September 29, 2011, with a comment period of September 29, 2011 through October 31, 2011. (76 FR 60388). No comments were received by AMS from individuals or various organizations representing segments of the cotton industry.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. Fees paid by users of the service are not changed by this action; implementation of the new procedures indicates the existing fees remain sufficient to fully reimburse AMS for provision of the services.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are approximately sixty cotton merchant organizations of various sizes active in trading U.S. cotton. Cotton merchants voluntarily use the AMS cotton futures classification services annually under the Cotton Futures Act (Act) (7 U.S.C. 15b). Many of these cotton merchants are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

Revisions being proposed reflect the progress made in quality determination and data dissemination. The proposed process changes in the classification of cotton futures will yield increases of efficiency to the benefit of the cotton marketing industry.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0008, Cotton Classing, Testing and Standards.

List of Subjects in 7 CFR Part 27

Commodity futures, Cotton.

For the reasons set forth in the preamble 7 CFR part 27 is amended as follows:

PART 27—[AMENDED]

■ 1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

■ 2. Section 27.2 paragraph (h) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(h) *Quality Assurance Division.* The Quality Assurance Division at Memphis, Tennessee; shall provide supervision of futures cotton classification.

* * * * *

■ 3. Section 27.9 is revised to read as follows:

§ 27.9 Classing Offices; Quality Assurance Division.

Classing Offices shall be maintained at points designated for the purpose by the Administrator. The Quality Assurance Division shall provide supervision of futures cotton classification and perform other duties as assigned by the Deputy Administrator.

■ 4. Section 27.14 is revised to read as follows:

§ 27.14 Filing of classification requests.

Requests for futures classification shall be filed with the Quality Assurance Division within 10 days after sampling and before classification of the samples.

§ 27.21 [Removed and Reserved]

■ 5. Section 27.21 is removed and reserved.

■ 6. Section 27.36 is revised to read as follows:

§ 27.36 Classification determinations based on official standards.

All cotton shall be classified on the basis of the official cotton standards of the United States in effect at the time of such classification.

■ 7. Section 27.39 is revised to read as follows:

§ 27.39 Issuance of classification records.

Except as otherwise provided in this section, as soon as practicable after the classification of cotton has been completed by the Cotton and Tobacco Programs, the Quality Assurance Division shall issue an electronic cotton classification record showing the results of such classification. Each electronic record shall bear the date of its issuance. The electronic record shall show the identification of the cotton according to the information in the possession of the Cotton and Tobacco Programs, the classification of the cotton and such other facts as the Deputy Administrator may require.

■ 8. Section 27.47 is revised to read as follows:

§ 27.47 Tender or delivery of cotton; conditions.

Subject to the provisions of §§ 27.52 through 27.55, no cotton shall be tendered or delivered on a basis grade contract unless on or prior to the date fixed for delivery under such contract, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a valid outstanding cotton classification record complying with the regulations in this subpart, showing such cotton to be tenderable on a basis grade contract.

§ 27.61 [Removed and Reserved]

■ 9. The undesignated center heading preceding § 27.61 is removed and § 27.61 is removed and reserved.

§§ 27.62–27.67 [Removed and Reserved]

■ 10. Sections 27.62–27.67 are removed and reserved.

§ 27.69 [Removed and Reserved]

■ 11. Section 27.69 is removed and reserved.

§ 27.72 [Removed and Reserved]

■ 12. Section 27.72 is removed and reserved.

■ 13. Section 27.80 is revised to read as follows:

§ 27.80 Fees; review classification, futures classification and supervision.

For services rendered by the Cotton and Tobacco Programs pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) Futures classification—$3.50 per bale.

Dated: January 30, 2012.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–2382 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2011–0004]

RIN 0579–AD58

Plum Pox Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the plum pox regulations to provide for the payment of compensation to eligible owners of non-fruit-bearing ornamental tree nurseries and to increase the amount of compensation that may be paid to eligible owners of commercial stone fruit orchards and fruit tree nurseries whose trees are required to be destroyed in order to prevent the spread of plum pox. We are also providing updated instructions for the submission of claims for compensation. These changes are necessary to provide adequate compensation to persons who are economically affected by the plum pox quarantine and the associated State and Federal eradication efforts. This action will assist our efforts to eradicate plum pox in the United States.

DATES: This interim rule is effective upon February 3, 2012. We will consider all comments that we receive on or before April 3, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0004-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0004* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Plum Pox National Program Manager, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1231; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. In Europe, plum pox has been present for a number of years and is considered to be the most serious disease affecting susceptible *Prunus* varieties. Plum pox is transmitted locally by various aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees that are exposed to the disease due to their proximity to infected trees. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees.

The first documented case of plum pox in the United States was detected in an Adams County, PA, orchard in 1999. In 2006, additional detections were made in New York and Michigan. Through cooperative Federal/State efforts, plum pox has been eradicated in Pennsylvania and Michigan. Currently, portions of Niagara, Orleans, and Wayne Counties, NY, are the only areas in the United States quarantined because of plum pox.

The regulations in Subpart—Plum Pox (7 CFR 301.74 through 301.74–5), referred to below as the regulations, quarantine areas of the United States where plum pox has been detected and restrict the interstate movement of regulated articles (e.g., trees, seedlings, root stock, budwood, branches, twigs, and leaves of susceptible *Prunus* spp.) from quarantined areas to prevent the spread of plum pox virus (PPV) into uninfected areas of the United States.

In addition to the quarantine and interstate movement restrictions in the regulations, § 310.74–5 also provides for the payment of compensation to eligible owners of commercial stone fruit orchards, including direct marketers, and fruit tree nurseries. Compensation payments are provided to eligible orchard owners to mitigate losses associated with the destruction of trees in order to control plum pox pursuant to an emergency action notification (EAN) issued by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Payments are also provided to eligible nursery owners to mitigate the net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an EAN by APHIS with respect to regulated articles within the nursery in order to control plum pox.

The compensation provisions of § 301.74–5 were established to reduce the economic effect of the plum pox quarantine on affected commercial growers and nursery owners, thus ensuring their continued cooperation with the survey and eradication activities being conducted by APHIS and State plant health agencies. The availability of compensation played an important role in the successful eradication of plum pox from Adams County, PA. Affected owners of commercial stone fruit orchards and fruit tree nurseries in the quarantined areas of New York are eligible for, and have received, compensation payments in connection with the destruction of trees and the resulting loss in income

associated with the ongoing eradication efforts in that State.

The compensation provisions for commercial stone fruit orchards and fruit tree nurseries were promulgated in 2000 following the establishment of the plum pox quarantine and regulations. Subsequently, in 2004 we amended the regulations to provide for the payment, under certain circumstances, of compensation to direct market growers, who we defined as growers who produce fruit and sell the fruit themselves for premium prices at farmers markets. The 2004 rule also added provisions for the payment of compensation for stone fruit trees destroyed at less than 1 year of age. Since that 2004 final rule, we have not made any adjustments to the compensation provisions of the regulations.

Increased Payment Amounts

Due to changes in management practices by stone fruit growers and direct marketers and in fruit tree nurseries, along with the effects of inflation and increases in the prices for the products of commercial stone fruit orchards and nurseries containing stone fruit trees, the compensation amounts in § 310.74–5 no longer accurately reflect the economic losses experienced by grove owners, direct marketers, and nursery owners who are subject to an EAN issued by APHIS in order to prevent the spread of plum pox. Further, the State/Federal eradication program has adopted the recommendations of plum pox experts to remove all potentially exposed host trees within a 500-meter radius from an infected tree, so it has become increasingly necessary to update the plum pox compensation rates to reflect current market conditions and thereby ensure the continued cooperation of business operations affected by the eradication program. Therefore, in this interim rule, we are amending § 301.74–5 to raise the payment amounts found in paragraph (b) of that section.

The current amounts of compensation for owners of commercial stone fruit orchards, including direct marketers, are presented in two tables in § 310.74–5(b)(1). Depending on the age of the trees and based on a 3-year fallow period, those amounts range from $2,403 to a maximum of $25,859 per acre for direct marketers and $15,000 per acre for all other orchard owners. The new compensation amounts, which are also dependent on the age of the tree and based on a 3-year fallow period, will range from a minimum of $3,302 for all growers to a maximum of $29,743 per acre for direct marketers and $18,519 per acre for all other orchard owners. We have based the amount of the increased compensation on the recommendations of a panel composed of APHIS and State representatives, industry representatives, and university scientists. The increased amounts are derived from increasing the calculated price per bushel and taking into account the increased costs of production and of land preparation. The initial regulatory flexibility analysis prepared for this rule, which may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov), provides a detailed explanation of the methodology is used to calculate the updated compensation rates. The methodology used is the same as that used to determine the original compensation rates.

We are also amending the regulations in § 301.74–5(b)(2) to increase the amount of compensation that may be paid to eligible owners of fruit tree nurseries for net revenues lost from their first and second year crops as the result of the issuance of an EAN. We are doing so by increasing the average price per tree, which is one of the factors considered in the formula for arriving at the amount of compensation to be paid.

The average price per tree for a first year crop (trees that were expected to be sold in the year during which the EAN was issued) has been $4.65 for all tree types, and the average price per tree for a second year crop (trees that would be expected to be sold in the year following the year during which the EAN was issued) has been $4.65 for plum and apricot trees and $3.30 for peach and nectarine trees. In this rule, we are setting the average price per tree at $5.22 for plum and apricot trees and $3.69 for peach and nectarine trees for both first and second year crops. We based these changes on the adjusted base price for a field-grown 18-inch fruit or nut tree found in the Eligible Plant List (a listing of insurable plants approved by USDA's Risk Management Agency) and Plant Price Schedule (a schedule of prices for insurable nursery plants) for the 2011 and Succeeding Crop Years Nursery Crop Insurance Program.

Eligible Nurseries

As discussed above, owners of fruit tree nurseries may be eligible to receive compensation for net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an EAN by APHIS with respect to regulated articles within the nursery in order to control plum pox. While the regulations are specific to fruit tree nurseries, studies have proven that non-fruit-bearing ornamental trees are susceptible to plum pox and may serve as host material for the virus. As such, they represent a risk to eradication efforts and are included in the list of regulated articles in § 301.74–2 of the regulations. Currently, three varieties of non-fruit-bearing ornamental trees have been verified as host material for plum pox: Purpleleaf plum varieties, dwarf flowering almond varieties, and sandcherry varieties. Because nurseries containing non-fruit-bearing ornamental trees may be subject to the same prohibitions on the movement or sale of nursery stock as those containing fruit trees, we are amending the regulations to provide that owners of non-fruit-bearing ornamental tree nurseries are eligible for compensation.

Paragraph (a) of § 301.74–5 describes the individuals who are eligible to receive compensation from USDA to mitigate losses or expenses incurred because of the plum pox quarantine and emergency actions. In this rule, we are adding a new paragraph (a)(3) to state that the owner of a non-fruit-bearing ornamental tree nursery will be eligible to receive compensation for net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an EAN by APHIS with respect to regulated articles within the nursery in order to control plum pox.

Paragraph (b) of § 301.74–5 sets out the amounts that eligible individuals may receive upon approval of their claims. In this rule, we are adding a new paragraph (b)(3) that provides that the owner of a non-fruit-bearing ornamental tree nursery will be eligible to receive compensation for up to 85 percent of the net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an EAN with respect to regulated articles within the nursery in order to control plum pox. This is consistent with the existing provisions in § 301.74–5(b)(2) regarding the payment of compensation to eligible owners of fruit tree nurseries. Net revenues will be calculated using an average price of $10.80 per tree or shrub. This amount is based on the average base prices for two- and five-gallon container-grown deciduous trees and shrubs from the Plant Price Schedule used in the Nursery Crop Insurance Program cited above.

Application Forms

The current regulations provide a mailing address in Pennsylvania from which the form for submitting a claim

for compensation may be obtained and to which the completed form must be submitted. Because plum pox has been eradicated in Pennsylvania, our Pennsylvania State office will no longer process compensation claims. Therefore, we are amending the regulations to provide alternative instructions for the submission of claims. Specifically, we are providing a link to the APHIS Web site where individuals seeking to file a claim will find the mailing address, telephone number, and email address for the National Director of the Plum Pox Eradication Program from whom the form for submitting a claim for compensation may be obtained and subsequently submitted. Federal and State officials with the plum pox eradication program will also be able to provide this information in person to affected growers, direct marketers, and nursery owners in the quarantined area.

Immediate Action

Immediate action is necessary to reduce the economic effect of the plum pox quarantine on affected commercial stone fruit growers and nursery owners, thus ensuring the continued cooperation of growers and nursery owners with the survey and eradication activities being conducted by the State of New York and APHIS.

Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The current compensation rates were established in 2000 and 2004 during the initial plum pox outbreak in Pennsylvania. Earnings by stone fruit farmers and nurseries have since changed due to inflation and changes in management practices. This revision of the plum pox compensation rates will help ensure compliance with the quarantine and provide an incentive for maintaining 500-meter buffers around positive sites, as recommended by USDA plum pox experts and in contrast to the 50-meter buffers that have been used by some growers.

The revised compensation rates are based on the same methodology as was used to determine the current rates. USDA compensates for up to 85 percent of the difference in value between destroyed and replanted orchards. The compensation rate depends on the year in an orchard's life cycle that destruction of the trees occurs. Assuming a 3-year fallow period following the destruction of an orchard, the revised compensation payments range from $3,302 to $18,519 per acre, when the farmer sells to processors or wholesalers; and $3,302 to $29,743 per acre, when the farmer sells directly to consumers (such as at farmers' markets).

Owners of fruit tree nurseries and non-fruit-bearing tree nurseries who meet the eligibility requirements will be compensated by USDA for up to 85 percent of the net revenues lost from their crops. The lost net revenues for non-fruit-bearing tree nurseries will be calculated using an average price of $10.80 per tree or shrub. The lost net revenues for fruit tree nurseries will be calculated using an average price per tree at $5.22 for plum and apricot trees and $3.69 for peach and nectarine trees for both first and second year crops.

To date, a total of 11 peach growers and 12 nursery owners in the quarantined areas in New York have been compensated for the destruction of PPV-infected and -exposed trees and nursery stock. Most, if not all, of the affected farms and nurseries are considered to be small entities, based on the Small Business Administration standard of annual receipts of not more than $750,000 and national sales data. These businesses will directly benefit from the higher compensation rates, and eradication of the disease will be more effectively achieved.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.74–5 is amended as follows:

■ a. By adding a new paragraph (a)(3) to read as set forth below.

■ b. By revising the tables in paragraphs (b)(1)(i) and (b)(1)(ii) to read as set forth below.

■ c. In paragraph (b)(2)(i)(B), by removing the figure ''$4.65'' and adding the words ''$5.22 for plum and apricot trees and $3.69 for peach and nectarine trees'' in its place.

■ d. In paragraph (b)(2)(ii)(B), by removing the words ''$4.65 for plum and apricot trees and $3.30'' and adding the words ''$5.22 for plum and apricot trees and $3.69'' in their place.

■ e. By adding a new paragraph (b)(3) to read as set forth below.

■ f. By revising paragraph (c) introductory text to read as set forth below.

■ g. In the heading of paragraph (c)(3), by adding the words ''and owners of non-fruit-bearing ornamental tree nurseries'' after the word ''nurseries''.

§ 301.74–5 Compensation.

(a) * * *

(3) *Owners of non-fruit-bearing ornamental tree nurseries.* The owner of a non-fruit-bearing ornamental tree nursery will be eligible to receive compensation for net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an emergency action notification by APHIS with respect to regulated articles within the nursery in order to control plum pox.

(b) * * *

(1) * * *

(i) * * *

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	$3,302	$954	$842
1	11,639	1,936	1,721
2	16,327	1,936	1,721
3	20,725	1,936	1,721
4	26,222	1,936	1,721
5	28,820	1,936	1,721
6	29,592	1,936	1,721
7	29,743	1,936	1,721
8	29,196	1,936	1,721
9	28,581	1,936	1,721
10	27,889	1,936	1,721
11	27,110	1,936	1,721
12	26,234	1,936	1,721
13	25,248	1,936	1,721
14	24,140	1,936	1,721
15	22,892	1,936	1,721
16	21,489	1,936	1,721
17	20,054	1,936	1,721
18	18,582	1,936	1,721
19	17,070	1,936	1,721
20	15,513	1,936	1,721
21	13,905	1,936	1,721
22	12,382	1,936	1,721
23	10,955	1,936	1,721
24	9,638	1,936	1,721
25	8,442	1,936	1,721

(ii) * * *

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	$3,302	$954	$842
1	6,959	1,072	953
2	10,090	1,072	953
3	12,737	1,072	953
4	16,263	1,072	953
5	17,929	1,072	953
6	18,423	1,072	953
7	18,519	1,072	953
8	18,167	1,072	953
9	17,771	1,072	953
10	17,325	1,072	953
11	16,823	1,072	953
12	16,259	1,072	953
13	15,625	1,072	953
14	14,911	1,072	953
15	14,107	1,072	953
16	13,204	1,072	953
17	12,279	1,072	953
18	11,331	1,072	953
19	10,356	1,072	953
20	9,352	1,072	953
21	8,314	1,072	953
22	7,330	1,072	953
23	6,408	1,072	953
24	5,554	1,072	953
25	4,777	1,072	953

* * * * *

(3) *Owners of non-fruit-bearing ornamental tree nurseries.* Owners of non-fruit-bearing ornamental tree nurseries who meet the eligibility requirements of paragraph (a)(3) of this section will be compensated for up to 85 percent of the net revenues lost from their crop as the result of the issuance of an emergency action notification. Net revenues will be calculated using an average price of $10.80 per tree or shrub.

(c) *How to apply.* The form necessary to submit a claim for compensation may be obtained from the National Director of the Plum Pox Eradication Program contact listed at *http://www.aphis.usda.gov/plant_health/plant_pest_info/plum_pox/index.shtml.* Claims for trees or nursery stock destroyed on or before February 3, 2012 must be received within 60 days after February 3, 2012. Claims for trees or nursery stock destroyed after February 3, 2012 must be received within 60 days after the destruction of the trees or nursery stock. Claims must be submitted as follows:

* * * * *

Done in Washington, DC, this 30th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–2448 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. Nos. AMS–FV–10–0094; FV11–985–1A FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2011–2012 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that revised the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year. The interim rule increased the Scotch spearmint oil salable quantity from 693,141 pounds to 733,913 pounds, and the allotment percentage from 34 percent to 36 percent. In addition, the interim rule increased the Native spearmint oil salable quantity from 1,012,949 pounds to 1,266,161 pounds, and the allotment percentage from 44 percent to 55 percent. This change is expected to moderate extreme fluctuations in the supply and price of spearmint oil and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2011, through May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of spearmint oil produced in the Far West is regulated by 7 CFR part 985. Under the authority of the order, salable quantities and allotment percentages were established for both Scotch and Native spearmint oil for the 2011–2012 marketing year. However, early in the 2011–2012 marketing year, it became evident to the Committee and the industry that demand for spearmint oil was greater than previously projected and that an intra-seasonal increase in the salable quantity and allotment percentage for each class of oil was warranted. Therefore, this rule continues in effect the action that increased the Scotch spearmint oil salable quantity from 693,141 pounds to 733,913 pounds and allotment percentage from 34 percent to 36 percent. In addition, this rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,012,949 pounds to 1,266,161 pounds and allotment percentage from 44 percent to 55 percent.

In an interim rule published in the **Federal Register** on October 6, 2011, and effective June 1, 2011 through May 31, 2012, (76 FR 61933, Doc. No. AMS–FV–10–0094, FV11–985–1 IR), § 985.230 was amended to reflect the aforementioned increases in the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2011–2012 marketing year.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. (13 CFR 121.201)

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 8 of the 32 Scotch spearmint oil producers and 22 of the 88 Native spearmint oil

producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of such products. Without volume control, producers would not be limited in the production and marketing of spearmint oil. Under those conditions, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long term economic damage to the domestic spearmint oil industry. The order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

This rule continues in effect the action that increased the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which ends on May 31, 2012. The Scotch spearmint oil salable quantity was increased from 693,141 pounds to 733,913 pounds and the allotment percentage from 34 percent to 36 percent. Additionally, the Native spearmint oil salable quantity was increased from 1,012,949 pounds to 1,266,161 pounds and the allotment percentage from 44 percent to 55 percent.

The Committee reached its recommendation to increase the salable quantity and allotment percentage for both Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet current market demand.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before December 5, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-10-0094-0003.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 61933, October 6, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

Accordingly, the interim rule that amended 7 CFR part 985 and that was published at 76 FR 61933 on October 6, 2011, is adopted as a final rule, without change.

Dated: January 30, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–2376 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1206; Directorate Identifier 2009–NM–216–AD; Amendment 39–16868; AD 2011–24–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain Model DC–10–10, DC–10–10F, and MD–10–10F airplanes. The airplane manufacturer name stated in the subject line, product identification section, and paragraph (c) of that AD, is incorrect. Also, the email address provided in paragraphs (i)(1) and (j) of that AD is incorrect. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This final rule is effective February 3, 2012. The effective date for AD 2011–24–04, Amendment 39–16868 (76 FR 73491, November 29, 2011) remains January 3, 2012.

ADDRESSES: 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: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5234; fax: (562) 627–5210; email: *nenita.odesa@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–24–04, amendment 39–16868 (76 FR 73491, November 29, 2011), currently requires repetitive inspections for cracking on the lower cap of the rear spar of the left and right wings between stations Xors=417 and the outboard edge of the lower cap splice of the wing rear spar at station Xors=400; temporary and permanent repairs if necessary; and repetitive inspections of repaired areas, and corrective actions if necessary, for certain Model DC–10–10, DC–10–10F, and MD–10–10F airplanes.

As published, the airplane manufacturer name specified in the subject line, product identification section, and paragraph (c) of AD 2011–24–04, Amendment 39–16868 (76 FR 73491, November 29, 2011), is incorrect.

As published, the email address provided in paragraphs (i)(1) and (j) of AD 2011–24–04, Amendment 39–16868 (76 FR 73491, November 29, 2011), is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portions of the final rule are being published in the **Federal Register.**

The effective date of this AD remains January 3, 2012.

Correction of Non-Regulatory Text

In the **Federal Register** of November 29, 2011, AD 2011–24–04, Amendment 39–16868 (76 FR 73491, November 29, 2011), is corrected as follows:

On page 73491, in the second column, in the subject line, change the subject line to read as follows:

"**Airworthiness Directives;** The Boeing Company Airplanes."

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of November 29, 2011, on page 73492, in the third column, the product identification line of AD 2011–24–04, Amendment 39–16868 (76 FR 73491, November 29, 2011), is corrected to read as follows:

* * * * *

2011–24–04 The Boeing Company: Amendment 39–16868; Docket No. FAA–2010–1206; Directorate Identifier 2009–NM–216–AD.

* * * * *

■ In the **Federal Register** of November 29, 2011, on page 73492, in the third column, paragraph (c) of AD 2011–24–04 Amendment 39–16868 (76 FR 73491, November 29, 2011), is corrected to read as follows:

* * * * *

(c) Applicability

This AD applies to The Boeing Company Model DC–10–10, DC–10–10F, and MD–10–10F airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011.

* * * * *

■ In the **Federal Register** of November 29, 2011, on page 73493, in the third column, paragraph (i)(1) of AD 2011–24–04 Amendment 39–16868 (76 FR 73491, November 29, 2011), is corrected to read as follows:

* * * * *

(1) The Manager, Los Angeles 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. Send information to ATTN: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 97012–4137; phone: 562–627–5234; fax: 562–627–5210; email: *nenita.odesa@faa.gov.*

* * * * *

■ In the **Federal Register** of November 29, 2011, on page 73494, in the first column, paragraph (j) of AD 2011–24–04 Amendment 39–16868 (76 FR 73491, November 29, 2011), is corrected to read as follows:

* * * * *

(i) Related Information

For more information about this AD, contact Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 97012–4137; phone: 562–627–5234; fax: 562–627–5210; email: *nenita.odesa@faa.gov.*

* * * * *

Issued in Renton, Washington, on January 23, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–2295 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 110718395–1482–01]

RIN 0694–AF30

Amendment to the Export Administration Regulations: Addition of a Reference to a Provision of the Iran Sanctions Act of 1996 (ISA) and Statement of the Licensing Policy for Transactions Involving Persons Sanctioned Under the ISA

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add a reference to the Iran Sanctions Act of 1996 (ISA), which states BIS's licensing policy for export and reexport transactions that involve persons sanctioned pursuant to certain enumerated statutes. In this rule, BIS provides notice to the public that it has a general policy of denial for export and reexport license applications in which a person sanctioned by the State Department under the ISA is a party to the transaction. BIS also makes technical corrections to enhance clarity and consistency.

DATES: This rule is effective February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Theodore Curtin, Sr. Export Policy Analyst, Foreign Policy Controls Division, Bureau of Industry and Security, Department of Commerce, by telephone (202) 482–1975 or by email to *theodore.curtin@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Basis of Amendment

The Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) (ISA) requires the President to sanction persons determined to have engaged in certain actions that help Iran develop petroleum resources, produce refined petroleum resources, or acquire refined petroleum products. Sanctions must also be imposed, pursuant to the ISA, on persons determined to have taken certain actions to help Iran acquire or develop certain weapons of mass destruction, missiles, or advanced conventional weapons. In a September 23, 2010 Presidential Memorandum, the President delegated the authority to impose sanctions under the ISA to the Secretary of State.

Pursuant to that delegation, the State Department makes a determination whether to impose sanctions. Guidance on sanctions imposed by the Secretary of State under the ISA is available at *http://www.state.gov/e/eeb/esc/iransanctions/*. Exporters should contact the Department of State directly if they have questions about ISA-related sanctions.

Upon making its determination, the State Department publishes in the **Federal Register** notices of the imposition of sanctions under the ISA. There are several possible sanctions that may be imposed under the ISA including a prohibition implemented by BIS on the issuance by the U.S. Government of a specific license or other specific permission or authority to export goods or technology to a sanctioned person under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401–2420).

Amendment to the EAR: Addition of a Reference to the ISA

This rule amends the Export Administration Regulations (EAR) at 15 CFR 744.19 to state that, consistent with the sanctions programs described in Section 744.19(a), (b), and (c), BIS will apply a policy of denial when reviewing export or reexport license applications in which a person sanctioned under the ISA is a party to the transaction. Currently, Section 744.19 of the EAR states that BIS's policy is to deny export or reexport license applications if a person who is a party to the transaction (i.e., the applicant, other party authorized to receive the license, purchaser, intermediate consignee, ultimate consignee, or end user) is subject to a sanction issued pursuant to one of three statutory authorities: (1) The Iran-Iraq Arms Nonproliferation Act of 1992 (Pub. L. 102–484); (2) the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 106–178); or (3) Section 11B(b)(1)(B)(i) or (ii) of the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401–2420). In this rule, BIS amends Section 744.19 to add a reference to a fourth statute, the ISA.

Also, this rule clarifies in Section 744.19 that the policy of denial applies to any person sanctioned under one of the four statutes who is a party to the transaction (*i.e.,* the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user). To make this clarification, this rule replaces the term ''entity'' that previously appeared in Section 744.19 of the EAR with ''person'' in order to be consistent with the four statutes and BIS's licensing policy under the EAR. As defined in the EAR, the term ''person'' applies to both natural persons and entities such as corporations and organizations.

Also, in this rule, BIS makes technical corrections to Section 744.19 of the EAR to update statutory citations and make conforming changes. This rule updates the reference to the Iran Nonproliferation Act of 2000, which has been amended on several occasions and is currently referred to as the Iran, North Korea, and Syria Nonproliferation Act, adds the U.S. Code citation for the Iran Nonproliferation Act of 2000, and amends the citations for the statutes referenced in Section 744.19(a), (b), and (c) to refer solely to the U.S. Code citations.

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 12, 2011 (76 FR 50661 (August 16, 2011)), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as amended, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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 rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provisions of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this rule is issued in final form.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR Part 744 continues to read as follows:

Authority: *Et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 13, 2011, 76 FR 3009 (January 18, 2011); Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

■ 2. Revise § 744.19 to read as follows:

§ 744.19 Licensing Policy Regarding Persons Sanctioned Pursuant to Specified Statutes.

Notwithstanding any other licensing policy elsewhere in the EAR, BIS will deny any export or reexport license application if any person who is a party

to the transaction (*i.e.,* the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user) is subject to one or more of the sanctions described in paragraphs (a), (b), (c), and (e) of this section and will deny any export or reexport license application for an item listed on the Commerce Control List with a reason for control of MT if a person who is a party to the transaction is subject to a sanction described in paragraph (d) of this section.

(a) A sanction issued pursuant to the Iran-Iraq Arms Nonproliferation Act of 1992 (50 U.S.C. 1701 note) that prohibits the issuance of any license to or by the sanctioned person.

(b) A sanction issued pursuant to the Iran, North Korea, and Syria Nonproliferation Act (50 U.S.C. 1701 note) that prohibits the granting of a license and requires the suspension of an existing license for the transfer to foreign persons of items, the export of which is controlled under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), or the Export Administration Regulations.

(c) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), that prohibits the issuance of new licenses for exports to the sanctioned person of items controlled pursuant to the Export Administration Act of 1979, as amended.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), that prohibits the issuance of new licenses for exports to the sanctioned person of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979, as amended.

(e) A sanction issued pursuant to the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) that prohibits the issuance of a specific license or grant of any other specific permission or authority to export any goods or technology to a sanctioned person under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420).

Dated: January 30, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–2465 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 110207103–2041–02]

RIN 0648–BA80

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery; Economic Data Collection

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement the Chinook Salmon Economic Data Report Program, which will evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Members of the American Fisheries Act catcher vessels, catcher/processor, and mothership sectors as well as representatives for the six western Alaska Community Development Quota Program organizations that presently receive allocations of Bering Sea pollock will submit the data collected for this program. This rule is intended to promote the goals and objectives of the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

DATES: This final rule is effective March 5, 2012.

ADDRESSES: Electronic copies of this rule, the Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) may be obtained from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; by email to *OIRA_Submission@omb.eop.gov;* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, (907) 586–7442, or Patsy A. Bearden, (907) 586–7008.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This rule implements the Chinook Salmon Economic Data Report (EDR) Program, which will provide NMFS with additional data to assess the effectiveness of the Chinook salmon bycatch management measures implemented under Amendment 91 to the FMP. The EDR consists of one new data collection and two revised data collections. The Chinook Salmon EDR program applies to owners and operators of catcher vessels, catcher/processors, motherships, and the six Western Alaska Community Development Quota (CDQ) Program groups qualified to participate in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea subarea of the BSAI. This rule also applies to the representatives of the above described participants in the Bering Sea pollock fishery.

Background

NMFS implemented Amendment 91 (75 FR 53026, August 30, 2010) to balance the need to minimize bycatch of Chinook salmon in the Bering Sea pollock fishery with the potential costs of bycatch restrictions on the pollock fishery. In addition to limiting the amount of Chinook salmon that may be caught by the pollock fishery, Amendment 91 includes innovative industry-designed incentives, such as the use of penalties for vessels that exceed a sector-established Chinook salmon PSC limit. These industry-enforced incentives are intended to minimize Chinook salmon bycatch to the extent practicable in all years, and to prevent bycatch from reaching the established limit in most years. Amendment 91 also allows NMFS to allocate transferrable Chinook salmon prohibited species catch (PSC) to an entity representing the catcher/

processor sector, mothership sector, inshore cooperatives, and CDQ groups participating in the Bering Sea pollock fishery. The Amendment 91 program applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six CDQ Program groups participating in the pollock fishery in the Bering Sea subarea of the BSAI.

In developing Amendment 91, the Council used the best scientific information available, including catch accounting data, observer data and vessel monitoring system data, to sufficiently analyze the Chinook bycatch management measures approved by the Secretary. The Council determined that it needed additional data in order to evaluate the longer-term effectiveness of the industry's incentives and the hard cap for reducing salmon prohibited species catch in the Bering Sea pollock fishery.

Actions Implemented by Rule

Under this final rule, NMFS establishes economic data requirements to implement the Chinook salmon EDR program. In addition to the previous data sources, the EDR now includes three new data forms: (1) The Chinook Salmon Prohibited Species Catch (PSC) Compensated Transfer Report (CTR); (2) the Vessel Fuel Survey; and (3) the Vessel Master Survey. The persons required to submit the EDR include vessel owners, vessel leaseholders, or vessel masters of American Fisheries Act (AFA) vessels, depending on the requirements listed in each form. Submitters also include representatives for, or participants in, an AFA catcher/processor or mothership sector, inshore cooperative, CDQ groups, or parties to an incentive plan agreement (IPA).

This rule amends other existing recordkeeping and reporting requirements, including the (1) IPA Annual Report; (2) Catcher Vessel Trawl Gear Groundfish Daily Fishing Logbook; (3) Catcher/processor Trawl Gear Electronic Logbook; and (4) eLandings landing report. The rule also adds new data requirements for existing groundfish logbooks and landing reports on trawl vessels' movements to avoid Chinook salmon bycatch. The rule revises data requirements regarding transfers of Chinook salmon PSC and pollock among AFA participants in IPA Annual Reports.

What the Amendments Accomplish

The information required in the three new EDR forms and in the revisions to existing recordkeeping and reporting requirements includes a combination of quantitative and qualitative data that will allow NMFS to analyze and compare annual and seasonal changes in the pollock fleet under Amendment 91. Specifically, the new EDR reports will gather information on authorized transfers of Chinook salmon prohibited species catch; vessel movements on the fishing grounds; and pollock allocations, sub-allocations, and transfers between members in an AFA cooperative.

The analysis NMFS will conduct with these data will assist NMFS and the Council to evaluate the effectiveness of: (1) The IPA incentives in times of high and low levels of Chinook salmon abundance; (2) the Chinook salmon PSC limits; and (3) the performance standard in reducing Chinook salmon bycatch. This analysis also can examine how Amendment 91 affects where, when, and how pollock fishing and Chinook salmon bycatch occur. Additionally, NMFS will use the data to study and verify conclusions regarding the effectiveness of Amendment 91 to minimize Chinook salmon bycatch to the extent practicable, as described by industry in an IPA annual report.

The Council recommended that the data collection program should be limited in scope to minimize the industry burden of recordkeeping and reporting. They also recognized that the quantity and quality of data submitted may only partially address the purpose and need statement for this action. This collection provides additional information to status quo data sources, but may not answer all the Council's Chinook salmon bycatch policy questions. Accordingly, the Council may propose future revisions to the data collection as industry develops experience with both the data collection program and Amendment 91. The preamble to the proposed rule (76 FR 42099, July 18, 2011) includes detailed information on the management background and need for the action.

Comments and Responses

NMFS invited comments on the proposed rule through August 17, 2011 (76 FR 42099, July 18, 2011). NMFS received one submission containing five unique comments on the proposed rule. The comments are summarized and responded to below.

Comment 1: To avoid duplicate reporting of an AFA cooperative's vessels' sub-allocations and seasonal harvest of the number of Chinook salmon PSC and the amount of pollock metric tons (mt), the proposed rule required reporting of these data in either the IPA annual report in § 679.21(f)(13) or in the AFA cooperative annual report in § 679.61(f)(2) but not in both. The commenter requests that NMFS require the reporting of these data only in an IPA annual report, and make optional the reporting of these data by each AFA cooperative in the AFA cooperative annual report. The commenter points out that it is difficult for each AFA cooperative to be informed of a different AFA cooperative's records of sub-allocations and catches, and that coordinating data from multiple sources into a single report without some centralized repository for this data would be difficult. In contrast, each IPA may include parties from multiple cooperatives, and so an IPA representative has the ability to request, organize, and report that information from each AFA cooperative.

Response: NMFS agrees with this comment with respect to the reporting of information about the sub-allocations of Chinook salmon PSC and pollock. NMFS proposed the option of reporting all Chinook salmon PSC and pollock sub-allocation data as well as the number of salmon caught at the end of each season in either the AFA cooperative annual report or the IPA report, but not both. The reason for providing the option is to avoid duplicate data reporting requirements. NMFS originally believed that providing a mutually exclusive choice for either an AFA cooperative representative or the IPA representative to submit that data would provide some additional flexibility for the industry. The commenter provides new information that this approach may create additional reporting burden and will not provide the flexibility intended by NMFS. NMFS believes that an IPA representative can aggregate sub-allocation and catch data received from members of an AFA cooperative who also are party to an IPA. Under the final rule, NMFS continues to require the AFA cooperative representative to submit information on sub-allocations of Chinook salmon PSC and pollock in an IPA annual report. However, NMFS, will not require submission of that information in the AFA cooperative annual report. NMFS will continue to require the reporting of retained and discarded Chinook salmon PSC and pollock in both the IPA annual report and the AFA cooperative annual report.

Comment 2: Representatives for the AFA cooperative or sector-level entity are not likely to be informed of the price of each transaction for Chinook salmon PSC. Therefore, the quality of data in the Chinook Transfer Report (CTR) will not be improved by requiring this price data from these representatives.

Response: NMFS disagrees with the comment that a representative for an

AFA cooperative or sector level entity should be removed from the persons required to submit a CTR. NMFS proposed a broad approach to identify the persons that may have knowledge of CTR price data. When NMFS proposed this rule, the Amendment 91 program had been implemented recently, and little information was available about which industry participants would have knowledge about the details of the pricing of each Chinook salmon PSC transaction. Accordingly, NMFS proposed to gather information about the pricing from the parties most likely to have that information. Under this rule, the four persons required to report price and amounts of Chinook salmon PSC transfers in the CTR are (1) the owner or leaseholder of an AFA-permitted vessel; (2) the representative for an AFA cooperative; (3) the sector-level entity; and (4) the CDQ group. NMFS is aware that not all these persons may have transferred Chinook salmon PSC allocation and paid or received money for the transfer during the reporting year. In response to this comment, and to reduce reporting burden, NMFS has added a check box to the certification page of the CTR for any owner or leaseholder of an AFA permitted vessel and the representative of any entity that received an allocation of Chinook PSC from NMFS to indicate if he/she did or did not participate in any qualifying Chinook salmon PSC transactions. If the submitter did not participate in any qualifying Chinook salmon PSC transactions, then he/she may submit only the certification page and is not required to fill out any additional data.

If NMFS removes the requirement for a representative of an AFA cooperative or sector-level entity to submit a CTR or certification page, NMFS will not be able to differentiate between a representative of an AFA cooperative that had conducted a Chinook salmon PSC transaction and failed to submit the CTR, and a representative that had not conducted any qualifying Chinook salmon PSC transactions. NMFS believes that the requirement for representatives of an AFA cooperative or sector-level entity to submit the CTR is necessary to ensure that all persons involved in monetary exchange for Chinook salmon PSC fill out a CTR, and that the CTR reporting burden for those that did not pay or receive money for a transfer is minimal.

Comment 3: The Vessel Master Survey should include on the Vessel Owner Certification Page a ''check box'' to indicate that the vessel did not participate in the Bering Sea pollock fishery during the reporting year and, if checked, the vessel owner should not be required to complete remaining sections of the Vessel Master Survey. The check box should be similar to the check box on the Vessel Fuel Survey.

Response: NMFS agrees with this comment. This is a minor revision to the Vessel Master Survey that will reduce unnecessary reporting burden. NMFS proposed the use of a similar check box for simplifying the reporting in the Vessel Fuel Survey. Adding a check box to indicate that the vessel did not participate in the Bering Sea pollock fishery should reduce the burden of reporting information in other fields of the form. Thus, NMFS has added a check box to the Vessel Master Survey to indicate if the vessel did not participate in the Bering Sea pollock fishery during the reporting year. In that event, the vessel owner will not be required to complete the remaining sections of the Vessel Master Survey. This revision to the survey does not amend regulatory text in the final rule, but is added to the Recordkeeping and Reporting requirements for the Vessel Master Survey (OMB Control Number 0648–0633).

Comment 4: The commenter does not object to requiring a vessel owner to submit each Vessel Master Survey filled out by a vessel master, but suggests the vessel owner should not be held responsible if the vessel master fails to submit a completed and accurate Vessel Master Survey.

Response: NMFS proposed that a vessel owner or leaseholder of an AFA-permitted vessel used to harvest pollock in the Bering Sea in the previous year must submit all Vessel Master Surveys completed by each vessel master who fished on the owner's vessel and verify that each vessel master listed on the certification page of the form was a vessel master of the owner's AFA-permitted vessel. This responsibility is assigned to the vessel owner because the owner is the individual most likely to hire a vessel master and arrange for collection of any information relevant to the operation of the vessel. Also, NMFS has no current database of vessel masters names and contact information that would allow for contact of each vessel master operating a given vessel. Instead, vessel owners or leaseholders are required to collect the completed data forms from each vessel master and submit them to NMFS, but are not responsible for the accuracy or completeness of information completed by the vessel master. A vessel owner or leaseholder, however, may be contacted by NMFS to assist in verifying the identity of vessel masters.

Comment 5: Under the proposed rule, persons submitting an EDR will be required to respond within 20 days of a NMFS information request. A 20-day time limit is an unreasonable number of days to expect a response, and a 90-day interval of time for responding to a request for additional data for verifying the accuracy of an EDR will be more practical.

Response: NMFS disagrees with this comment. The 20-day limit for responding to an inquiry from NMFS for additional information does not apply to all three Chinook salmon EDR data forms as stated in the public comment, but only to the CTR. Data required for the Vessel Master Survey and Vessel Fuel Survey is generally qualitative and based on the opinion of an owner or vessel master. NMFS does not require that submitters record and retain additional logs or records to support the qualitative responses, and will not audit these responses with requests for additional data. Data required for the CTR would include persons or entities party to specific transactions. The identity of persons, prices and the amounts included in a given transaction for the CTR are records that NMFS expects submitters to retain to support this data collection and other reporting. The 20-day time limit for responding to a request from NMFS to submit additional data for a CTR was modeled after EDR regulations for both the BSAI Crab Rationalization Program (70 FR 10174, March 2, 2005) and the Amendment 80 program (72 FR 52668, September 14, 2007). Submitters of data from each of those two ongoing data collection programs have successfully responded within the 20-day time limit. There are no requirements in the three Chinook EDRs that would justify a different or longer response period to agency requests for additional information on the CTR. Revising the 20-day limit to a different interval will create an inconsistency with these established EDR programs.

In both the BSAI Crab Rationalization and Amendment 80 EDR programs, the protocol for implementing the 20-day time limit for a submitter to respond to a NMFS request for additional information is invoked only after NMFS has completed a formal and multi-day sequence of steps for contacting submitters. The protocol for the sequence of phone, email, and letter contacts with a submitter of any EDR from whom NMFS requests additional information requires three weeks to a month, prior to NMFS concluding that NMFS data collection staff are unable to solicit a response from an EDR submitter. The total elapsed time prior

to forwarding a request to NOAA Office of Law Enforcement for assistance in contacting a submitter is approximately six to eight weeks. Based on the history of the submitter contact process for the BSAI Crab Rationalization and Amendment 80 EDRs, in only a single instance has NMFS requested that the NOAA Office of Law Enforcement assist in contacting an EDR submitter. The NOAA Office for Law Enforcement issued a formal warning to the submitter for not responding to a NMFS request for audit information on a Crab EDR. Based on experience in these EDR programs, in the final rule, NMFS retains the 20-day time limit for responding to a formal request for additional information on a submitted EDR.

Changes From the Proposed Rule

In response to public comment on the proposed rule, NMFS will not revise the AFA cooperative's annual reporting requirements at § 679.61(f). NMFS is removing the proposed options for reporting certain information on Chinook salmon PSC and pollock in either an IPA annual report or an AFA cooperative's annual report. Additionally, NMFS removes the proposed provision to require that IPA annual reports at § 679.21(f)(13)(ii)(E) include the number of Chinook salmon PSC and the amount of pollock at the start of each season sub-allocated to each participating vessel, as well as the number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season, unless reported in an AFA cooperative's annual report under § 679.61(f)(2). NMFS removes the phrase ''unless reported under § 679.61(f)(2)'' in response to a public comment for the reasons explained above under Comments and Responses. An IPA annual report, therefore, must include the above-described information.

Another change NMFS makes from the proposed rule is to remove the proposed requirement that the AFA cooperative's annual report at § 679.61(f)(2)(vii) include data on the sub-allocations and catch of Chinook salmon PSC and pollock. This change responds to the public comment referred to above, and is explained under Comments and Responses.

NMFS also withdraws all proposed revisions to § 679.61(f)(2)(ii) that would have moved the reporting of retained and discarded catch of pollock and Chinook salmon PSC from § 679.61(f)(2)(ii) to a different location in the AFA cooperative's annual report at § 679.61(f)(2)(vii). NMFS will continue to require reporting of retained and discarded catch of pollock and all Chinook salmon PSC in the AFA annual cooperative report consistent with the intent of the AFA annual cooperative report to collect information on retained and discarded catch of pollock and all PSC. NMFS will not revise § 679.61 in this final rule.

NMFS makes minor corrections in the final rule to create consistent submission requirements for both the regulations and the instructions in the Vessel Master Survey. In the regulatory text, NMFS clarifies that the vessel master must complete the vessel master certification page in the Vessel Master Survey, and the vessel owner or leaseholder must complete the vessel owner certification. NMFS also clarifies that the vessel owner or leaseholder must electronically submit to NMFS all the Vessel Master Survey certification pages and vessel survey forms as well as the vessel owner certification.

NMFS makes additional corrections to the submission dates for an IPA annual report and the three Chinook salmon EDR reports to correspond with the effective date of this final rule. The first correction clarifies that new data on the sub-allocations, retained catch, and discarded catch of Chinook salmon PSC and pollock required in an IPA annual report at § 679.21(f)(13)(ii)(E) and (f)(13)(ii)(F), must be submitted on or before April 1, 2013, for the calendar year of 2012, rather than June 1, 2012, for the calendar year of 2011. Submission dates for most of the data required in an IPA annual report will continue to be April 1, 2012. IPA representatives will still be required to include a description of (1) the incentive measures for the previous year (§ 679.21(f)(13)(ii)(A)); (2) how incentives affect each vessel (§ 679.21(f)(13)(ii)(B)); (3) whether the incentives achieve salmon savings (§ 679.21(f)(13)(ii)(C)); and (4) the amendments to the terms of the IPA (§ 679.21(f)(13)(ii)(C)).

NMFS includes a minor clarification to the requirements for the IPA annual report at § 679.21(f)(13)(ii)(F)(1)((iv) and (f)(13)(ii)(F)(2)((iv). NMFS adds the word ''PSC'' to the phrase, ''number of Chinook salmon transferred'' wherever it appears in the paragraph. These two phrases are revised to state, ''number of Chinook salmon PSC transferred.'' This revision is required for consistency with reference to Chinook salmon PSC in the preceding paragraph at § 679.21(f)(13)(ii)(F)(1).

NMFS clarifies the submission dates for the three Chinook salmon EDR reports at § 679.65(b) through (d) by specifying that the CTR, Vessel Master Survey, and Vessel Fuel Survey must be submitted on or before June 1, 2013, and each year thereafter. This clarification is included to eliminate ambiguity regarding whether the submission of Chinook bycatch EDR data should begin in 2012 or 2013.

Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable law.

Small Entity Compliance Guide

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Executive Order 12866

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

Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604(a) of the Regulatory Flexibility Act (RFA). NMFS did not receive any comments on the initial regulatory flexibility analysis (IRFA) and the FRFA incorporates the IRFA and provides a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

Need for and Objectives of the Rule

This action is needed because current sources of data collected under Amendment 91, including catch accounting, observer, and vessel monitoring system data, do not provide all the industry data that is necessary for analysis of the management measures implemented to reduce Chinook salmon bycatch. The Council proposed to address those data limitations by creating the EDR. The EDR provides data to evaluate the effectiveness of: (1) The IPA incentives in times of high and low levels of salmon bycatch; (2) Chinook salmon PSC limits; and (3) the performance standard in terms of reducing salmon bycatch. The EDR data allows for the evaluation of how Amendment 91 affects where, when, and how pollock fishing and salmon

bycatch occur. The EDR program also will provide data for the agency to study and verify conclusions drawn by industry in an IPA annual report.

Significant Issues Raised by the Public Comments

The proposed rule was published on July 18, 2011 (76 FR 42099). An IRFA was prepared for the proposed rule and was described in the classifications section of the preamble to the rule. The public comment period ended on August 17, 2011. No comments specific to the IRFA were received. Five comments were received specific to the action and were summarized in the preamble to this final rule under Comments and Responses.

Number and Description of Small Entities Directly Regulated by the Rule

The directly regulated entities for this final action are the members of the commercial fishing fleet that participate in the directed pollock trawl fishery in the Bering Sea. Under a conservative application of the Small Business Administration criterion and the best available data from 2010, there are six small entities out of an estimated 122 respondents eligible to submit the EDR that will be directly regulated by the final action. All the non-CDQ AFA-affiliated pollock entities directly regulated by this action were members of AFA cooperatives in 2010 and, therefore, NMFS considers them ''affiliated'' non-small entities for RFA purposes. To provide the estimates of the number of non-CDQ AFA-affiliated pollock entities that were not small, NMFS matched earnings from all Alaskan fisheries for 2010 with the vessels that participated in the AFA-affiliated pollock fleet for that year. Due to their status as non-profit corporations, the six CDQ groups are identified as ''small'' entities. This action directly regulates the six CDQ groups, and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in regulations implementing the RFA (13 CFR 121.103) the CDQ groups' affiliations with other large entities do not define them as large entities. Complete descriptions of the CDQ groups and the impacts of this action are located in sections 2.5 and 6.10.3 of the Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis for Amendment 91 that may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Description of Significant Alternatives and a Description of Steps Taken To Minimize the Significant Economic Impacts on Small Entities

To minimize impacts on small entities, NMFS did not select some options considered in the RIR that may have expanded the amount of data available to evaluate the effectiveness of Amendment 91. For example, requiring reporting of additional detailed roe production as well as expanded Chinook salmon transfer data, revenue data, and daily operating cost data were considered but rejected because these data may not be recorded by the industry in a consistent and uniform manner, and would be costly for submitters to report. Alternatives 2 and 3 included options for expanding the frequency of reporting and the amount of data to be collected beyond those required by this final rule. These more detailed data were to be collected during or at the end of each fishing trip, and included (1) the use of ledger forms for recording the amount Chinook salmon PSC or pollock allocations and transfers; (2) the reporting of the price for each transfer of Chinook salmon PSC or pollock; and (3) the reporting of the amount of fuel used, activities associated with each interval of fuel use, and the price paid for fuel. These alternatives were not selected because the cost and burden of collecting the additional data during or at the end of a fishing trip would have been substantial, and additional experience operating under Amendment 91 is required before industry could refine recordkeeping for the Council to further consider more detailed information.

Alternative 1 was not selected because it does not address the objectives of the Chinook salmon EDR program to increase the quality and quantity of data for assessing the effects of Amendment 91 IPAs, the PSC limits, and the performance standard on when, where, and how pollock fishing and Chinook salmon bycatch occur.

Alternative 4 was chosen because the limited scope of the data collected will likely increase the quality and quantity of data used to assess the effects of Amendment 91 IPAs, the PSC limits, and the performance standard on when, where, and how pollock fishing and Chinook salmon bycatch occur; will inform the Council and NMFS regarding the development of a more expansive data collection program in the future; and is feasible to implement in a timely manner. Alternative 4 will have the least impact of the four alternatives on small entities while continuing to meet the objectives of the action.

Based upon the best available scientific data and consideration of the objectives of this action, the Council and NMFS determined there are no alternatives to this action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes as well as minimize any significant adverse economic impact of the rule on small entities. The analysis did not identify any Federal rules that will duplicate, overlap, or conflict with the action. This rule requires revisions to some existing recordkeeping and reporting requirements and includes one new collection of information to implement new EDR forms.

Collection-of-Information Requirements

This rule contains collection-of information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the OMB. The collections are listed below by OMB control number.

OMB Control Number 0648–0634

Public reporting burden per response is estimated to average 23 minutes for a catcher vessel trawl gear daily fishing log; and 35 minutes for an AFA catcher/processor trawl gear electronic log book.

OMB Control Number 0648–0633

Public reporting burden per response is estimated to average 40 hours for a CTR; 8 hours for a Vessel Fuel Survey; and 3 hours for a Vessel Master Survey.

OMB Control Number 0648–0401

Public reporting burden per response is estimated to average 40 hours for an IPA Annual Report.

OMB Control Number 0648–0515

Public reporting burden per response is estimated to average 35 minutes for a mothership eLandings landing report.

Reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**); email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 30, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

Title 15—Commerce and Foreign Trade

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR:''

■ a. Remove the entry for ''679.5(c)'';

■ b. Add an entry in alphanumeric order for ''679.5(c), (e), and (f)'';

■ c. Revise entries in alphanumeric order for ''and ''679.21(f) and (g)''; and 679.5(e) and (f)''

■ d. Add entries for ''679.65(a), (c), and (d)'' and ''679.65(b) through (e)''.

The additions and revisions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * * * *	
50 CFR.	
* * * * * * *	
679.5(c), (e), and (f)	–0213, –0272, –0330, –0513, –0515, and –0634.
* * * * * * *	
679.5(e) and (f)	–0401.
* * * * * * *	
679.21(f) and (g)	–0393, –0401, and –0608.
* * * * * * *	
679.65(a), (c), and (d)	–0634, and –0515.
679.65(b) through (e)	–0633.
* * * * * * *	

Title 50—Wildlife and Fisheries

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.,* Pub. L. 108–447.

■ 4. In § 679.2, add a definition for ''designated data collection auditor'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Designated data collection auditor (DDCA) means the NMFS-designated contractor to perform the functions of a data collection auditor for the Chinook salmon PSC Compensated Transfer Report.

* * * * *

■ 5. In § 679.5:

■ a. Revise paragraph (c)(4)(vi) introductory text;

■ b. Add paragraphs (c)(4)(vi)(I) and (e)(6)(i)(A)(*12*); and

■ c. Revise paragraphs (f)(1)(vii), (f)(2)(ii), and (f)(7).

The additions and revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(4) * * *

(vi) *Catch-by-haul information.* The operator must record the following information (see paragraphs (c)(4)(vi)(A) through (I) of this section) for each haul (see § 679.2). If no catch occurred for a given day, write ''no catch.''

* * * * *

(I) *Movement to Avoid Salmon.* If a catcher vessel is directed fishing for pollock in the Bering Sea, indicate with a check mark (X) whether, prior to the haul, the operator moved fishing location primarily to avoid Chinook salmon bycatch.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) * * *

(*12*) For deliveries from catcher vessels directed fishing for pollock in the Bering Sea, indicate whether, prior to the haul, the operator of the catcher vessel moved fishing location primarily to avoid Chinook salmon bycatch.

* * * * *

(f) * * *

(1) * * *

(vii) *AFA and CDQ trawl catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information. In the

ELB, the operator must enter processor identification information; catch-by-haul information; prohibited species discard or disposition data for all salmon species in each haul; and indicate whether, prior to the haul, the operator moved fishing location primarily to avoid Chinook salmon bycatch. In eLandings, the operator must enter processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data for all prohibited species except salmon.

(2) * * *

(ii) *Reporting groundfish by ELB.* If the User is unable to submit commercial fishery information due to hardware, software, or Internet failure for a period longer than the required reporting time, contact NMFS Inseason Management at (907) 586–7228 for instructions. When the hardware, software, or Internet is restored, the User must enter this same information into the electronic logbook (ELB) or other NMFS-approved software.

* * * * *

(7) *ELB data submission*—(i) *Catcher/processors.* The operator of a catcher/processor must transmit ELB data directly to NMFS online through eLandings or other NMFS-approved data transmission mechanism, by 2400 hours, A.l.t., each day to record the previous day's hauls.

(ii) *Catcher vessels.* The operator of a catcher vessel must transmit ELB data directly to NMFS as an email attachment or to NMFS through a shoreside processor, SFP, or mothership who received his/her groundfish catch. Through a prior agreement with the catcher vessel, the operator of a mothership or the manager of a shoreside processor or SFP will forward the ELB data transfer to NMFS as an email attachment within 24 hours of completing receipt of the catcher vessel's catch.

* * * * *

■ 6. In § 679.21, paragraph (f)(12)(vii) is redesignated as (f)(13) and revised to read as follows.

§ 679.21 Prohibited species bycatch management.

* * * * *

(f) * * *

(13) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The IPA Annual Report must be postmarked or received by the Council no later than April 1, as follows

(A) For paragraphs (f)(13)(ii)(A) through (D) of this section, in each year following the year in which the IPA is first effective;

(B) For paragraphs (f)(13)(ii)(E) and (F) of this section, in 2013 and each year thereafter.

(ii) *Information requirements.* The IPA Annual Report must contain the following information:

(A) A comprehensive description of the incentive measures in effect in the previous year;

(B) A description of how these incentive measures affected individual vessels;

(C) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures;

(D) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made;

(E) Sub-allocation to each participating vessel of the number of Chinook salmon PSC and amount of pollock (mt) at the start of each fishing season, and number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season; and

(F) In-season transfers—(*1*) *Transfers among entities.* For in-season transfer of Chinook salmon PSC or pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups, provide the following information:

(*i*) Date of transfer;

(*ii*) Name of transferor;

(*iii*) Name of transferee;

(*iv*) Number of Chinook salmon PSC transferred; and

(*v*) Amount of pollock (mt) transferred.

(*2*) *Transfers among IPA vessels.* Transfers among vessels participating in the IPA provide the following information:

(*i*) Date of transfer;

(*ii*) Name of transferor;

(*iii*) Name of transferee;

(*iv*) Number of Chinook salmon PSC transferred; and

(*v*) Amount pollock (mt) transferred.

* * * * *

■ 7. Section 679.65 is added to read as follows:

§ 679.65 Bering Sea Chinook Salmon Bycatch Management Program Economic Data Report (Chinook salmon EDR program).

(a) *Requirements.* NMFS developed the regulations under this section to implement the Chinook salmon EDR program. Additional regulations that implement specific portions of the Chinook salmon EDR program are set out under paragraphs (a)(1) through (4) of this section:

(1) *Daily fishing logbook* (DFL), catcher vessel trawl gear. *See* § 679.5(c)(4).

(2) *Electronic logbook* (ELB), AFA and CDQ trawl catcher/processors. *See* § 679.5(f) in combination with eLandings pursuant to § 679.5(e).

(3) *IPA Annual Report.* See § 679.21(f)(13).

(4) *AFA cooperative annual reporting requirement. See* § 679.61(f)(2).

(b) *Chinook salmon PSC Compensated Transfer Report (CTR).* (1) An owner or leaseholder of an AFA-permitted vessel and the representative of any entity that received an allocation of Chinook salmon PSC from NMFS must submit a CTR, Part 1, each calendar year, for the previous calendar year.

(2) Any person who transferred Chinook salmon PSC allocation after January 20, and paid or received money for the transfer, must submit a completed CTR (Part 1 and Part 2) for the previous calendar year.

(3) The CTR is available through the Internet on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at (206) 526–6414.

(4) Beginning in 2013, and each year thereafter, the completed CTR must be submitted electronically on or before 1700, A.l.t., on June 1, following the instructions on the form.

(c) *Vessel Fuel Survey.* (1) An owner or leaseholder of an AFA-permitted vessel must submit all completed Vessel Fuel Surveys for each vessel used to harvest pollock in the Bering Sea in a given year.

(2) The Vessel Fuel Survey is available through the Internet on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at (206) 526–6414.

(3) The owner or leaseholder annually must submit a completed Vessel Fuel Survey, electronically on or before 1700, A.l.t., on June 1, 2013, and each year thereafter, following the instructions on the form.

(d) *Vessel Master Survey.* (1) For any AFA-permitted vessel used to harvest pollock in the Bering Sea in the previous year:

(i) The vessel master must complete the Vessel Master Survey, and the Vessel Master certification following the instructions on the form.

(ii) An owner or leaseholder must complete the Vessel owner certification following instructions on the form.

(iii) An owner or leaseholder must submit all Vessel Master Surveys, and each Vessel owner certification electronically on or before 1700, A.l.t., on June 1, 2013, and each year thereafter, following the instructions on the form.

(2) The Vessel Master Survey is available through the Internet on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at (206) 526–6414.

(e) *Chinook salmon EDR verification and audit procedures.* NMFS or the designated data collection agent (DDCA) will conduct verification of Chinook salmon EDR information with the persons identified at § 679.65(b)(1), (b)(2), (c)(1), (d)(1)(i), and (d)(1)(ii).

(1) The persons identified at § 679.65(b)(1), (b)(2), (c)(1), (d)(1)(i), and (d)(1)(ii) must respond to inquiries by NMFS and its DDCA for purposes of the CTR, within 20 days of the date of issuance of the inquiry.

(2) The persons identified at § 679.65(b)(1) and (b)(2) must provide copies of additional data to facilitate verification by NMFS and its DDCA for purposes of the CTR. These paper or electronic copies may include, but are not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

* * * * *

[FR Doc. 2012–2361 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

RIN 3046–AA89

Recordkeeping and Reporting Requirements Under Title VII, the ADA, and GINA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission), through this final rule, extends its existing recordkeeping requirements under title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) to entities covered by title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information.

DATES: *Effective Date:* April 3, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Erin N. Norris, Senior Attorney, (202) 663–4876, Office of Legal Counsel, 131 M Street NE., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, Braille, electronic computer disk, and audio tape. Requests for this notice in an alternative format should be made to the Publications Center at 1–(800) 699–3362 (voice), 1–(800) 800–3302 (TTY), or (703) 821–2098 (Fax—this is not a toll free number).

SUPPLEMENTARY INFORMATION: On May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act of 2008 (GINA) into law. Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. The coverage in title II of GINA corresponds with that of title VII of the Civil Rights Act of 1964, as amended, covering employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs, as well as federal sector employers. Title II became effective on November 21, 2009. EEOC has issued interpretive regulations under GINA (See 75 FR 68912). Further, EEOC issued a final rule implementing changes to its administrative and procedural regulations in a separate notice found at 74 FR 63981. On June 2, 2011, EEOC proposed to amend its recordkeeping regulations to add references to GINA and sought public comment (76 FR 31892). EEOC received only one comment, from an association of state credit unions. The comment expressed support for the proposed changes. Accordingly, the Commission has decided to adopt its proposed changes as its final rule. The final rule does not require the creation of any documents or impose any reporting requirements. It imposes the same record retention requirements under GINA that apply under Title VII and the ADA, i.e., any records made or kept must be retained for the period of time specified in the Title VII and ADA regulations

Regulatory Procedures

Executive Orders 12866 and 13563

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. This rule is not a ''significant regulatory action'' under section 3(f) of the Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. It is estimated that the public recordkeeping burden will not increase significantly as a result of the amendments because all employers affected by them are already required to retain all personnel or employment records that they make or keep for a specified period of time, and the only new requirement is that they retain any of those records relevant to a charge of discrimination filed under GINA until the charge is resolved. As required by the Paperwork Reduction Act, the Equal Employment Opportunity Commission has submitted to the Office of Management and Budget a request for approval of these information collection requirements under section 3507(d) of the Act.

Collection title: Recordkeeping under Title VII, the ADA, and GINA.

OMB number: 3046–0040.

Description of affected public: Employers with 15 or more employees are subject to Title VII, the ADA, and GINA.

Number of respondents: 899,580.

Reporting hours: Not applicable.

Number of forms: None.

Federal cost: None.

Abstract: Section 207 of GINA, 42 U.S.C. 2000ff *et seq.,* incorporates the powers, procedures, and remedies found in section 709 of Title VII. Section 709(c) of Title VII, 42 U.S.C. 2000e-8(c), requires the Commission to establish regulations pursuant to which employers subject to the Act shall preserve certain records to assist the EEOC in assuring compliance with the Act's nondiscrimination in employment requirements. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provision in section 709(e) of Title VII. EEOC has previously issued recordkeeping regulations under Title VII and the ADA which require all covered entities to preserve all employment and personnel records that they make or keep for a specified period of time, and to preserve all records relevant to a Title VII or ADA charge until the charge is resolved. This revision extends these same

requirements to entities covered by GINA.

Burden statement: This recordkeeping requirement does not require reports or the creation of new documents; it merely requires retention of documents that the employer has already made or kept, and the burden imposed by these regulations is therefore minimal. An employer subject to the existing requirements in 29 CFR part 1602 currently must retain all personnel or employment records made or kept by that employer for the period specified in the regulations, and must retain any records relevant to charges filed under Title VII or the ADA until final disposition of those matters, which may be longer than one year. This rulemaking requires employers to also retain documents relevant to charges filed under GINA until final disposition of those charges.

Existing Burdens Prior to Change

—*Establishing Recordkeeping System:* There are approximately 899,580 employers subject to the recordkeeping requirement in Part 1602. According to our prior calculations, the previously approved Title VII and ADA recordkeeping requirement in Part 1602 imposed a total burden on covered employers in the aggregate of approximately 16,002 hours, which represented the aggregated time that had to be spent by all new firms taken together (an estimated 96,013 covered firms per year) to ensure that their record maintenance systems complied with EEOC's recordkeeping requirements. For the current approval process, we used more recent data on the number of new firms (an estimated 94,910 per year), which decreased the total burden to 15,818 hours. Based on the fact that these regulations do not require employers to create any records and do not impose any reporting requirements, but merely require employers to maintain the records that they do create, we estimate that it would take each new firm ten minutes or less to comply. A summary of the recordkeeping requirements covered by this notice, which covered entities may use to familiarize themselves and their staffs with EEOC's recordkeeping requirements, is available at *http://www.eeoc.gov/employers/recordkeeping_obligations.cfm.* Established firms bear no burden under this analysis, because their systems for retaining personnel and employment records are already in place.

—*Retention of Records When Charge is Filed:* For firms that have recordkeeping systems in place, the fact that a charge is filed should not impose any additional burden, because we assume that employers set up their recordkeeping systems in such a way as to ensure that records related to a charge are retained in accordance with EEOC regulations.

Effect of Proposed Change on Existing Burdens

—*Establishing Recordkeeping System:* There will be no increase in the existing burden as a result of this regulatory change. As stated above, established firms bear no burden because their systems for retaining personnel and employment records are already in place. The burden imposed upon new firms created after the regulatory change becomes effective would be the same as the burden shouldered by new firms prior to the change because it will take no longer to set up a recordkeeping system to retain records relevant to Title VII, ADA, and GINA charges than it did to set up a recordkeeping system to retain records relevant to Title VII and ADA charges. As a result of the above-mentioned decrease in the number of new firms, we estimate that the aggregate burden for new firms of establishing a compliant recordkeeping system decreased to 15,818 hours.

—*Retention of Records When Charge is Filed:* The only employers who may be subject to an increased burden are those existing firms that become parties to charges filed under GINA and must therefore ensure that relevant records are retained until the final disposition of the GINA charges. We estimate that an employer that is a party to a GINA charge will need less than ten minutes to ensure that its previously existing system of retaining records pertinent to charges filed under Title VII and the ADA is revised to retain records relating to charges filed under GINA (based upon our estimate that a new firm would need ten minutes to ensure that any recordkeeping system it maintains complies with EEOC regulations). Assuming that 200 GINA charges will be filed, that each charge is filed against a different employer, and using a burden estimate of ten minutes per charge, the annual aggregate burden would increase by only about 33 hours to 15,851.

Regulatory Flexibility Act

Title II of GINA applies to all employers with fifteen or more employees, approximately 822,000 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy. *See Firm Size Data* at *http://sba.gov/advo/research/data.html#us.* We estimate that there will be 200 new charges filed under GINA per year. We estimate that typical human resources professionals will need to dedicate no more than ten minutes per charge to ensure that the employer's existing record retention system retains any personnel documents relevant to a charge of discrimination under GINA until the resolution of the matter. We further estimate that the median hourly pay rate of an HR professional is approximately $46.40. *See* Bureau of Labor Statistics, Occupational Employment and Wages, May 2009 at *http://www.bls.gov/oes/current/oes113049.htm.* Therefore, the cost of spending ten minutes per charge would be approximately $7.73 (one-sixth of $46.40). Even assuming that every one of the estimated 200 GINA charges is filed against a small business, EEOC does not believe that a cost of approximately $7.73 per charge will be significant for the impacted small entities. Further, if each of the 200 GINA charges was filed against a different small entity, 200 affected firms out of 822,000 is not a substantial number of small firms. Accordingly, the Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because any burden it may impose on business entities is minimal. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1602

Administrative practice and procedure, Equal Employment Opportunity.

Dated: January 30, 2012.

For the Commission.

Jacqueline A. Berrien,

Chair.

Accordingly, part 1602 is amended as follows:

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, AND GINA

■ 1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.;* 42 U.S.C. 12117; 42 U.S.C. 2000ff–6.

§§ 1602.14, 1602.21, 1602.28, 1602.31 [Amended]

■ 2. Amend part 1602 by removing the words ''title VII or the ADA'' and adding in their place the words ''title VII, the ADA, or GINA'' in the following places:

a. § 1602.14.

b. § 1602.21(b).

c. § 1602.28(a).

d. § 1602.31.

[FR Doc. 2012–2420 Filed 2–2–12; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2012–0022]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the Quad City Marathon to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for four hours.

DATES: This deviation is effective from 7:30 a.m. to 11:30 a.m. on September 23, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0022 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0022 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for a four-hour period from 7:30 a.m. to 11:30 a.m., September 23, 2012, while a marathon is held between the cities of Davenport, IA and Rock Island, IL. The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: January 12, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–2387 Filed 2–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1166]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base, Camp Lejeune, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Atlantic Intracoastal Waterway (AICW) adjacent to Marine Corps Base (MCB) Camp Lejeune, North Carolina, which encompasses the navigable waters of the AICW between Mile Hammock Bay and the Onslow Swing Bridge in support of military training operations. This action is necessary to provide for safety of life on navigable waters during the military training operation. This action is intended to restrict vessel traffic on the Atlantic Intracoastal Waterway to protect mariners from the hazards associated with military training operations.

DATES: This rule is effective from 7 a.m. on February 6, 2012 through 4 p.m. on February 7, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–1166 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1166 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Chief Warrant Officer Joseph Edge, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (252) 247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 10, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base, Camp Lejeune, NC in the **Federal Register** (77 FR 1431). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the participants, patrol vessels, and other vessels transiting the event area. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

Background and Purpose

On February 6 and 7, 2012 the Marine Corps Base, Camp Lejeune, North Carolina will be conducting military training operations on the navigable waters of the Atlantic Intracoastal Waterway between position 34°32′51″ N, 077°19′36″ W and 34°34′15″ N, 077°16′16″ W (NAD 1983). Due to the need to protect mariners from the hazards associated with the military training operations, vessel traffic will be temporary restricted between Mile Hammock Bay and the Onslow Swing Bridge.

The Coast Guard is establishing a safety zone on specified waters of the Atlantic Intracoastal Waterway between position 34°32′51″ N, 077°19′36″ W and 34°34′15″ N, 077°16′16″ W (NAD 1983). This safety zone will be established in the vicinity of Camp Lejeune, NC from 7 a.m. until 11 a.m., and from 12:01 p.m. until 4 p.m. on February 6, 2012, from 7 a.m. until 11 a.m., and from 12:01 p.m. until 4 p.m. on February 7, 2012. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing safety zones on the specified navigable waters of the Atlantic Intracoastal Waterway.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, it is limited in size, and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Atlantic Intracoastal Waterway from 7 a.m. to 4 p.m. on February 6 and 7, 2012.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–(888) REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–1166 to read as follows:

§ 165.T05–1166 Safety Zone; Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base, Camp Lejeune, NC.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector North Carolina zone, as defined in 33 CFR 3.25–20, in the vicinity of the Atlantic Intracoastal Waterway between position 34°32′51″ N/077°19′36″ W and 34°34′15″ N/077°16′16″ W (NAD 1983).

(b) Definition: For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Sector North Carolina, North Carolina to act on his behalf.

(c) Regulations: (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Sector North Carolina can be reached through the Sector Duty Officer at Sector North Carolina in Wilmington, North Carolina at telephone Number 910–343–3880.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 MHz).

(d) Enforcement Period: This regulation will be enforced from 7 a.m. until 11 a.m., and from 12:01 p.m. until 4 p.m. on February 6, 2012; from 7 a.m. until 11 a.m., and from 12:01 p.m. until 4 p.m. on February 7, 2012.

Dated: January 20, 2012.

Anthony Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2012–2390 Filed 2–2–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0731; FRL–9625–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Virginia's Regulation Regarding the Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia). This revision pertains to amendments of Virginia's regulations regarding the 2010 1-hour primary national ambient air quality standard (NAAQS) for sulfur dioxide (SO_2). This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on March 5, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2011–0731. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On October 14, 2011 (76 FR 63859), EPA published a notice of proposed rulemaking (NPR) for Virginia. The NPR proposed approval of amendments to Virginia's regulation regarding the SO_2 NAAQS. The formal SIP revision was submitted by Virginia on July 12, 2011. Additional background information behind this SIP revision is discussed in detail in the NPR. EPA received no comments on this NPR.

II. Summary of SIP Revision

In June 2010, EPA revised the primary SO_2 NAAQS, establishing a 1-hour standard at the level of 75 parts per billion (ppb). The amendments to Virginia's regulations include the adoption of the 2010 1-hour SO_2 NAAQS and the nullification of the existing annual and 24-hour primary SO_2 NAAQS one year after area designations for the 2010 1-hour primary SO_2 NAAQS. These amendments can be found under Regulation 9VAC5–30–30. There were also administrative changes regarding these amendments. These changes include updates to documents incorporated by reference under 40 CFR Part 50, as well as administrative changes regarding those updates. These changes can be found under Regulation 9VAC5–20–21.E.1.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity Law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Virginia SIP revision that adopts the 2010 1-hour primary SO_2 NAAQS under Regulation 9VAC5–30–30 and updates documents incorporated by reference found under 40 CFR Part 50 under Regulation 9VAC5–20–21.E.1.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to amendments of Virginia's regulations regarding the 2010 1-hour SO_2 NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: January 17, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for Section 5–30–30. The table in paragraph (e) is amended by adding an entry for Documents Incorporated by Reference after the thirteenth existing entry for Documents Incorporated by Reference. The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5 Chapter 30—Ambient Air Quality Standards [Part III]				
*	*	*	*	*
5–30–30	Sulfur Oxides (Sulfur Dioxide)	5/25/11	2/3/12 [*Insert page number where the document begins*].	Addition of paragraphs A.2 through A.4; revisions to paragraphs A.1, C. and D.
*	*	*	*	*

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	*	*
Documents Incorporated by Reference (9 VAC 5–20–21, Section E.1.a.(1)).	Statewide	5/25/11	2/3/12 [*Insert page number where the document begins*].	Addition of paragraphs (1)(a) and (1)(u). The citations of all other paragraphs are revised.
* *	* *	*	*	*

[FR Doc. 2012–2334 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: Pursuant to the Antarctic Conservation Act of 1978, The National Science Foundation (NSF) is amending its regulations to reflect newly designated Antarctic Specially Protected Areas (ASPA), Antarctic Specially Managed Areas (ASMA) and Historical Sites or Monuments (HSM). These additions reflect measures already adopted by the Antarctic Treaty Parties at recent Antarctic Treaty Consultative Meetings (ATCM). Finally, the regulation is being revised to correct some typographical and numbering errors.

DATES: Effective February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Office of the General Counsel, (703) 292–8060.

SUPPLEMENTARY INFORMATION: The Antarctic Conservation Act of 1978, as amended (''ACA'') (16 U.S.C. 2401, *et seq.*) implements the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol'').

Annex V contains provisions for the protection of specially designated areas specially managed areas and historic sites and monuments. Section 2405 of title 16 of the ACA directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement Annex V to the Protocol.

The Antarctic Treaty Parties, which includes the United States, periodically adopt measures to establish additional specially protected areas, specially managed areas and historical sites or monuments in Antarctica. This rule is being revised to reflect three newly added Antarctic specially protected areas (ASPAs 168–171), one specially managed area (ASMA 7) and five historical sites and monuments in Antarctica (HSM 83–87).

Public Participation

The addition of these areas and sites merely reflects decisions already made by the Antarctic Treaty Parties at various international ATCM meetings. Because these amendments involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Further, because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. Although this rule is exempt from the Regulatory Flexibility Act, it has nonetheless been determined that this rule will not have a significant impact on a substantial number of small businesses. Finally, as the agency has determined that this action pertains to the foreign affairs function of the United States it accordingly is not a ''rule'' as that term is used by the Congressional Review Act (5 U.S.C. 801–808). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Environmental Impact

This final rule makes conforming changes to the National Science Foundation's regulations to reflect the substantive outcomes of recent Antarctic Treaty Consultative Meetings. The actions taken by the Antarctic Treaty Parties to specially protect and manage these new Antarctic areas and historic resources will result in added protection of the Antarctic environment and its historic resources.

No Takings Implications

The Foundation has determined that the final rule will not involve the taking of private property pursuant to E.O. 12630.

Civil Justice Reform

The Foundation has considered this final rule under E.O. 12988 on civil justice reform and determined the principles underlying and requirements of E.O. 12988 are not implicated.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Foundation has considered this final rule under the requirements of E.O. 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Foundation has determined that no further assessment of federalism implications is necessary.

Moreover, the Foundation has determined that promulgation of this final rule does not require advance consultation with Indian Tribal officials as set forth in E.O. 13175, Consultation and Coordination with Indian Tribal Governments.

Energy Effects

The Foundation has reviewed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Foundation has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Foundation has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Antarctica, Exports, Imports, Plants, Reporting and recordkeeping requirements, Wildlife.

Dated: January 18, 2012.

Lawrence Rudolph,

General Counsel.

Pursuant to the authority granted by 16 U.S.C. 2405(a)(1), NSF hereby amends 45 CFR part 670 as set forth below:

PART 670—[AMENDED]

■ 1. The authority citation for part 670 continues to read as follows:

Authority: 16 U.S.C. 2405, as amended.

■ 2. Section 670.29 is revised to read as follows:

§ 670.29 Designation of Antarctic Specially Protected Areas, Specially Managed Areas and Historic Sites and Monuments.

(a) The following areas have been designated by the Antarctic Treaty Parties for special protection and are hereby designated as Antarctic Specially Protected Areas (ASPA). The Antarctic Conservation Act of 1978, as amended, prohibits, unless authorized by a permit, any person from entering or engaging in activities within an ASPA. Detailed maps and descriptions of the sites and complete management plans can be obtained from the National Science Foundation, Office of Polar Programs, National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

ASPA 101 Taylor Rookery, Mac. Robertson Land
ASPA 102 Rookery Islands, Holme Bay, Mac. Robertson Land
ASPA 103 Ardery Island and Odbert Island, Budd Coast, Wilkes Land
ASPA 104 Sabrina Island, Northern Ross Sea, Antarctica
ASPA 105 Beaufort Island, McMurdo Sound, Ross Sea
ASPA 106 Cape Hallett, Northern Victoria Land, Ross Sea
ASPA 107 Emperor Island, Dion Islands, Marguerite Bay, Antarctic Peninsula
ASPA 108 Green Island, Berthelot Islands, Antarctic Peninsula
ASPA 109 Moe Island, South Orkney Islands
ASPA 110 Lynch Island, South Orkney Islands
ASPA 111 Southern Powell Island and adjacent islands, South Orkney Islands
ASPA 112 Coppermine Peninsula, Robert Island, South Shetland Islands
ASPA 113 Litchfield Island, Arthur Harbour, Anvers Island, Palmer Archipelago
ASPA 114 Northern Coronation Island, South Orkney Islands
ASPA 115 Lagotellerie Island, Marguerite Bay, Graham Land
ASPA 116 New College Valley, Caughley Beach, Cape Bird, Ross Island
ASPA 117 Avian Island, Marguerite Bay, Antarctic Peninsula
ASPA 118 Summit of Mount Melbourne, Victoria Land
ASPA 119 Davis Valley and Forlidas Pond, Dufek Massif, Pensacola Mountains
ASPA 120 Pointe-Geologie Archipelego, Terre Adelie
ASPA 121 Cape Royds, Ross Island
ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island
ASPA 123 Barwick and Balham Valleys, Southern Victoria Land
ASPA 124 Cape Crozier, Ross Island
ASPA 125 Fildes Peninsula, King George Island (25 de Mayo)
ASPA 126 Byers Peninsula, Livingston Island, South Shetland Islands
ASPA 127 Haswell Island
ASPA 128 Western shore of Admiralty Bay, King George Island, South Shetland Islands
ASPA 129 Rothera Point, Adelaide Island
ASPA 130 Tramway Ridge, Mount Erebus, Ross Island
ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land ASPA 132 Potter Peninsula, King George Island (Isla 25 de Mayo) (South Shetland Islands)
ASPA 133 Harmony Point, Nelson Island, South Shetland Islands
ASPA 134 Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula
ASPA 135 North-eastern Bailey Peninsula, Budd Coast, Wilkes Land
ASPA 136 Clark Peninsula, Budd Coast, Wilkes Land
ASPA 137 North-west White Island, McMurdo Sound
ASPA 138 Linnaeus Terrace, Asgard Range, Victoria Land
ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago
ASPA 140 Parts of Deception Island, South Shetland Islands
ASPA 141 Yukidori Valley, Langhovde, Lutzow-Holm Bay
ASPA 142 Svarthamaren
ASPA 143 Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land
ASPA 144 Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands
ASPA 145 Port Foster, Deception Island, South Shetland Islands
ASPA 146 South Bay, Doumer Island, Palmer Archipelago
ASPA 147 Ablation Valley and Ganymede Heights, Alexander Island
ASPA 148 Mount Flora, Hope Bay, Antarctic Peninsula
ASPA 149 Cape Shirreff and San Talmo Island, Livingston Island, South Shetland Islands
ASPA 150 Ardley Island, Maxwell Bay, King George Island (25 de Mayo)
ASPA 151 Lions Rump, King George Island, South Shetland Islands
ASPA 152 Western Bransfield Strait
ASPA 153 Eastern Dallmann Bay
ASPA 154 Botany Bay, Cape Geology, Victoria Land
ASPA 155 Cape Evans, Ross Island
ASPA 156 Lewis Bay, Mount Erebus, Ross Island
ASPA 157 Backdoor Bay, Cape Royds, Ross Island
ASPA 158 Hut Point, Ross Island
ASPA 159 Cape Adare, Borchgrevink Coast
ASPA 160 Frazier Islands, Windmill Islands, Wilkes Land, East Antarctica
ASPA 161 Terra Nova Bay, Ross Sea
ASPA 162 Mawson's Huts, Cape Denison, Commonwealth Bay, George V Land, East Antarctica
ASPA 163 Dakshin Gangotri Glacier, Dronning Maud Land
ASPA 164 Scullin and Murray Monoliths, Mac. Robertson Land
ASPA 165 Edmonson Point, Wood Bay, Ross Sea
ASPA 166 Port-Martin, Terre Adelie
ASPA 167 Hawker Island, Vestfold Hills, Ingrid Christensen Coast, Princess Elizabeth Land, East Antarctica
ASPA 168 Mount Harding, Grove Mountains, East Antarctica
ASPA 169 Amanda Bay, Ingrid Christensen Coast, Princess Elizabeth Land, East Antarctica
ASPA 170 Marion Nunataks, Charcot Island, Antarctic Peninsula ASPA 171 Narebski Point, Barton Peninsula, King George Island

(b) The following areas have been designated by the Antarctic Treaty

Parties for special management and have been designated as Antarctic Specially Managed Areas (ASMA). Detailed maps and descriptions of the sites and complete management plans can be obtained from the National Science Foundation, Office of Polar Programs, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

ASMA 1 Admiralty Bay, King George Island

ASMA 2 McMurdo Dry Valleys, Southern Victoria Land

ASMA 3 Cape Denison, Commonwealth Bay, George V Land, East Antarctica

ASMA 4 Deception Island

ASMA 5 Amundsen-Scott South Pole Station, South Pole

ASMA 6 Larsemann Hills, East Antarctica

ASMA 7 Southwest Anvers Island and Palmer Basin

(c) The following areas have been designated by the Antarctic Treaty Parties as historic sites or monuments (HSM). The Antarctic Conservation Act of 1978, as amended, prohibits any damage, removal or destruction of a historic site or monument listed pursuant to Annex V to the Protocol.

Descriptions of the sites or monuments can be obtained from the National Science Foundation, Office of Polar Programs, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

HSM 1 Flag mast erected in December 1965 at South Geographical Pole by the First Argentine Overland Polar Expedition.

HSM 2 Rock cairn and plaques erected in January 1961 at Syowa Station in memory of Shun Fukushima.

HSM 3 Rock cairn and plaque erected in January 1930 by Sir Douglas Mawson on Proclamation Island, Enderby Land.

HSM 4 Station building to which a bust of V.I. Lenin is fixed together with a plaque in memory of the conquest of the Pole of Inaccessibility, by Soviet Antarctic Explorers in 1958.

HSM 5 Rock cairn and plaque at Cape Bruce, Mac. Robertson Land, erected in February 1931 by Sir Douglas Mawson.

HSM 6 Rock cairn and canister at Walkabout Rocks, Vestfold Hills, Princess Elizabeth Land, erected in 1939 by Sir Hubert Wilkins.

HSM 7 Stone with inscribed plaque, erected at Mirny Observatory, Mabus Point, in memory of driver-mechanic Ivan Kharma.

HSM 8 Metal Monument sledge and plaque at Mirny Observatory, Mabus Point, in memory of driver-mechanic Anatoly Shcheglov.

HSM 9 Cemetery on Buromskiy Island, near Mirny Observatory.

HSM 10 Building (Magnetic Observatory) at Dobrowolsky Station, Bunger Hills, with plaque in memory of the opening of Oasis Station in 1956.

HSM 11 Heavy Tractor at Vostock Station with plaque in memory of the opening of the Station in 1957.

HSM 14 Site of ice cave at Inexpressible Island, Terra Nova Bay, constructed in March 1912 by Victor Campbell's Northern Party.

HSM 15 Hut at Cape Royds, Ross Island, built in February 1908 by the British Antarctic Expedition.

HSM 16 Hut at Cape Evans, Ross Island, built in January 1911 by the British Antarctic Expedition.

HSM 17 Cross on Wind Vane Hill, Cape Evans, Ross Island, erected by the Ross Sea Party in memory of three members of the party who died in the vicinity in 1916.

HSM 18 Hut at Hut Point, Ross Island, built in February 1902 by the British Antarctic Expedition.

HSM 19 Cross at Hut Point, Ross Island, erected in February 1904 by the British Antarctic Expedition in memory of George Vince.

HSM 20 Cross on Observation Hill, Ross Island, erected in January 1913 by the British Antarctic Expedition in memory of Captain Robert F Scott's party which perished on the return journey from the South Pole.

HSM 21 Remains of stone hut at Cape Crozier, Ross Island, constructed in July 1911 by the British Antarctic Expedition.

HSM 22 Three huts and associated relics at Cape Adare Two built in February 1899 the third was built in February 2011 all by the British Antarctic Expedition.

HSM 23 Grave at Cape Adare of Norwegian biologist Nicolai Hanson.

HSM 24 Rock cairn, known as ''Amundsen's cairn,'' at Mount Betty, Queen Maud Range erected by Roald Amundsen in January 1912.

HSM 26 Abandoned installations of Argentine Station ''General San Martin'' on Barry Island, Debenham Islands, Marguerite Bay, Antarctic Peninsula.

HSM 27 Cairn with a replica of a lead plaque erected at Megalestris Hill, Petermann Island in 1909 by the second French expedition.

HSM 28 Rock Cairn at Port Charcot, Booth Island, with wooden pillar and plaque.

HSM 29 Lighthouse named ''Primero de Mayo'' erected on Lambda Island, Melchior Islands, by Argentina in 1942.

HSM 30 Shelter at Paradise Harbour erected in 1950.

HSM 32 Concrete Monolith erected in 1947 near Capitan Arturo Prat Base on Greenwich Island, South Shetland Islands.

HSM 33 Shelter and cross with plaque near Capitan Arturo Prat Base Greenwich Island, South Shetland Islands.

HSM 34 Bust at Capitan Arturo Prat base Greenwich Island, South Shetland Islands, of Chilean naval hero Arturo Prat.

HSM 35 Wooden cross and statue of the Virgin of Carmen erected in 1947 near Capitan Arturo Prat base Greenwich Island, South Shetland Islands.

HSM 36 Replica of a metal plaque erected by Eduard Dallman at Potter Cove, King George Island, South Shetland Islands.

HSM 37 Statue erected in 1948 at General Bernando O'Higgins Base (Chile) Trinity Peninsula.

HSM 38 Wooden hut on Snow Hill Island built in February 1902 by the Swedish South Polar Expedition.

HSM 39 Stone hut at Hope Bay, Trinity Peninsula built in January 1903 by the Swedish South Polar Expedition.

HSM 40 Bust of General San Martin, grotto with statue of the Virgin Lujan, a flag mast and graveyard at Base Esperanza, Hope Bay Trinity Peninsula, erected by Argentina in 1955.

HSM 41 Stone hut and grave at Paulet Island built in 1903 by members of the Swedish South Polar Expedition.

HSM 42 Area of Scotia bay, Laurie Island, South Orkney containing stone huts built in 1903 by the Scottish Antarctic Expedition, Argentine meteorological hut and magnetic observatory (Moneta house) and graveyard.

HSM 43 Cross erected in 1955 and subsequently moved to Belgrano II Station, Nunatak Bertrab, Confin Coast, Coats Land in 1979.

HSM 44 Plaque erected at temporary Indian Station ''Dakshin Gangotri,'' Princess Astrid Kyst, Droning Maud Land, listing the names of the first Indian Antarctic Expedition.

HSM 45 Plaque on Brabant Island, on Metchnikoff Point, at a height of 70m on the crest of the moraine separating this point from the glacier and bearing an inscription.

HSM 46 All of the buildings and installations of Port-Martin Base, Terre Ad6lie, constructed in 1950 by the 3rd French expedition in Terre Ad6lie.

HSM 47 Wooden building called ''Base Marret'' on the Ile des Petrels, Terre Ad6lie.

HSM 48 Iron Cross on the North-East headland of the Ile des Petrels, Terre Ad6lie.

HSM 49 Concrete pillar erected by the First Polish Antarctic Expedition at Dobrowski Station on Bunger Hill in January 1959, to measure acceleration due to gravity.

HSM 50 Brass Plaque bearing the Polish Eagle at Fildes Peninsula, King George Island, South Shetland Islands.

HSM 51 Grave of Wlodzimierz Puchalski, surmounted by an iron cross south of Arctowski station on King George Island, South Shetland Islands.

HSM 52 Monolith commemorating the establishment on 20 February 1985 of the ''Great Wall Station'' on Fildes Peninsula, King George Island, South Shetland Islands.

HSM 53 Bust of Captain Luis Alberto Pardo, monolith and plaques on Point Wild, Elephant Island, South Shetland Islands.

HSM 54 Richard E. Byrd Historic Monument, a bronze bust at McMurdo Station.

HSM 55 East Base, Antarctica, Stonington Island (Buildings and artifacts) erected by the Antarctic Service Expedition (1939–1941) and the Ronne Antarctic Research Expedition (1947–1948).

HSM 56 Waterboat Point, Danco Coast, (remains of hut and environs).

HSM 57 Plaque at ''Yankee Bay'' (Yankee Harbour), MacFarlane Strait, Greenwich Island, South Shetland Islands.

HSM 59 Cairn on Half Moon Beach, Cape Shirreff, Livingston Island, South Shetland Islands and a Plaque on 'Cerro Gaviota' opposite San Telmo Islets.

HSM 60 Wooden plaque and cairn placed in November 1903 at ''Penguins Bay,'' Seymour Island (Marambio), James Ross Archipelago.

HSM 61 ''Base A'' at Port Lockroy, Goudier Island, off Wiencke Island.

HSM 62 ''Base F'' (Wordie House), on Winter Island, Argentine Islands.

HSM 63 ''Base Y'' on Horseshoe Island, Marguerite Bay, western Graham Land.

HSM 64 ''Base E'' on Stonington Island, Marguerite Bay, western Graham Land.

HSM 65 Message post erected in January 1895 on Svend Foyn Island, Possession Islands.

HSM 66 Prestrud's cairn, Scott Nunataks, Alexandra Mountains, Edward VII Peninsula erected in December 1911.

HSM 67 Rock shelter known as ''Granite House,'' erected in 1911 at Cape Geology, Granite Harbour.

HSM 68 Site of depot at Hells Gate Moraine, Inexpressible Island, Terra Nova Bay.

HSM 69 Message post at Cape Crozier, Ross Island, erected January 1902 by Capt. Robert F. Scott's Discovery Expedition.

HSM 70 Message post at Cape Wadworth, Coulman Island, erected January 1902 by Capt. Robert F. Scott.

HSM 71 Whalers Bay, Deception Island, South Shetland Islands (includes whaling artifacts).

HSM 72 Mikkelsen Cairn, Tryne Islands, Vestfold Hills.

HSM 73 Memorial Cross for the 1979 Mount Erebus crash victims, erected in January 1987 at Lewis Bay, Ross Island.

HSM 74 Unnamed cove on the south-west coast of Elephant Island, South Shetland Islands, including the foreshore and intertidal area, in which the wreckage of a large wooden sailing vessel is located.

HSM 75 ''A Hut'' of Scott base, Pram Point, Ross Island.

HSM 76 Ruins of base Pedro Aguirre Cerda, Pendulum Cove, Deception Island, South Shetland Islands.

HSM 77 Cape Denison, Commonwealth Bay, George V Land, including Boat Harbour and the historic artifacts contained within its waters.

HSM 78 Memorial Plaque at India Point, Humboldt Mountains, Wohlthat Massif, central Dronning Maud Land.

HSM 79 Lillie Marleen Hut, Mt. Dockery, Everett Range, Northern Victoria Land.

HSM 80 Amundsen's Tent erected in December 1911 at the South Pole.

HSM 81 Rocher du Debarquement (Landing Rock).

HSM 82 Monument to the Antarctic Treaty and Plaques, Fildes Peninsula, King George Island, South Shetland Islands.

HSM 83 Base ''W'' established in 1956 at Detaille Island, Lallemande Fjord, Loubert Coast.

HSM 84 Hut erected in 1973 at Damoy Point, Dorian Bay, Wiencke Island, Palmer Archipelago.

HSM 85 Plaque Commemorating the PM–3A Nuclear Power Plant at McMurdo Station.

HSM 86 No.1 Building Commemorating China's Antarctic Expedition at Great Wall/Station.

[FR Doc. 2012–1392 Filed 2–2–12; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

[ET Docket No. 10–98; FCC 11–171]

Amateur Radio Use of the Allocation at 5 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to facilitate more efficient and effective use by the Amateur Radio Service of five channels in the 5330.5–5406.4 kHz band (the 60 meter band). Specifically, and consistent with our proposals in the *Notice of Proposed Rulemaking* in this proceeding, the Commission replaces one of the channels with a less encumbered one, increases the maximum authorized power amateur stations may transmit in this band, and authorizes amateur stations to transmit three additional emission designators. The Commission also adopts an additional operational rule that prohibits the use of automatically controlled digital stations and makes editorial revisions to the relevant portions of the Table of Frequency Allocations (Allocation Table) and our service rules.

DATES: Effective March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, 202–418–2450, *tom.mooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 10–98, FCC 11–171, adopted November 16, 2011 and released November 18, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Report and Order

1. On May 4, 2010, the Commission issued an *NPRM* in this proceeding, in which it proposed to adopt the three rule modifications requested by the American Radio Relay League (ARRL). The Commission also identified and sought comment on four operational issues: (1) Would a transmission time limit help ensure that amateur operators transmitting the two data emissions avoid causing harmful interference to Federal users in instances where

Federal agencies exercise their primary use of the 60 meter band, and if so, would 3 minutes be sufficient, or is another limit more appropriate? (2) Should amateur stations be permitted to transmit emission types in addition to those proposed in the *NPRM*? (3) Would a Voice-Operated Transmit (VOX) mode of operation, which ARRL recommended that we require for amateur operators transmitting phone emissions, increase the potential for interference because of its susceptibility to keying a radio to transmit under high surrounding noise environments such as might be found in an emergency operations center? (4) Should amateur operators that provide emergency communications using the 60 meter band be encouraged to add a sound card-generated Automatic Link Establishment (ALE) capability to their stations?

2. The Commission first addresses the three key rule changes identified in the *NPRM* that can lead to more efficient and effective use of the 60 meter band by the Amateur Radio Service: replacing one channel, increasing power limits, and adding emission designators. The Commission then discusses modifications to specific operational rules, including several matters where it concludes that it is unnecessary to change the existing rules.

Replacement Channel

3. In its petition, ARRL requested that the Commission replace one of the five channels in the 60 meter band (5368 kHz) with a channel (5358.5 kHz) that the National Telecommunications and Information Administration (NTIA) has identified. ARRL based its request on reports from amateur operators of frequent interference from a digital signal on the existing authorized channel. The Commission concludes that its proposal to replace the 5368 kHz channel with one centered on 5358.5 kHz will benefit amateur operations in the 60 meter band and adopts this rule change.

4. The Commission notes that three commenters suggest that the new channel should be an additional channel, not a replacement channel. Because the existing model of secondary amateur radio use of five channels is acceptable to the primary Federal users in the 60 meter band and was the basis of the discussions between ARRL and NTIA that formed the outline of our proposal, the Commission did not pursue this proposal.

5. Finally, in considering those comments that discuss the adjustments that amateur radio operators and equipment manufacturers will need to make to use the replacement channel, the Commission concludes that proposed § 97.303(h) requires a *de minimis* adjustment. This action ensures that a large installed base of equipment is not rendered technically out of compliance under our modified rules. Accordingly, the Commission amends footnote US381 and § 97.303(h) by removing 5368 kHz, by adding the center (assigned) frequency 5358.5 kHz, and by defining the 60 meter band as the 5330.5–5406.4 kHz band; and also amends § 97.303(h) by adding carrier frequencies for each of the five channels in the 60 meter band that are 1.5 kHz below the center frequency. In addition, the Commission renumbers footnote US381 as US23 to be consistent with its current numbering system for domestic footnotes that is based on frequency order.

Power Increase

6. Section 97.313(i) states that no station may transmit with an effective radiated power (ERP) exceeding 50 W PEP on the 60 meter band and also provides a simplified means of calculating ERP. In the *NPRM,* the Commission proposed to increase the maximum ERP that amateur stations may transmit on channels in the 60 meter band from 50 to 100 W PEP. Based on the record, the Commission adopts its proposal.

7. The Commission believes that the examples cited by the commenters offer compelling reasons to support its tentative conclusion that an increase in maximum power would serve to facilitate many amateur radio communications with minimal risk of harmful interference. It also rejects requests for higher power limits, such as 500 W PEP. There is no indication that a greater power limit would produce substantially greater benefits or that any increased potential for harmful interference at this power limit has been fully considered. Additionally, the Commission does not believe that it would be useful to complicate the rules by establishing different power limits for different circumstances, as some commenters suggest. Because the minimal 50 W PEP increase does not significantly increase the potential for interference between stations, such a distinction is not necessary or warranted. Just as with the existing 50 W PEP power limit, a 100 W limit that applies to all channels will be straightforward, easy to understand, and easy to apply. Thus, the Commission concludes that there is a tangible benefit—greater communication abilities that will enhance amateur emergency communication activities—that will accrue if it increase the power limit to 100 W PEP and that the record shows that the costs (*i.e.,* the increased potential for harmful interference) are minimal. The Commission specifically rejects alternate options such as an even higher power increase or different power limits for different circumstances, because these options would introduce added costs—a significantly greater interference potential and added regulatory complexity—that would sharply reduce the overall benefits of the rule change.

8. As part of its amendment of the transmitter power standard applicable to the 60 meter band, the Commission clarifies the second sentence in § 97.313(i) by revising ''dipole'' to read ''half-wave dipole antenna,'' by removing unnecessary text, and by explicitly stating that a numeric gain of 1 is equivalent to 0 dBd. The Commission likewise corrects an errant cross-reference in § 97.313(f) of its transmitter power rules that was introduced when it recently combined two footnotes.

Additional Emissions

9. Under the existing rules, only upper sideband voice transmissions are permitted in the 60 meter band. In the *NPRM,* the Commission proposed to authorize the use of three additional emission designators in the band: CW emission 150HA1A, which is Morse telegraphy by means of on-off keying, and data emissions 2K80J2D and 60H0J2B. In § 97.307(f)(14)(i) of the proposed rules, the Commission restricts emission designator 2K80J2D to data using PACTOR–III technique and emission designator 60H0J2B to data using PSK31 technique. The Commission also sought comment on whether amateur stations could be permitted to transmit emission types in addition to those requested by ARRL in the 60 meter band without increasing the likelihood of interference to primary users. As discussed, the Commission adopts its proposal to allow the use of the three additional emission designators.

10. *Emission Designators.* Our proposal drew a wide range of responses. Although the majority of commenters fully or generally support the proposals that the Commission made in the *NPRM,* many commenters expressed concerns about some or all of the proposed new emission designators. Commenters were most supportive of the proposed addition of emission designators 150HA1A and 60H0J2B. By contrast, the proposal to add emission type 2K80J2D proved much more divisive. The record also includes a few

commenters who are skeptical that additional emission types are appropriate for the 60 meter band.

11. Finally, some commenters suggest limiting some or all of the proposed emissions to a specified channel or channels within the 60 meter band. While the specific channel use proposals vary by commenter, there is a general view among these commenters that such an approach would help offset possible interference between emission types or that a specific channel/mode assignment would promote efficiency.

12. *Specific Techniques of the Data Emissions.* Commenters strongly believe that the use of the emission designators 60H0J2B and 2K80J2D should not be restricted to the specific techniques of PSK31 and PACTOR–III, respectively. This approach differs from what was proposed in the *NPRM.*

13. The Commission adopts its proposal to authorize the use of three additional emission designators in the 60 meter band. These additional capabilities can serve to enhance amateur emergency communications and allow for greater experimentation in the band, and it believes that doing so is in the public interest. We note, however, that because ''emission J2B'' is specifically defined in part 97 of our rules to be a Radio Teletype (RTTY) emission, emission designator 60H0J2B must be codified as a RTTY emission in order to provide for consistency within part 97 of our rules. Accordingly, the Commission authorizes control operators to transmit the following additional emission types and designators in the 60 meter band: CW emissions, limited to emission 150HA1A (*i.e.,* Morse code telegraphy); data emissions, limited to emission 2K80J2D (exemplified by PACTOR–III); and RTTY emissions, limited to emission 60H0J2B (exemplified by PSK31).

14. The Commission recognizes that many commenters are concerned that the addition of new emission types—data emission types in general and PACTOR–III specifically—holds the risk of reducing the utility of these channels for many amateurs, especially for those who may not readily recognize data transmissions and may avoid use of the channels out of an abundance of caution. The Commission concludes that there are ways to minimize any potential disruption that the new emission types could cause. ARRL notes that amateur ''stations typically utilize relatively short transmissions in telegraphy and are able to manually detect the presence of a non-Amateur signal within the channel bandwidth while operating in that mode'' and that the ''same is true of 60H0J2B and 2K80J2D emissions, if careful manual operating practices are used.'' Moreover, ARRL commits to the necessary dissemination of ''best practices'' information to the amateur community on a timely basis and to the adoption and publication of a comprehensive band plan for these channels that will maintain maximum flexibility in Amateur use without interference. Lastly, the Commission adopts certain operational rules, which will serve to ensure that the new emission types are used in a manner that promotes continued shared use of the band by all.

15. The Commission declines to adopt any emission designators beyond the three proposed in the *NPRM.* ARRL states that its discussions with NTIA about the additional emission types were very specific and what was endorsed by NTIA was very specifically limited to the three additional emissions requested in its petition and no others. The Commission agrees that this is the best course, as it is consistent with existing understandings between Federal and amateur radio interests. Similarly, it does not find it necessary to modify the band plan by, for example, requiring that certain emission types be used on specified channels or during specified emergency events. The Commission believes that ARRL and the amateur community can work within the framework we establish to promote continued cooperative use of the 60 meter band and that the imposition of such complex and burdensome channel and emission use restrictions is unnecessary. In sum, the additional emission designators will benefit the amateur radio community by providing new opportunities to use the 60 meter band. While the Commission recognizes that this added flexibility means that some users could face reduced utility of the band for certain emission types, we are confident that any detrimental impact can be avoided if the amateur radio community continues its legacy of following best practices and exercising sound judgment in sharing the available spectrum.

16. Finally, the Commission agrees with commenters that limiting digital operation to a specific technique discourages the further development of additional techniques, which may be more efficient than those currently in use. Therefore, the Commission authorizes an amateur station transmitting RTTY emission 60H0J2B or data emission 2K80J2D to use any unspecified digital code, subject to the requirements of § 97.309(b). The Commission amended § 97.305(c) by inserting the 60 meter band entry, which lists ''Phone, RTTY, data'' under the heading ''Emission types authorized.'' In addition, it amended § 97.307 by adding new paragraph (f)(14) to list the emission types and designators and other restrictions.

Operational Requirements

17. *Transmission time limit.* The Commission also sought comment on whether to adopt a rule addressing transmission time limits. The existing rules address station identification and require each amateur station operating on the 60 meter band to transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every ten minutes during a communication, for the purpose of making the source of the transmissions from the station clearly known. The Commission proposed, at a minimum, to add a rule stating that ''[t]he control operator of a station transmitting data emissions must exercise care to limit the length of transmission so as to avoid causing harmful interference to United States Government stations'' but also asked whether codifying a specific time limit would help ensure that amateur licensees avoid causing harmful interference to primary Federal users.

18. The Commission declines to adopt a specific limit on transmission length and adopts the more general rule language that it proposed. Based on the clear history of successful amateur service sharing of the 60 meter band and the lack of a consensus among the commenters, the Commission finds that there is no need to adopt a specific time limit. It believes that the existing station identification rule and the new rule text, together with good amateur radio practice and the instruction and support of ARRL (including its anticipated ''best practices'' guide), will ensure that amateur radio operators using the data and RTTY emissions do not cause harmful interference to primary Federal users. Accordingly, the Commission amends footnote US381 (renumbered herein as US23) and § 97.307(f)(14)(ii)(B) by adding the proposed sentences (except that RTTY emissions are listed separately from data emissions).

19. *Automatically Controlled Digital Stations.* Section 97.221(c) permits automatic control of an amateur station while transmitting a RTTY or data emission and § 97.109 states that when a station is being automatically controlled, the control operator is not required to be at the control point. Commenters express concern that data emissions—in particular, PACTOR–III—may not effectively detect upper

sideband (USB) emissions in progress and inhibit or cease transmissions when necessary when they are operating as automatic, unattended data stations. ARRL states that amateur stations typically utilize relatively short transmissions in telegraphy and are able to manually detect the presence of a non-amateur signal within the channel bandwidth while operating in that mode and that the same would be true of 60H0J2B and 2K80J2D emissions, if careful ''manual'' operating practices are used. The Commission finds merit in the commenters' concerns and concludes that ARRL's underlying assumption that stations transmitting data emissions are not under automatic control should be incorporated in the Commission's rules as part of its decision to add new data emission types. The Commission's prohibition on automatically controlled stations will also help ensure that when Federal agencies need to exercise their primary use of the 60 meter band frequencies, amateur licensees will be better positioned to avoid causing harmful interference and it included this restriction in § 97.221(c).

20. *Operation on Channel Centers.* Section 97.303(h) currently requires that amateur operators ensure that their station's transmission occupies only 2.8 kHz centered at each of the five center frequencies. The *NPRM* proposed that, for amateur stations transmitting CW emissions and PSK31 data emissions, the carrier frequency shall be set to the center frequency. NTIA has requested that the Commission continue to restrict amateur service transmissions in this manner.

21. The Commission adopts the center frequency requirement as proposed in the *NPRM.* Because the amateur service operates in the 60 meter band on a secondary basis, the Commission pays particular attention to NTIA's position and the interests of Federal agencies that have primary status in the band. The Commission concludes that continuing to restrict amateur stations to transmitting on the center frequencies will maintain the limited number of amateur operators using the five channels at any given time and provide certainty as to where such operations can be found. By not upsetting the expectations of the Federal users of the band, it is confident that they will be able to immediately reclaim these frequencies from secondary amateur radio operations, if and when necessary. Accordingly, the Commission amends § 97.303(h) to specify that control operators of stations transmitting phone, data, and RTTY emissions (emission designators 2K80J3E, 2K80J2D, and 60H0J2B, respectively) may set the carrier frequency 1.5 kHz below the center frequency, and that, for stations transmitting CW emissions (emission designator 150HA1A), the carrier frequency is set to the center frequency.

22. *VOX Requirement.* The Commission requested comment on whether amateur operators should be required to use VOX in the phone emission mode, which ARRL stated would permit a Federal user to interrupt an amateur station's transmission quickly and easily without waiting for an unpredictable end of the transmission. The Commission specifically sought comment on whether a VOX mode of operation might increase the potential for interference because of its susceptibility to keying a radio to transmit under high surrounding noise environments such as might be found in an emergency operations center.

23. The Commission agrees with the majority of commenters that improper operation of VOX would cause increased interference, and it therefore declines to require the use of VOX by amateur stations transmitting a phone emission in the 60 meter band. Moreover, amateur communications in the 60 meter band already successfully co-exist without a VOX requirement, and the Commission sees no reason why this cannot continue. The Commission will rely on control operators to choose between PTT and VOX operations, based on their abilities, equipment, and operating conditions.

24. *ALE Capability.* At the request of NTIA, the Commission solicited comment on whether amateur operators that provide emergency communications using the 60 meter band should be encouraged to add a sound card generated ALE capability to their stations. ALE is a standard for initiating and sustaining communications using High Frequency (HF) radio.

25. The Commission recognizes that ALE allows emergency control operators to use multiple channels efficiently and reduces the time spent trying to connect with another station. However, it also shares commenters' concerns that there is a potential for channel monopolization due to periodic transmissions, which are not subject to manual control, and that users who do not have ALE capability may have no way of determining who is interfering with their operation. ARRL takes no position on whether we should encourage amateur operators to add ALE capability to their stations but does state that it would not support modifying the Commission's Rules to specifically require ALE. One commenter states that the inclusion of ALE on 60 meters is a larger issue and ought to be addressed in a separate proceeding that considers amateur ALE operation in general. The Commission further notes that ARRL and local emergency management agencies already have the latitude to encourage—and indeed require—that participants in specialized emergency communications programs (such as the Radio Amateur Civil Emergency Service (RACES) and Amateur Radio Emergency Service (ARES)) add a sound card-generated ALE capability to their stations. Because there is no consensus in the record, nor evidence that adding ALE will be beneficial in all situations, the Commission declines to make any recommendation as to its use as part of this proceeding.

26. *Additional Issues Raised by Commenters.* Finally, the Commission briefly discusses three issues raised by commenters that fall outside the scope of this proceeding, are not necessary to grant the relief sought by ARRL, or that are already provided for in our current rules. Commenters request that the Commission investigate expanding the 60 meter band allocation beyond the five channels that are currently allocated. The Commission notes that NTIA has recently indicated that it cannot support ARRL's request for a secondary amateur service allocation of 50 kilohertz near 5 MHz, and it did not propose such an action in the *NPRM.* One commenter recommends that, for routine messages, any one transmission of the two digital mode emissions be restricted to three hundred characters and that any one transmission of CW be restricted to 40 characters. No other party raised this issue, it was not within the scope of the *NPRM,* and it is not directly germane to providing the relief sought by ARRL. Lastly, commenters requested that the Commission allow antenna tuning transmissions. This type of transmitting is already authorized pursuant to § 97.305(b), which authorizes amateur stations to transmit test emissions on HF and MF frequencies to, among other purposes, match transmitters to antennas.

Final Regulatory Flexibility Certification

27. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not,

[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

28. In this Report and Order, the Commission amends the amateur service rules in order to replace one of the channels in the 60 meter band with a less encumbered channel, to provide for additional emission designators, and to increase the maximum authorized power. Because ''small entities,'' as defined in the RFA, are not persons eligible for licensing in the amateur service, the proposed changes to Part 97 do not apply to ''small entities.'' Rather, they apply exclusively to individuals who are the control operators of amateur radio stations.

29. As of April 1, 2011, the Commission has issued the following types of licenses in the 5330.5–5406.4 kHz band (60 meter band): (1) 91 call signs to 41 licensees in the Conventional Industrial/Business Pool Radio Service (IG); (2) five call signs to four licensees in the Coastal Group Radio Service (MC); and (3) one call sign in the Aeronautical and Fixed Radio Service (AF).

30. *IG Licensees.* We note that, while the 91 call signs list the 5005–5450 kHz band, these IG licensees are actually authorized to operate only on the 13 carrier frequencies (with a maximum necessary bandwidth of 2.8 kHz) listed in footnote US22 of the Allocation Table (*i.e.,* 5046.6, 5052.6, 5055.6, 5061.6, 5067.6, 5074.6, 5099.1, 5102.1, 5135, 5140, 5192, 5195, and 5313.6 kHz) and that none of these frequencies are within the 60 meter band. Therefore, we find that the 41 IG licensees are not affected by the rule changes that we adopt today.

31. *MC Licensees.* With regard to the four MC licensees (Globe Wireless, CruiseEmail, XNet Yacht Association, and Richard C Giddings), we note that only one licensee is authorized to transmit within the allocated channel bandwidth of a 60 meter band frequency. Specifically, CruiseEmail is authorized (pursuant to call sign *KDS*) to operate a public coast station (station class FC) in Olympia, Washington. We note that the necessary bandwidth (5330–5332.8 kHz) of this primary station overlaps the 5332 kHz channel (5330.6–5333.4 kHz), which is allocated to the amateur service on a secondary basis.

32. *AF Licensees.* With regard to the sole AF licensee, we note that this licensee (Aviation Spectrum Resources Inc) is authorized (pursuant to call sign *KNE96*) to operate at the Agana NAS Guam International Airport in Agana, Guam. We further note that the necessary bandwidth (5370–5372.8 kHz) of this primary aeronautical fixed station (station class AX) overlaps the 5373 kHz channel (5371.6–5374.4 kHz), which is allocated to the amateur service on a secondary basis.

33. Accordingly, the Commission certifies that the rules adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Report and Order including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[6]

Congressional Review Act

34. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

35. Pursuant to Sections 4(i), 301, 302(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302a(a) 303(c), 303(f), 303(g), and 303(r), this Report and Order is adopted and parts 2 and 97 of the Commission's Rules are amended as set forth in Final Rules, effective March 5, 2012.

36. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

37. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[7] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.[8]

Ordering Clauses

List of Subjects in 47 CFR Parts 2 and 97

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 97 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended to read as follows.

■ a. Page 8 is revised.

■ b. In the list of United States (US) Footnotes, footnote US23 is added and footnote US381 is removed.

§ 2.106 Table of Frequency Allocations.

* * * * *

The additions and revisions read as follows:

BILLING CODE 6712–01–P

[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] 15 U.S.C. 632.

[7] *See* 5 U.S.C. 801(a)(1)(A).

[8] *See* 5 U.S.C. 604(b).

4.063-4.438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 5.128			4.063-4.438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 US82 US296 US340		Maritime (80) Aviation (87)
4.438-4.65 FIXED MOBILE except aeronautical mobile (R)		4.438-4.65 FIXED MOBILE except aeronautical mobile	4.438-4.65 FIXED MOBILE except aeronautical mobile (R) US22 US340		Maritime (80) Aviation (87) Private Land Mobile (90)
4.65-4.7 AERONAUTICAL MOBILE (R)			4.65-4.7 AERONAUTICAL MOBILE (R) US282 US283 US340		Aviation (87)
4.7-4.75 AERONAUTICAL MOBILE (OR)			4.7-4.75 AERONAUTICAL MOBILE (OR) US340		
4.75-4.85 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING 5.113	4.75-4.85 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	4.75-4.85 FIXED BROADCASTING 5.113 Land mobile	4.75-4.85 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Private Land Mobile (90)
4.85-4.995 FIXED LAND MOBILE BROADCASTING 5.113			4.85-4.995 FIXED MOBILE US340	4.85-4.995 FIXED US340	Aviation (87) Private Land Mobile (90)
4.995-5.003 STANDARD FREQUENCY AND TIME SIGNAL (5 MHz)			4.995-5.005 STANDARD FREQUENCY AND TIME SIGNAL (5 MHz) US1 US340		
5.003-5.005 STANDARD FREQUENCY AND TIME SIGNAL Space research					
5.005-5.06 FIXED BROADCASTING 5.113			5.005-5.06 FIXED US22 US340		Aviation (87) Private Land Mobile (90)
5.06-5.25 FIXED Mobile except aeronautical mobile 5.133			5.06-5.45 FIXED US22 Mobile except aeronautical mobile US23 US212 US340		Maritime (80) Aviation (87) Private Land Mobile (90) Amateur Radio (97)
5.25-5.45 FIXED MOBILE except aeronautical mobile					
5.45-5.48 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.45-5.48 AERONAUTICAL MOBILE (R)	5.45-5.48 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.45-5.68 AERONAUTICAL MOBILE (R) 5.111 5.115 US283 US340		Aviation (87)
5.48-5.68 AERONAUTICAL MOBILE (R) 5.111 5.115					

United States (US) Footnotes

* * * * *

US23 In the band 5330.5–5406.4 kHz (60 m band), the assigned frequencies 5332, 5348, 5358.5, 5373, and 5405 kHz are allocated to the amateur service on a secondary basis. Amateur service use of the 60 m band frequencies is restricted to a maximum effective radiated power of 100 W PEP and to the following emission types and designators: phone (2K80J3E), data (2K80J2D), RTTY (60H0J2B), and CW (150HA1A). Amateur operators using the data and RTTY emissions must exercise care to limit the length of transmissions so as to avoid causing harmful interference to Federal stations.

* * * * *

PART 97—AMATEUR RADIO SERVICE

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 4. Section 97.221 is amended by revising paragraph (c) to read as follows:

§ 97.221 Automatically controlled digital station.

* * * * *

(c) Except for channels specified in § 97.303(h), a station may be automatically controlled while transmitting a RTTY or data emission on any other frequency authorized for such emission types provided that:

(1) The station is responding to interrogation by a station under local or remote control; and

(2) No transmission from the automatically controlled station occupies a bandwidth of more than 500 Hz.

■ 5. Section 97.303 is amended by revising paragraph (h) to read as follows.

§ 97.303 Frequency sharing requirements.

* * * * *

(h) *60 m band:* (1) In the 5330.5–5406.4 kHz band (60 m band), amateur stations may transmit only on the five center frequencies specified in the table below. In order to meet this requirement, control operators of stations transmitting phone, data, and RTTY emissions (emission designators 2K80J3E, 2K80J2D, and 60H0J2B, respectively) may set the carrier frequency 1.5 kHz below the center frequency as specified in the table below. For CW emissions (emission designator 150HA1A), the carrier frequency is set to the center frequency. Amateur operators shall ensure that their emissions do not occupy more than 2.8 kHz centered on each of these center frequencies.

60 M BAND FREQUENCIES (KHZ)

Carrier	Center
5330.5	5332.0
5346.5	5348.0
5357.0	5358.5
5371.5	5373.0
5403.5	5405.0

(2) Amateur stations transmitting on the 60 m band must not cause harmful interference to, and must accept interference from, stations authorized by:

(i) The United States (NTIA and FCC) and other nations in the fixed service; and

(ii) Other nations in the mobile except aeronautical mobile service.

* * * * *

■ 6. Section 97.305 is amended by revising the table in paragraph (c) by inserting the new entry ''60 m'' between the ''75 m'' and ''40 m'' entries to read as follows.

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards see § 97.307(f), paragraph:
*	*	*	*
HF:			
80 m	Entire band	RTTY, data	(3), (9).
75 m	Entire band	Phone, image	(1), (2).
60 m	5.332, 5.348, 5.3585, 5.373 and 5.405 MHz	Phone, RTTY, data	(14).
40 m	7.000–7.100 MHz	RTTY, data	(3), (9).
*	*	*	*

■ 7. Section 97.307 is amended by adding paragraph (f)(14) to read as follows.

§ 97.307 Emission standards.

* * * * *

(f) * * *

(14) *In the 60 m band:*

(i) A station may transmit only phone, RTTY, data, and CW emissions using the emission designators and any additional restrictions that are specified in the table below (except that the use of a narrower necessary bandwidth is permitted):

60 M BAND EMISSION REQUIREMENTS

Emission type	Emission designator	Restricted to:
Phone	2K80J3E	Upper sideband transmissions (USB).
Data	2K80J2D	USB (for example, PACTOR–III).
RTTY	60H0J2B	USB (for example, PSK31).
CW	150HA1A	Morse telegraphy by means of on-off keying.

(ii) The following requirements also apply:

(A) When transmitting the phone, RTTY, and data emissions, the suppressed carrier frequency may be set as specified in § 97.303(h).

(B) The control operator of a station transmitting data or RTTY emissions must exercise care to limit the length of transmission so as to avoid causing harmful interference to United States Government stations.

■ 8. Section 97.313 is amended by revising paragraphs (f) and (i) to read as follows.

§ 97.313 Transmitter power standards.

* * * * *

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in paragraph (a) of footnote US270 in § 2.106, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the District Director of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (−3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

* * * * *

(i) No station may transmit with an effective radiated power (ERP) exceeding 100 W PEP on the 60 m band. For the purpose of computing ERP, the transmitter PEP will be multiplied by the antenna gain relative to a half-wave dipole antenna. A half-wave dipole antenna will be presumed to have a gain of 1 (0 dBd). Licensees using other antennas must maintain in their station records either the antenna manufacturer's data on the antenna gain or calculations of the antenna gain.

* * * * *

[FR Doc. 2012–2477 Filed 2–2–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA974

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Increase

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

ACTION: Temporary rule; inseason trip limit increase.

SUMMARY: NMFS increases the trip limit in the commercial sector for king mackerel in the Florida east coast subzone to 75 fish per day in or from the exclusive economic zone (EEZ). This trip limit increase is necessary to maximize the socioeconomic benefits of the quota.

DATES: This rule is effective 12:01 a.m., local time, February 1, 2012, through March 31, 2012, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: (727) 824–5305, fax: (727) 824–5308, email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(*1*)).

In accordance with 50 CFR 622.44(a)(2)(i)(B)(*2*), beginning on February 1, if less than 75 percent of the Florida east coast subzone quota has been harvested by that date, king mackerel in or from that subzone may be possessed on board or landed from a permitted vessel in amounts not exceeding 75 fish per day. The 75-fish daily trip limit will continue until a closure of the subzone's fishery has been effected or the fishing year ends on March 31.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel in the Florida east coast subzone will not be reached before February 1, 2012. Accordingly, a 75-fish trip limit applies to vessels in this fishery for king mackerel in or from the EEZ in the Florida east coast subzone effective 12:01 a.m., local time, February 1, 2012. The 75-fish trip limit will remain in effect until the fishery closes or until the end of the current fishing season (March 31, 2012) for this subzone. From November 1 through March 31, the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit increase. Allowing prior notice and opportunity for public comment for this trip limit increase is contrary to the public interest because it requires time, thus delaying fishermen's ability to catch more king mackerel than the present trip limit allows and preventing fishermen from reaping the socioeconomic benefits derived from this increase in daily catch.

As this action allows fishermen to increase their harvest of king mackerel from 50 fish to 75 fish per day in or from the EEZ of the Florida east coast subzone, the AA finds it relieves a restriction and may go into effect on its effective date pursuant to 5 U.S.C.

553(d)(1). This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 31, 2012.

Steven Thur,

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

[FR Doc. 2012–2474 Filed 1–31–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427–0609–02]

RIN 0648–XA946

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is retroactively transferring a portion of its 2011 commercial summer flounder quota to the Commonwealth of Virginia. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 9, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 155,187 lb (70,392 kg) of its 2011 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling in Oregon Inlet, North Carolina, between December 9, 2011, and December 13, 2011, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2011 are: North Carolina, 3,160,384 lb (1,433,526 kg); and Virginia, 5,296,694 lb (2,402,540 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: January 31, 2012.

Steven Thur,

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

[FR Doc. 2012–2482 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 23
Friday, February 3, 2012

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. #AMS–NOP–11–0073; NOP–11–14]

National Organic Program: Notice of Draft Guidance for Accredited Certifying Agents, Certified Operations, and Non-Certified Handlers of Certified Organic Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability with request for comments.

SUMMARY: The National Organic Program (NOP) is announcing the availability of a draft guidance document intended for use by accredited certifying agents, certified operations and non-certified handlers of certified organic products. The draft guidance document is entitled as follows: Handling Bulk, Unpackaged Organic Products (NOP 5031).

This draft guidance document is intended to inform the public of NOP's current thinking on this topic. The NOP is seeking comments on this draft guidance document. A notice of availability of final guidance on this topic will be issued upon its final approval. Once finalized, this guidance document will be available from the NOP through ''The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations.'' This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the NOP regulations. The current edition of the Program Handbook is available online at *http://www.ams.usda.gov/nop* or in print upon request.

DATES: To ensure that NOP considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written comments on the draft guidance by April 3, 2012.

ADDRESSES: Submit written requests for hard copies of this draft guidance document to Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250–0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Interested persons may comment on this draft guidance document using the following procedures:

Internet: http://www.regulations.gov.

Mail: Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250–0268.

Written comments responding to this request should be identified with the document number AMS–NOP–11–0073; NOP–11–14. You should clearly indicate your position and the reasons for your position. If you are suggesting changes to the draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on *www.regulations.gov* and at USDA, AMS, NOP, Room 2646–South building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa R. Bailey, Ph.D., Director, Standards Division, National Organic Program (NOP), USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268, Telephone: (202) 720–3252, Email: *NOP.guidance@ams.usda.gov,* or visit the NOP Web site at: *www.ams.usda.gov/nop.*

SUPPLEMENTARY INFORMATION:

I. Background

The NOP selected the topic for the draft guidance announced through this notice in response to a recommendation issued by the National Organic Standards Board (NOSB) in October 2010. On October 28, 2010, the NOSB finalized a recommendation requesting that the NOP clarify the requirements and limitations of 7 CFR 205.101(b) of the NOP regulations.[1] This section of the regulations addresses the conditions that a handling operation must meet in order to be excluded from the organic certification requirements of Part 205. The NOSB recommended that NOP issue guidance to clarify how these conditions apply to handlers of bulk, unpackaged organic products. The NOP is responding to this recommendation by issuing draft guidance to outline the types of handling operations that are or are not excluded from organic certification. The draft guidance proposes that brokers, traders or distributors of bulk, unpackaged organic commodities or livestock are not excluded from certification and, therefore, must be certified organic operations.

II. Significance of Guidance

This draft guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent the NOP's current thinking on the topic. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–

[1] NOSB Recommendation: Clarifying Limitations of § 205.101(b). Issued on October 28, 2010. Accessible on the NOP Web site at: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5087789&acct=nosb.*

6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

Electronic Access

Persons with access to Internet may obtain the draft guidance at either NOP's Web site at *http://www.ams.usda.gov/nop or http://www.regulations.gov.* Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the **ADDRESSES** section of this Notice.

Authority: 7 U.S.C. 6501–6522.

Dated: January 30, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–2377 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Financial Derivatives Transactions To Offset Interest Rate Risk; Investment and Deposit Activities

AGENCY: National Credit Union Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Through this Advance Notice of Proposed Rulemaking (''ANPR''), the NCUA Board (Board) requests additional public comments to identify the conditions for federal credit unions (FCUs) to engage in certain derivatives transactions for the purpose of offsetting interest rate risk (IRR).[1] This ANPR follows an earlier Advance Notice of Proposed Rulemaking (ANPR I) on derivatives transactions issued for comment (76 FR 37030, June 24, 2011). This ANPR asks additional questions regarding the conditions under which NCUA may grant authority for an FCU to engage in derivatives transactions independently.

DATES: Comments must be received on or before April 3, 2012.

ADDRESSES: You may submit comments by any one of the following methods.

(Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name]—Comments on Advance Notice of Proposed Rulemaking for Part 703, Financial Derivatives Transactions To Offset Interest Rate Risk'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Taylor, Senior Capital Markets Specialist, at (703) 518–6628; or Lance Noggle, Staff Attorney, Office of General Counsel, at (703) 518–6555. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

I. Background
II. Questions for Comment

I. Background

In June 2011, the Board issued ANPR I (76 FR 37030, June 24, 2011) requesting public comment on whether and how to modify its rule on investment and deposit activities to permit FCUs to enter derivatives transactions for the purpose of offsetting IRR. It now seeks additional information to assist in drafting a proposed rule for FCUs to independently engage in derivatives transactions (*i.e.,* without program oversight by a third-party provider).

ANPR I requested comment in five areas. Three areas asked for comments on NCUA's current pilot program and third-party programs in general. Only two areas concentrated on independent derivatives authority. As the Board focuses on developing requirements for such authority, it seeks additional information to help ensure that a rule granting independent derivatives authority is manageable for both participating FCUs and NCUA, while simultaneously protecting the credit union industry from undue risk.

II. Questions for Comment

Since the inception of the derivatives pilot program, very few FCUs have submitted applications seeking permission to independently engage in derivatives to offset IRR. In ANPR I, the Board sought comment on whether it should allow FCUs to independently engage in derivatives activities. Nearly all commenters who responded to this question supported independent derivatives authority for FCUs. As discussed more fully below, however, not all commenters agreed on the conditions under which the NCUA should grant such authority.

The Board is assessing the parameters under which NCUA may authorize FCUs to independently engage in derivatives activities, and invites comment on the issues raised in this ANPR. To facilitate consideration of the public's views, please address your comments to the specific questions, and organize and identify them by corresponding question number so that each question is addressed separately. To maximize the value of public input on each issue, it is also important that commenters provide and explain the reasons that support each of their opinions. There will be a further opportunity to comment on these issues should the Board issue a proposed rule.

Eligibility of Applicant FCUs for Independent Derivatives Authority

The Board is considering eligibility requirements for FCUs seeking authority to independently enter into derivatives transactions. ANPR I asked several eligibility questions, including what criteria NCUA should consider in granting or denying a request for independent derivatives authority. As noted above, nearly all commenters who addressed the issue of independent derivatives authority supported it. Yet

[1] Interest rate risk refers to the vulnerability of a credit union's financial condition to adverse movements in market interest rates. For example, changes to a credit union's funding costs generally are considered part of the inherent interest rate risk associated with a fixed-rate mortgage loan. A borrower with a fixed-rate mortgage loan is unaffected by increases in market interest rates because his payment is based on a ''fixed'' rate. The credit union that originated the mortgage loan, however, is subject to losses in the market value of these mortgages from the increases in market interest rates. Furthermore, as market interest rates rise, there is a concomitant increase in the credit union's funding costs, or the interest rate the credit union pays on the money it uses to ''fund'' the mortgage loan.

not all of these commenters agreed on the conditions under which NCUA should grant such authority.

Three commenters supported allowing FCUs to independently engage in derivatives activity without further comment. Ten commenters stated that NCUA should consider allowing FCUs to independently engage in derivatives activity, subject to ability to manage derivatives, expertise, and adequate controls, and so long as the activity is shown to offset IRR. Three commenters supported allowing independent derivatives authority for FCUs, but only after they have participated in a third-party program. Two commenters supported independent derivatives approval only if it is limited and qualified by high standards, although these commenters did not define ''high standards.'' Nine commenters discouraged the use of numerical criteria, such as asset size. Five commenters suggested that NCUA should consider experience, correlation testing, and modeling expertise. Ten commenters stated that FCUs applying to engage independently should comply with the current third-party pilot program standards.

The Board is considering eligibility requirements based on at least three factors, including need, financial condition, and ability to manage derivatives. First, an FCU would need to demonstrate relevant IRR exposure. One of the motivations behind the Board's consideration of expanded derivatives authority is to reduce potentially excessive IRR. The Board, therefore, believes that demonstrating a material exposure to IRR, and how an FCU can mitigate it through derivatives activity, is an appropriate requirement. Second, an FCU would be required to demonstrate a requisite level of financial performance, measured in part by its CAMEL rating and net worth classification. Third, an FCU would need to demonstrate an ability to effectively manage derivatives, including minimum experience requirements for FCU staff involved in the analysis and ongoing risk management of a derivatives book. The Board considers the second and third requirements to be appropriate given the complexity of, and inherent risks in, derivatives transactions.

The Board recognizes that FCUs generally have limited experience with derivatives. Only eight FCUs participated in existing derivatives pilot programs as of June 2011. Of these, six FCUs participated in third-party programs and only two FCUs were authorized to independently engage in derivatives transactions. Generally, most credit unions have an interest rate sensitivity exposure to rising rates, so the downward direction of market rates during the past five years may largely account for FCUs' moderated interest in derivatives. With NCUA and FCUs themselves increasingly concerned about the impact of future rising interest rates on credit unions' balance sheets, especially those with heavy concentrations of long-term, fixed-rate assets, the Board expects that more FCUs may wish to pursue derivatives as a way to manage IRR. Yet, given the complexity of even the most straightforward derivatives instruments, the Board believes that an FCU should independently engage in derivatives transactions only if FCU management and staff can demonstrate adequate derivatives experience. This position is consistent with the majority of commenters that responded to the independent derivatives authority questions in ANPR I.

The Board believes that what constitutes ''adequate derivatives experience'' will vary depending on the nature and complexity of an FCU's balance sheet. As noted in ANPR I, the Board is considering whether to limit the types of derivatives instruments that some FCUs may transact. If an FCU is limited to relatively simple, ''plain vanilla'' derivatives instruments such as interest rate swaps [2] and interest rate caps,[3] the Board believes that the FCU's staff should demonstrate at least three years of effective experience with derivatives, including the ability to evaluate key risk factors. A commensurate level of additional experience likely would be required for FCUs whose assets or liabilities exhibit more complex IRR characteristics.

If an FCU is seeking independent derivatives authority, the Board believes it is inappropriate for the FCU to rely exclusively on the derivatives experience of an outside party. Instead, the FCU would be required to demonstrate sufficient internal knowledge of derivatives, perhaps in an onsite review prior to the FCU receiving independent derivatives authority.

Question 1: Should the Board require an FCU to demonstrate a material IRR exposure or another evident risk management need before it is granted independent derivatives authority?

Question 2: Is it appropriate to require minimum performance levels, as measured, for example, by CAMEL ratings and net worth classifications, when considering whether to grant or deny an FCU's application to independently engage in derivatives transactions? If so, what performance measures are appropriate and what should those levels be?

Question 3: What is the minimum kind and amount of derivatives experience and expertise that an FCU's staff should demonstrate before the FCU receives independent derivatives authority? For example, if an FCU has a less complex balance sheet, is it sufficient for that FCU's staff to demonstrate a minimum of three years transacting derivatives? Should NCUA require additional kinds and amounts of experience when there is more complexity in the FCU's balance sheet (*e.g.,* prepayments and call options)? To what extent should an FCU seeking independent derivatives authority be allowed to rely on an outside party to fulfill an experience and expertise requirement?

Safety and Soundness Requirements

The Board believes that, when transacted properly, derivatives can be an effective tool for FCUs to use in IRR mitigation. The Board further believes that transacting derivatives for other purposes, such as speculation, could present unforeseen risks. Accordingly, the Board considers it appropriate to limit the types of derivatives that an FCU may transact to interest rate derivatives instruments that serve to mitigate IRR, namely interest rate swaps and interest rate caps.

Most credit unions with material IRR exposures use short-term liabilities to fund long-term fixed assets. FCUs can mitigate this type of IRR exposure by using interest rate swaps and interest rate caps. Interest rate swaps, particularly ''pay-fixed/receive-floating'' swaps in which one party pays a fixed rate of interest and receives a floating rate, can offset IRR resulting from cash flows received on fixed, long-term assets such as fixed-rate mortgage loans. Interest rate caps can offset IRR resulting from cash flows paid on liabilities that are either short term or associated with nonmaturity shares on which interest rates may vary by limiting the risk exposure to the capped rate. Other derivatives instruments, such as credit derivatives (e.g., credit default swaps), provide limited IRR mitigation value and potentially could be used for speculation. For these reasons, the Board believes that only interest rate derivatives instruments are

[2] An interest rate swap is a derivatives instrument that allows one party to exchange (or swap) its set of interest payments (for example, fixed-rate interest payments) for another party's set of interest payments (for example, floating-rate interest payments). An interest rate swap effectively converts a fixed rate on a loan to a floating one, or vice versa.

[3] An interest rate cap is a derivatives instrument that limits floating interest rate exposure to a specified maximum level for a specified period of time. It essentially is an insurance policy purchased by a party to protect itself against rising interest rates.

appropriate for FCUs to use in managing IRR.

Question 4: Should FCUs be limited to using interest rate swaps and interest rate caps to offset and manage IRR? Should interest rate swaps be limited to pay-fixed/receive-floating instruments? What other limits should be established to ensure that an FCU does not transact interest rate derivatives in an amount greater than the level of its IRR exposure?

There are numerous risks inherent in any derivatives activity, including market risk and counterparty risk. The constant fluctuation of the mark-to-market value of a derivatives position represents the most significant market risk. Mark-to-market valuation requires the value of a derivatives instrument to be set at discrete points in time as prescribed by generally accepting accounting principles. This valuation represents the then-current market sales price for that instrument, which reflects any unrealized gain or loss for the FCU in the derivatives transaction.

The Board is considering whether to establish exposure limits as a way to guard against such volatility in the value of a derivatives portfolio. For example, if an FCU experiences mark-to-market losses in excess of a specified threshold, NCUA could limit the FCU's authority to transact derivatives. These limits may be based on the notional amount of a derivatives instrument or on its mark-to-market valuation. The Board notes that the third-party pilot program includes exposure limits that are based on the notional amount of the derivatives portfolio, expressed as a percentage of the credit union's net worth. Some commenters to ANPR I, however, have suggested that exposure limits should be based on mark-to-market valuation.

Question 5: Should NCUA establish exposure limits for FCUs or should it require an FCU's board of directors to establish exposure limits? Should there be limits on the aggregate amount of each type of derivatives instrument in the portfolio or on the aggregate amount of derivatives transacted with any counterparty? Should limits be based on the notional amount of a derivatives instrument, its mark-to-market valuation, or both?

Another significant risk in derivatives activity is counterparty risk, also known as ''default risk'' or ''credit risk.'' Counterparty risk is the risk that losses will occur due to a counterparty's failure to fulfill its obligations under the derivatives contract. The Board believes that, to manage counterparty risk, an FCU should, on an ongoing basis, monitor counterparties and their creditworthiness, as well as the credit risk mitigation features inherent in the derivatives transaction (*e.g.,* margin requirements, daily valuations of collateral, and performance of third parties).

Consistent with the need to carefully monitor credit features, the Board believes that counterparty risk can be substantially mitigated through effective collateral management. In derivatives transactions, parties may be required to post collateral to secure their obligations under the derivatives contract. Posting collateral protects either party in a derivatives transaction from the risk of loss, which may occur for a number of reasons including counterparty default. The Board, therefore, believes it is appropriate for an FCU to include the following collateral management standards in the related derivatives contract:

- Bilateral collateral, in which both parties to a derivatives contract agree to post collateral to cover mark-to-market gains and losses.
- Tri-party custody, in which posted collateral is delivered to a third party acting as custodian.
- Zero thresholds, in which parties are required to post collateral at any level of loss over a minimum amount specified in the derivatives contract.
- Restricting the type of assets used as posted collateral to instruments permitted for investment by an FCU.

Question 6: Are there ways to mitigate counterparty risk besides posting collateral? Are there additional or alternate collateralization conditions that NCUA should require beyond those described in this ANPR?

By the National Credit Union Administration Board on January 26, 2012.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2012–2092 Filed 2–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0085; Directorate Identifier 2011–SW–004–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–61A, D, E, L, N, NM, R, and V helicopters to require replacing each forward and aft fuel system 40 micron fuel filter element with a 10 micron fuel filter element. This proposed AD is prompted by a National Transportation Safety Board (NTSB) review of in-service events where engine performance degradation occurred and the review determined that some of these events were caused by contaminants larger than 10 microns present in the engine fuel control units (FCUs). The proposed actions are intended to prevent particulate contamination in the FCU, which could lead to malfunction of an internal valve(s), power loss at a critical phase of flight, and loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by April 3, 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 proposed 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 proposed AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main St., Stratford, CT; telephone (203) 383–4866; email *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com*. 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: Kirk Gustafson, Aerospace Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 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 proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for the Sikorsky Model S–61A, D, E, L, N, NM, R, and V helicopters with a fuel system 40 micron fuel filter element, part number (P/N) 52–0505–2 or 52–01064–1. This proposed AD would require replacing each forward and aft fuel system 40 micron fuel filter element with a 10 micron fuel filter element. This proposed AD was prompted by an NTSB review of in-service events involving Sikorsky S–61 model helicopters where engine performance degradation occurred. The review determined that contaminants larger than 10 microns entering the engine FCU can migrate to the internal servo valves and the pressuring regulating valve, causing them to malfunction. Malfunction of these valves can result in abnormal engine operation and loss of power. The NTSB conducted this review as a part of its investigation of an accident involving a Sikorsky S–61 model helicopter. During disassembly and examination of the FCUs in the accident helicopter, the NTSB found trace levels of contamination in each FCU, indicating the filters in the fuel supply system did not completely filter contaminants from the fuel. The NTSB stated that no evidence exists that contamination contributed to the accident, but concluded that using fuel system 10 micron fuel filters could reduce the risk of engine performance degradation occurring due to fuel contamination. This condition of particulate contamination in the FCU, if not corrected, could lead to malfunction of an internal valve, power loss at a critical phase of flight, and loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

We reviewed Sikorsky Alert Service Bulletin (ASB) No. 61B30–16, dated February 2, 2010 (ASB No. 61B30–16), which supersedes ASB No. 61B28–1, dated January 15, 2010 (ASB No. 61B28–1). ASB No. 61B28–1 specified replacing the forward and aft fuel system 40 micron fuel filter elements with 10 micron fuel filter elements at the next scheduled inspection or within 150 flight hours from the issuance of the ASB. ASB 61B30–16 retains the same instructions as ASB 61B28–1, but deletes the compliance time ''at the next scheduled preventative maintenance inspection.'' Also, ASB No. 61B30–16 was issued because ASB No. 61B28–1 was incorrectly numbered.

Proposed AD Requirements

This proposed AD would require, within 150 hours time-in-service (TIS), replacing each forward and aft fuel system 40 micron fuel filter element with a 10 micron fuel filter element. Thereafter, operators would only be permitted to install a fuel system 10 micron fuel filter element when replacing the forward or aft fuel system fuel filter element. This proposed AD would also require re-identifying the fuel filter and the fuel control assembly.

Differences Between This Proposed AD and the Service Information

ASB 61B30–16 specifies complying with the instructions within 150 flight hours from the issuance of the ASB, but this proposed AD requires complying with the instructions within 150 hours TIS from the effective date of the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 78 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It would take approximately 4 work-hours to replace the fuel system fuel filters and re-identify the fuel tank fuel filter and fuel control assembly bracket. The average labor rate is $85 per work-hour and required parts will cost about $370 per helicopter. Based on these figures, we estimate the cost of the proposed AD on U.S. operators would be $710 per helicopter and the total cost of this AD on U.S. operators would be $55,380.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new Airworthiness Directive (AD):

Sikorsky Aircraft Corporation: Docket No. FAA–2012–0085; Directorate Identifier 2011–SW–004–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S–61A, D, E, L, N, NM, R, and V helicopters with a fuel system 40 micron fuel filter element, part number (P/N) 52–0505–2 or 52–01064–1, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as contaminants present in the engine fuel control units (FCUs). This AD was prompted by a National Transportation Safety Board review of in-service events where engine performance degradation occurred. This condition could result in particulate contamination in the FCU, which could lead to malfunction of an internal valve, power loss at a critical phase of flight, and loss of control of the helicopter.

(c) 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.

(d) Required Actions

(1) Within 150 hours time-in-service, do the following:

(i) Replace each forward and aft fuel system 40 micron fuel filter element with a 10 micron fuel filter element, P/N AM52–01064–1.

(ii) Re-identify the fuel filter, P/N 52–2145–009, and fuel control assembly bracket as follows:

(A) On the fuel filter identification plate, cross out the last two digits (''09'') of the existing fuel filter P/N 52–2145–009, and replace those last two digits with ''14'' to re-identify the fuel filter as P/N 52–2145–014.

(B) Change the existing fuel control assembly part number on the fuel control assembly bracket to re-identify it as follows:

(1) Change fuel control assembly P/N S6130–63209–001 to P/N S6130–63209–041.

(2) Change fuel control assembly P/N S6130–63209–002 to P/N S6130–63209–042.

(3) Change fuel control assembly P/N S6130–63209–003 to P/N S6130–63209–043.

(4) Change fuel control assembly P/N S6130–63209–004 to P/N S6130–63209–044.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kirk Gustafson, Aerospace Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA,12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7190; email *kirk.gustafson@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.

(f) Additional Information

Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–16, dated February 2, 1010, which is not incorporated by reference, contains additional information about the subject of this AD. For this service information, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main St., Stratford, CT; telephone (203) 383–4866; email *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.* You may review copies of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 2800, Fuel system.

Issued in Fort Worth, Texas, on January 23, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–2421 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0083; Directorate Identifier 2010–SW–022–AD]

RIN 2120–AA64

Airworthiness Directives; Aeronautical Accessories Inc. High Landing Gear Aft Crosstube Assembly

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the Aeronautical Accessories Inc. (AAI) High Landing Gear Aft Crosstube Assembly (aft crosstube) installed on certain Bell Helicopter Textron, Inc. (Bell) and Agusta S.p.A. (Agusta) model helicopters as an approved Bell part installed during production or based on a Supplemental Type Certificate (STC). This proposed AD is prompted by three reports of failed crosstubes because of cracks. The proposed actions are intended to prevent failure of a crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by April 3, 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 proposed 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 proposed AD, contact Aeronautical Accessories, Inc., P.O. Box 3689, Bristol, Tennessee 37625–3689, telephone (423) 538–5151 or 1–800–251–7094, fax (423) 538–8469 or at *http://www.aero-access.com.* You may also get service information from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files.* 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, TX 76137.

FOR FURTHER INFORMATION CONTACT:

Martin R. Crane, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5170, email *martin.r.crane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 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 proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

This document proposes adopting a new AD for AAI aft crosstubes installed during production or based on STC SR01502AT on certain Bell and Agusta model helicopters. This proposal would require certain recurring visual, dimensional, and fluorescent penetrant inspections of each aft crosstube. If there is a crack, the AD would require, before further flight, replacing any cracked aft crosstube with an airworthy aft crosstube. This proposal would also require establishing a life limit for one of the affected part-numbered aft crosstubes (as the later part-numbered aft crosstube already has limits established) and creating a component history card or equivalent record for aft crosstube part number (P/N) 412–321–304. This proposal is prompted by three reports of failed aft crosstubes. This condition, if not corrected, could result in collapse of the landing gear, and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Related Service Information

We have reviewed AAI Alert Service Bulletin No. AA–07109, dated April 3, 2008 (ASB), which specifies recurring inspections and maintenance of each aft crosstube, P/N 412–321–104, installed as an approved part by Bell during production, and P/N 412–321–304, installed under STC SR01052AT, on Bell Model 412, 412EP, and 412CF and Agusta Model AB412 and AB412EP helicopters. The ASB specifies establishing a high aft crosstube, P/N 412 321–304, ''takeoff/landing'' life limit of 20,000. Also, the ASB specifies that operators should follow helicopter towing instructions to prevent crosstube damage or failure as a result of ground handling or towing.

We have also reviewed Bell ASB 412–08–129, dated May 12, 2008, for Bell Model 412 and 412EP helicopters, serial numbers 33001 through 33213, 36001 and subsequent, with an aft crosstube P/N 412–321–104 installed. Bell issued its ASB ''to achieve complete distribution of AA–07109 vendor bulletin to the current affected model distribution list.''

Proposed AD Requirements

This proposed AD would require:

- Within 50 hours time-in-service (TIS), establishing a life limit of 20,000 takeoffs and landings for aft crosstube P/N 412 321 304; creating a component history card or equivalent record; and determining and recording the total number of takeoffs and landings for each aft crosstube.
- Within the next 450 takeoffs and landings, if an aft crosstube has reached 20,000 or more takeoffs and landings, replacing it with an airworthy aft crosstube.
- At specified intervals, preparing the aft crosstube inspection areas and inspecting each aft crosstube for a crack. If there are no cracks, thereafter at specified intervals, priming and cleaning the inspection area, and inspecting each aft crosstube for a crack. If there is a crack, before further flight, replacing the cracked aft crosstube with an airworthy aft crosstube.
- At specified intervals, determining the horizontal deflection of each aft crosstube from the centerline of the helicopter (BL 0.0) to the outside of the skid tubes. If the measured horizontal deflection exceeds aft crosstube limits, replacing the aft crosstube with an airworthy aft crosstube.
- At specified intervals, removing the aft crosstube assembly, removing paint and sealant, and fluorescent penetrant inspecting each aft crosstube for a crack. If there are no cracks, priming and painting the inspection area. If there is a crack, before further flight, replacing each cracked aft crosstube with an airworthy aft crosstube.

This proposed AD would revise the Airworthiness Limitations section of the applicable maintenance manuals or the Instructions for Continued Airworthiness (ICA) by establishing a new retirement life of 20,000 takeoffs and landings for aft crosstube P/N 412–321–304 by making pen and ink changes or inserting a copy of the AD into the maintenance manual or the ICAs.

Costs of Compliance

We estimate that this proposed AD would affect 115 helicopters of U.S. Registry.

We also estimate that the proposed actions would take about:

- 1 hour to create a component history card or equivalent record and determine and record the number of accumulated takeoffs and landings for each affected aft crosstube;
- 3 hours to prepare the area for a visual inspection;
- ½ hour to do the repetitive visual inspections, assuming 14 repetitive visual inspections per year;
- 1 hour to do a dimensional inspection of the skid gear, assuming 3 inspections per year;
- 24 hours to prepare and fluorescent penetrant inspect the aft crosstube, assuming 2 inspections per year; and
- 10 hours to replace an aft crosstube, if necessary, assuming 3 aft crosstubes would be replaced.

The average labor rate is $85 per work hour. Required parts would cost about $9,315 per aft crosstube. Based on these

figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $636,545.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aeronautical Accessories, Inc.: Docket No. FAA–2012–0083; Directorate Identifier 2010–SW–022–AD.

(a) Applicability

This AD applies to High Landing Gear Aft Crosstube Assembly (aft crosstube) part number (P/N) 412–321–104 and P/N 412–321–304, installed on Agusta S.p.A. Model AB412 and AB412EP and Bell Helicopter Textron, Inc., Model 412, 412CF, and 412EP helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a cracked aft crosstube which could result in collapse of the landing gear, and subsequent loss of control of the helicopter.

(c) 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.

(d) Required Actions

(1) Within 50 hours time-in-service (TIS) establish a life limit of 20,000 takeoffs and landings for each aft crosstube P/N 412–321–304. For the purposes of this AD, a takeoff and landing is defined as the cycle from when the helicopter gets light on the skids (takeoff) unloading the aft crosstube and then settles on the skids again (landing) reloading the aft crosstubes. Either the number of landings or takeoffs may be counted.

(i) Create a component history card or equivalent record.

(ii) Determine and record on the history card or equivalent record the total number of takeoffs and landings for each aft crosstube. If the takeoff and landing information is unavailable, estimate the number by multiplying the airframe hours by 10.

(2) Within the next 450 takeoffs and landings, if an aft crosstube has reached 20,000 or more takeoffs and landings, replace it with an airworthy aft crosstube.

(3) Before reaching 2,500 takeoffs and landings or for an aft crosstube with 2,500 or more takeoffs and landings, within 50 hours TIS or within the next 250 takeoffs and landings, whichever occurs first, prepare the aft crosstube inspection areas as depicted in Figure 1 of Aeronautical Accessories, Inc. (AAI) Alert Service Bulletin No. AA–07109, dated April 3, 2008 (ASB), by following the Accomplishment Instructions, Part B, paragraphs 1 through 4, of the ASB. Using a 10X or higher magnifying glass, inspect the prepared areas of each aft crosstube for a crack. If there is a crack, before further flight, replace the cracked aft crosstube with an airworthy aft crosstube. If there are no cracks, after completing the aft crosstube inspection, prime and paint the inspection area by following the Accomplishment Instructions, Part B, paragraphs 6 and 7, of the ASB.

(4) Thereafter, at intervals not to exceed 450 takeoffs and landings, clean the inspection area. Using a 10X or higher magnifying glass, inspect the clear-coated area of the aft crosstube for a crack.

(5) If there is a crack, before further flight, replace the cracked aft crosstube with an airworthy aft crosstube.

(6) Within 30 days or before reaching 2,500 takeoffs and landings, whichever occurs later, and thereafter at intervals not to exceed 2,500 takeoffs and landings or 12 months, whichever occurs first, determine the horizontal deflection of each aft crosstube from the centerline of the helicopter (BL 0.0) to the outside of the skid tubes by following the Accomplishment Instructions, Part D, paragraphs 1 through 3, of the ASB. If the measured aft crosstube horizontal deflection depicted in Figure 2 of the ASB is less than 57 inches (1448 mm) or greater than 59 inches (1499 mm), replace the aft crosstube with an airworthy aft crosstube.

(7) Within 3 months or on or before reaching 7,500 takeoffs and landings, whichever occurs later, and thereafter at intervals not to exceed 5,000 takeoffs and landings:

(i) Remove the aft crosstube assembly by removing the aft crosstube support beam assembly, P/N 604–030–001, and both aft crosstube clamp assemblies, P/N 604–027–002.

(ii) Remove paint and sealant from the aft crosstube outboard of the upper center support to top of saddles, both sides, as depicted in Figure 3 of the ASB.

(iii) Fluorescent penetrant inspect each aft crosstube outboard of the upper center support as depicted in Figure 3 of the ASB for a crack.

(iv) If there is a crack, before further flight, replace the cracked aft crosstube with an airworthy aft crosstube.

(8) Revise the helicopter Airworthiness Limitations section of the applicable maintenance manuals or the Instructions for Continued Airworthiness (ICA) by establishing a new retirement life of 20,000 takeoff and landings for aft crosstube P/N 412–321–304 by making pen and ink changes or inserting a copy of this AD into the maintenance manual or the ICAs.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Martin R. Crane, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, email *martin.r.crane@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.

(f) Additional Information

The FAA approved AAI Instructions for Continued Airworthiness Report Number AA–01136 and the Bell Helicopter Textron Alert Service Bulletin No. 412–08–129, dated May 12, 2008, which are not incorporated by reference, contain additional information about inspecting the aft crosstube for a crack.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 32: Landing Gear.

Issued in Fort Worth, Texas, on January 23, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–2423 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0087; Directorate Identifier 2011–SW–029–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada, Limited (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the Bell Model 206, 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters with Aviation Specialties Unlimited Inc. (ASU) Night Vision Imaging System (NVIS) lighting modified by Supplemental Type Certificate SR01383SE (STC). This proposed AD is prompted by the finding that an unfiltered turbine outlet temperature (TOT) indicator over-temperature warning light, when illuminated, created glare and reflections that could degrade the pilot's view while using night vision goggles thereby creating an unsafe condition. The proposed actions are intended to modify any unfiltered TOT indicator unit over-temperature warning light by installing a filter to prevent degradation of the pilot's vision while using night vision goggles and to prevent subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by April 3, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the 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 Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed 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 proposed AD, contact Aviation Specialties Unlimited Inc., 4632 Aeronca Street, Boise, Idaho 83705, telephone (208) 426–8117, fax (208) 426–8975 or *http://www.asu-nvg.com/.* 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, TX 76137.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aviation Safety Engineer, FAA, Seattle Aircraft Certification Office, Airframe Branch, 1601 Lind Avenue SW., Renton, Washington 98057, telephone (425) 917–6426, fax (425) 917–6590; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 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 proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for the specified Bell model helicopters with an ASU Night Vision Lighting Imaging System installed per STC SR01383SE. This proposed AD is prompted by the finding that an unfiltered TOT indicator over-temperature warning light, when illuminated, created glare and reflections that could degrade the pilot's view while the pilot is using night vision goggles. This proposed AD would require determining the date of the STC installation, determining whether each helicopter has a TOT indicator unit with an internal over-temperature warning light. If an unfiltered TOT indicator over-temperature warning light is installed, this AD would require installing an NVIS filter. The proposed actions are intended to modify any unfiltered TOT indicator unit over-temperature warning light by installing a filter to prevent degradation of the pilot's vision while using night vision goggles and to prevent subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters with NVIS lighting installed per STC SR01383SE on or before April 6, 2011.

Relevant Service Information

We reviewed ASU's Alert Service Bulletin No. ASU 206–2010–11–1, dated November 4, 2010 (ASB) for the Bell Helicopter Textron 206 series helicopters. The ASB states to visually inspect each helicopter to determine if the TOT indicator/gauge has an internal over-temperature warning light installed. If the over-temperature warning light is internal, the ASB specifies notifying ASU. ASU states it will immediately ship an NVIS filter, part number (P/N) ASU–TOTGAG–1.

Proposed AD Requirements

This proposed AD would require, within 30 days or 50 hours time-in-service, whichever occurs first, determining the date of the STC installation. If the date is on or before April 6, 2011, or the date is undocumented, this AD would require determining if the TOT indicator unit has an internal over-temperature warning light. If the unit has an unfiltered internal over-temperature warning light, this AD would require installing an NVIS filter, P/N ASU–TOTGAG–1.

Differences Between This Proposed AD and the Service Information

This proposed AD does not apply to helicopters modified by the STC after April 6, 2011, because a new design was approved for the STC on April 6, 2011, and contained instructions to install the NVIS over-temperature indicator light filter. This proposed AD does not require you to notify ASU.

Costs of Compliance

We estimate that this proposed AD would affect 34 helicopters of U.S. registry. We estimate that operators may incur the following costs to comply with this AD: Determining the date, inspecting for an unfiltered, over-temperature TOT indicator light in the cockpit, and installing a filter would take about 1.8 work hours at $85 per hour. A filter would cost about $300. The total cost would be $15,402 assuming the filter would be installed on the entire fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska 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 proposed AD and placed it in the docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada, Limited (Bell): Docket No. FAA–2012–0087; Directorate Identifier 2011–SW–029–AD.

(a) Applicability

This AD applies to Model 206, 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, certificated in any category, modified with Aviation Specialties Unlimited Inc. (ASU) Night Vision Imaging System (NVIS) lighting installed per Supplemental Type Certificate (STC) SR01383SE.

(b) Unsafe Condition

This AD defines the unsafe condition as an unfiltered turbine outlet temperature (TOT) indicator over-temperature warning light, when illuminated, creating glare and reflections that could degrade the pilot's view through night vision goggles. This condition could result in loss of control of the helicopter.

(c) 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.

(d) AD Requirements

Within 30 days or 50 hours time-in-service, whichever occurs first:

(1) Determine the date of the STC installation.

(2) If the date of the STC installation is on or before April 6, 2011, or the date is undocumented, determine whether the cockpit TOT indicator unit has an unfiltered internal over-temperature warning light. If the unit has an unfiltered internal over-temperature warning light, install an NVIS filter, part number ASU–TOTGAG–1.

(e) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kathleen Arrigotti, Aviation Safety Engineer, FAA, Seattle Aircraft Certification Office, Airframe Branch, 1601 Lind Avenue SW., Renton, Washington 98057, telephone (425) 917–6426, fax (425) 917–6590; email *9-ANM-Seattle-ACO-AMOC-Requests@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, notify 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.

(f) Additional Information

Aviation Specialties Unlimited Inc., Alert Service Bulletin No. ASU 206–2010–11–1, dated November 4, 2010, contains information pertaining to the subject of this AD. This service information is not incorporated by reference. You may review copies of this service information at the FAA, Office of the Regional Counsel, 2601 Meacham Blvd., Fort Worth, TX 76193.

(g) Subject

Joint Aircraft System Component (JASC) Code: 7722: Engine EFT/TOT Indicating System.

Issued in Fort Worth, Texas, on January 23, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–2427 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0084; Directorate Identifier 2010–SW–089–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the Bell Helicopter Textron Canada Limited (BHTC) Model 427 helicopters. This proposed AD is prompted by a review of the tailboom attachment installation, which revealed that the torque value of the bolts specified in the BHTC Model 427 Maintenance Manual and applied during manufacturing was incorrect and exceeded the torque range recommended for the bolts. The proposed actions are intended to prevent an over-torque of the tailboom attachment bolt (bolt), bolt failure, loss of the tailboom, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by April 3, 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 proposed 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 proposed AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or at *http://www.bellcustomer.com/files/.*

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: Sharon Miles, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5122; email *sharon.y.miles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 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 proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

Transport Canada (TC), which is the aviation authority for Canada, has issued AD CF–2010–32, dated September 30, 2010 (AD CF–2010–32), to correct an unsafe condition for the BHTC Model 427 helicopters, serial numbers (S/Ns) 56001 through 56084, and S/Ns 58001 and 58002. TC advises that a review of the tailboom attachment installation determined that the torque value of the bolts specified in the BHTC Model 427 Maintenance Manual and applied during manufacturing exceeded the torque range recommended for the bolts. They state that this situation, if not corrected, could lead to a bolt failure, detachment of the tailboom, and loss of control of the helicopter.

FAA's Determination

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the bilateral agreement, TC has kept the FAA informed of the situation described above. We are issuing this AD because we evaluated all information provided by TC and determined the unsafe condition is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

BHTC has issued Alert Service Bulletin No. 427–10–31, dated March 1, 2010 (ASB), which specifies installing new attachment hardware with a reduced torque value. This ASB specifies determining the torque of the newly installed bolts and nuts every 1 to 5 flight hours until torque stabilizes at all locations, and thereafter at intervals not to exceed 300 flight hours. TC classified this ASB as mandatory and issued AD CF–2010–32 to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require, within 150 hours time-in-service (TIS) or 90 days, whichever occurs first, the following actions:

- Remove the left upper bolt, washers, and nut. Install the new bolt, part number (P/N) NAS627–27; washers, P/N 140–007–29S25E6 and P/N NAS1149G0732P; and new nut, P/N 42FLW–720. Run the nut onto the threads of the mating bolt with a torque wrench and measure the existing tare. Any bolt and nut used must have a minimum tare of 14 inch/lbs. Torque the nut and coat the bolt head, nut, and washers with appropriate corrosion preventive compound to seal the joint. Repeat these actions at the three remaining bolt locations.
- After installation of the new attachment hardware, at intervals of no less than 1 hour TIS but not exceeding 5 hours TIS, determine the torque of each nut until torque stabilizes at each attachment location. Thereafter, determine the torque of each nut at intervals not to exceed 300 hours TIS.

The actions would be required to be accomplished by following specified

portions of the service bulletin described previously.

Differences Between This Proposed AD and the TC AD

The differences between this proposed AD and the TC AD are as follows:

• The TC AD applies to the BHTC Model 427 helicopter, serial numbers 58001 and 58002; however, this proposed AD is not applicable to the BHTC Model 427 helicopters with these serial numbers because they are not eligible for an FAA Certificate of Airworthiness.

Costs of Compliance

We estimate that this proposed AD would affect 28 helicopters of U.S. registry. We estimate it would take about 2.0 work-hours per helicopter to replace the hardware, and 1.0 work-hour per helicopter to determine the recurring torque value at an average labor rate of $85 per work hour. Required parts would cost about $488 per helicopter. Based on these figures, we estimate for the first year the total cost per helicopter to be $913, and the total cost impact on U.S. operators to be $25,564. This estimated total cost assumes attachment hardware will be replaced on all affected helicopters, the torque will be considered stabilized after one torquing, and the recurring 300 hour TIS torque determination will be accomplished twice a year.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new Airworthiness Directive (AD):

Bell Helicopter Textron Canada Limited (BHTC): Docket No. FAA–2012–0084; Directorate Identifier 2010–SW–089–AD.

(a) *Applicability.* This AD applies to model 427 helicopters, serial numbers 56001 through 56084, certificated in any category.

(b) *Unsafe Condition.* This AD defines the unsafe condition as an over torque of the tailboom attachment bolt (bolt). This condition could result in bolt failure, loss of the tailboom, and subsequent loss of control of the helicopter.

(c) *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.

(d) *Required Actions.*

(1) Within 150 hours time-in-service (TIS) or 90 days, whichever occurs first, replace the tailboom attachment hardware (attachment hardware) as follows:

(i) Remove the left upper bolt, washers, and nut.

(ii) Install a new bolt, part number (P/N) NAS627–27; washer, P/N 140–007–29S25E6; washer(s), P/N NAS1149G0732P; and new nut, P/N 42FLW–720 in accordance with paragraphs 5.a) through 5.d) of the Accomplishment Instructions in BHTC Alert Service Bulletin No. 427–10–31, dated March 1, 2010 (ASB).

(iii) Run the nut onto the threads of the mating bolt with a torque wrench and measure the existing tare torque. Any bolt and nut used must have a minimum tare torque value of 14 inch/lbs.

(iv) Torque the nut in accordance with paragraphs 5.f) and 5.g) of the ASB.

(v) Coat the bolt head, nut, and washers with appropriate corrosion preventive compound to seal the joint.

(vi) At each remaining attachment location, remove the bolt, washers, and nut, and install the attachment hardware in accordance with paragraphs (d)(1)(ii) through (d)(1)(v) of this AD.

(2) After installation of the new attachment hardware, at intervals of not less than 1 hour TIS but not exceeding 5 hours TIS, determine the torque of each nut until the torque stabilizes at each attachment location. Thereafter, at intervals not to exceed 300 hours TIS, determine the torque of each nut. When determining the torque, it is acceptable to use the minimum tare torque of 14 inch/lbs (1.58 Nm) added to the minimum torque range of 550–560 inch/lbs (62.1 to 63.3 Nm). If you remove corrosion preventative compound during the torquing, recoat the bolt head, nut, and washers with appropriate corrosion preventive compound to seal the joint.

(e) *Alternative Methods of Compliance (AMOC).*

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5122; fax: (817) 222–5961, email *sharon.y.miles@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.

(f) *Additional Information.* The subject of this AD is addressed in Transport Canada AD CF–2010–32, dated September 30, 2010.

(g) *Subject.* Joint Aircraft Service Component (JASC) Code: 5302: Rotorcraft Tailboom.

Issued in Fort Worth, Texas, on January 23, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–2422 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0082; Directorate Identifier 2010–SW–036–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc., Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc., (Bell) Model 412 and 412EP helicopters. This proposal would require creating a component history card or equivalent record and begin counting and recording the number of accumulated landings for each high aft crosstube assembly (crosstube). Also, this proposal would require installing ''caution'' decals regarding towing of a helicopter at or above 8,900 pounds. This proposal would also require confirming the crosstube is within the horizontal deflection limits and replacing it if it is not. This proposal would also require a recurring fluorescent penetrant inspection (FPI) of each crosstube and upper center support for a crack, any corrosion, nick, scratch, dent, or any other damage. This proposal would require repairing damaged crosstubes and upper center supports that are within acceptable limits, reworking crosstubes by bonding on abrasion strips, and replacing each unairworthy crosstube with an airworthy crosstube. This proposal is prompted by analysis of the crosstubes conducted as a result of recent field failures and corrosion problems of the affected crosstubes. The actions specified by this proposed AD are intended to prevent failure of a crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by April 3, 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 proposed 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 proposed AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* 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: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *mike.kohner@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 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 proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

This document proposes adopting a new AD for the specified Bell model helicopters. This proposal would require creating a component history card or equivalent record and begin counting and recording the number of accumulated landings for each crosstube. Also, this proposal would require installing ''caution'' decals regarding towing of a helicopter at or above 8,900 pounds. This proposal would also require confirming that the crosstube is within the horizontal deflection limits and replacing it if it is not. This proposal would also require a recurring FPI of each crosstube and upper center support for a crack, any corrosion, a nick, scratch, dent, or any other damage. This proposal would require repairing damaged crosstubes and upper center supports that are within acceptable limits, reworking crosstubes by bonding on abrasion strips, and replacing each unairworthy crosstube with an airworthy crosstube. The affected crosstubes are the older non-anodized configuration and have had a service history of corrosion problems. In response to reports of field failures, Bell has completed a load level survey, material coupon testing, and additional analysis of the crosstubes. The results indicate that fatigue damage can occur during towing and landing. This condition, if not corrected, could result in failure of a crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

We have reviewed Bell Helicopter Alert Service Bulletin No. 412–09–135, dated August 25, 2009 (ASB). The ASB specifies, within 6 months after receiving the ASB, for each affected crosstube, a recurring 12 month/2500 landing FPI, a recurring 12 month/2500 landing deflection check, and use of a towing retention kit per BHT–412–SI–58 Gross Weight Towing Kit Provisions and Puller Equipment for helicopters that weigh 8,900 pounds or higher.

Proposed AD Requirements

This proposed AD would require compliance with specified portions of the manufacturer's service bulletin. It would require for each crosstube:

- Within 50 hours time-in-service (TIS), unless accomplished previously, creating a component history card or equivalent record and begin counting and recording the number of accumulated landings for each crosstube. Also, installing CAUTION decals regarding towing a helicopter that weighs at or above 8,900 pounds.
- Within 6 months, unless accomplished previously, and thereafter at intervals not to exceed 12 months or 2,500 landings, whichever occurs first:
  - Determining the horizontal deflection of each crosstube, and before further flight, replacing any crosstube that exceeds any maximum allowable deflection limit.
  - Removing and disassembling the landing gear assembly to prepare each crosstube for an FPI.
  - Cleaning and preparing the crosstube for the FPI by removing the sealant and paint.
  - Performing an FPI of each crosstube and upper center support for a crack, any corrosion, a nick, scratch, dent, or any other damage.
  - Repairing the crosstube if there is any corrosion, a nick, scratch, dent, or any other damage that is within the maximum repair damage limits, before further flight, or replacing the unairworthy crosstube.
  - If there is a crack or other damage beyond any of the maximum repair damage limits, before further flight, replacing the crosstube with an airworthy crosstube.
- Before further flight, after doing the FPI, unless accomplished previously, reworking each crosstube by bonding abrasion strips on the under side of the crosstubes at BL 0.0 and BL 14. Also, recording on the component history card or equivalent record an ''FM'' to the end of the part number sequence of each crosstube that has been reworked (for example, 412–050–011–107FM).

Costs of Compliance

We estimate that this proposed AD would affect 115 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It would take about 1 hour to create a component history card or equivalent record and begin to determine and record the number of accumulated landings; 0.5 hour to install caution decals on the pilot and co-pilot side of each helicopter; 0.5 hour to measure the horizontal deflection of each crosstube; 3 hours to inspect and prepare the area and do an FPI on each crosstube; 4 hours to rework a crosstube, assuming 5 will need to be reworked; and 2 hours to replace a crosstube, assuming 3 will need to be replaced. The average labor rate is $85 per work-hour and required parts for a replacement crosstube would cost about $9,315 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $79,030.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new Airworthiness Directive (AD):

Bell Helicopter Textron, Inc.: Docket No. FAA–2012–0082; Directorate 2010–SW–036–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron, Inc., (Bell) Model 412 and 412EP helicopters with a high aft crosstube assembly (crosstube), part number (P/N) 412–050–011–101, –103, –105, –107; or 412–050–045–105, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure and corrosion of the affected crosstubes. This condition could result in collapse of the landing gear and subsequent loss of control of the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time.

(d) Required Actions

(1) Within 50 hours time-in-service (TIS), unless accomplished previously:

(i) For each crosstube, create a component history card or equivalent record. Begin to count and record the number of accumulated landings for each crosstube. For the purposes of this AD, a landing would be counted anytime the helicopter lifts off into the air and then lands again with any further reduction of the collective after the landing gear touches the ground.

(ii) Install CAUTION decals, P/N 212–070–600–143, on the pilot and co-pilot sides of each helicopter as depicted in Figure 3 of Bell Helicopter Alert Service Bulletin No. 412–09–135, dated August 25, 2009 (ASB), and by following the Accomplishment Instructions, Part III—Towing, paragraph 1., of the ASB.

(2) Within 6 months, unless accomplished previously, and thereafter at intervals not to exceed 12 months or 2,500 landings, whichever occurs first, determine the horizontal deflection of each crosstube from the centerline of the helicopter (BL 0.0) to the outside edge of each skid tube. Before further flight, replace any crosstube that exceeds any maximum allowable deflection limit contained in the maintenance manual.

(3) Within 6 months, unless accomplished previously, and thereafter at intervals not to exceed 12 months or 2,500 landings, whichever occurs first:

(i) Remove and disassemble the landing gear assembly to prepare each crosstube for a fluorescent penetrant inspection (FPI) by following the Accomplishment Instructions, Part I, paragraphs 1. through 9., of the ASB.

Note 1: Abrasion strip, P/N 206–050–301–111; lower center support, P/N 412–050–007–101, with the incorporated Larson L101 abrasion strip; and lower center support, P/N 604–026–003, if installed on any crosstube, P/N 412–050–045–105, or reworked crosstubes, P/N 412–050–011–101, –103, –105, or –107, are only removed if required by following the instructions in the ASB (see items 2, 5, and 6 in Figure 1 of the ASB).

(ii) Clean and prepare the crosstube for the FPI by removing the sealant and paint in the area depicted in Figure 2 of the ASB by following the Accomplishment Instructions, Part I, ''Cleaning and Preparation,'' paragraphs 1. through 5., of the ASB.

(iii) Perform an FPI of each crosstube and upper center support, P/N 412–050–006–101, for a crack, any corrosion, a nick, scratch, dent, or any other damage by following the Accomplishment Instructions, Part I, ''Inspection,'' paragraphs 1. through 3. of the ASB. Use Table 2 in the ASB to determine the appropriate Inspection Criteria Table to use in the maintenance manual, which list the maximum repair damage limits for each crosstube P/N applicable to this AD.

(iv) Repair the crosstube or upper center support if there is any corrosion, a nick, scratch, dent, or any other damage that is within the maximum repair damage limits, before further flight, or replace the crosstube with an airworthy crosstube.

Note 2: The repair procedures are specified in the Component Repair and Overhaul Manual.

(v) If there is a crack or other damage beyond any of the maximum repair damage limits, before further flight, replace the crosstube with an airworthy crosstube.

(4) Before further flight, after completing paragraph (d)(3) of this AD, unless accomplished previously, rework each crosstube P/N 412–050–011–101, –103, –105, or –107 by applying the bonding procedures and abrasion strips on the under side of the crosstubes at BL 0.0 and BL 14 by following the Accomplishment Instructions, Part I, ''Rework of Crosstubes,'' paragraphs 1. through 10. of the ASB. Record on the component history card or equivalent record an ''FM'' to the end of the part number sequence of each crosstube that has been reworked (for example, 412–050–011–107FM). Omit the Larson L101 abrasion strip at BL 0.0 on each crosstube when installing lower center support, P/N 604–026–003 (see item 6 in Figure 1 of the ASB).

(e) Special Flight Permit

Special flight permits for inspections only may be issued under 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *mike.kohner@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.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 3210, Main Landing Gear.

Issued in Fort Worth, Texas, on January 27, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–2419 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1237; Airspace Docket No. 08–AWA–5]

RIN 2120–AA66

Proposed Modification of the Atlanta Class B Airspace Area; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Atlanta, GA, Class B airspace area to ensure the containment of aircraft within Class B airspace, reduce controller workload and enhance safety in the Atlanta, GA, terminal area.

DATES: Comments must be received on or before April 3, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–1237 and Airspace Docket No. 08–AWA–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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–2011–1237 and Airspace Docket No. 08–AWA–5) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters 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 Nos. FAA–2011–1237 and Airspace Docket No. 08–AWA–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. 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 through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **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 210, 1701 Columbia Ave., College Park, GA 30337.

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

Background

The primary purpose of Class B airspace is to reduce the potential for midair collisions in the airspace surrounding airports with high density air traffic operations by providing an area in which all aircraft are subject to certain operating rules and equipment requirements. FAA directives require Class B airspace areas to be designed to contain all instrument procedures and that air traffic controllers vector aircraft as appropriate to remain within Class B airspace after entry. Controllers must inform the aircraft when leaving and entering Class B airspace if it becomes necessary to extend the flight path outside Class B airspace for spacing. However, in the interest of safety, FAA policy dictates that such extensions be the exception rather than the rule.

Atlanta Class B Airspace History

On May 21, 1970, the FAA issued a final rule that established the Atlanta, GA, Terminal Control Area (TCA) with an effective date of June 25, 1970 (35 FR 7784). The TCA was modified several times during the 1970s to accommodate revised instrument procedures, the addition of a fourth parallel runway, and to ensure that the flight paths of large turbine-powered aircraft remain within the designated airspace. In 1993, as part of the Airspace Reclassification Final Rule (56 FR 65638), the term ''terminal control area'' was replaced by ''Class B airspace area.''

A fifth parallel runway became operational at the Hartsfield-Jackson Atlanta International Airport (ATL) in May 2006, enabling the implementation of Simultaneous Triple ILS operations as well as triple departure procedures. The new procedures added additional traffic and complexity to the ATL air traffic operation and the FAA found that not all aircraft could be contained within Class B airspace due to the existing design. To address this situation, the FAA issued a final rule in October 2006 (71 FR 60419) that lowered the floor of the Atlanta Class B airspace area from 6,000 feet MSL to 5,000 feet MSL within two small areas (approximately 9 NM by 5 NM), one to the east and one to the west of the airport and between the 20 NM and 25 NM arcs of the Atlanta VORTAC. The rule, however, was an interim measure that didn't address all issues with the Class B design, and the FAA noted its intent to conduct a thorough review of the Atlanta Class B airspace design for possible future revisions. Except for the changes implemented in the 2006 rule, noted above, the configuration of the Atlanta Class B airspace area has remained largely unchanged since the 1970s.

Need for Modification

Traffic at ATL has increased dramatically in the years since the airspace was originally designed. The airport has expanded from three parallel runways in the early 1980s to five parallel runways today. The operation has changed from a large contingent of propeller-driven aircraft to an almost all jet fleet today with a varied mix of aircraft types in the terminal area. The operational complexity at ATL also has increased dramatically with the addition of the fifth runway and the introduction of advanced navigation procedures (e.g., RNAV SIDs and STARs), which necessitates additional Class B airspace and more stringent procedures. In addition, there is a renewed safety emphasis on retaining all large turbine-powered aircraft within the Class B airspace to avoid mixing with other aircraft that are not in contact with ATC. The Atlanta operation has outgrown the 1970s airspace design and air traffic controllers often must vector aircraft on inefficient routes in an effort to keep them within Class B airspace. Keeping large jet aircraft within the existing Atlanta Class B airspace is not always possible. For example, arrivals are sometimes required to extend the downwind leg beyond the lateral limits of the existing Class B airspace before turning onto final due to traffic volume. On hot summer days, heavy aircraft on departure are sometimes unable to climb fast enough to stay above the rising floor of the Class B airspace.

Clarification of Terms

A review of comments received in response to the informal airspace meetings (see below) revealed some confusion over the meaning or application of several terms that apply to published VFR routes. Frequently, the terms are incorrectly used interchangeably. Since the terms are used in this NPRM, the following information is provided to explain the purpose of each type of route.

A *VFR Corridor* is airspace through a Class B airspace area with defined vertical and lateral boundaries in which aircraft may operate without an ATC clearance or communication with ATC. The corridor is, in effect, a ''tunnel'' through Class B airspace. Due to heavy traffic volume and procedures necessary to manage the flow of traffic, it has not been possible to incorporate VFR corridors in Class B airspace areas in recent years.

A *VFR Flyway* is a general flight path not defined as a specific course for use by pilots in planning flights into, out of, through or near complex terminal airspace to avoid Class B airspace. An ATC clearance is not required to fly these routes. Where established, VFR flyways are depicted on the reverse side of the VFR Terminal Area Chart (TAC), commonly referred to as ''Class B charts.'' They are designed to assist pilots in planning flights under or around busy Class B airspace without actually entering Class B airspace.

A *Class B airspace VFR transition route* is a route depicted on a TAC to accommodate VFR traffic transiting through a specific Class B airspace area. The route includes a specific flight course and specific ATC-assigned altitudes. Pilots must obtain an ATC clearance prior to entering Class B airspace on the route.

See the Aeronautical Information Manual (AIM) for more information about these routes.

Pre-NPRM Public Input

In October 2008, the FAA took action to form an Ad Hoc Committee to develop recommendations for the FAA to consider in designing a proposed modification to the Atlanta Class B airspace area. The Georgia Department of Transportation (GDOT) Aviation Programs Office headed the group, which consisted of representatives from airports that underlie the Atlanta Class B airspace area, national aviation organizations, and the ballooning and soaring communities. The Committee met three times between February 2009 and April 2009.

As announced in the **Federal Register** of December 4, 2009 (74 FR 63818), informal airspace meetings were held on February 22, 2010, in Kennesaw, GA; on February 25, 2010, in Covington, GA; on March 1, 2010, in Chamblee, GA; and on March 4, 2010, at Peachtree City Falcon Field, Peachtree City, GA. The purpose

of the meetings was to provide airspace users an opportunity to present their views and suggestions regarding modifications to the Atlanta Class B airspace area.

Discussion of Ad Hoc Committee Recommendations and Comments

As a starting point for discussions, a preliminary Class B design was presented to the Ad Hoc Committee for review. In general, the preliminary design consisted of lower Class B floors within a reduced radius of 30 NM from the ATL VORTAC as opposed to the current 35 NM radius. The preliminary design retained the extensions on the southwest and southeast corners as well as proposing new extensions on the northwest and northeast corners that extended out to a 40 NM radius in those areas. The Ad Hoc Committee submitted several recommendations to the FAA regarding the proposed modifications of the Atlanta Class B airspace area.

The Committee raised three concerns related to the proposed lower Class B airspace floors, particularly in the airspace directly underlying the final approach courses at ATL. First, the Committee believed there would be increased congestion at lower altitudes due to VFR traffic trying to avoid flying in the Class B airspace area and leaving less room for VFR aircraft to transition the airspace. The Committee recommended the FAA establish transition routes for north and southbound traffic to assist VFR aircraft navigating through the area and to mitigate congestion below the Class B floor.

The FAA understands the need for safe routes for VFR aircraft to transition through, around, and under the Class B airspace. The FAA originally considered proposing to lower the Class B floor in the airspace underlying the final approach courses at ATL from the current 3,500 feet MSL to 2,500 feet, which is the minimum vectoring altitude (MVA) in that area. Instead, the FAA proposed to set the floor at 3,000 feet because that altitude would contain all operations that are not currently being contained with the existing 3,500 foot floor. Aircraft executing a missed approach or a go-around from the southern-most runway are climbed to 3,000 feet. This altitude is needed to deconflict traffic with other aircraft at 4,000 feet. Aircraft at 3,000 feet routinely exit the existing Class B airspace, which conflicts with FAA procedures. The procedures cannot be changed due to the lack of available airspace to contain missed approaches.

The 3,000 foot Class B floor provides adequate airspace for aircraft to safely transition under the Class B airspace and still maintain the required terrain and obstruction clearance. The FAA intends to establish VFR Waypoints and Reporting Points to assist VFR pilot navigation. The new VFR waypoints would be located over areas that can be easily identified visually. The FAA also plans to establish VFR routes that can be used to circumnavigate the Class B airspace when necessary to avoid aircraft operating within the Class B airspace. However, these routes would also be useful as a predetermined route through the Class B airspace when operations permit. In addition to these new VFR waypoints, the FAA intends to establish RNAV T-Routes within Class B airspace for transitioning over the top of ATL. The T-routes would be part of the low altitude IFR enroute structure, but could also serve as VFR transition routes through the Class B for suitably equipped aircraft. Since the routes would enter Class B airspace, an ATC clearance would be required to use the T-routes. Typically, VFR aircraft could be assigned either 4,500 feet or 5,500 feet when transitioning along these routes. The new T-Routes would also make transitioning of IFR aircraft more safe and efficient. The VFR Flyway Planning Chart on the back of the Atlanta Terminal Area Chart would be updated to reflect the new routes and VFR waypoints. However, the FAA does not plan to establish a VFR Flyway or VFR corridor over the top of ATL because that airspace is too congested to accommodate such a flyway or corridor.

Second, the Committee was concerned that the lower floors would result in commercial airline traffic flying at lower altitudes in closer proximity to the satellite airports in the ATL area. Therefore, the Committee contended that lower floors could decrease the efficiency of the satellite airports and create IFR delays for arriving and departing traffic at the satellite airports.

The FAA looked at the Class B floors over the satellite airports. With the opening of the fifth runway at ATL, departure procedures had to be modified to reduce delays. One procedural modification was to separate the prop and turboprop traffic from traffic lanes used by faster jet aircraft. This resulted in more aircraft being turned north and south off of ATL. The routes that these aircraft take are already in existence and aircraft are already flying in the vicinity of Fulton county Airport-Brown Field (FTY) and Dekalb-Peachtree (PDK) airports, but below the floor of the existing Class B airspace. Lowering the floor of the Class B airspace over these airports would only ensure that this existing ATL departure traffic is contained within the Class B airspace as required by FAA directives. The change would not affect IFR traffic flows at either FTY or PDK. Also, the lower floor would not impose a lower initial altitude for aircraft departing these airports. Today, all aircraft departing all satellite airports are initially assigned 3,000 feet. Aircraft are then normally assigned 5,000 feet, or higher, upon initial contact with departure control. The assignment of higher altitudes is not dependent on the Class B airspace, but rather on the internal IFR airspace delegations within Atlanta TRACON (A80). This practice would not change because of the proposed modifications of the Class B airspace. There would be no expected increase in delays at satellite airports due to the lowering of the Class B floor.

Regarding satellite airport VFR traffic, it is true that lowering the floor of the Class B airspace may affect altitudes that VFR aircraft can initially climb to and still remain outside of the proposed Class B airspace. For example, aircraft departing southbound from Atlanta Regional Airport-Falcon Field (FFC), Newnan Coweta County (CCO), Clayton County-Tara Field (4A7) and Griffin-Spalding County (6A2) airports currently are able to climb to about 7,500 feet and still remain outside of the Class B airspace. Lowering the floor would have an impact VFR aircraft departing those airports in that they would have to remain below 6,000 feet or 5,000 feet until clear of the Class B airspace boundary, or request Class B service from A80. With today's Class B airspace configuration, large turbine-powered aircraft are allowed to mix with smaller aircraft departing the airports listed above. Containing large turbine-powered aircraft within Class B airspace, in compliance with FAA procedures, would increase safety in the area by minimizing the potential mixing of controlled and uncontrolled aircraft.

The Committee's third concern regarding the lower floors was the potential increase in noise complaints from surrounding communities. The FAA understands the concerns of the surrounding communities concerning noise and the effect of lowering the base of the Class B airspace. However, the Class B airspace changes under consideration are not associated with any changes of flight path or altitude. The FAA does not intend to change any existing instrument procedures in conjunction with the proposed Class B changes. As noted above, changes in the Class B airspace are being proposed purely to ensure that existing instrument procedures are contained

within the designated Class B airspace. The FAA believes that the noise concerns result from the perception that aircraft would be flying lower if the Class B floor is lowered. Aircraft are already flying in those areas, and at those altitudes, utilizing current FAA procedures, but these aircraft are not presently contained within Class B airspace as required by FAA policy. This proposal is subject to an environmental analysis prior to any FAA final regulatory action.

The Committee recommended that the FAA establish visual references to mark the Class B boundaries to assist VFR aircraft that have limited navigation equipment. The FAA agrees and would establish VFR Reporting Points at key points around the Class B airspace area to aid in navigation through and around the area, if this rule is adopted.

The Committee recommended that the current 8,000 feet and 6,000 feet Class B airspace floors over PDK be retained, or kept as close to the current altitudes as possible, in order to maintain efficient operations at PDK.

Due to the opening of the fifth runway at ATL, departure procedures had to be modified to reduce delays, as described above. Aircraft are already flying in the vicinity of PDK airport. Lowering the floor of the Class B airspace over the satellite airports would only contain the existing ATL departure traffic within the Class B airspace; it would not affect IFR traffic flows at PDK.

The Committee also recommended that the Class B floor over Covington Municipal Airport (9A1) not be lowered from 8,000 feet to 4,000 feet as proposed, but that the airport be excluded (i.e., ''cut out'') from the Class B airspace. After reviewing this recommendation, the FAA found that the airspace over 9A1 could be excluded without an adverse impact to the ATL operation. The proposed Class B airspace boundary has been revised so that 9A1 would be completely outside of Class B airspace.

In addition to the above recommendations, the Ad Hoc Committee report listed a number of other concerns about the preliminary design that were not directly tied to a recommendation. These concerns are discussed below.

The Committee stated that lower IFR departure altitudes could force faster aircraft to mix with slower aircraft.

The proposed design of the Class B would not result in lower IFR departure altitudes. IFR traffic flows would be the same with the proposed Class B airspace design as they are today. The initial departure altitude has been 3,000 feet for all satellite airports since the mid 1970s. After initial departure, aircraft are normally assigned 5,000 feet until they are clear of other traffic landing at ATL. IFR aircraft are not restricted by the Class B airspace, but rather by other IFR traffic. Once the conflicting traffic is clear, aircraft are routinely cleared to climb into/through the Atlanta Class B airspace. There remains the possibility of faster and slower aircraft mixing at low altitudes outside of the Class B airspace. This, however, is not new and is more a function of satellite airport proximity to the ATL airport than of the Class B airspace.

The Committee held that the FAA had not studied the effect of the proposed Class B design on VFR traffic flow.

There are two areas where VFR flights would be most affected by the proposed change in the Class B airspace. The first area is below the new proposed 5,000 foot MSL shelf north of ATL. In this area, pilots would have to choose between flying at a lower altitude, circumnavigating the area to the north, or requesting Class B service from A80. Likewise, the area that currently underlies the final approach courses for ATL is proposed to be lowered to 3,000 feet MSL. Again, pilots must choose between flying lower, circumnavigating the area, or requesting Class B service from A80 to transition the area. Large turbine powered aircraft are routinely operating in both of these areas. Class B airspace is necessary in these areas to ensure the highest level of safety possible in the Atlanta terminal area.

The Committee raised the issue of flight restrictions over the Atlanta Motor Speedway in Hampton, GA, during NASCAR races. The Committee believed that lowering the Class B floor from 8,000 feet to 6,000 feet in that area would cause compression of traffic when a race was in progress.

The flight restriction, currently described in FDC NOTAM number 9/5151, prohibits flight within a 3 NM radius of the track, up to and including 3,000 feet AGL, during the period from one hour before until one hour after the end of the event. While events subject to the restrictions of this NOTAM occur once a year at the Atlanta Motor Speedway, the restriction does not apply to other Speedway race events. Even when the restriction is in effect, the FAA does not believe that circumnavigating the area would be a significant impact to aircraft operating in the vicinity. As stated in the NOTAM, the restriction does not apply to aircraft authorized by, and in contact with, ATC for operational or safety of flight purposes. Furthermore, aircraft may operate in the restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic control procedures.

The Committee stated that compressing aircraft lower to the ground as a result of lower Class B floors places aircraft closer to obstacles and terrain, which limits the time pilots have to respond to a mechanical emergency. Pilots must plan their flights to take these potential situations into account. Today, aircraft routinely operate at or below 2,400 feet while transitioning under the existing Class B airspace. This altitude is 600 feet below the floor of the proposed Class B airspace in some areas. This altitude has routinely provided safe obstacle and terrain clearance for aircraft transitioning under the Class B airspace.

Instead of lowering the Class B floor, one Committee member suggested that ATC should advise aircraft with poor climb performance that they are leaving the Class B airspace or publish a climb gradient that will allow aircraft to remain within the existing Class B airspace.

The need for lower Class B airspace floors to the north and to the south of ATL is based on the requirement to fully contain existing instrument procedures within Class B airspace. These procedures are not fully contained by today's Class B airspace configuration. Due to internal airspace delegations designed to segregate slower prop and turboprop traffic from turbojet traffic, prop and turboprop aircraft must fly at lower altitudes out to 20NM before they can initiate a climb. This allows enough room for turbojet aircraft to climb above the prop and turboprop aircraft. Additionally, merely advising the aircraft that they are leaving the Class B airspace is not an option. Retaining these aircraft within the Class B airspace is required by FAA policy and is a top safety issue. Since the existing airspace is inadequate, the Class B design needs to be modified.

The Committee wrote that the new proposed Class B extensions on the northwest and northeast corners (referred to by commenters as the ''ears'' or ''wings''), as well as the existing southwest and southeast extensions, would be difficult to navigate around and that they are unnecessary. The FAA reevaluated this feature and concluded that all four ''ears'' can be deleted from the proposed design.

The Committee believed that the lower Class B floors could impact sailplane operations at the Monroe-Walton County Airport (D73) and the West Georgia Regional Airport-O. V. Gray Field (CTJ). It contended that the lower inbound traffic to ATL from the east and the west would infringe on

airspace being used outside of the Class B airspace by sailplanes.

Arrival traffic to ATL does not typically fly in the vicinity of those airports. ATL inbounds are routed from the four corners, northeast, northwest, southeast, and southwest. These arrival corridors are well clear of the two airports and are not changing due to the proposed the Class B airspace modifications.

The Ad Hoc Committee report also included an alternative Class B design for FAA's consideration. In part, this design consisted of higher Class B floors than those proposed by the FAA, such as retaining the current 8,000 foot floor north and south of ATL. Also, a large portion of the Class B would have a 6,000 foot floor. A block of Class B airspace would be aligned along the extended centerlines, to the east and west of the airport, with a floor of 2,500 feet from 7 NM to 12 NM, and a base of 3,500 feet MSL from 12 NM out to 20 NM. Surrounding this section on all sides, the Class B floor would be 5,000 feet MSL. The 5,000 foot area would provide for westbound VFR traffic at 4,500 feet MSL north of the airport and eastbound VFR traffic at 3,500 feet MSL south of the airport.

The Committee's proposal would require changing ATC procedures to fit the proposed alternate airspace, instead of changing the airspace to fit the procedures. These procedures, adopted over many years, have proven to be the most efficient for handling the high volume of traffic serving ATL. The main points of the alternative design in the Committee's report are discussed below.

1. The FAA does not find that the 6,000 foot area would be adequate to contain all large turbine powered aircraft departing ATL. It does not allow enough room for departures to clear internal airspace boundaries that protect ATL jet departures from satellite airport departures. Additionally, on the southeast and southwest corners of the airspace, it does not allow ATL arrival aircraft to get low enough to feed the south final.

2. Raising the Class B airspace floor over the downtown area and the stadiums to 5,000 feet to allow traffic to overfly the FTY Class D airspace area and (when NOTAM 9/5151 is in effect) would be problematic. The current floor over the downtown area would not change in the FAA's proposed Class B design. The floor of the Class B airspace over the downtown area has been 3,500 feet since at least the mid-1970s and has provided adequate space for aircraft to transition that airspace. A 5,000-foot floor would not allow departures or missed approach aircraft to be contained within the Class B airspace.

3. The Committee contended that turboprop departures should not be turned until they can comply with the 5,000 foot floor. This is not operationally feasible because it would require the turboprops to be blended back in with the jets on departure and would greatly reduce departure capacity at ATL.

4. The Committee suggested that ATL missed approaches should be flown as departures unless an emergency exists. This alternative procedure would not allow ATC enough options. The rules that apply to missed approaches in a terminal environment, where multiple runways are being used simultaneously for arrivals and departures, are very complex. They require ATC to retain the maximum flexibility in the operation to ensure that we can effectively separate missed approach and unplanned go-arounds from departing aircraft. Sometimes, aircraft will be able to proceed outbound on the departure tracks. Other times aircraft must be turned immediately to avoid aircraft departing simultaneously from a parallel runway.

5. The Committee also contended that long, low, finals are not needed. Currently, aircraft are turned on to parallel finals at ATL between 3,500 feet and 7,000 feet MSL. FAA Order JO 7110.65 requires that aircraft being turned onto parallel finals be separated by 3 miles longitudinal or 1,000 feet vertical separation until they are established on final approach course. It is more efficient to turn the aircraft on final with vertical separation. Raising the altitude that aircraft are turned on to parallel finals would result in even longer finals and would require Class B extensions beyond 30NM. The FAA has been able to reduce the size of the proposed Class B on the east and west sides to less than 30 NM based on the existing procedures.

Discussion of Informal Airspace Meeting Comments

Over 150 comments were received in response to the informal airspace meetings. Two commenters wrote in support of the proposal, while the remaining comments opposed various aspects of the proposed Class B modifications.

One commenter contended that the proposed Class B changes are premature since ATL flights declined in 2009 and could continue to do so over the next decade due to the U.S. economic downturn. According to the commenter, the current Class B should be left in place and reviewed again in five or ten years.

While economic swings may happen periodically, the volume of traffic and passenger boardings at ATL remain extremely high. Passenger boardings at ATL declined by just over three percent from 2008 to 2009, but even so, boardings exceeded 42 million passengers (over eight times the threshold to qualify for Class B airspace). Calendar year 2010 data show a two percent rise in boardings from the previous year. Similarly, airport operations declined slightly from 2008 to 2009, but still totaled over 970,000 operations (more than three times the number to qualify for Class B airspace). The proposed airspace changes are necessary to ensure safety of flight. Nevertheless, the FAA would continue to periodically evaluate the airspace design and may propose changes in the future if circumstances dictate.

Some commenters suggested that the ATL Class B airspace should be set up like that in Seattle, WA, but aligned along ATL's east/west approaches and departures with fixes outbound so traffic is strung out over a larger area east- and west-bound. They contended that this alignment would leave the northern satellite airports free to expedite their arrivals/departures; while ATL missed approaches could fly straight out.

Each Class B airspace area design is individually tailored to fit the operational needs of the primary airport. Atlanta's airspace system could not be set up like Seattle due to the many differences between the two operations. West coast facilities are able to take advantage of the fact that the majority of the traffic arrives from the same direction (east) while Atlanta traffic arrives from all directions. The Seattle Class B design is influenced by high terrain to the east and northwest as well as special use airspace northwest and southwest of the area. Additionally, the Atlanta operation is much larger than Seattle, involving five runways versus three, and accommodating over three times the number of airport operations. Seattle's Class B configuration simply would not provide sufficient airspace to contain Atlanta's operations. Regarding missed approaches, ATL missed approach aircraft cannot always fly straight out because aircraft departing from other runways also occupy the same airspace. In the FAA's proposed design, the size of the Atlanta Class B would be reduced so that all Class B airspace beyond 30 NM would be eliminated.

One commenter wrote that the proposed ''wings'' in the four quadrants

should be retained because eliminating the wings exposes arriving aircraft below 10,000 feet to transitory nonparticipating aircraft circumnavigating the Class B airspace.

The FAA has reevaluated the proposed Class B extensions. The existing and proposed ''wings'' extended beyond the 30 NM Class B lateral limit as provided in FAA Order JO 7400.2H. The vertical and lateral limits of the area are designed to contain all instrument procedures within Class B airspace. In this proposal, the outer limits of the proposed Class B have been reduced to a maximum of 30 NM from ATL to meet FAA policy and to address Ad Hoc Committee comments that the ''wings'' should be reduced or eliminated.

One commenter contended that aircraft will be unable to identify the lateral boundaries on the ''45s'' (**Note:** the ''45s'' refers to those Class B boundary lines currently described by the ATL VORTAC 323°, 031°, 138° and 218° radials) because they would no longer be based on ATL VORTAC radials. In addition, the east and west Class B boundaries would be difficult to identify because they are defined by longitude lines rather than DME.

The FAA has found that, in the current Class B design, some of the boundaries that are defined by radials and DME are the same areas where aircraft are consistently leaving the Class B airspace. Due to the position of the ATL VORTAC, if radials were used to describe the proposed realigned ''45s,'' it would result in the designation of more Class B airspace than is needed to contain current operations. An increasing number of general and business aviation users are now RNAV or RNAV GPS equipped. Additionally, pilots may request vectors to remain clear of Class B airspace. The Ad Hoc Committee concurred with the use of GPS in defining certain area boundaries.

Many commenters were concerned about the perceived impacts of the proposed changes on VFR operations in the Atlanta terminal area. It was stated that the FAA did not fully determine the impact on VFR aircraft flying beneath the Class B airspace. In response, a new study was done, which found that, of the 7,123 flights observed in the vicinity of PDK, 141 were operating above 5,000 feet MSL. With almost 98% of the aircraft flying in that area already operating below 5,000 feet MSL, lowering the floor of Class B airspace to 5,000 feet MSL would not significantly impact VFR operations.

However, many commenters echoed concerns also raised by the Ad Hoc Committee that the lower Class B floors would cause the compression of VFR traffic beneath the Class B and/or require pilots to fly further to deviate around the Class B airspace. Commenters said that the changes could increase the potential for midair collisions, reduce the airspace available for avoiding Class D airspace areas and obstructions in the ATL terminal area, and leave pilots with less time and altitude to react to inflight emergency situations or locate a suitable emergency landing site.

The FAA acknowledges these concerns and recognizes that compression could occur for some VFR operations. However, with the existing Class B configuration, VFR aircraft that are not in communication with ATC are currently mixing with turbine-powered ATL traffic. The FAA weighed the impacts to VFR pilots flying lower or choosing to circumnavigate the Class B airspace against the safety of having large turbine-powered aircraft flying at altitudes that are not contained within Class B airspace. Considering the heavy concentration of operations by all types of aircraft in the Atlanta terminal area, we believe the operation of large turbine-powered aircraft outside the Class B airspace poses a greater safety risk. Lowering the floor of the Class B airspace increases safety by segregating large turbine-powered aircraft from aircraft that may not be in contact with ATC. As always, it is the pilot's prerogative and responsibility to evaluate these factors and determine the safest course of action for any given flight.

One commenter opposed the lowering of the Class B floor in the vicinity of PDK from 8,000 feet to 5,000 feet because it could cause compression of VFR aircraft given the fact that the PDK Class D airspace ceiling is 3,500 feet.

The existing Class B floor above PDK is 8,000 feet, while immediately to the east and south of PDK, the existing floor is 6,000 feet. Under the proposed Class B changes, the floor of Class B airspace above the southern half of the PDK Class D airspace would be 5,000 feet; to the northeast, the floor would be 6,000 feet; and to the northwest, the floor would be 7,000 feet. This would still give pilots room to navigate north of the PDK airport eastbound at 5,500 feet. It is true that the proposed change would eliminate the 5,500 foot VFR altitude over the southern half of the PDK Class D airspace. This may require the pilot to make a choice to fly eastbound below 3,000 feet AGL or to fly further north in order to fly above 3,000 feet AGL and below the Class B airspace.

Other commenters argued that the proposed 3,000 foot floor on the east and west sides of the area would make it more difficult for VFR aircraft to navigate around the city and get from north-to-south and vice versa. The commenters asked that more waypoint-driven VFR routes be developed around the city, and that a ''corridor'' used by A80 to route aircraft over ATL be publicized and added to the Sectional Chart and be made a more routine choice for VFR pilots.

Regarding the proposed 3,000 foot floor, the existing Class B floor in those areas is 3,500 feet MSL. Today, aircraft landing at ATL are intercepting the southern final approach course farther from the airport than needed to meet the present Class B separation criteria. During Triple ILS approaches, aircraft are required to maintain 1,000 feet vertical separation until established on the final approach courses. This mandates an aircraft final approach interception point that is two NM farther from the airport than would be required if the Class B floor was lowered to 3,000 feet. The proposed 3,000-foot floor would allow aircraft to be turned onto the final approach course closer to the airport which would increase efficiency, save fuel and reduce emissions. Additionally, lowering the floor to 3,000 feet would allow Visual Approaches to be conducted more often, which is the most efficient arrival operation at ATL. The proposed 3,000 foot floor would produce a safer airspace environment for aircraft arriving at the world's busiest airport. Flying VFR under the lowest floor of the Class B airspace always requires the pilot in command to evaluate traffic that may be flying overhead within the Class B as well as terrain, obstructions and emergency landing options and determine the best and safest course of action for the planned flight. Regarding waypoint-driven VFR routes, the Atlanta TAC would be revised to contain VFR flyways as well as GPS intersections/waypoints to assist VFR pilot navigation.

In regard to the comment about A80's ''corridor'' over the top of Atlanta, this is not the same thing as a ''VFR corridor'' as described in the *Clarification of Terms* section, above. The A80 Satellite Sectors are assigned airspace within the Class B that can be used to transition aircraft north and south. This airspace delegation is adjusted based on the operational runway configuration in use at ATL. It is a 6 NM wide north/south airspace area that overlies the approach side of the arrival runways. Its primary use is to route IFR aircraft departing airports north of VOR Federal airway V–18 that are filed to destinations south of the

Atlanta area. It is also used when operationally advantageous to route some aircraft northbound that are landing at airports to the north and within A80's airspace. This small, high traffic density ''corridor,'' encompassing 5,000 to 6,000 feet, is used by air traffic controllers to efficiently flow and meter Atlanta satellite airport aircraft. Since the location of the ''corridor'' shifts based on the direction of operations at ATL, it would be impractical to publish the locations on aeronautical charts. Clearance into the area is based on traffic and the workload of the Satellite Controllers. It is intended for controller operational use. Pilots may request use of the ''corridor'' and controllers may approve the request when appropriate. VFR aircraft flying in this airspace are required to obtain a Class B clearance.

Several commenters said that the FAA should have considered establishing VFR corridors through the Class B airspace to offset the issue of flying beneath the lower Class B floors. The FAA considered a VFR corridor, however, since a VFR corridor permits flight through Class B airspace without an ATC clearance or radio communications requirements, the idea was not adopted due to the high volume of traffic, the amount of airspace required to create a useful corridor, and the potential effects on safety considering weather and missed approach procedures.

One commenter requested that the FAA establish ''traffic dependent routes'' that could be used to allow more direct routes to FTY and PDK when traffic, time and weather conditions permit. ''Traffic dependent routes'' are currently being discussed with A80 separately from this Class B proposal process. Class B airspace would have no effect on the implementation of ''traffic dependent routes.''

One commenter noted a lack of IFR arrival routes into the satellite airports for use by smaller, but technically advanced, aircraft. Currently, the DIFFI ONE, JRAMS TWO (RNAV) and the TRBOW EIGHT Standard Terminal Arrivals (STARs) are in effect. These STARs were designed to facilitate all types of aircraft inbound from the south of Atlanta that have filed to airports north of Atlanta that are within A80's airspace. It is important to note that these STARs are also designed to keep aircraft that are not landing at the Atlanta Airport safely outside of the Atlanta base leg arrival traffic as well as Atlanta departing traffic.

Several commenters suggested that lowering the Class B floors would result in increased IFR departure delays from satellite airports such as FTY and PDK. The existence of Class B airspace has no impact on delays from these airports. The determining factors for delays are normally traffic volume and weather. No additional IFR aircraft would be introduced into the airspace over these airports, so the traffic that flows through the affected airspace is already there. Where aircraft fly today in that area is where they would fly if the new airspace is implemented. The only difference is that, if the new Class B is implemented, those aircraft would be contained within the Class B airspace. IFR aircraft departing from satellite airports would not be artificially held down due to a change in the floor of the Class B airspace. Any IFR delays experienced by the satellite airports should be of the same frequency and magnitude as those experienced today.

There is also a perception that IFR aircraft departing satellite airports are kept out of the Class B airspace. This is not the case. With the proposed Class B airspace, aircraft departing satellite airports would be worked within Class B airspace much more often. For example, a turbojet aircraft departing Runway 8 at FTY going eastbound is normally assigned 5,000 feet MSL shortly after takeoff. Today, that aircraft is outside Class B airspace. If the proposed Class B change is implemented, that same aircraft would still be assigned 5,000 feet but would be contained within Class B airspace.

A pilot who flies out of Gwinnett County Airport-Briscoe Field (LZU) (in comparing his current operations below the existing 6,000 foot floor, to the north of Atlanta) stated that if the Class B floor is lowered to 5,000 feet in that area, he could not legally fly VFR at 3,000 feet AGL. Aircraft operating below Class B airspace north of Atlanta may transition west bound at 4,500 feet MSL and eastbound at 3,500 feet MSL. These altitudes ensure that VFR aircraft are outside of Class B airspace and will remain above the FTY Class D airspace area. In this instance, there are at least three options for VFR aircraft:

1. Alter course to avoid the FTY, Dobbins ARB (MGE), DeKalb-Peachtree (PDK) and Cobb County-McCollum Field (RYY) Class D airspace areas at 3,500 MSL;

2. Ask for VFR Flight Following from A80. If VFR aircraft are receiving VFR Flight Following from A80, they can transit these Class D airspace areas without having to contact each individual control tower; or

3. Fly just north of an east/west line over PDK which will put VFR aircraft in an area where the lower limit of Class B is either 6,000 or 7,000 MSL. This airspace can be transited at 5,500 feet MSL while remaining outside the Class B and Class D airspace areas.

Another commenter said that extending the Class B airspace to LZU would require pilots on approach to Runway 7 to fly under the Class B shelf which could discourage access by light sport pilots and students. The commenter asked that the Class B boundary be moved farther from LZU to allow several miles for extended downwind. Since the existing Class B airspace extends out to 35 NM, today the LZU airport totally underlies a shelf of Class B airspace. With the proposed Class B design, LZU airport would be completely outside the Class B boundary. Aircraft approaching Runway 7 may still need to fly under a 6,000 foot Class B floor, but this floor is well above traffic pattern altitude and leaves plenty of room for aircraft to maneuver. The proposed design would be much less restrictive to LZU airport operations than the existing airspace.

One commenter believed that lowering the Class B floor would cause the existing VFR ''corridors'' to be within Class B airspace, thus defeating the purpose of the ''corridors.'' ATL does not have VFR corridors in either the current or proposed airspace design. The FAA believes that the commenter is referring, instead, to the charted VFR flyways depicted on the reverse side of the Atlanta VFR Terminal Area Chart. If the proposed airspace is implemented, these flyways will be amended based on the Class B changes. The FAA intends to develop additional flyways and to add GPS waypoints to the chart to assist pilots in navigating around the area. The FAA has no plans to develop a VFR corridor within the Atlanta Class B airspace area because the airspace is simply too congested.

Over 90 comments concerned impacts of the proposal on the communities around PDK airport, including: Increased noise and air pollution; lower property values and inability to sell homes; detrimental effect on local businesses; reduced tax revenues; and decreased quality of life. Noise complaints were a recurring issue because many commenters believed that lowering the floor of the Class B airspace would cause aircraft to fly lower over residential areas resulting in increased noise for their communities.

The FAA is not proposing to change existing air traffic procedures or flight paths, therefore, where aircraft fly today is where they would continue to fly if the proposed Class B changes are implemented. As stated previously, the reason for the proposed Class B change is to comply with agency policy to

contain large turbine-powered aircraft arriving and departing ATL within Class B airspace on the routes they are currently flying. Therefore, the Class B changes should not cause an increase of over-flight noise from what residents are experiencing today.

Additionally, there is a perception that Hartsfield jets will begin flying lower over residential areas near PDK airport due to the lowering of the Class B floor. The FAA does not intend to change where aircraft fly today. ATL arrivals are operating in the area in question at 6,000 feet today and they will continue to operate at that altitude in the future. As previously discussed, the purpose of the proposed lowering of the Class B floor to 5,000 feet is to encompass ATL departures that are already operating in that area at 5,000 feet underneath the arrivals (but outside the confines of Class B airspace). ATL arrival flows could not be lowered from 6,000 feet to 5,000 feet without also lowering the departures down to 4,000 feet in order to be below the arrivals with proper separation. This would require the Class B floor to be even lower at 4,000 feet, but that is not being considered. Since arrivals and departures to both ATL and PDK will continue to operate at the same altitudes as they do today, none of the above impacts would result from the proposed Class B changes. In fact, the vast majority of noise being experienced by residents is caused by aircraft at or below 3,000 feet MSL when taking off from, or landing at, PDK. These aircraft will continue to fly at those altitudes regardless of any changes made to the Atlanta Class B airspace. The proposed Class B changes would have no effect, positive or negative, on noise generated by aircraft arriving or departing PDK. Therefore, lowering the floor of Class B airspace to 5,000 feet MSL would not have an appreciable effect on the amount of noise experienced by residents in the neighborhoods surrounding PDK.

Two commenters wrote that a new reliever airport should be constructed in the Atlanta area to support the growth of air travel and preclude the need for modifying the Class B airspace. This suggestion is outside the scope of this proposed rulemaking effort.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the Atlanta Class B airspace area. This action (depicted on the attached chart) proposes to lower the floor of Class B airspace to ensure the containment of large turbine-powered aircraft, reduce the outer lateral dimensions of the area for more efficient airspace utilization, and update the Atlanta airport geographic position to reflect the current airport survey information. The Class B airspace ceiling would remain at 12,500 feet MSL. The proposed revisions of the Atlanta Class B airspace area are outlined below.

Area A. Area A is the surface area that extends from the ground up to 12,500 feet MSL. The FAA is not proposing any changes to Area A.

Area B. A revised Area B is proposed consisting of that airspace extending upward from 2,500 feet MSL east and west of the Atlanta airport. The revised Area B would combine two existing subareas, B and C. The existing area B consists of a small segment of airspace, east of the ATL airport that extends upward from 2,100 feet MSL between the 7 and 9-mile radii of the Atlanta VORTAC. The existing Area C includes that airspace extending upward from 2,500 feet MSL, east and west of Atlanta airport between the 7 and 12 NM radius of the Atlanta VORTAC. With this change, the existing 2,100-foot floor of Class B airspace would be eliminated.

Area C. Area C is redefined to include that airspace that extends upward from 3,000 feet MSL (as described above, the existing Area C extends upward from 2,500 feet MSL). The new Area C would lower the existing floor of Class B airspace from 3,500 feet MSL to 3,000 feet MSL. Currently, Area D includes the airspace extending upward from 3,500 feet MSL. With this proposal, most of the airspace now in Area D would be incorporated into the new Area C (with the lower 3,000-foot floor).

Area D. This area would still consist of that airspace extending upward from 3,500 feet MSL. However, it would be significantly reduced in size due to the modification of Area C, described above. The revised Area D would include only that airspace bounded on the south by a line 4 miles north of and parallel to the Runway 08L/26R localizer course, and on the north by a line 8 miles north of and parallel to the above mentioned localizer courses. The revised Area D would be bounded on the west by long. 84°51′38″ W., and on the east by long. 84°00′32″ W.

Area E. This area would continue to include the airspace extending upward from 4,000 feet MSL, but it would be modified incorporating a small segment of Class B airspace, south of ATL that currently extends upward from 6,000 feet MSL. In addition, Area E would incorporate the two segments, currently extending upward from 5,000 feet MSL that were added by the October 2006 rule as discussed in the Background section, above.

Area F. Area F consists of that airspace extending upward from 5,000 feet MSL. The area currently is composed of four small segments, one southwest of ATL, one southeast and the two segments east and west of ATL that were designated in the October 2006 rule. These four areas would be removed from Area F and incorporated into other subareas with lower floors. The modified Area F would be located north of ATL within the area bounded on the south by a line 8 miles north of and parallel to the Runway 08L/26R localizer courses, and on the north by a line 13.5 miles north of and parallel to the above mentioned localizer courses. On the east and west, Area F would be bounded approximately by the 30 NM radius of the Atlanta VORTAC. The effect of this change would be to lower the floor of Class B airspace from 6,000 feet MSL to 5,000 feet MSL in the described area.

Area G. Area G contains that airspace extending upward from 6,000 feet MSL. Currently, Area G consists of airspace north of ATL, which would largely be incorporated into the revised Area F. The revised Area G would consist of the airspace bounded approximately between the Atlanta VORTAC 30 NM radius on the south, and a line 12 miles south of and parallel to the Runway 10/28 localizer courses.

Area H. This area consists of two airspace segments that extend upward from 5,000 feet MSL, one located southwest and one located southeast of ATL. The Area H segments would be bounded on the north by a line 12 miles south of and parallel to the Runway 10/28 localizer courses and on the south by the 30 NM radius of the Atlanta VORTAC, excluding the airspace within Area G as described above.

Area I. Area I is redefined to consist of the airspace extending upward from 7,000 feet MSL north of ATL. The revised Area I would be bounded on the north side by the 30 NM radius of the Atlanta VORTAC; on the south by a line 13.5 NM north of and parallel to the Runway 08L/26R localizer courses; on the east by a line from lat. 33°52′25″ N., long. 84°19′08″ W. direct to lat. 34°04′20″ N., long. 84°09′24″ W.; and on the west by a line from lat 33°53′28″ N., long. 84°36′07″ W. This change would lower the floor of Class B airspace from 8,000 feet MSL to 7,000 feet MSL in the defined area.

Area J. Area J would be a new subarea to describe that airspace extending upward from 6,000 feet MSL in two segments, one northwest and one northeast, of ATL. One segment would

abut the west side of Area I and the other segment would abut the east side of Area I. The two segments would abut the northern boundary of Area F, with the 30 NM radius of the Atlanta VORTAC defining their northern edges. Area J would lower part of the Class B airspace floor from 8,000 feet MSL to 6,000 feet MSL in the northwest and northeast sections of the area.

If the above proposed changes are implemented, all existing Class B airspace that lies outside the 30 NM radius of the Atlanta VORTAC would be eliminated. These changes are being proposed to ensure the containment of large turbine-powered aircraft within Class B airspace as required by FAA directives to enhance safety and the efficient management of air traffic in the Atlanta, GA terminal area.

The geographic coordinates in this proposal are stated in degrees, minutes and seconds based on North American Datum 83.

Class B airspace areas are published in paragraph 3000 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 B airspace area proposed in this document would be published subsequently in the Order.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this final rule.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This action proposes to modify the Atlanta, GA, Class B airspace area to ensure the containment of aircraft within Class B airspace, reduce controller workload and enhance safety in the Atlanta, GA, terminal area. It lowers the Class B Airspace in some sections to encompass existing IFR traffic. Lowering the floor of the Class B airspace would increase safety by segregating large turbine-powered aircraft from aircraft that may not be in contact with ATC. It would also increase safety and reduce air traffic controller workload by reducing the number of radio communications that air traffic controllers must use to inform IFR aircraft when they are leaving and re-entering Class B airspace. This would reduce the amount of distraction that air traffic controllers face in issuing these communications and free radio time for more important control instructions. IFR traffic would not be rerouted as a result of this proposal.

The change may cause some VFR pilots to have to choose between flying lower, circumnavigating the area, or requesting Class B service from A80 to transition the area. This has the potential of increasing costs to VFR pilots if the alternative routes are longer, take more time and burn more fuel. The FAA believes, however, that there would be minimal impact to VFR aircraft operating where the Class B floor would be lowered. Where the floor would be lowered to 5,000 feet, an FAA sampling of VFR traffic found that 98 percent of 7123 VFR flights were already operating below 5,000 feet. Where the floor would be lowered to 3,000 feet, we believe there is sufficient airspace to allow safe flight below the Class B airspace. The minimum vectoring altitude (based in part on obstruction clearance) under most of the proposed 3,000-foot floor is 2,500 feet. VFR aircraft can and do fly safely at 2,000 feet under the existing Class B floor. Recognizing that some VFR aircraft may elect to circumnavigate instead of flying lower, it is only a short deviation in distance and time would be needed to place the aircraft beneath a higher Class B floor.

The FAA intends to take actions that would increase the alternatives available to VFR pilots. For instance, if this proposal is adopted, the FAA intends to establish VFR Waypoints and Reporting Points to assist VFR pilot navigation, and to establish VFR routes that can be used to circumnavigate the Class B airspace or used as a predetermined route through the Class B airspace when operations permit. In addition to these new VFR waypoints, the FAA would establish RNAV T–Routes within Class B airspace for transitioning over the top of ATL airports. These various alternatives should provide pilots with options that would assist them in navigating around or beneath the Class B and/or to request ATC clearance to cut through the Class B. The FAA believes that no more than a small percent of VFR traffic would choose to travel longer, less efficient or more costly routes because safe flight would still be possible beneath most of the Class B airspace, A80 would continue to provide VFR services to assist pilots in transiting the area, and only short course deviations would be needed if pilots decide to avoid the areas with lower Class B floors.

The FAA would have to update maps and charts to indicate the airspace modifications, but these documents are updated regularly. These modifications would be made within the normal updating process and therefore would not contribute to the cost of the rule since the updates would be as scheduled.

The proposed rule redefines Class B airspace boundaries to improve safety, would not require updating of materials outside the normal update cycle, would not require rerouting of IFR traffic, and is expected to possibly cause some VFR traffic to travel alternative routes which are not expected to be appreciably longer than with the current airspace design. The expected outcome would be a minimal impact with positive net benefits, and a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule is expected to improve safety by redefining Class B airspace boundaries and would impose only minimal costs because it would not require rerouting of IFR traffic, could possibly cause some VFR traffic to travel alternative routes that are not expected to be appreciably longer than with the current airspace design, and would not require updating of materials outside the normal update cycle. Therefore, the expected outcome would be a minimal economic impact on small entities affected by this rulemaking action.

Therefore, the FAA certifies this proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. The FAA solicits comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims. The FAA also invites comments regarding other small entity concerns with respect to the proposed rule.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore no affect on international trade

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List 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 the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace

* * * * *

ASO GA B Atlanta, GA [Revised]

Hartsfield-Jackson Atlanta International Airport (Primary Airport)
(Lat. 33°38′12″ N., long. 84°25′41″ W.)
Atlanta VORTAC
(Lat. 33°37′45″ N., long. 84°26′06″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 12,500 feet MSL, bounded on the east and west by a 7-mile radius of the Atlanta VORTAC, on the south by a line 4 miles south of and parallel to the Runway 10/28 localizer courses, and on the north by a line 4 miles north of and parallel to the Runway 08L/26R localizer courses; excluding the Atlanta Fulton County Airport-Brown Field, GA, Class D airspace area.

Area B. That airspace extending upward from 2,500 feet MSL to and including 12,500 feet MSL, bounded on the east and west by a 12-mile radius of the Atlanta VORTAC, on the south by a line 4 miles south of and parallel to the Runway 10/28 localizer courses, and on the north by a line 4 miles north of and parallel to the Runway 08L/26R localizer courses; excluding the Atlanta Fulton County Airport-Brown Field, GA, Class D airspace area and that airspace contained in Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 12,500 feet MSL, bounded on the east by long. 84°00′32″ W., on the west by long. 84°51′38″ W., on the south by a line 8 miles south of and parallel to the Runway 10/28 localizer courses, and on the north by a line 4 miles north of and parallel to the Runway 08L/26R localizer courses; excluding that airspace contained in Areas A and B.

Area D. That airspace extending upward from 3,500 feet MSL to and including 12,500 feet MSL, bounded on the east by long. 84°00′32″ W., on the west by long. 84°51′38″ W., on the south by a line 4 miles north of and parallel to the Runway 08L/26R localizer courses, and on the north by a line 8 miles

north of and parallel to the Runway 08L/26R localizer courses.

Area E. That airspace extending upward from 4,000 feet MSL to and including 12,500 feet MSL, bounded on the east by long. 83°54′04″ W., on the west by long. 84°57′41″ W., on the south by a line 12 miles south of and parallel to the Runway 10/28 localizer courses and on the north by a line 8 miles north of and parallel to the Runway 08L/26R localizer courses; excluding that airspace contained in Areas A, B, C, and D.

Area F. That airspace extending upward from 5,000 feet MSL to and including 12,500 feet MSL, within a 30-mile radius of the Atlanta VORTAC and bounded on the east by long. 83°54′04″ W., on the south by a line 8 miles north of and parallel to the Runway 08L/26R localizer courses, on the west by long. 84°57′41″ W., and on the north by a line 13.5 miles north of and parallel to the Runway 08L/26R localizer courses.

Area G. That airspace extending upward from 6,000 feet MSL to and including 12,500 feet MSL bounded on the north by a line 12 miles south of and parallel to the Runway 10/28 localizer courses, on the east by a line from lat. 33°25′20″ N., long. 84°16′49″ W. direct to lat. 33°15′33″ N., long. 84°01′55″ W., on the south by a 30-mile radius of the Atlanta VORTAC, and on the west by a line from lat. 33°25′25″ N., long. 84°33′32″ W. direct to lat. 33°18′26″ N., long. 84°42′56″ W., thence south via long. 84°42′56″ W.

Area H. That airspace extending upward from 5,000 feet MSL to and including 12,500 feet MSL, within a 30-mile radius of the Atlanta VORTAC south of a line 12 miles south of and parallel to the Runway 10/28 localizer courses, bounded on the west by long 84°57′41″ W. and on the east by long. 83°54′04″ W.; excluding that airspace within the lateral limits of area G.

Area I. That airspace extending upward from 7,000 feet MSL to and including 12,500 feet MSL bounded on the north by the 30-mile radius of the Atlanta VORTAC, on the east by a line from lat. 33°52′25″ N., long. 84°19′08″ W. direct to lat. 34°04′20″ N., long. 84°09′24″ W., on the south by a line 13.5 miles north of and parallel to the Runway 08L/26R localizer courses, and on the west by a line from lat. 33°52′28″ N., long. 84°36′07″ W. direct to lat. 34°01′40″ N., long. 84°47′55″ W.

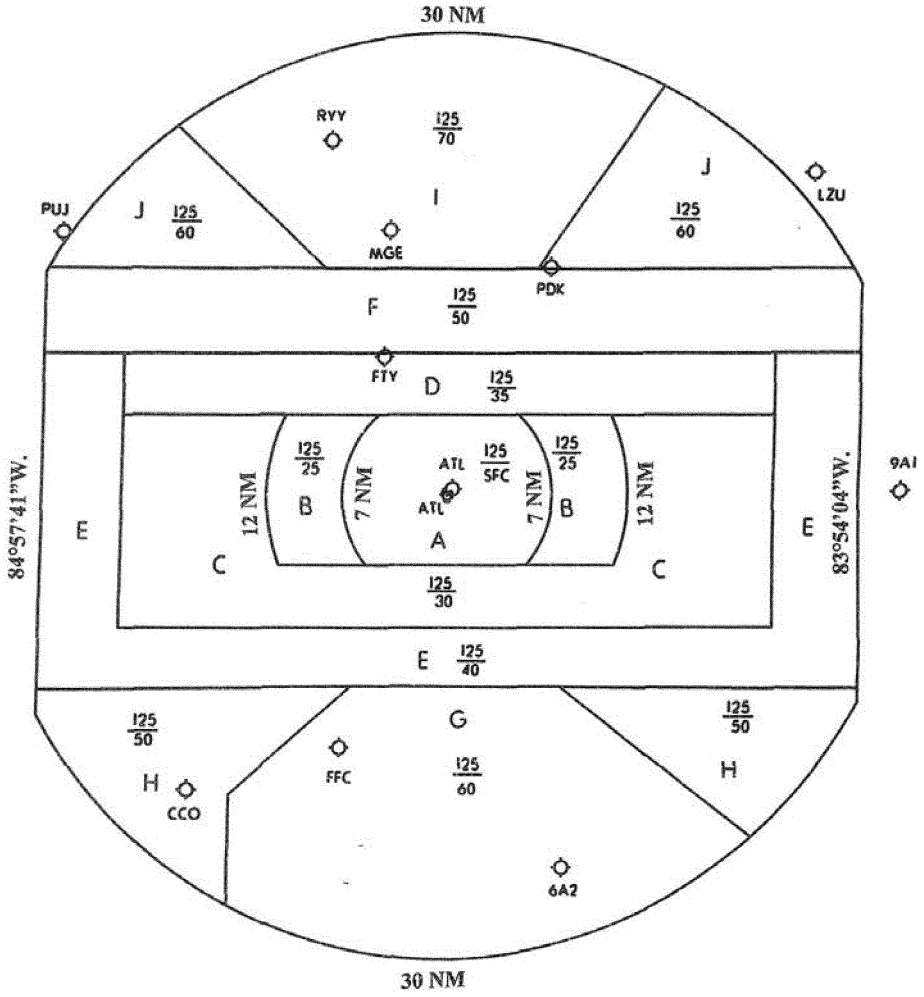
Area J. That airspace extending upward from 6,000 feet MSL to and including 12,500 feet MSL within a 30-mile radius of the Atlanta VORTAC north of a line 13.5 miles north of and parallel to the Runway 08L/26R localizer courses; excluding that airspace within the lateral limits of area I.

Issued in Washington, DC, on January 19, 2012.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

Proposed Modification of the Atlanta, GA Class B Airspace Area (Docket No. 08-AWA-5)



For Information Only Not For Navigation

[FR Doc. 2012–2072 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 336

19 CFR Part 357

RIN 0625–AA90

Withdrawal of Regulations Pertaining to Imports of Cotton Woven Fabric and Short Supply Procedures; Opportunity for Public Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: Import Administration (''IA'') issues this proposed rule for the purpose of withdrawing regulations pertaining to imports of cotton woven fabric and short supply procedures. Both sets of regulations are obsolete.

DATES: To ensure consideration, comments must be received no later than April 3, 2012.

ADDRESSES: You may submit comments on this proposal to withdraw these regulations by one of the two following methods:

Electronic Submission: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2011–0004, unless the commenter does

not have access to the Internet. All comments should be addressed to the Secretary of Commerce, Attention: Robert Goodyear, Director, Office of Operations Support, Import Administration, ITA, Room 3099–A, U.S., Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster-support@ita.doc.gov.*

Mail: Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier to the names and addresses listed above. Mark the outside of the envelope ''Comments on proposed Withdrawal of Regulations Pertaining to Imports of Cotton Woven Fabric and Short Supply Procedures.''

FOR FURTHER INFORMATION CONTACT: Robert Goodyear, Director, Office of Operations Support, Import Administration, U.S. Department of Commerce, at (202) 482–5194 or Scott McBride, Senior Attorney, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–6292.

SUPPLEMENTARY INFORMATION:

Background

President Barack Obama issued Executive Order 13563 on January 18, 2011, titled ''Improving Regulation and Regulatory Review.'' The Executive Order directed all agencies, to ''develop and submit'' to the Office of Information and Regulatory Affairs plans under which agencies, ''consistent with law and [their] resources and regulatory priorities,'' will ''periodically review [their] 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.'' The Executive Order states that one of the purposes of implementing a program to perform a ''retrospective analysis of existing rules'' is to withdraw regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome.''

In August 2011, the U.S. Department of Commerce issued its Plan for Retrospective Analysis of Existing Rules. < *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules*>. Within the Department's Plan, International Trade Administration indicated that IA intended to withdraw two groups of regulations which it determined are obsolete.

The regulatory provisions titled ''Imports of Cotton Woven Fabric,'' codified at 15 CFR 336.1–336.5, are no longer relevant. They were implemented pursuant to the Tax Relief and Health Care Act of 2006, at Division C, Title IV, Section 406(b)(1) (Pub. L. 109–432) (codified in the Harmonized Tariff Schedule of the United States, per 19 U.S.C. 3004) (2006). The Tax Relief and Health Care Act of 2006 set forth tariff rate quotas for cotton woven fabric and the regulatory provisions at issue provide for the administration of allocations of those quotas by IA. The interim regulations were issued in 2007, and then adopted without change, with an effective date of July 10, 2008. *Imports of Certain Cotton Shirting Fabric: Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act of 2006 (Interim Final Rule),* 72 FR 40235 (July 24, 2007); *Imports of Certain Cotton Shirting Fabric: Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act of 2006 (Final Rule),* 73 FR 39585 (July 10, 2008). However, the tariff rate quota on cotton woven fabric expired on December 31, 2009. Accordingly, these regulations are obsolete and should be withdrawn.

The regulations pertaining to ''Short Supply Procedures,'' which are codified at 19 CFR 357.101–111, are also no longer relevant. These regulations were issued pursuant to Section 4(b) of the Steel Trade Liberalization Program Implementation Act (Pub. L. 101–221) (1989). *Short Supply Procedures (Interim—Final Rules),* 55 FR 1348 (Jan. 12, 1990). They pertain to voluntary restraints on certain steel imports from October 1, 1989 through March 31, 1992, and IA was tasked with making short supply determinations under these regulations. IA has determined that these regulations should also be withdrawn because they are obsolete, as the associated import restraints have not affected U.S. trade for over 19 years.

Classification

Executive Order 12866

It has been determined that this proposed rule is not significant for purposes of Executive Order 12866 of September 30, 1993 (*''Regulatory Planning and Review''*) (58 FR 51734) (October 4, 1993). Neither set of regulations has an annual effect on the economy of $100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety. *Id.* at 51738.

Paperwork Reduction Act of 1995

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255) (August 10, 1999).

Environmental Impact

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would have no impact on small entities because both sets of regulations are obsolete and this rule simply makes a technical correction by withdrawing these obsolete regulations.

Proposed Effective Date

ITA is proposing that any final rule that may issue based upon this proposed rule become effective upon its publication in the **Federal Register**.

Comments

Parties are invited to comment on ITA's *Proposed Withdrawal of*

Regulations Pertaining to Imports of Cotton Woven Fabric and Short Supply Procedures within April 3, 2012. All submitted comments must be public and submitted pursuant to the directions under the **ADDRESSES** heading. ITA will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at *http://www.trade.gov/ia/*.

List of Subjects

15 CFR Part 336

Imports, Quotas, Reporting and recordkeeping, Tariffs, Textiles.

19 CFR Part 357

Imports, Reporting and recordkeeping requirements, Steel.

15 CFR PART 336—IMPORTS OF COTTON WOVEN FABRIC

Accordingly, under the authority given pursuant to the Tax Relief and Health Care Act of 2006, at Division C, Title IV, Section 406(a)(1) (Pub. L. 109–432)(2006) (titled ''Temporary Duty Reductions for Certain Cotton Shirting Fabric'' and listing 12/31/2009 as the end date for the tariff rate quota), ITA proposes to amend 15 CFR chapter III by removing part 336.

19 CFR PART 357—SHORT SUPPLY PROCEDURES

Accordingly, under the authority given by Section 4(b) of the Steel Trade Liberalization Program Implementation Act (Pub. L. 101–221), which by its terms was limited to imports through March 31, 1992, ITA proposes to amend 19 CFR chapter III by removing part 357.

Dated: January 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2227 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157714–06]

RIN 1545–BG43

Determination of Governmental Plan Status

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on advanced notice of proposed rulemaking.

SUMMARY: This document announces a public hearing on an advance notice of proposed rulemaking, (REG–157714–06) relating to the determination of governmental plans. This notice supersedes the notice of public hearing published in the **Federal Register** on Monday, January 23, 2012 (77 FR 3202) that announced a public hearing for June 5, 2012. This notice also extends the comment period for the submission of public comments.

DATES: The public hearing is scheduled for Monday, July 9, 2012, at 10 a.m. in the auditorium of the Internal Revenue Building. The IRS must receive outlines of the topics to be discussed at the public hearing by June 18, 2012.

ADDRESSES: The public hearing is being held in the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to CC:PA:LPD:PR (REG–157714–06), Room 5205, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–157714–06), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–157714–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180, (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the advanced notice of proposed rulemaking (REG–157714–06) that was published in the **Federal Register** on Tuesday, November 8, 2011 (76 FR 69172).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline has passed, persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and four copies) by June 18, 2012.

The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–2499 Filed 2–2–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133223–08]

RIN 1545–BI19

Indian Tribal Government Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on advance notice of proposed rulemaking.

SUMMARY: This document announces a public hearing on an advance notice of proposed rulemaking, (REG–133223–08) relating to Indian tribal government plans. This notice supersedes the notice of public hearing published in the **Federal Register** on Monday, January 23, 2012 (77 FR 3210) that announced a public hearing for June 5, 2012. This notice also extends the public comment period for submission of public comments.

DATES: The public hearing is scheduled for Tuesday, July 10, 2012, at 10 a.m. in the auditorium of the Internal Revenue Building. The IRS must receive outlines

of the topics to be discussed at the public hearing by June 18, 2012.

ADDRESSES: The public hearing is being held in the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to CC:PA:LPD:PR (REG–133223–08), room 5205, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133223–08), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–133223–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180, (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the advanced notice of proposed rulemaking (REG–133223–08) that was published in the **Federal Register** on Tuesday, November 8, 2011 (76 FR 69188).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline has passed, persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and four copies) by June 18, 2012.

The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration)

[FR Doc. 2012–2502 Filed 2–2–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115809–11]

RIN 1545–BK23

Longevity Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the purchase of longevity annuity contracts under tax-qualified defined contribution plans under section 401(a) of the Internal Revenue Code (Code), section 403(b) plans, individual retirement annuities and accounts (IRAs) under section 408, and eligible governmental section 457 plans. These regulations will provide the public with guidance necessary to comply with the required minimum distribution rules under section 401(a)(9). The regulations will affect individuals for whom a longevity annuity contract is purchased under these plans and IRAs (and their beneficiaries), sponsors and administrators of these plans, trustees and custodians of these IRAs, and insurance companies that issue longevity annuity contracts under these plans and IRAs. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 3, 2012. Outlines of topics to be discussed at the public hearing scheduled for June 1, 2012 must be received by May 11, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (Reg–115809–11), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (Reg–115809–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–115809–11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jamie Dvoretzky at (202) 622–6060; concerning submission of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor) at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in these proposed regulations is in § 1.401(a)(9)–6, A–17(a)(6) (disclosure that a contract is intended to be a qualifying longevity annuity contract) and § 1.6047–2 (an initial report must be prepared and an initial disclosure statement must be furnished to qualifying longevity annuity contract owners, and an annual statement must be provided to qualifying longevity annuity contract owners and their surviving spouses containing information required to be furnished to the IRS). The information in § 1.401(a)(9)–6, A–17(a)(6), is required in order to notify participants and beneficiaries, plan sponsors, and the IRS that the proposed regulations apply to a contract. The information in the annual statement in § 1.6047–2 is required in order to apply the dollar and percentage limitations in § 1.401(a)(9)–6, A–17(b) and § 1.408–8, Q&A–12(b) and to comply with other requirements of the proposed regulations, and the information in the initial report and disclosure statement in § 1.6047–2 is required in order for individuals to understand the features and limitations of a qualifying longevity annuity contract. The information would be used by plans and individuals to comply with the required minimum distribution rules.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC

20224. Comments on the collection of information should be received by April 3, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Estimated total average annual recordkeeping burden: 35,661 hours.

Estimated average annual burden per response: 10 minutes.

Estimated number of responses: 213,966.

Estimated number of recordkeepers: 150.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), 408A(c)(5), and 6047(d) of the Code.

Section 401(a)(9) prescribes required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by the required beginning date. The required beginning date generally is April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires. However, the ability to delay distribution until the calendar year in which a participant retires does not apply in the case of a 5-percent owner or an IRA owner.

If the entire interest of the participant is not distributed by the required beginning date, section 401(a)(9)(A) provides that the entire interest of the participant must be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) prescribes required minimum distribution rules that apply after the death of the participant. Section 401(a)(9)(G) provides that any distribution required to satisfy the incidental death benefit requirement of section 401(a) is treated as a required minimum distribution.

Section 403(b) plans, IRAs described in section 408, and eligible deferred compensation plans under section 457(b) also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections. However, pursuant to section 408A(c)(5), the minimum distribution and minimum distribution incidental benefit (MDIB) requirements do not apply to Roth IRAs during the life of the participant.

Section 408(i) provides that the trustee of an individual retirement account and the issuer of an endowment contract or an individual retirement annuity must make reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is maintained with respect to such matters as the Secretary may require. Pursuant to this provision, the IRS prescribes Form 5498 (IRA Contribution Information), which requires annual reporting with respect to an IRA, including a statement of the fair market value of the IRA as of the prior December 31. Section 6047(d) states that the Secretary shall by forms or regulations require that the employer maintaining, or the plan administrator of, a plan from which designated distributions (as defined in section 3405(e)(1)) may be made, and any person issuing any contract under which designated distributions may be made, make returns and reports regarding the plan or contract to the Secretary, to the participants and beneficiaries of the plan or contract, and to such other persons as the Secretary may by regulations prescribe. These sections also provide that the Secretary may, by forms or regulations, prescribe the manner and time for filing these reports. Section 6693 prescribes monetary penalties for failure to comply with section 408(i), and sections 6652 and 6704 prescribe monetary penalties for failure to comply with section 6047(d).

Section 1.401(a)(9)–6 of the Income Tax Regulations sets forth the minimum distribution rules that apply to a defined benefit plan and to annuity contracts under a defined contribution plan. Under § 1.401(a)(9)–6, A–12, if an annuity contract held under a defined contribution plan has not yet been annuitized, the interest of a participant or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the value of that contract is included in the account balance used to determine required minimum distributions from the participant's individual account.

If an annuity contract has been annuitized, the periodic annuity payments must be nonincreasing, subject to certain exceptions that are set forth in § 1.401(a)(9)–6, A–14. In addition, annuity payments must satisfy the MDIB requirement of section 401(a)(9)(G). Under § 1.401(a)(9)–6, A–2(b), if a participant's sole beneficiary, as of the annuity starting date, is his or her spouse and the distributions satisfy section 401(a)(9) without regard to the MDIB requirement, the distributions to the participant are deemed to satisfy the MDIB requirement. However, if distributions are in the form of a joint and survivor annuity for a participant and a non-spouse beneficiary, the MDIB requirement is not satisfied unless the periodic annuity payment payable to the survivor does not exceed an applicable percentage of the amount that is payable to the participant, with the applicable percentage to be determined using the table in § 1.401(a)(9)–6, A–2(c).

The regulations under sections 403(b)(10), 408(a)(6), 408(b)(3), 408A(c)(5), and 457(d)(2) prescribe how the required minimum distribution rules apply to other types of retirement plans and accounts. Section 1.403(b)–6(e)(1) provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)–6(e)(2) provides, with certain exceptions, that the section 401(a)(9) required minimum distribution rules are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8. Section 1.408–8, Q&A–1, provides, with certain modifications, that an IRA is subject to the rules of §§ 1.401(a)(9)–1 through 1.401(a)(9)–9. One such modification is set forth in

§ 1.408–8, Q&A–9, which prescribes a rule under which an IRA generally does not fail to satisfy section 401(a)(9) merely because the required minimum distribution with respect to the IRA is distributed instead from another IRA. Section 1.408A–6, Q&A–14(a), provides that no minimum distributions are required to be made from a Roth IRA during the life of the participant. Section 1.408A–6, Q&A–15, provides that a participant who is required to receive minimum distributions from his or her traditional IRA cannot choose to take the amount of the required minimum distributions from a Roth IRA. Section 1.457–6(d) provides that a section 457(b) eligible plan must meet the requirements of section 401(a)(9) and the regulations under that section.

On February 2, 2010, the Department of Labor, the IRS, and the Department of the Treasury issued a Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans in the **Federal Register** (75 FR 5253). That Request for Information included questions relating to how the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income. In particular, the Request for Information asked whether there were changes to the rules that could or should be considered to encourage arrangements under which participants can purchase deferred annuities that begin at an advanced age (sometimes referred to as longevity annuities or longevity insurance).

A number of commentators identified the required minimum distribution rules as an impediment to the utilization of these types of annuities. One such impediment that they noted is the requirement that, prior to annuitization, the value of the annuity be included in the account balance that is used to determine required minimum distributions. This requirement raises the risk that, if the remainder of the account has been depleted, the participant would have to commence distributions from the annuity earlier than anticipated in order to satisfy the required minimum distribution rules. Some commentators stated that if the deferred annuity permits a participant to accelerate the commencement of benefits, then, in order to take that contingency into account, the premium would be higher for a given level of annuity income regardless of whether the participant actually commences benefits at an earlier date. Some commentators also noted that longevity annuities often do not provide a commutation benefit, cash surrender value, or other similar feature.

The Treasury Department and the IRS have concluded that there are substantial advantages to modifying the required minimum distribution rules in order to facilitate a participant's purchase of a deferred annuity that is scheduled to commence at an advanced age—such as age 80 or 85—using a portion of his or her account. Under the proposed amendments to these rules, prior to annuitization, the participant would be permitted to exclude the value of a longevity annuity contract that meets certain requirements from the account balance used to determine required minimum distributions. Thus, a participant would never need to commence distributions from the annuity contract before the advanced age in order to satisfy the required minimum distribution rules and, accordingly, the contract could be designed with a fixed annuity starting date at the advanced age (and would not need to provide an option to accelerate commencement of the annuity).

Purchasing longevity annuity contracts could help participants hedge the risk of drawing down their benefits too quickly and thereby outliving their retirement savings. This risk is of particular import because of the substantial, and unpredictable, possibility of living beyond one's life expectancy. Purchasing a longevity annuity contract would also help avoid the opposite concern that participants may live beneath their means in order to avoid outliving their retirement savings. If the longevity annuity provides a predictable stream of adequate income commencing at a fixed date in the future, the participant would still face the task of managing retirement income over that fixed period until the annuity commences, but that task generally is far less challenging than managing retirement income over an uncertain period.

The Treasury Department and the IRS have concluded that any special treatment under the required minimum distribution rules to facilitate the purchase of such a longevity annuity contract should be limited to a portion of a participant's account balance, such as 25 percent. A percentage limit is necessary in order to be consistent with section 401(a)(9)(A), which requires the entire interest of each participant to be distributed, beginning by the required beginning date, in accordance with regulations, over the life or life expectancy of the participant (or the participant and a designated beneficiary). The pattern of required minimum payments implemented in the existing regulations under section 401(a)(9) limits the extent to which tax-favored retirement savings can be used for purposes other than retirement income (such as transmitting accumulated wealth to a participant's heirs). Limiting the special treatment for a longevity annuity to those contracts purchased with no more than 25 percent of the account balance is consistent with the intent of section 401(a)(9)(A) because, for a typical participant who will need to draw down the entire account balance during the period prior to commencement of the annuity, the overall pattern of payments would not provide more deferral than would otherwise normally be available for lifetime payments under the section 401(a)(9)(A) rules.

However, because a participant is required to receive only required minimum distributions during the period before the annuity begins (and would not under these proposed regulations be required to draw down the entire remaining balance on an accelerated basis), the Treasury Department and the IRS have concluded that, in addition to the percentage limitation, the amount used to purchase an annuity for which the minimum distribution requirements would be eased should be subject to a dollar limitation, such as $100,000. This dollar limitation would be applied in order to constrain the extent to which the combination of payments from the account balance (determined by excluding the value of the annuity before the annuity commences) and later payments from the annuity contract might result in an overall pattern of payouts from the plan that permits undue deferral of distribution of the participant's entire interest.

Such a limit would still allow significant income to be provided beginning at age 85. For example, if at age 70 a participant used $100,000 of his or her account balance to purchase an annuity that will commence at age 85, the annuity could provide an annual income that is estimated to range between $26,000 and $42,000 (depending on the actuarial assumptions used by the issuer and the form of the annuity elected by the participant, such as whether the form elected is a straight life annuity or a joint and survivor annuity). These illustrations assume a three-percent interest rate, no pre-annuity-starting-date death benefit, use of the Annuity 2000 Mortality Table for males and

females,[1] no indexation for inflation, and no load for expenses.

These amounts would be higher if the interest rate used by the issuer to determine the annuity amount were higher. For example, the $42,000 amount would be increased to approximately $50,000 if the annuity were purchased assuming a four-percent interest rate, rather than a three-percent rate.

In addition, a participant who purchases a contract before age 70 could obtain the same income with a lower premium or could obtain larger income with the same premium. For example, even assuming a three-percent interest rate, the $42,000 amount would be approximately $51,000 if the annuity were purchased at age 65 rather than age 70. Furthermore, a participant who purchases increments of annuities over his or her career could hedge the risk of interest-rate fluctuation by purchasing these increments in different interest rate environments and effectively averaging annuity purchase rates over time.

To facilitate compliance with the dollar and percentage limitations and other requirements that longevity annuity contracts must satisfy in order to qualify for the special treatment, certain disclosure and reporting requirements would apply for the issuers of these contracts. Because longevity annuities would not begin until contract owners reach an advanced age, annual statements would also serve as an important reminder to those owners (and persons assisting them with their financial affairs) of their right to receive the annuities.

Explanation of Provisions

These proposed regulations would modify the required minimum distribution rules in order to facilitate the purchase of deferred annuities that begin at an advanced age. The proposed regulations would apply to contracts that satisfy certain requirements, including the requirement that distributions commence not later than age 85. Prior to annuitization, the value of these contracts, referred to as ''qualifying longevity annuity contracts'' (QLACs), would be excluded from the account balance used to determine required minimum distributions.

I. Definition of QLAC

A. Limitations on Premiums

The proposed regulations provide that, in order to constitute a QLAC, the amount of the premiums paid for the contract under the plan on a given date may not exceed the lesser of a dollar or a percentage limitation. The proposed regulations prescribe rules for applying these limitations to participants who purchase multiple contracts or make multiple premium payments for the same contract.

Under the dollar limitation, the amount of the premiums paid for a contract under the plan may not exceed $100,000. If, on or before the date of a premium payment, an employee has paid premiums for the same contract or for any other contract that is intended to be a QLAC and that is purchased for the employee under the plan or under any other plan, annuity or account, the $100,000 limit is reduced by the amount of those other premium payments.[2]

Under the percentage limitation, the amount of the premiums paid for a contract under the plan may not exceed an amount equal to 25 percent of the employee's account balance on the date of payment. If, on or before the date of a premium payment, an employee has paid premiums for the same contract or for any other contract that is intended to be a QLAC and that is held or purchased for the employee under the plan, the maximum amount under the 25-percent limit is reduced by the amount of those other payments.

For purposes of determining whether premiums for a contract exceed the dollar or percentage limitation, unless the plan administrator has actual knowledge to the contrary, the plan administrator would generally be permitted to rely on an employee's representation of the amount of premiums paid on or before that date under any other contract that is intended to be a QLAC and that is purchased for an employee under any other plan, annuity, or account. However, this reliance is not available with respect to a plan, annuity, or account that is maintained by an employer (or an entity that is treated as a single employer with the employer under section 414(b), (c), (m), or (o)) with respect to purchases for an employee under any other plan, annuity, or account maintained by that employer.

If a premium for a contract causes the total premiums to exceed either the dollar or percentage limitation, the contract would fail to be a QLAC as of the date on which the excess premiums were paid. Thus, beginning on that date, the value of the contract would no longer be excluded from the account balance used to determine required minimum distributions.

For calendar years beginning on or after January 1, 2014, the dollar limitation would be adjusted at the same time and in the same manner as under section 415(d), except that (1) the base period would be the calendar year quarter beginning July 1, 2012, and (2) any increase that is not a multiple of $25,000 would be rounded to the next lowest multiple of $25,000. If a contract failed to be a QLAC immediately before an adjustment because the premiums exceeded the dollar limitation, an adjustment of the dollar limitation would not cause the contract to become a QLAC.

B. Maximum Age at Commencement

The proposed regulations provide that, in order to constitute a QLAC, the contract must provide that distributions under the contract commence not later than a specified annuity starting date set forth in the contract. The specified annuity starting date must be no later than the first day of the month coincident with or next following the employee's attainment of age 85. This age reflects the approximate life expectancy of an employee at retirement, and was recommended in a number of the comments received in response to the Request for Information. Any contract for which premiums are paid after the latest permissible specified annuity starting date would not be a QLAC, because such a contract could not require distributions to commence by that date.

The proposed regulations would permit a QLAC to allow a participant to elect an earlier annuity starting date than the specified annuity starting date. For example, if the specified annuity starting date under a contract were the date on which a participant attains age 85, the contract would not fail to be a QLAC solely because it allows the participant to commence distributions at an earlier date. On the other hand, these rules would not require a QLAC to provide an option to commence distributions before the specified annuity starting date, so that a QLAC could provide that distributions must commence only at the specified annuity starting date. For a given premium, such a contract could provide a substantially higher periodic annuity payment beginning on the specified annuity starting date than a contract with an acceleration option. Similarly, premiums could be lower for a given level of periodic annuity payment, leaving a larger portion of the remaining

[1] If the annuity is provided under an employer plan, unisex mortality assumptions would be required.

[2] As discussed under the heading ''II. IRAs,'' a contract that is purchased or held under a Roth IRA is not treated as a contract that is intended to be a QLAC (even if it otherwise meets the requirements to be a QLAC).

account balance for the participant to use for living expenses before the specified annuity starting date.

The proposed regulations provide that the maximum age may also be adjusted to reflect changes in mortality. The adjusted age (if any) would be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)). The Treasury Department and the IRS anticipate that such changes will not occur more frequently than the adjustment of the $100,000 limit described in subheading I.A. ''Limitations on premiums.'' If a contract failed to be a QLAC immediately before an adjustment because it failed to provide that distributions must commence by the requisite age, an adjustment of the age would not cause the contract to become a QLAC.

C. Benefits Payable After Death of the Employee

Under a QLAC, the only benefit permitted to be paid after the employee's death is a life annuity, payable to a designated beneficiary, that meets certain requirements. Thus, for example, a contract that provides a distribution form with a period certain or a refund of premiums in the case of an employee's death would not be a QLAC. These types of payments are inconsistent with the purpose of providing lifetime income to employees and their beneficiaries, as described in the Background section of this preamble. A contract that provides a given lifetime periodic annuity payment to an employee would be less expensive if it provided for a life annuity payable to a designated beneficiary upon the employee's death rather than additional features such as an optional single-sum death benefit. After paying a lower premium for such a life annuity, the employee would be able to retain a larger portion of his or her account, maximizing the employee's lifetime benefits, while also leaving larger death benefits for a beneficiary, from the remaining amount of the account.

The proposed regulations provide that if the sole beneficiary of an employee under the contract is the employee's surviving spouse, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse that does not exceed 100 percent of the annuity payment payable to the employee. The proposed regulations include a special exception that would allow a plan to comply with any applicable requirement to provide a qualified preretirement survivor annuity [3] (which would have an effect only if the employee has a substantially older spouse).

If the employee's surviving spouse is not the sole beneficiary under the contract,[4] the only benefit permitted to be paid after the employee's death is a life annuity payable to a designated beneficiary. In order to satisfy the MDIB requirements of section 401(a)(9)(G), the life annuity is not permitted to exceed an applicable percentage of the annuity payment payable to the employee. The applicable percentage is determined under one of two alternative tables, and the determination of which table applies depends on the different types of death benefits that are payable to the designated beneficiary.

Under the first alternative, the applicable percentage is the percentage described in the existing table in § 1.401(a)(9)–6, A–2(c). Because the existing applicable percentage table does not take into account the potential for a death benefit to be paid to the non-spouse designated beneficiary during the period between the required beginning date and the annuity starting date, this table is available only if, under the contract, no death benefits are payable to such a beneficiary if the employee dies before the specified annuity starting date. Furthermore, in order to address the possibility that an employee with a shortened life expectancy could accelerate the annuity starting date in order to avoid this rule, this table is available only if, under the contract, no benefits are payable in any case in which the employee selects an annuity starting date that is earlier than the specified annuity starting date under the contract and the employee dies less than 90 days after making that election, even if the employee's death occurs after his or her selected annuity starting date.

Under the second alternative, the applicable percentage is the percentage described in a new table set forth in the proposed regulations. The table is available for use when the contract provides a pre-annuity-starting-date death benefit to the non-spouse designated beneficiary. The table takes into account that a significant portion of the premium is used to provide death benefits to a designated beneficiary if death occurs during the deferral period between age 70½ and age 85. In order to limit the portion of the premium that is used to provide death benefits to a designated beneficiary, use of the table is limited to contracts under which any non-spouse designated beneficiary must be irrevocably selected as of the required beginning date. Accordingly, the applicable percentages in the table are based on the expected longevity for the designated beneficiary, determined as of the employee's required beginning date.

The Treasury Department and the IRS considered whether to prescribe a special rule under which a QLAC could provide for a pre-annuity-starting-date death benefit to a non-spouse designated beneficiary and also allow the designated beneficiary to be changed at any time before the annuity starting date. However, in order to satisfy the MDIB requirements in such a case, the applicable percentages would need to be much smaller than the percentages set forth in the special table. This is because a larger portion of the cost of the contract would be allocable to death benefits if, after the required beginning date and before the annuity starting date, the participant were able to replace a designated beneficiary who has died (or to replace a designated beneficiary who has a short life expectancy with one who has a longer life expectancy). Comments are requested on whether the proposed regulations should be modified to permit alternative death benefits that would be subject to such lower applicable percentages.

If the employee dies before the specified annuity starting date under the contract, the date by which benefits must commence to the designated beneficiary depends on whether the beneficiary is the employee's surviving spouse. If the sole beneficiary under the contract is the employee's surviving spouse, the life annuity is not required to commence until the employee's specified annuity starting date under the contract (in lieu of the otherwise applicable rule that would require distributions to commence by the later of the end of the calendar year following the calendar year in which the employee died or the end of the calendar year in which the employee would have attained age 70½). If the

[3] A qualified preretirement survivor annuity is defined in section 417(c)(2) as an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a) of the Code). Section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), includes a parallel definition. See Rev. Rul. 2012–3 for rules relating to qualified preretirement survivor annuities.

[4] If the surviving spouse is one of the designated beneficiaries, this rule is applied as if the contract were a separate contract for the surviving beneficiary, but only if certain conditions are satisfied, including a separate account requirement. See § 1.401(a)(9)–8, A–2(a) and A–3.

employee's sole beneficiary under the contract is not the surviving spouse, the life annuity payable to the designated beneficiary must commence by the last day of the calendar year immediately following the calendar year of the employee's death.

The proposed regulations include a rule for applying the limitations on amounts payable to a surviving spouse or a designated beneficiary in the event the employee dies before the annuity starting date. Under this rule, if the contract does not allow an employee to select an annuity starting date that is earlier than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died, the contract must nonetheless provide a way to determine the periodic annuity payments that would have been payable if payments to the employee had commenced immediately prior to the date on which benefit payments to the designated beneficiary commence.

D. Other QLAC Requirements

Under the proposed regulations, a QLAC would not include a variable contract under section 817, equity-indexed contract, or similar contract, because the purpose of a QLAC is to provide a participant with a predictable stream of lifetime income. In addition, exposure to equity-based returns is available through control over the remaining portion of the account balance so that a participant can achieve adequate diversification.

The proposed regulations also provide that, in order to be a QLAC, the contract is not permitted to make available any commutation benefit, cash surrender value, or other similar feature. As in the case of the limitations on benefits payable after death, these limitations would allow an annuity contract to maximize the annuity payments that are made while a participant or beneficiary is alive. In addition, having a limited set of options available to purchasers would make these contracts more readily understandable and enhance purchasers' ability to compare products across providers. Ease of comparison will be particularly important to the extent that contracts provided under plans are priced on a unisex basis, while contracts offered under IRAs generally take gender into account in establishing premiums.

The proposed regulations provide that a contract is not a QLAC unless it states, when issued, that it is intended to be a ''qualifying longevity annuity contract'' or a ''QLAC.'' This rule would ensure that the issuer, participant, plan sponsor, and IRS know that the rules applicable to QLACs apply to this contract.

The proposed regulations provide that distributions under a QLAC must satisfy the generally applicable section 401(a)(9) requirements relating to annuities at § 1.401(a)(9)–6, other than the requirement that annuity payments commence on or before the employee's required beginning date. Thus, for example, the limitation on increasing payments under § 1.401(a)(9)–6, A–1(a), applies to the contract.

II. IRAs

The proposed regulations provide that, in order to constitute a QLAC, the amount of the premiums paid for the contract under an IRA on a given date may not exceed $100,000. If, on or before the date of a premium payment, a participant has paid premiums for the same contract or for any other contract that is intended to be a QLAC and that is purchased for the participant under the IRA or under any other IRA, plan, or annuity, the $100,000 limit is reduced by the amount of those other premium payments.

The proposed regulations also provide that in order to constitute a QLAC, the amount of the premiums paid for the contract under an IRA on a given date generally may not exceed 25 percent of a participant's IRA account balances. Consistent with the rule under which a required minimum distribution from an IRA could be satisfied by a distribution from another IRA (applied separately to traditional IRAs and Roth IRAs), the proposed regulations would allow a QLAC that could be purchased under an IRA within these limitations to be purchased instead under another IRA. Specifically, the amount of the premiums paid for the contract under an IRA may not exceed an amount equal to 25 percent of the sum of the account balances (as of December 31 of the calendar year before the calendar year in which a premium is paid) of the IRAs (other than Roth IRAs) that an individual holds as the IRA owner. If, on or before the date of a premium payment, an individual has paid other premiums for the same contract or for any other contract that is intended to be a QLAC and that is held or purchased for the individual under his or her IRAs, the premium payment cannot exceed the amount determined to be 25 percent of the individual's IRA account balances, reduced by the amount of those other premiums.

The proposed regulations provide that, for purposes of both the dollar and percentage limitations, unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representations of the amount of the premiums (other than the premiums paid under the IRA) and, for purposes of applying the percentage limitation, the amount of the individual's account balances (other than the account balance under the IRA).

Under the proposed regulations, an annuity purchased under a Roth IRA would not be treated as a QLAC. This is because a Roth IRA (unlike a designated Roth account under a plan, as described in section 402(A) is not subject to the section 401(a)(9)(A) requirement that the individual's benefits commence and be paid over the lives or life expectancy of the individual and a designated beneficiary (but, after the death of the individual, benefits must be paid under the same section 401(a)(9)(B) rules that apply to traditional IRAs). Because the rules of section 401(a)(9)(A) do not apply to a Roth IRA owner, a longevity annuity contract purchased using a portion of the individual's Roth IRA would not need to provide the right to accelerate payments in order to ensure compliance with those rules. Thus, there is no need to permit the value of a longevity annuity contract to be excluded from the account balance that is used to determine required minimum distributions during the life of a Roth IRA owner. Accordingly, the proposed regulations would not apply the rules regarding QLACs to Roth IRAs.

The proposed regulations would not preclude the use of assets in a Roth IRA to purchase a longevity annuity contract, nor would such a contract be subject to the same restrictions as a QLAC. For example, a longevity annuity contract purchased using assets of a Roth IRA could have an annuity starting date that is later than age 85 and offer features, such as a cash surrender right, that are not permitted under a QLAC. Although such a contract could not be excluded from the account balance used to determine required minimum distributions, this exclusion is not necessary because the required minimum distribution rules do not apply during the life of a Roth IRA owner.

In addition, the dollar and percentage limitations on premiums that apply to a QLAC would not take into account premiums paid for a contract that is purchased or held under a Roth IRA, even if the contract satisfies the requirements to be a QLAC. If a QLAC is purchased or held under a plan, annuity, contract, or traditional IRA that is later rolled over or converted to a Roth IRA, the QLAC would cease to be

a QLAC (and would cease to be treated as intended to be a QLAC) after the date of the rollover or conversion. In that case, the premiums would then be disregarded in applying the dollar and percentage limitations to premiums paid for other contracts after the date of the rollover or conversion.[5]

Comments are requested on whether the regulations should be modified to apply the QLAC rules to a Roth IRA or to reduce the availability of the section 401(a)(9) relief for purchases of QLACs by the amount of assets that the individual holds in a Roth IRA. Comments are also requested as to whether any special rules should apply where a QLAC is purchased using assets of a Roth IRA, such as special disclosure in order to minimize any potential confusion.

III. Section 403(b) Plans

The proposed regulations apply the tax-qualified plan rules, instead of the IRA rules, to the purchase of a QLAC under a section 403(b) plan. For example, the 25-percent limitation on premiums would be separately determined for each section 403(b) plan in which an employee participates. The proposed regulations also provide that the tax-qualified plan rules relating to reliance on representations, rather than the IRA rules, apply to the purchase of a QLAC under a section 403(b) plan.

The proposed regulations provide that, if the sole beneficiary of an employee under a contract is the employee's surviving spouse and the employee dies before the annuity starting date under the contract, a life annuity that is payable to the surviving spouse after the employee's death is permitted to exceed the annuity that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement survivor annuity (as discussed for qualified plans under subheading I.C. ''Benefits payable after death of the employee''). A section 403(b) plan may be subject to this requirement under ERISA, whereas IRAs are generally not subject to this requirement. See § 1.401(a)–20, Q&A–3(d), and § 1.403(b)–5(e).

IV. Section 457(b) Plans

Section 1.457–6(d) provides that an eligible section 457(b) plan must meet the requirements of section 401(a)(9) and the regulations under section 401(a)(9). Thus, these proposed regulations relating to the purchase of a QLAC under a tax-qualified defined contribution plan would automatically apply to an eligible section 457(b) plan. However, the rule relating to QLACs is limited to eligible governmental section 457(b) plans. Because section 457(b)(6) requires that an eligible section 457(b) plan that is not a governmental plan be unfunded, the purchase of an annuity contract under such a plan would be inconsistent with this requirement.

V. Defined Benefit Plans

Although defined benefit plans are subject to the minimum required distribution rules, they offer annuities which provide longevity protection. Because this protection is therefore already available, these proposed regulations would not apply to defined benefit plans.[6]

VI. Disclosure and Annual Reporting Requirements

Under the proposed regulations, the issuer of a QLAC would be required to create a report containing the following information about the QLAC:

- A plain-language description of the dollar and percentage limitations on premiums;
- The annuity starting date under the contract, and, if applicable, a description of the employee's ability to elect to commence payments before the annuity starting date;
- The amount (or estimated amount) of the periodic annuity payment that is payable after the annuity starting date as a single life annuity (including, if an estimated amount, the assumed interest rate or rates used in making this determination), and a statement that there is no commutation benefit or right to surrender the contract in order to receive its cash value;
- A statement of any death benefit payable under the contract, including any differences between benefits payable if the employee dies before the annuity starting date and benefits payable if the employee dies on or after the annuity starting date;
- A description of the administrative procedures associated with an employee's elections under the contract, including deadlines, how to obtain forms, and where to file forms, and the identity and contact information of a person from whom the employee may obtain additional information about the contract; and
- Such other information that the Commissioner may require.

This report is not required to be filed with the Internal Revenue Service. Each issuer required to create a report would be required to furnish to the individual in whose name the contract has been purchased a statement containing the information in the report. This statement must be furnished prior to or at the time of purchase. In addition, in order to avoid duplicating state law disclosure requirements, the statement would not be required to include information that the issuer has already provided to the employee in order to satisfy any applicable state disclosure law. Comments are requested on whether the information listed is appropriate, and whether (and, if so, the extent to which) this list would duplicate disclosure requirements under existing state law. Comments are also requested on whether there is other information that should be included in the disclosure, such as the special tax attributes of a QLAC.

The proposed regulations prescribe annual reporting requirements under section 6047(d) which would require any person issuing any contract that states that it is intended to be a QLAC to file annual calendar-year reports and provide a statement to the individual in whose name the contract has been purchased regarding the status of the contract. The Commissioner will prescribe an applicable form and instructions for this purpose, which will contain the filing deadline and other information.

The report will be required to identify that the contract is intended to be a QLAC and to include, at a minimum, the following items of information:

- The name, address, and identifying number of the issuer of the contract, along with information on how to contact the issuer for more information about the contract;
- The name, address, and identifying number of the individual in whose name the contract has been purchased;
- If the contract was purchased under a plan, the name of the plan, the plan number, and the Employer Identification Number (EIN) of the plan sponsor;
- If payments have not yet commenced, the annuity starting date on which the annuity is scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated; and

[5] Section 1.408A–4, Q&A–14, describes the amount includible in gross income when part or all of a traditional IRA that is an individual retirement annuity described in section 408(b) is converted to a Roth IRA, or when a traditional IRA that is an individual retirement account described in section 408(a) holds an annuity contract as an account asset and the traditional IRA is converted to a Roth IRA. Those rules would also apply when a contract is rolled over from a plan into a Roth IRA.

[6] See also Rev. Rul. 2012–4 (relating to rollovers to defined benefit plans).

• The amount of each premium paid for the contract, along with the date of payment.[7]

Each issuer required to file the report with respect to a contract would also be required to provide to the individual in whose name the contract has been purchased a statement containing the information that is required to be furnished in the report. This requirement may be satisfied by providing the individual with a copy of the required form, or in another form that contains the following language: ''This information is being furnished to the Internal Revenue Service.'' The statement is required to be furnished to the individual on or before January 31 following the calendar year for which the report is required.

An issuer that is subject to these annual reporting requirements must comply with the requirements for each calendar year beginning with the year in which premiums are first paid and ending with the earlier of the year in which the individual for whom the contract has been purchased attains age 85 (as adjusted in calendar years beginning on or after January 1, 2014) or dies. However, if the individual dies and the sole beneficiary under the contract is the individual's spouse (so that the spouse's annuity might not commence until the individual would have attained age 85), the annual reporting requirement continues until the year in which the distributions to the spouse commence.

Proposed Effective Date

The proposed regulations regarding disclosure and reporting will be effective upon publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations. Otherwise, these regulations are proposed to be effective for contracts purchased on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and for determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013. Until regulations finalizing these proposed regulations are issued, taxpayers may not rely on the rules set forth in these proposed regulations (and the existing rules under section 401(a)(9) continue to apply).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that an insubstantial number of entities of any size will be impacted by the regulation. In addition, IRS and Treasury expect that any burden on small entities will be minimal because required disclosures are expected to take 10 minutes to prepare. In addition, the entities that will be impacted will be insurance companies, very few of which are small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on benefits payable to a non-spouse beneficiary (under the subheading ''C. Benefits payable after death of the employee''), Roth IRAs (under the heading ''II. IRAs''), and disclosure (under the heading ''VI. Disclosure and annual reporting requirements''). Comments are also requested on whether an insurance product that provides guaranteed lifetime withdrawal benefits could constitute a QLAC, taking into account the rules precluding the use of a variable annuity and a commutation of benefits and the rules relating to the provision of benefits to a designated beneficiary after an employee's death (under which benefits can be paid only in the form of a life annuity). The IRS and the Treasury Department further request comments on all aspects of the proposed rules.

All comments will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing has been scheduled for June 1, 2012, beginning at 1 p.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by May 3, 2012, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by May 11, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Cathy Pastor and Jamie Dvoretzky, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6047–2 is also issued under 26 U.S.C. 6047(d). * * *

Par. 2. Section 1.401(a)(9)–5 is amended by:

1. Revising paragraph A–3(a).

[7] For IRAs, the fair market value of the account on December 31 must be provided to the IRA owners by January 31 of the following year. Trustees, custodians, and issuers are responsible for ensuring that all IRA assets (including those not traded on an established securities market or with otherwise readily determinable value) are valued annually at their fair market value. This includes the value of a contract that is intended to be a QLAC.

2. Redesignating paragraph A–3(d) as new paragraph A–3(e) and revising newly designated paragraph A–3(e).

3. Adding new paragraph A–3(d).

The revisions and addition read as follows:

§ 1.401(a)(9)–5 Required minimum distributions from defined contribution plans.

* * * * *

A–3. (a) In the case of an individual account, the benefit used in determining the required minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding that distribution calendar year (valuation calendar year) adjusted in accordance with paragraphs (b), (c), and (d) of this A–3.

* * * * *

(d) The account balance does not include the value of any qualifying longevity annuity contract described in A–17 of § 1.401(a)(9)–6 that is held under the plan. This paragraph (d) only applies for purposes of determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013.

(e) If an amount is distributed from a plan and rolled over to another plan (receiving plan), A–2 of § 1.401(a)(9)–7 provides additional rules for determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan) in a transfer to which section 414(l) applies, A–3 and A–4 of § 1.401(a)(9)–7 provide additional rules for determining the amount of the required minimum distribution and the benefit under both the transferor and transferee plans.

* * * * *

Par. 3. Section 1.401(a)(9)–6 is amended by revising the last sentence in A–12(a) and adding Q&A–17 to read as follows:

§ 1.401(a)(9)–6 Required minimum distributions for defined benefit plans and annuity contracts.

* * * * *

A–12. (a) * * * See A–1(e) of § 1.401(a)(9)–5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence, A–3(d) of § 1.401(a)(9)–5 for rules relating to qualifying longevity annuity contracts described in A–17 of this section, and A–2(a)(3) of § 1.401(a)(9)–8 for rules relating to the purchase of an annuity contract with a portion of an employee's account balance.

* * * * *

Q–17. What is a qualifying longevity annuity contract?

A–17. (a) *Definition of qualifying longevity annuity contract.* A qualifying longevity annuity contract (QLAC) is an annuity contract (that is not a variable contract under section 817, equity-indexed contract, or similar contract) that is purchased from an insurance company for an employee and that satisfies each of the following requirements—

(1) Premiums for the contract satisfy the requirements of paragraph (b) of this A–17;

(2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month coincident with or next following the employee's attainment of age 85;

(3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of this section (other than the requirement in A–1(c) of this section that annuity payments commence on or before the required beginning date);

(4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature;

(5) No benefits are provided under the contract after the death of the employee other than the life annuities payable to a designated beneficiary that are described in paragraph (c) of this A–17; and

(6) The contract, when issued, states that it is intended to be a QLAC.

(b) *Limitations on premium*—(1) *In general.* The premiums paid for the contract on a date do not exceed the lesser of the dollar limitation in paragraph (b)(2) of this A–17 or the percentage limitation in paragraph (b)(3) of this A–17.

(2) *Dollar limitation.* The dollar limitation is an amount equal to the excess of—

(i) $100,000, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is purchased for the employee under the plan, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental section 457(b) plan.

(3) *Percentage limitation.* The percentage limitation is an amount equal to the excess of—

(i) 25 percent of the employee's account balance under the plan determined on that date, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is held or was purchased for the employee under the plan.

(c) *Payments after death of the employee*—(1) *Surviving spouse is sole beneficiary*—(i) *In general.* Except as provided in paragraph (c)(1)(ii)(B) of this A–17, if the sole beneficiary of an employee under the contract is the employee's surviving spouse, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that is payable to the employee (or, in the case of the employee's death before the employee's annuity starting date, the periodic annuity payment that would have been payable to the employee as of the date that benefits to the surviving spouse commence under paragraph (c)(1)(ii)(A) of this A–17).

(ii) *Death before employee's annuity starting date.* If the employee dies before the employee's annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract—

(A) The life annuity, if any, payable to the surviving spouse under paragraph (c)(1)(i) of this A–17 must commence not later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died; and

(B) The amount of the periodic annuity payment payable to the surviving spouse is permitted to exceed 100 percent of the periodic annuity payment that is payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement survivor annuity (as defined under section 417(c)(2) of the Internal Revenue Code (Code) or section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA)) pursuant to sections 401(a)(11) and 417 of the Code or section 205(a)(2) of ERISA.

(2) *Surviving spouse is not sole designated beneficiary*—(i) *In general.* If the employee's surviving spouse is not the sole beneficiary under the contract, the only benefit permitted to be paid after the employee's death is a life annuity payable to a designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iv) of this A–17)

of the periodic annuity payment that is payable to the employee (or, in the case of the employee's death before the employee's annuity starting date, the applicable percentage of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the designated beneficiary commence under this paragraph (c)(2)(i)). In addition, no benefit is permitted to be paid after the employee's death unless the contract satisfies the requirements of either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this A–17. Moreover, except as provided in paragraph (c)(1)(ii)(A) of this A–17, in any case in which the employee dies before the employee's annuity starting date, any life annuity payable to a designated beneficiary must commence by the last day of the calendar year immediately following the calendar year of the employee's death.

(ii) *No pre-annuity starting date death benefit.* The contract satisfies the requirements of this paragraph (c)(2)(ii) if the contract provides that no benefit is permitted to be paid to a beneficiary other than the employee's surviving spouse after the employee's death—

(A) In any case in which the employee dies before the selected annuity starting date under the contract; and

(B) In any case in which the employee selects an annuity starting date that is earlier than the specified annuity starting date under the contract and the employee dies less than 90 days after making that election.

(iii) *Pre-annuity starting date death benefit.* The contract satisfies the requirements of this paragraph (c)(2)(iii) if the contract provides that in any case in which the beneficiary under the contract is not the employee's surviving spouse, benefits are payable to the beneficiary only if the beneficiary was irrevocably selected on or before the employee's required beginning date.

(iv) *Applicable percentage.* If the contract is described in paragraph (c)(2)(ii) of this A–17, the applicable percentage is the percentage described in the table in paragraph A–2(c) of this section. If the contract is described in paragraph (c)(2)(iii) (and not in (c)(2)(ii)) of this A–17, the applicable percentage is the percentage described in the table set forth in this paragraph (c)(2)(iv). The applicable percentage is based on the adjusted employee/beneficiary age difference, determined in the same manner as in paragraph A–2(c) of this section.

Adjusted employee/ beneficiary age difference	Applicable percentage
2 years or less	100
3	88
4	78
5	70
6	63
7	57
8	52
9	48
10	44
11	41
12	38
13	36
14	34
15	32
16	30
17	28
18	27
19	26
20	25
21	24
22	23
23	22
24	21
25 and greater	20

(3) *Calculation of early annuity payments.* For purposes of paragraphs (c)(1)(i) and (c)(2)(i) of this A–17, to the extent the contract does not provide an option for the employee to select an annuity starting date that is earlier than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died, the contract must provide a way to determine the periodic annuity payment that would have been payable if the employee were to have an option to accelerate the payments and the payments had commenced to the employee immediately prior to the date that benefit payments to the surviving spouse or designated beneficiary commence.

(d) *Rules of application*—(1) *Reliance on representations.* For purposes of the limitation on premiums described in paragraphs (b)(2) and (b)(3) of this A–17, unless the plan administrator has actual knowledge to the contrary, the plan administrator may rely on an employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–17, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the employer or an entity that is treated as a single employer with the employer under section 414(b), (c), (m), or (o).

(2) *Consequences of excess premiums.* If a contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b) of this A–17 on the date of the payment of that premium, the contract is not a QLAC beginning on that date. In such a case, none of the value of the contract may be disregarded under § 1.401(a)(9)–5, Q&A–3(d), as of the date on which the contract ceases to be a QLAC.

(3) *Dollar and age limitations subject to adjustments*—(i) *Dollar limitation.* In the case of calendar years beginning on or after January 1, 2014, the $100,000 amount under paragraph (b)(2)(i) of this A–17 will be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2012, and any increase under this paragraph (d)(3)(i) that is not a multiple of $25,000 shall be rounded to the next lowest multiple of $25,000.

(ii) *Age limitation.* The maximum age set forth in paragraph (a)(2) of this A–17 may also be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(iii) *Prospective application of adjustments.* If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(2) of this A–17 or the age limitation in paragraph (a)(2) of this A–17, any subsequent adjustment that is made pursuant to paragraph (d)(3)(i) or paragraph (d)(3)(ii) of this A–17 will not cause the contract to become a QLAC.

(4) *Multiple beneficiaries.* If an employee has more than one designated beneficiary under a QLAC, the rules in § 1.401(a)(9)–8, A–2(a), apply for purposes of paragraphs (c)(1)(i) and (c)(2)(i) of this A–17.

(5) *Roth IRAs.* A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–17. See § 1.408A–6, A–14(d). If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid for the contract will not be taken into account under paragraph (b)(2)(ii)(B) or paragraph (b)(3)(ii)(B) of this A–17 after the date of the rollover or conversion.

(e) *Effective/applicability date.* This Q&A–17 applies to contracts purchased on or after the date of publication of the Treasury decision adopting these rules

as final regulations in the **Federal Register** and for determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013.

Par. 4. Section 1.403(b)–6 is amended by adding paragraph (e)(9) to read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(e) * * *

(9) *Special rule for qualifying longevity annuity contracts.* The rules in § 1.401(a)(9)–6, A–17(b) (relating to limitations on premiums for a qualifying longevity annuity contract (QLAC), and § 1.401(a)(9)–6, A–17(d)(1) (relating to reliance on representations with respect to a QLAC), apply to the purchase of a QLAC under a section 403(b) plan (rather than the rules in § 1.408–8, A–12(b) and (c)).

* * * * *

Par. 5. Section 1.408–8, Q&A–12, is added to read as follows:

§ 1.408–8 Distribution requirements for individual retirement plans.

* * * * *

Q–12. How does the special rule in § 1.401(a)(9)–5, A–3(d), for a qualifying longevity annuity contract (QLAC), defined in § 1.401(a)(9)–6, A–17, apply to an IRA?

A–12. (a) *General rule.* The special rule in § 1.401(a)(9)–5, A–3, for a QLAC, defined in § 1.401(a)(9)–6, A–17, applies to an IRA, subject to the exceptions set forth in this A–12. See § 1.408A–6, A–14(d) for special rules relating to Roth IRAs.

(b) *Limitations on premium*—(1) *In general.* In lieu of the limitations described in § 1.401(a)(9)–6, A–17(b), the premiums paid for the contract on a date are not permitted to exceed the lesser of the dollar limitation in paragraph (b)(2) of this A–12 or the percentage limitation in paragraph (b)(3) of this A–12.

(2) *Dollar limitation.* The dollar limitation is an amount equal to the excess of—

(i) $100,000, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is purchased for the IRA owner under the IRA, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental section 457(b) plan.

(3) *Percentage limitation.* The percentage limitation is an amount equal to the excess of—

(i) 25 percent of the total account balances of the IRAs (other than Roth IRAs) that an individual holds as the IRA owner as of December 31 of the calendar year immediately preceding the calendar year in which a premium is paid, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is held or was purchased for the individual under those IRAs.

(c) *Reliance on representations.* For purposes of the limitations described in paragraphs (b)(2) and (b)(3) of this A–12, unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–12 that are not paid under the IRA, and the amount of the account balances described in paragraph (b)(3)(i) of this A–12, other than the account balance under the IRA.

(d) *Roth IRAs.* A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–12. See § 1.408A–6, A–14(d). If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid for the contract will not be taken into account under paragraph (b)(2)(ii)(B) or paragraph (b)(3)(ii)(B) of this A–12 after the date of the rollover or conversion.

(e) *Effective/applicability date.* This Q&A–12 applies to contracts purchased on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and for determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013.

Par. 6. Section 1.408A–6 is amended by adding paragraph A–14(d) to read as follows:

§ 1.408A–6 Distributions.

* * * * *

A–14. * * *

(d) The special rules in § 1.401(a)(9)–5, A–3, and § 1.408–8, Q&A–12, for a QLAC, defined in § 1.401(a)(9)–6, A–17, do not apply to a Roth IRA.

* * * * *

Par. 7. Section 1.6047–2 is added to read as follows:

§ 1.6047–2 Information relating to qualifying longevity annuity contracts.

(a) *Requirement and form of report*—(1) *In general.* Any person issuing any contract that states that it is intended to be a qualifying longevity annuity contract (QLAC), defined in § 1.401(a)(9)–6, Q&A–17, shall make reports required by this section. This requirement applies only to contracts purchased or held under any plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 (other than a Roth IRA) or eligible governmental section 457(b) plan.

(2) *Initial disclosure.* The issuer shall be required to prepare a report identifying that the contract is intended to be a QLAC and containing the following information—

(i) A plain-language description of the dollar and percentage limitations on premiums;

(ii) The annuity starting date under the contract, and, if applicable, a description of the individual's ability to elect to commence payments before the annuity starting date;

(iii) The amount (or estimated amount) of the periodic annuity payment that is payable after the annuity starting date as a single life annuity (including, if an estimated amount, the assumed interest rate or rates used in making this determination), and a statement that there is no commutation benefit or right to surrender the contract in order to receive its cash value;

(iv) A statement of any death benefit payable under the contract, including any differences between benefits payable if the individual dies before the annuity starting date and benefits payable if the individual dies on or after the annuity starting date;

(v) A description of the administrative procedures associated with an individual's elections under the contract, including deadlines, how to obtain forms, and where to file forms, and the identity and contact information of a person from whom the individual may obtain additional information about the contract; and

(vi) Such other information as the Commissioner may require.

(3) *Annual report.* The issuer shall make annual calendar-year reports on the applicable form prescribed by the Commissioner for this purpose concerning the status of the contract. The report shall identify that the

contract is intended to be a QLAC and shall contain the following information—

(i) The name, address, and identifying number of the issuer of the contract, along with information on how to contact the issuer for more information about the contract;

(ii) The name, address, and identifying number of the individual in whose name the contract has been purchased;

(iii) If the contract was purchased under a plan, the name of the plan, the plan number, and the Employer Identification Number (EIN) of the plan sponsor;

(iv) If payments have not yet commenced, the annuity starting date on which the annuity is scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated;

(v) The amount of each premium paid for the contract, along with the date of the premium payment; and

(vi) Such other information as the Commissioner may require.

(b) *Manner and time for filing*—(1) *Initial disclosure.* The report required by paragraph (a)(2) of this section shall not be filed with the Internal Revenue Service.

(2) *Annual report*—(i) *Timing.* The report required by paragraph (a)(3) of this section shall be filed in accordance with the forms and instructions prescribed by the Commissioner. Such a report must be filed for each calendar year beginning with the year in which premiums for a contract are first paid and ending with the earlier of the year in which the individual in whose name the contract has been purchased attains age 85 (as adjusted pursuant to § 1.401(a)(9)–6, A–17(d)(3)(ii)) or dies.

(ii) *Surviving spouse.* If the individual dies and the sole beneficiary under the contract is the individual's spouse (in which case the spouse's annuity would not be required to commence until the individual would have attained age 85), the report must continue to be filed for each calendar year until the calendar year in which the distributions to the spouse commence or in which the spouse dies, if earlier.

(c) *Issuer statements.* (1) *Initial disclosure.* Each issuer required to make a report required by paragraph (a)(2) of this section shall furnish to the individual in whose name the contract has been purchased a statement containing the information in the report. The statement shall be furnished at the time of purchase. The statement is not required to include information that the issuer has already provided to the individual in order to comply with any applicable state disclosure law.

(2) *Annual report.* Each issuer required to file the report required by paragraph (a)(3) of this section shall furnish to the individual in whose name the contract has been purchased a statement containing the information required to be furnished in the report, except that such statement shall be furnished to a surviving spouse to the extent that the report is required to be filed under paragraph (b)(2)(ii) of this section. A copy of the required form may be used to satisfy the statement requirement of this paragraph (c)(2). If a copy of the required form is not used to satisfy the statement requirement of this paragraph (c)(2), the statement shall contain the following language: ''This information is being furnished to the Internal Revenue Service.'' The statement required by this paragraph (c)(2) shall be furnished on or before January 31 following the calendar year for which the report required by paragraph (a)(3) of this section is required.

(d) *Effective/applicability date.* This section applies on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–2340 Filed 2–2–12; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110980–10]

RIN 1545–BJ55

Modifications to Minimum Present Value Requirements for Partial Annuity Distribution Options Under Defined Benefit Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These proposed regulations would change the regulations regarding the minimum present value requirements for defined benefit plan distributions to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form. These regulations would affect sponsors, administrators, participants, and beneficiaries of defined benefit pension plans. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 3, 2012. Outlines of topics to be discussed at the public hearing scheduled for June 1, 2012, must be received by May 11, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–110980–10), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–110980–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–110980–10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Peter J. Marks or Linda S.F. Marshall at (202) 622–6090; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(11) of the Internal Revenue Code (Code) provides that, in order for a defined benefit plan to qualify under section 401(a), and except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity. In the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a defined benefit plan must provide a qualified preretirement survivor annuity to the surviving spouse of such participant, except as provided under section 417.

Section 417(e)(1) provides that a plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if that present value does not exceed the amount that can be distributed without

the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of a qualified joint and survivor annuity or the qualified preretirement survivor annuity only if the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.[1]

Section 417(e)(3)(B) of the Code, as amended by section 302 of the Pension Protection Act of 2006 (PPA '06), Public Law 109–280, 120 Stat. 780 (2006), provides that the term ''applicable mortality table'' means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to section 430(h)(3)(C) or (3)(D)).

Section 417(e)(3)(C) of the Code, as amended by section 302 of PPA '06, provides that the term ''applicable interest rate'' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) of the Code for the month before the date of the distribution or such other time as the Secretary may prescribe by regulations. Under section 417(e)(3)(D), these rates are to be determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D). Section 417(e)(3)(D) also provides special rules applicable for plan years beginning in 2008 through 2011 under which the applicable interest rate is based on a blend of the interest rates under section 417(e)(3)(C) and the previously applicable 30-year Treasury rate.

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an ''applicable defined benefit plan'' is not treated as failing to meet the requirements of section 417(e) with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation. Section 411(a)(13)(C) defines the term ''applicable defined benefit plan'' to mean a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

Section 1107(a)(2) of PPA '06 provides that a pension plan does not fail to meet the requirements of section 411(d)(6) by reason of a plan amendment to which section 1107 applies, except as provided by the Secretary of the Treasury. Section 1107 of PPA '06 applies to plan amendments made pursuant to the provisions of PPA '06 or regulations issued thereunder that are adopted no later than a specified date, generally the last day of the first plan year beginning on or after January 1, 2009.

Final regulations under section 417 relating to the qualified joint and survivor and qualified preretirement survivor annuity requirements were issued on August 22, 1988. The final regulations were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103–465 (GATT).

Section 1.417(e)–1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)–1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)–1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a qualified preretirement survivor annuity, the life of the participant's spouse), or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction of Social Security supplements or qualified disability benefits.

Notice 2007–81 2007–2 CB 899 (2007), (see § 601.601(d)(2)(ii)(*b*) of this chapter) provides guidance on the corporate bond yield curve and the segment rates used under section 430, as well as the interest rates for determining minimum present values under section 417(e)(3), to implement changes to the funding rules and minimum present value requirements made in PPA '06.

Rev. Rul. 2007–67 2007–2 CB 1047 (2007), (see § 601.601(d)(2)(ii)(*b*) of this chapter) provides that the applicable mortality table for a given year applies to distributions with annuity starting dates that occur during stability periods that begin during that calendar year. Under Rev. Rul. 2007–67, the applicable mortality table for 2008 was based on a fixed blend of 50 percent of the static male combined mortality rates and 50 percent of the static female combined mortality rates promulgated under § 1.430(h)(3)–1(c)(3) of the proposed regulations (which were later issued as final regulations). Rev. Rul. 2007–67 provides that updated section 417(e)(3) applicable mortality tables will be published for each calendar year in future guidance and, except as provided in that future guidance, will be determined from the section 430(h)(3)(A) tables on the same basis as the applicable mortality table for 2008.[2]

Rev. Rul. 2007–67 provides that an amendment to determine the applicable interest rate under the section 417(e)(3) rules in effect for plan years beginning on or after January 1, 2008, will not violate section 411(d)(6) solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the modified segment rates for the 30-year Treasury rate for the same period. Additionally, Rev. Rul. 2007–67 provides that a plan amendment to incorporate by reference the applicable mortality table under section 417(e)(3) that is prescribed by Rev. Rul. 2007–67 and by subsequent guidance will not violate section 411(d)(6) solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the

[1] Under section 411(a)(11)(B), the same actuarial assumptions are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

[2] Notice 2008–85, 2008–2 CB 905, sets forth the section 417(e)(3) applicable mortality tables for distributions with annuity starting dates that occur during stability periods that begin during calendar years 2009 through 2013.

applicable section 417(e)(3) mortality table for the prior applicable mortality table under section 417(e)(3).

Rev. Rul. 2007–67 also provides guidance regarding the applicable interest rate used under section 417(e)(3) pursuant to the PPA '06 changes. Pursuant to Rev. Rul. 2007–67, the rules of §§ 1.417(e)–1(d)(4) and 1.417(e)–1(d)(10)(*ii*) regarding the time for determining the applicable interest rate continue to apply for plan years beginning on or after January 1, 2008, without regard to the change in the basis for determining the applicable interest rate.

The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 109–280 (120 Stat. 780 (2008)), amended section 415(b)(2)(E)(v) to provide that the applicable mortality table under section 417(e)(3)(B) applies for purposes of adjusting a benefit or limitation pursuant to section 415(b)(2)(B), (C), or (D).

Explanation of Provisions

Treatment of Bifurcated Accrued Benefits

These proposed regulations would amend the current final regulations under section 417(e) to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity that is excepted from the minimum present value requirements of section 417(e)(3) pursuant to § 1.417(e)–1(d)(6) and partly in a more accelerated form. Where a defined benefit plan offers a single-sum distribution or other form of accelerated distribution as an optional form of benefit in addition to the required qualified joint and survivor annuity, many participants have been reluctant to elect lifetime payments to insure against unexpected longevity, choosing instead an accelerated distribution form in order to maximize their liquidity. However, participants who elect a single sum or other accelerated form of distribution may face a greater challenge in protecting themselves against the risk of outliving their retirement savings.

The IRS and the Treasury Department believe that many participants would be better served by having the opportunity to elect to receive a portion of their retirement benefits in annuity form (which provides financial protection against unexpected longevity) while receiving accelerated payments for the remainder of the benefit to provide increased liquidity during retirement. Under current regulations, both portions of such a distribution option are subject to the minimum present value requirements of section 417(e)(3).

The proposed regulations would provide an exception to this rule in the case of a plan with a bifurcated accrued benefit as defined in the proposed regulations. Under this exception, such a plan is permitted to provide that, if a participant selects two different distribution options with respect to separate portions of the bifurcated accrued benefit, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3). Thus, if this rule applies to treat two separate distribution options selected with respect to separate portions of a bifurcated accrued benefit as two separate optional forms of benefit, and one of those separate optional forms of benefit is exempt from the requirement to use the section 417(e)(3) assumptions, then that exemption would apply to that separate optional form of benefit. In such a case, the plan would have to apply the section 417(e)(3) assumptions only to the separate optional form of benefit that is not so exempted (rather than apply those assumptions to the entire optional form of benefit).

The primary impact of this proposed change would be to make it simpler and easier for a plan to offer an optional form of benefit that is a combination of a single-sum payment and an annuity. Allowing a plan to apply a bifurcated approach would permit the plan to use the section 417(e)(3) assumptions for the single-sum portion of the optional form and its usual annuity equivalence factors for the annuity portion (rather than being required to make a special calculation of the annuity portion using the section 417(e)(3) assumptions). Not only would this be simpler administratively, it would also yield a more intuitive result.

One type of plan with a bifurcated accrued benefit that would be eligible for this treatment is a plan that provides for two separate portions of the accrued benefit that are determined without regard to any election of optional form of benefit and permits a participant to choose different forms of benefit with respect to each of those portions of the accrued benefit. An example of such a plan is a plan that has been amended to accrue benefits under a different plan formula, where a participant's benefit is the sum of the participant's accrued benefit for years of service before the amendment date, determined under the pre-amendment plan terms, plus the participant's accrued benefit for years of service after the amendment date, determined under the post-amendment plan terms, with no interaction between the two formulas, and the plan permits a participant to make separate elections of optional forms of benefit with respect to each of those portions of the accrued benefit.

A second type of plan with a bifurcated accrued benefit that would be eligible for this treatment is a plan that provides for a participant to apply different distribution elections to different portions of the accrued benefit so that the amount of the distribution, with respect to the distribution election applied to its respective portion of the accrued benefit, is the pro rata portion of the amount of the distribution that would be determined if that distribution election had been applied to the entire accrued benefit. An example of such a plan is a plan that provides both a single-sum option and a joint and survivor option for the entire benefit, but allows a participant to select an optional form which is 25 percent of the full lump sum and 75 percent of the full joint and survivor annuity.

A third type of plan with a bifurcated accrued benefit that would be eligible for this treatment is a plan that provides a single-sum distribution option with respect to only a portion of the benefit and provides a separate benefit election for the remainder of the distribution. In order to satisfy the requirements to be this type of plan with a bifurcated accrued benefit, the amount of the distribution that is not paid in a single sum must be no less than the amount that would be payable under the rules described in the prior paragraph had a single sum election been available with respect to the entire accrued benefit, where the single sum is determined as the present value of the accrued benefit payable at normal retirement age (or the immediate annuity if the participant is older than normal retirement age) determined using the applicable interest rates and the applicable mortality table. An example of such a plan is a plan that provides that a participant can elect to receive in a single sum an amount equal to the employee contributions, accumulated with interest, with the remainder of the accrued benefit paid under one of the annuity optional forms of benefit available under the plan in an amount sufficient to satisfy the requirements under the proposed regulations.

As previously discussed, the proposed regulations would make the bifurcation of benefits for purposes of section 417(e)(3) conditional on the existence of plan terms that explicitly provide that, if a participant selects two different distribution options with respect to separate portions of the bifurcated accrued benefit, then the two different distribution options are treated

as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3). To provide for such bifurcated treatment, a plan sponsor would be required to amend its plan to provide for use of the plan factors that generally apply to annuity distributions instead of the section 417(e)(3) assumptions in these circumstances. Any plan amendment must comply with the requirements of section 411(d)(6). See the discussion in this preamble under the heading ''Effective/Applicability Date.''

The Treasury Department and the IRS recognize that additional modifications to the regulations under section 417(e)(3) are needed in light of the enactment of PPA '06. It is expected that additional proposed amendments to the regulations under section 417(e)(3) will be issued to reflect statutory changes and to make other clarifications.

Effective/Applicability Date

These regulations are proposed to be effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

The changes under the proposed regulations are proposed to apply to distributions with annuity starting dates in plan years beginning after the publication date of final regulations. If the regulations are finalized as proposed and a plan that previously provided for a partial single-sum distribution together with a specified annuity distribution is amended to treat that distribution form as a bifurcated accrued benefit (and applies less favorable actuarial factors to the portion of the benefit that is not subject to section 417(e)(3)), then the plan must comply with the requirements of section 411(d)(6). This can be done by providing that, after the applicable amendment date under § 1.411(d)–3(g)(4), the amount of each portion of a distribution is not less than the amount that would have been payable under the plan provisions in effect before the amendment applied to the participant's accrued benefit as of the applicable amendment date.

Special Analyses

It has been determined that this notice of proposed rule making is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the proposed regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rule making has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. In particular, the Treasury Department and the IRS request comments regarding whether the special rules in these proposed regulations regarding bifurcated accrued benefits should be extended to any types of benefits that are not covered by the rules in these proposed regulations. All comments will be available for public inspection or copying at www.regulations.gov or upon request. A public hearing has been scheduled for June 1, 2012, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by May 3, 2012, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by May 11, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Peter J. Marks and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.417(e)–1 is amended by:

1. Redesignating paragraph (d)(1) as newly designated paragraph (d)(1)(i) and revising the heading of the newly designated paragraph (d)(1)(i).
2. Adding a new paragraph (d)(1)(ii).
3. Revising paragraphs (d)(7) and (d)(8)(i).
4. Adding a new paragraph (d)(8)(v).

The additions and revisions read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans.* * * *

(ii) *Defined contribution plans.* Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), regardless of whether the requirements of section 401(a)(11) apply to the plan.

* * * * *

(7) *Permitted bifurcation of certain optional forms of benefit*—(i) *General rule.* A plan with a bifurcated accrued benefit (as described in paragraph (d)(7)(ii) of this section) is permitted to provide that, if a participant selects two different distribution options with respect to separate portions of the bifurcated accrued benefit, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and this paragraph (d). Thus, if this paragraph (d)(7) applies to treat two separate distribution options selected with respect to separate portions of a bifurcated accrued benefit as two separate optional forms of benefit, and

the exception from the application of paragraph (d) of this section that is contained in paragraph (d)(6) of this section applies to one of those optional forms of benefit, then this paragraph (d) applies only to the optional form of benefit to which the exception under paragraph (d)(6) of this section does not apply.

(ii) *Bifurcated accrued benefit*—(A) *In general.* A plan provides a bifurcated accrued benefit within the meaning of this paragraph (d)(7)(ii) if the plan satisfies the requirements of paragraph (d)(7)(iii) of this section (relating to separately determined benefits), (d)(7)(iv) of this section (relating to separate distribution options for proportionate benefits), or (d)(7)(v) of this section (relating to single sum with separate distribution option for remainder).

(B) *Rules of operation.* If a plan provides a bifurcated accrued benefit within the meaning of this paragraph (d)(7)(ii), and one portion of the benefits under the plan would itself be a bifurcated accrued benefit if it were the entire accrued benefit, then the rules of paragraph (d)(7)(i) of this section may be re-applied to such portion.

(iii) *Separately determined benefits.* A plan satisfies the requirements of this paragraph (d)(7)(iii) if the plan provides for two separate portions of the accrued benefit that are determined without regard to any election of optional form of benefit and permits a participant to select different distribution options with respect to each of those portions of the accrued benefit.

(iv) *Separate elections for proportionate benefits.* A plan satisfies the requirements of this paragraph (d)(7)(iv) if—

(A) The plan provides for a participant to select one distribution option with respect to a portion of the accrued benefit and a different distribution option with respect to the remaining portion of the accrued benefit;

(B) The distribution option selected with respect to each of the separate portions of the accrued benefit is available with respect to the entire accrued benefit; and

(C) The amount of the distribution with respect to each distribution option applied to its respective portion of the accrued benefit is the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit.

(v) *Single sum with separate election for remainder.* A plan satisfies the requirements of this paragraph (d)(7)(v) if—

(A) The plan provides for a specified amount to be distributed in a single sum, with the remainder distributed as another distribution option payable under the plan;

(B) A single-sum distribution is not available with respect to the participant's entire accrued benefit; and

(C) The amount of the distribution that is not paid in a single sum is not less than the amount that would be payable if—

(*1*) A single sum election were available with respect to the entire accrued benefit, where the single sum is the present value of the accrued benefit payable at normal retirement age (or the immediate annuity if the participant is older than normal retirement age) determined using the applicable interest rates and the applicable mortality table;

(*2*) The participant elected to receive the specified amount in a single sum; and

(*3*) The rules of paragraph (d)(7)(iv) of this section were applied to determine the amount of the distribution that is not paid in a single sum.

(vi) *Examples.* The following examples illustrate the rules of this paragraph (d)(7). Unless otherwise indicated, these examples are based on the following assumptions: Each plan is a single-employer defined benefit plan with a calendar-year plan year, a one-year stability period coinciding with the calendar year, and a one-month lookback used for determining the applicable interest rate. The normal retirement age is 65, and all participant elections are made with proper spousal consent. In addition, these examples reflect the amendments to sections 417 and 411 that were made in the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006).

Example 1. (i) Plan B offers a number of optional forms of payment, including a qualified joint and survivor annuity and a single-sum payment. The single-sum payment is equal to the present value of the participant's immediate benefit (but no less than the present value of the participant's accrued benefit) using the applicable interest and mortality rates under section 417(e)(3). The amount of the joint and survivor annuity is determined using plan factors that are not based on the applicable interest and mortality rates under section 417(e)(3). Plan B permits a participant to elect to receive a percentage of the accrued benefit chosen by the participant as a single sum and the remainder in any annuity form provided under the plan, with both portions of the payment determined by multiplying the amount that would be payable if the entire benefit were paid in that form by the percentage that applies to that distribution option. Plan B provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Assume that the December 2012 segment rates are 3.21%, 5.19% and 5.67% for purposes of this example.

(ii) Participant S retires at age 62 in 2013, with an accrued benefit of $1,000 per month payable as a straight life annuity at normal retirement age. Participant S is eligible for an unreduced early retirement benefit and can therefore collect a straight life annuity benefit of $1,000 per month beginning immediately. Alternatively, Participant S can elect to receive the benefit in other forms, including a single-sum payment of $153,852 (based on the applicable interest rate and mortality table under section 417(e), which are the 2013 applicable mortality table and the December 2012 segment rates), or a 100% joint and survivor annuity of $850 per month (based on the plan's annuity conversion factors). Participant S elects to receive 25% of the benefit in the form of a single-sum payment and the balance as a 100% joint and survivor annuity.

(iii) In accordance with paragraph (d)(7)(iv) of this section, Plan B provides for a bifurcated accrued benefit because Plan B provides for a participant to select a single-sum distribution with respect to a portion of the accrued benefit and an annuity distribution option with respect to the remaining portion of the accrued benefit. Each distribution option is available with respect to the entire accrued benefit, and the amount of the distribution with respect to each distribution option applied to its respective portion of the accrued benefit is the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit. Furthermore, Plan B provides that the two different distribution options selected with respect to each of those portions of the accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan B implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Accordingly, Participant S receives a single sum payment equal to 25% of the full single sum amount, or $38,463. In addition, Participant S receives a 100% joint and survivor annuity in the amount of $637.50 per month, equal to 75% of the full joint and survivor benefit of $850 per month otherwise payable. The joint and survivor benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(i) of this section.

Example 2. (i) Plan C permits participants to elect a partial single sum equal to employee contributions, accumulated with interest. Any other amounts must be paid in the form of an annuity. Under the terms of Plan C, if a participant elects to receive this partial single sum, the annuity benefit payable to the participant is at least as great as the minimum amount determined pursuant to paragraph (d)(7)(v)(C) of this section. Plan C provides that, with respect to a distribution that is paid partly in the form

of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Participant T retires at age 60 in 2013 with an accrued benefit of $1,500 per month payable as a straight life annuity payable at normal retirement age. Based on the plan's early retirement and optional form factors (which are not based on the applicable interest and mortality rates under section 417(e)(3)), Participant T's benefit commencing at age 60 in the form of a 10-year certain and continuous annuity would be $925 per month. Participant T elects to receive a single sum payment of $32,000 equal to T's accumulated contributions with interest, and the remainder as a 10-year certain and continuous annuity. Assume that the December 2012 segment rates are the same as those assumed in *Example 1.* Based on the applicable mortality table for 2013 and the December 2012 segment rates, the deferred annuity factor at age 60 for lifetime payments commencing at age 65 is 8.769.

(ii) In accordance with paragraph (d)(7)(v) of this section, Plan C provides for a bifurcated accrued benefit because Plan C provides for a specified amount to be distributed in a single sum, with the remainder distributed as another distribution option payable under the plan, a single-sum distribution is not available with respect to a participant's entire accrued benefit, and the amount of the distribution that is not paid in a single sum meets the requirements of paragraph (d)(7)(v)(C) of this section. Furthermore, Plan C provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Accordingly, the rule for proportional benefits under paragraph (d)(7)(iv) of this section is applied to determine the minimum amount of Participant T's annuity as if a single sum payment were available, equal to the present value of T's full accrued benefit. If Plan C had offered a single sum payment option with respect to Participant T's full accrued benefit of $1,500 per month, the minimum present value based on the applicable mortality table for 2013 and the assumed December 2012 segment rates would have been $1,500 × 12 × the deferred annuity factor of 8.769, or $157,842. The single sum payment actually available to Participant T under the provisions of Plan C is the amount of accumulated contributions with interest, or $32,000 which represents 20.27% of the single sum value of Participant T's full accrued benefit ($32,000 ÷ $157,842 = 20.27%).

(iii) Therefore, the portion of T's accrued benefit not payable as a single sum must be at least as great as the amount based on the remaining 79.73% of T's benefit multiplied by the accrued benefit of $1,500 per month, or $1,195.95 per month payable at normal retirement age. Based on Plan C's early retirement and optional form factors, the annuity benefit payable to Participant T in the form of a 10-year certain and continuous annuity beginning at age 60 cannot be less than $925 times 79.73% or $737.50 per month. Participant T receives this in addition to the single sum payment of $32,000. The 10-year certain and continuous benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(i) of this section.

Example 3. (i) Plan D permits participants to elect a single-sum payment of up to $10,000 with the remaining benefit payable in the form of an annuity. Under the terms of Plan D, if a participant elects to receive this partial single sum, the annuity benefit payable to the participant is at least as great as the minimum amount determined pursuant to paragraph (d)(7)(v)(C) of this section. Plan D provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Participant W retires in 2013 at age 55 with an accrued benefit of $1,000 per month payable at normal retirement age. Participant W is eligible for an unreduced early retirement benefit of $1,000 per month payable as a straight life annuity. Alternatively, based on Plan D's definition of actuarial equivalence (which is not based on the applicable interest and mortality rates under section 417(e)(3)), Participant W can receive an immediate benefit in the form of a 100% joint-and-survivor annuity of $800 per month. Participant W elects to receive a single sum payment of $10,000, with the balance of the benefit payable as a 100% joint-and-survivor annuity beginning at age 55. Assume that the December 2012 segment rates are the same as those assumed in *Example 1.* Based on the applicable mortality table for 2013 and the December 2012 segment rates, the deferred annuity factor at age 55 for lifetime payments commencing at age 65 is 6.558.

(ii) In accordance with paragraph (d)(7)(v) of this section, Plan D provides for a bifurcated accrued benefit because Plan D provides for a specified amount to be distributed in a single sum, with the remainder distributed as another distribution option payable under the plan, a single-sum distribution is not available with respect to a participant's entire accrued benefit, and the amount of the distribution that is not paid in a single sum meets the requirements of paragraph (d)(7)(v)(C) of this section.

Furthermore, Plan D provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Accordingly, the rule for proportional benefits under paragraph (d)(7)(iv) of this section is applied to determine the minimum amount of Participant W's annuity as if a single sum payment were available, equal to the present value of W's full accrued benefit.

(iii) If Plan D had offered a single sum payment option with respect to Participant W's full accrued benefit of $1,000 per month, the minimum present value based on the applicable mortality table for 2013 and the assumed December 2012 segment rates would have been $1,000 × 12 × the deferred annuity factor of 6.558, or $78,696. The single sum payment actually available to Participant W under the provisions of Plan D is $10,000, which represents 12.71% of the single sum value of W's full accrued benefit ($10,000 ÷ $78,696 = 12.71%).

(iv) Therefore, the portion of Participant W's accrued benefit not payable as a single sum must be at least as great as the amount based on the remaining 87.29% of W's benefit multiplied by the accrued benefit of $1,000 per month, or $872.90 per month payable at normal retirement age. Based on Plan D's early retirement and optional form factors, the annuity benefit payable to Participant W in the form of a 100% joint-and-survivor annuity beginning at age 55 is no less than 87.29% × $800, or $698.32 per month. Participant W receives this in addition to the single sum payment of $10,000. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(i) of this section.

Example 4. (i) Plan E was amended to freeze benefits under the traditional plan formula as of December 31, 2012, and to provide benefits under a cash balance formula beginning January 1, 2013. The plan provides that participants may elect separate distribution options for the portion of the benefit accrued under the traditional formula as of December 31, 2012, and the portion of the benefit earned under the cash balance formula. Furthermore, the plan provides that a participant may elect to receive a single-sum payment only with respect to the portion of the benefit earned under the cash balance formula. Plan E provides that the two distribution options selected with respect to the portion of the benefit accrued under the traditional formula as of December 31, 2012, and the portion of the benefit earned under the cash balance formula are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d).

(ii) In accordance with paragraph (d)(7)(iii) of this section, Plan E provides for a bifurcated accrued benefit because the portion of the accrued benefit determined under the traditional formula and the portion of the accrued benefit determined under the cash balance formula are determined separately without regard to any election of optional form of benefit and Plan E permits a participant to select different distribution options with respect to both of those portions of the accrued benefit. Furthermore, as permitted by paragraph (d)(7)(i) of this section, Plan E provides that the two different distribution options selected with

respect to each of those portions of the accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Therefore, whether a participant elects to receive a single sum payment of the portion of the benefit earned under the cash balance formula does not affect whether the distribution elected with respect to the portion of the benefit earned as of December 31, 2012, is subject to the minimum present value requirements of section 417(e)(3).

Example 5. (i) The facts are the same as in *Example 4,* except that Plan E also permits a participant to elect, with respect to the cash balance portion of the benefit, to receive a percentage of the accrued benefit chosen by the participant as a single sum and the remainder in any annuity form provided under the plan, with both portions of the payment determined by multiplying the amount that would be payable if the entire benefit were paid in that form by the percentage that applies to that distribution option. Plan E provides that, with respect to such a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Participant X retires at age 65, with an accrued benefit under the traditional formula of $500 per month (earned as of December 31, 2012), and a cash balance hypothetical account of $45,000. Based on Plan E's actuarial equivalence factors, Participant X's accrued benefit derived from the cash balance hypothetical account is $320 per month, payable as a life annuity at normal retirement. Participant V elects to receive $15,000 of the current hypothetical account balance in the form of a single sum and to receive the remainder of the total accrued benefit as a life annuity.

(ii) Under the analysis set forth in *Example 4,* Plan E provides for a bifurcated accrued benefit in accordance with paragraph (d)(7)(C) of this section with respect to the portion of the accrued benefit attributable to the benefit accrued as of December 31, 2012, and the portion of the accrued benefit attributable to the benefit earned under the cash balance formula. Furthermore, Plan E provides that the two different distribution options selected with respect to each of those portions of the accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Thus, a separate distribution option may be chosen for each of these two portions, and section 417(e)(3) applies separately to each portion.

(iii) In accordance with paragraphs (d)(7)(ii)(B) and (d)(7)(iv) of this section, the portion of the accrued benefit under Plan E earned under the cash balance formula is also a bifurcated accrued benefit because Plan E provides for a participant to select a single-sum distribution with respect to a portion of the cash balance formula accrued benefit and an annuity distribution option with respect to the remaining portion of the cash balance formula accrued benefit, each distribution option is available with respect to the entire cash balance formula accrued benefit, and the amount of the distribution with respect to each distribution option applied to its respective portion of the cash balance formula accrued benefit is the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire cash balance formula accrued benefit. Furthermore, Plan E provides that the two different distribution options selected with respect to each of those portions of the cash balance formula accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Thus, under paragraph (d)(7)(iv) of this section, ⅓ of the cash balance hypothetical account is paid as a single sum (that is, $15,000 ÷ $45,000), and the remaining ⅔ of the cash balance hypothetical account, or $30,000, is converted to an annuity benefit of ⅔ × $320, or $213.33 per month.

(iv) Participant X therefore receives a single sum payment of $15,000, representing the portion of the current hypothetical account balance that X elected to receive as a single sum. In addition, Participant X receives a monthly life annuity of $713.33 per month (equal to the $500 benefit attributable to the benefit earned as of December 31, 2012, plus the $213.33 portion of the cash balance benefit paid as an annuity). Participant X's election to receive a single sum payment of part of the benefit earned under the cash balance formula does not affect whether the remainder of Participant X's distribution is subject to the minimum present value requirements of section 417(e)(3).

(8) *Effective/applicability date*—(i) *In general.* Except as otherwise provided in this paragraph (d)(8), this paragraph (d) applies to distributions with annuity starting dates in plan years beginning on or after January 1, 1995.

* * * * *

(v) Paragraph (d)(7) of this section applies to distributions with annuity starting dates in plan years beginning on or after the date final regulations that finalize these proposed regulations are published in the **Federal Register**.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–2341 Filed 2–2–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 32P; AG Order No. 3321–2012]

RIN 1140–AA38

Federal Firearms License Proceedings—Hearings (2008R–15P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice is proposing to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding administrative hearings held as part of firearms license proceedings. This proposed rule clarifies that such hearings are held in an informal setting and that persons requesting a hearing will be afforded the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. The proposed regulations are intended to ensure that federal firearms licensees and persons applying for a federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before May 3, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Send comments to any of the following addresses—

- Deborah G. Szczenski, Industry Operations Specialist (Regulations), Mailstop 6N–602, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE., Washington, DC 20226; *Attn:* ATF 32P. Written comments must appear in a minimum 12-point size of type (.17 inches), include your mailing address, be signed, and may be of any length.
- (202) 648–9741 (facsimile).
- *http://www.regulations.gov.* Federal eRulemaking portal; follow the instructions for submitting comments.

You may also view an electronic version of this proposed rule at the *http://www.regulations.gov* site.

See the Public Participation section at the end of the **SUPPLEMENTARY**

INFORMATION section for instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Deborah G. Szczenski, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–7087.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the provisions of the Gun Control Act of 1968 (''the Act''), 18 U.S.C. Chapter 44. He has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the provisions of the Act in 27 CFR Part 478.

The regulations in Subpart E of Part 478, sections 478.71–478.78, relate to proceedings involving federal firearms licenses, including the denial, suspension, or revocation of a license, or the imposition of a civil fine. In particular, § 478.71 provides that the Director of ATF may issue a notice of denial on ATF Form 4498 (Notice of Denial of Application for License) to an applicant for a license if he has reason to believe that the applicant is not qualified, under the provisions of § 478.47, to receive a license. The notice sets forth the matters of fact and law relied upon in determining that the application should be denied, and affords the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If a request for a hearing is not filed within such time, the application is disapproved and a copy, so marked, is returned to the applicant.

Under § 478.72, an applicant who has been denied an original or renewal license may file a request with the Director of Industry Operations (DIO) for a hearing to review the denial of the application. On conclusion of the hearing and after consideration of all relevant facts and circumstances presented by the applicant or his representative, the Director (or his or her delegate) renders a decision confirming or reversing the denial of the application. If the decision is that the denial should stand, a certified copy of the Director's findings and conclusions are furnished to the applicant with a final notice of denial, ATF Form 4501 (now ATF Form 5300.13), Final Notice of Denial of Application or Revocation of Firearms License. In addition, a copy of the application, marked ''Disapproved,'' is furnished to the applicant. If the decision is that the license applied for should be issued, the applicant will be so notified, in writing, and the license will be issued.

Section 478.73 provides that whenever the Director has reason to believe that a firearms licensee has willfully violated any provision of the Act or part 478, a notice of revocation of the license (ATF Form 4500) may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the Director has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1), relating to a NICS (National Instant Criminal Background Check System) background check. Additionally, under 18 U.S.C. 924(p)(1)(A) and 922 (z), a notice of suspension or revocation of a license, or the imposition of a civil penalty, may be issued when a licensee sells, delivers, or transfers any handgun to any unlicensed person without providing a secure gun storage or safety device for the handgun.

As specified in § 478.74, a licensee who receives a notice of license suspension or revocation of a license, or imposition of a civil fine, may file a request for a hearing with the Director of Industry Operations. On conclusion of the hearing and after consideration of all the relevant information presented at the hearing, the Director renders a decision and prepares a brief summary of the findings and conclusions on which the decision was based. If the decision is that the license should be revoked or, in actions under 18 U.S.C. 922(t)(5) (or 924(p)), that the license should be revoked or suspended, or that a civil fine should be imposed, a certified copy of the summary is furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5) (or 924(p)), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee will be notified in writing.

Under § 478.76, a firearms licensee or an applicant for a firearms license may be represented at a hearing by an attorney, certified public accountant, or other person recognized to practice before ATF, provided certain requirements are met. The Director may be represented in hearing proceedings by an attorney in the Office of Chief Counsel or authorized Division Counsel. Pursuant to § 478.77, hearings concerning notification of license denials, suspensions, revocations, or the imposition of a civil fine must be held in a location convenient to the aggrieved party.

Currently, ATF has procedures regarding administrative hearings held as part of firearms license proceedings (see ATF 36N, 75 FR 48362, Aug. 10, 2010).

II. Proposed Rule—Clarification of Hearing Proceedings

As indicated above, the regulations provide certain information regarding hearings relative to firearms license proceedings, e.g., who can request a hearing, where the hearing is held, and that the person requesting a hearing is entitled to representation. ATF believes that other aspects of the hearing process should be clarified in the regulations. For example, hearings are informal in nature and adherence to civil court rules and procedures is not required. In addition, persons who request a hearing have an opportunity at that time for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment. These provisions are being incorporated into the proposed regulations.

The proposed regulations are intended to ensure that federal firearms licensees and applicants for a federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this proposed rule has been reviewed by the Office of Management and Budget. However, this proposed rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. Accordingly, this proposed rule is not an ''economically significant''

rulemaking as defined by Executive Order 12866.

The proposed amendments merely clarify that an administrative hearing, pursuant to a firearms license proceeding, is held in an informal setting where a federal firearms licensee or an applicant for a federal firearms license will have the opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment for review and consideration by the Director of ATF.

B. Executive Order 13132

This proposed regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this proposed regulation will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this proposed rule and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely clarify that an administrative hearing, pursuant to a firearms license proceeding, is held in an informal setting where a federal firearms licensee or an applicant for a federal firearms license will have the opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment for consideration by the Director of ATF.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Public Participation

A. Comments Sought

ATF is requesting comments on the proposed rule from all interested persons. ATF is also specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 32P), be legible, and include your name and mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or on paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of his comments that contains material that is confidential under law (e.g., trade secrets, processes, etc.). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked ''confidential'' at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in a minimum 12-point size of type (.17 inches), include your mailing address, be signed, and may be of any length.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 648–9741. Faxed comments must:

(1) Be legible and appear in a minimum 12-point size of type (.17 inches);

(2) Be on 8½″ x 11″ paper;

(3) Contain a legible, written signature; and

(4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the Federal eRulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of

ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this proposed rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–8740.

Drafting Information

The author of this document is Deborah G. Szczenski; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR Part 478 is proposed to be amended as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

1. The authority citation for 27 CFR Part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

2. Section 478.72 is amended by adding a new fifth sentence to read as follows:

§ 478.72 Hearing after application denial.

* * * The hearing shall be informal and the applicant will have the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. * * *

3. Section 478.74 is amended by adding a new fourth sentence to read as follows:

§ 478.74 Request for hearing after notice of suspension, revocation, or imposition of civil fine.

* * * The hearing shall be informal and the licensee will have the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. * * *

Dated: January 30, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–2492 Filed 2–2–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100 and 165

[Docket No. USCG–2011–1026]

RIN 1625–AA08; AA00

Safety Zones; Annually Recurring Marine Events in Coast Guard Southeastern New England Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend special local regulations and to establish permanent safety zones in Coast Guard Southeastern New England Captain of the Port (COTP) Zone for annually recurring marine events. When these safety zones are activated, and subject to enforcement, this rule may restrict vessels from portions of water areas during annual events listed in the TABLE below that may pose a hazard to public safety. The revised safety zones would expedite public notification of events, remove extraneous and discontinued marine events, add new annually recurring marine events, and ensure the protection of the maritime public and event participants from the hazards associated with marine regattas, firework displays, swim competitions, and other marine events.

DATES: Comments and related material must be received by the Coast Guard on or before April 3, 2012. Requests for public meetings must be received by the Coast Guard on or before February 24, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1026 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Edward G. LeBlanc, Waterways Management Division at Coast Guard Sector Southeastern New England, telephone (401) 435–2351, email *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1026), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu

select ''Proposed Rule'' and insert ''USCG–2011–1026'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1026'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before February 24, 2012, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1225, 1226, 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

Many marine events are held annually on a recurring basis on or over the navigable waters within the Coast Guard Southeastern New England COTP Zone. These events include sailing regattas, powerboat races, rowboat races, parades, swim events, air shows, and fireworks displays. In the past, the Coast Guard has established special local regulations, regulated areas, and safety zones for these events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. This proposed rule will consistently apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. The Table in this proposed regulation lists each annual recurring event requiring a regulated area as administered by the Coast Guard.

By establishing permanent regulations for these events, the Coast Guard will eliminate the need to establish temporary rules for events that occur on an annual basis. Some of the events discussed below are duplicated in 33 CFR 100.112, 100.113, 100.114 and 100.116, which are citations that no longer meet the Coast Guard's intended purposes. While 33 CFR part 100 is designed for Regattas and Marine Parades, 33 CFR part 165 is for Regulated Navigation Areas and Limited Access Areas. The Coast Guard has identified a number of events in 33 CFR part 100 which would be more appropriately located in 33 CFR part 165. This rulemaking will amend local regulations for events already contained in 33 CFR part 100 both to update event information as well as to move fireworks displays to Section 165, a citation that better meets the Coast Guard's intended purpose of ensuring safety during these events.

This rulemaking will eliminate seven (7) extraneous and outdated marine events which have either been discontinued, or no longer require a special local regulation due to the absence of a viable marine hazard. Elimination of these seven events will prevent confusion amongst the public who may be led to believe that these events are still marine events recurring on an annual basis. Their removal will also promote regulatory efficiency by eliminating unnecessary local regulations which are no longer enforced.

In addition, the Coast Guard has promulgated safety zones or special local regulations in the past for 17 of the 24 events listed in the TABLE, and has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring events. The seven (7) new annually recurring events now require local regulations in order to ensure the safety of both participants and spectators, as the marine events may pose unique hazards to waterways navigation and safety.

The Coast Guard does not anticipate any negative public comments regarding these seven new annually recurring marine events as these events have been held on an annual basis for several years now, in which local maritime enforcement assets have established ''safety perimeters'' around the events, similar to the proposed safety zones. The Coast Guard has promulgated safety zones or special local regulations for these areas in the past, and has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring.

Discussion of Proposed Rule

The Coast Guard proposes to remove sections 33 CFR 100.112, 100.113, 100.116, to revise section 33 CFR 100.114, and to add section 33 CFR 165.173. The proposed changes will remove seven outdated marine events and establish 24 permanent regulated areas. The proposed rule will apply to each recurring marine event listed in the attached Table in the Coast Guard Southeastern New England COTP Zone. The Table provides the event name, type, and approximate safety zone dimensions as well as approximate dates, times, and locations of the events. The specific times, dates, regulated areas and enforcement period for each event will be provided through the Local Notice to Mariners, Broadcast Notice to Mariners or through a Notice of Enforcement published in the **Federal Register**.

Three event sponsors of fireworks displays have requested the creation of safety zones which may be enforced 365 days a year. The purpose of these 365 day safety zones is to permit sponsors the flexibility to hold similar fireworks displays at the same location on different days and for different events without the need of creating temporary final rules. These three 365 day Safety Zones can be found in section 1.0 in the Table below.

The particular size of the safety zones established for each event will be reevaluated on an annual basis in accordance with Navigational and Vessel Inspection Circular (NVIC) 07–02, Marine Safety at Firework Displays, the National Fire Protection Association

Standard 1123, Code for Fireworks Displays (100-foot distance per inch of diameter of the fireworks mortars), and other pertinent regulations and publications.

This proposed regulation would prevent vessels from transiting areas specifically designated as safety zones during the periods of enforcement to ensure the protection of the maritime public and event participants from the hazards associated with listed annual recurring events. Only event sponsors, designated participants, and official patrol vessels will be allowed to enter safety zones and special local regulation areas. Spectators and other vessels not registered as event participants may not enter the regulated areas without the permission of the COTP or the COTP's designated representative.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from safety zones for a short duration of time; vessels may transit in all portions of the affected waterway except for those areas covered by the proposed regulated areas, and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative. The Coast Guard has promulgated safety zones or special local regulations in accordance with 33 CFR parts 100 and 165 for 17 of the proposed 24 event areas in the past and has not received notice of any negative impact caused by any of the safety zones or special local regulations. By establishing a permanent regulation containing all of these events, the Coast Guard will eliminate the need to establish individual temporary rules for each separate event that occurs on an annual basis, thereby limiting the costs of cumulative regulations.

Notifications will be made to the local maritime community through the Local Notice to Mariners well in advance of the events. If the event does not have a date listed, then the exact dates and times of the enforcement period will be announced through a Notice of Enforcement in the **Federal Register**. No new or additional restrictions will be imposed on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: Owners or operators of vessels intending to transit, fish, or anchor in the areas where the listed annual recurring events are being held.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from safety zones for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas; and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative. The Coast Guard has promulgated safety zones or special local regulations in accordance with 33 CFR parts 100 and 165 for all event areas in the past and has not received notice of any negative impact caused by any of the safety zones or special local regulations; and notifications will be made to the local maritime community through the Local Notice to Mariners well in advance of the events. If the event does not have a date listed, then exact dates and times of the enforcement period will be announced through a Notice of Enforcement in the **Federal Register**. No new or additional restrictions would be imposed on vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of safety zones for fireworks displays, swim events and other marine events. It appears that this action will qualify for Coast Guard Categorical Exclusions (34) (g) and (h), as described in figure 2–1 of the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

§§ 100.112, 100.113, 100.116 [Removed]

2. Remove §§ 100.112, 100.113, and 100.116

3. Remove the following entries in the ''Fireworks Display Table'' in § 100.114 (along with the associated ''Massachusetts '' and ''Rhode Island'' titles) as follows: 7.16, 7.18, 7.19, 7.20, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.38, 8.2, 8.5, 9.4, 10.1, 12.2, 12.3, and 12.5.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

4. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

5. Add a new § 165.173 to read as follows:

§ 165.173 Safety Zones for Annually Recurring Marine Events held in Coast Guard Sector Southeastern New England Captain of the Port Zone.

(a) Regulations.

The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the fireworks displays and swim events listed in the Table to § 165.173. These regulations may be enforced for the duration of each event.

Notifications will be made to the local maritime community through the Local Notice to Mariners well in advance of the events. If the event does not have a date listed, then exact dates and times of the enforcement period will be announced through a Notice of Enforcement in the **Federal Register**.

Note to introductory paragraph of § 165.173: Although listed in the Code of Federal Regulations, sponsors of events listed in the Table shall submit an application each year in accordance with 33 CFR 100.15.

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' The ''official patrol vessels'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Southeastern New England.

(d) Vessels may not transit the regulated areas without Patrol Commander approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(e) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through a Notice of Enforcement published in the **Federal Register**, unless authorized by an official patrol vessel.

(f) The Patrol Commander may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(g) The Patrol Commander may delay or terminate any event in this subpart at any time to ensure safety. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

(h) For all fireworks displays listed below, the regulated area is that area of navigable waters within the specified radius of the launch platform or launch site for each fireworks display, unless modified later in a Notice of Enforcement published in the **Federal Register**.

TABLE TO § 165.173

1.0	365 DAY JANUARY–DECEMBER
1.1 Provincetown Fireworks	• Event Type: Fireworks Display. • Date: Enforced on any day during the duration of the event as specified by a Notice of Enforcement published in the **Federal Register**. • Time: Approximately 5 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of the Provincetown Harbor, Provincetown, MA. • Position: Within 500 yards of 41°28′44″ N, 070°10′83″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks barge.
1.2 Providence Fireworks	• Event Type: Fireworks Display. • Date: Enforced on any day during the duration of the event as specified by a Notice of Enforcement published in the **Federal Register**. • Time: Approximately 5 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of the Hurricane Barrier in the Providence River, Providence, RI. • Position: Within 500 yards of 41°48′50″ N, 071°23′43″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks barge.
1.3 Fall River Fireworks	• Event Type: Fireworks Display. • Date: Enforced on any day during the duration of the event as specified by a Notice of Enforcement published in the **Federal Register**. • Time: Approximately 5 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Battleship Cove, Fall River, MA. • Position: Within 500 yards of 41°42′37″ N, 071°09′53″ W (NAD 83). • Safety Zone Dimension: Approximately 200 yard radius circle around the fireworks barge.
6.0	JUNE
6.1 Oak Bluffs Summer Solstice	• Event Type: Fireworks Display. • Date: One night on the 3rd or 4th weekend of June. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Town Beach, Oak Bluffs, MA. • Position: Within 500 yards of 41°27′19″ N, 070°33′08″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks barge.
6.2 RI National Guard Air Show	• Event Type: Air Show. • Date: One weekend (Friday, Saturday, and Sunday) in June or July. • Time: Approximately 9 a.m. to 7 p.m. • Location: (1) All waters over the West Passage of Narragansett Bay, in the vicinity of the Quonset State Airport, North Kingston, RI which are within a 4000-yard radius arc extending from position 41°35′44″ N, 071°24′14″ W (NAD 83); and (2) All waters over the West Passage of Narragansett Bay, in the vicinity of Narragansett Pier, Narragansett, RI, which are within a 2000-yard radius arc extending from position 41°26′17″ N, 071°27′02″ W (NAD 83) (Friday only). • Safety Zone Dimension: Approximately 1000 yards long by 1000 yards wide.
7.0	JULY
7.1 Marion 4th of July Fireworks	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m.

TABLE TO § 165.173—Continued

	• Location: From a barge in the vicinity of Outer Sipican Harbor, Marion, MA. • Position: Within 500 yards of 41°42′17″ N, 070°45′08″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks barge.
7.2 Oyster Harbors July 4th Festival	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Tim's Cove, North Bay, Osterville, MA. • Position: Within 500 yards of 41°37′29″ N, 070°25′12″ W (NAD 83). • Safety Zone Dimension: Approximately 200 yard radius circle around the fireworks barge.
7.3 North Kingstown Fireworks Display	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Town Beach, North Kingston, RI. • Position: Within 500 yards of 41°33′59″ N, 071°26′23″ W (NAD 83). • Safety Zone Dimension: Approximately 200 yard radius circle around the fireworks barge.
7.4 Falmouth Fireworks	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Falmouth Beach, Falmouth, MA. • Position: Within 500 yards of 41°32′27″ N, 070°35′26″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks barge.
7.5 Town of Nantucket Fireworks	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Jetties Beach, Nantucket Sound, MA. • Position: Within 500 yards of 41°19′00″ N, 070°06′30″ W (NAD 83). • Safety Zone Dimension: Approximately 200 yard radius circle around the fireworks barge.
7.6 City of Newport 4th of July Fireworks	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From the shore in the vicinity of Fort Adams, Newport, RI. • Position: Within 500 yards of 41°28′49″ N, 071°20′12″ W (NAD 83). • Safety Zone Dimension: Approximately 350 yard radius circle around the launch site.
7.7 Town of Barnstable/Hyannis July 4th Fireworks.	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Lewis Bay, Hyannis, MA. • Position: Within 500 yards of 41°38′20″ N, 070°15′08″ W (NAD 83). • Safety Zone Dimension: Approximately 350 yard radius circle around the fireworks barge.
7.8 Edgartown 4th of July Fireworks Celebration.	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Edgartown Outer Harbor, Edgartown, MA. • Approximate position: Within 500 yards of 41°22′39″ N, 070°30′14″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks barge.
7.9 City of New Bedford Fireworks Display	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of New Bedford Harbor, New Bedford, MA. • Approximate position: Within 500 yards of 41°37′55″ N, 070°54′44″ W (NAD 83). • Safety Zone Dimension: Approximately 250 yard radius circle around the fireworks barge.
7.10 Onset Fireworks	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: On the shore, in the vicinity of Shellpoint Beach, Onset, MA.

TABLE TO § 165.173—Continued

	• Approximate position: Within 500 yards of 41°44′13″ N, 070°39′51″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks launch site.
7.11 Bristol 4th of July Fireworks	• Event Type: Fireworks Display. • Date: One night between July 1st and July 10th, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: In the vicinity of Northern portion of the Bristol Harbor, Bristol, RI, on the section of Poppasquash Rd separating the harbor and Mill Pond. • Position: Within 500 yards of 41°40′53.4″ N, 071°17′00″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks launch site.
7.12 Swim Buzzards Bay	• Event Type: Swim Event. • Date: One Saturday or Sunday in July or August, as announced in the Local Notice to Mariners. • Time: Start times will vary from 6 a.m. to 11:59 a.m., and last approximately two hours until the last swimmer is ashore. Start time will be announced in advance in the Local Notice to Mariners. • Location: The regulated area includes all waters in the vicinity of the Outer New Bedford Harbor, within 500 yards along a centerline with an approximate start point of 41°36′35″ N, 070°54′18″ W (NAD 83) and an approximate end point of 41°37′26″ N, 070°53′48 ″W (NAD 83) at Davy's Locker Restaurant in New Bedford, MA, to Fort Phoenix Beach in Fairhaven, MA. • Safety Zone Dimension: 500 yards on either side of the centerline described above.
7.13 Save the Bay Swim	• Event Type: Swim Event. • Date: One Saturday or Sunday in July or August, as announced in the Local Notice to Mariners. • Time: Start time will vary from 6 a.m. to 11:59 a.m. and last for approximately four hours, until the last swimmer is ashore. Start time will be announced in advance in the Local Notice to Mariners. • Location: The regulated area includes all waters in the vicinity of the Newport/Pell Bridge, East Passage of Narragansett Bay, along a centerline with an approximate start point of 41°30′24″N, 071°19′49″ W (NAD 83) and an approximate end point of 41°30′39″ N, 071°21′50″ W (NAD 83), i.e., a line drawn from the Officers' Club, Coaster's Harbor Island, Naval Station Newport, to Potter Cove, Jamestown. • Safety Zone Dimension: 500 yards on either side of the centerline described above.
8.0	AUGUST
8.1 Boston Pops Nantucket	• Event Type: Fireworks Display. • Date: One night in August as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: On the shore, in the vicinity of Jetties Beach, Nantucket, MA. • Position: Within 500 yards of 41°17′43″ N, 070°06′10″ W (NAD 83). • Safety Zone Dimension: Approximately 400 yard radius circle around the fireworks barge.
8.2 Oak Bluffs Fireworks	• Event Type: Fireworks Display. • Date: One night in August. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Oak Bluffs Harbor, Oak Bluffs, MA. • Position: Within 500 yards of 41°27′27″ N, 070°33′17″ W (NAD 83). • Safety Zone Dimension: Approximately 350 yard radius circle around the fireworks barge.
8.3 Newport Salute to Summer Fireworks	• Event Type: Fireworks Display. • Date: One night during the last two weekends in August or 1st weekend in September. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: From a barge in the vicinity of Naval Station Newport, Newport, RI. • Position: Within 500 yards of 41°30′15″ N, 071°19′50″ W (NAD 83). • Safety Zone Dimension: Approximately 400 yard radius circle around the fireworks barge.
9.0	SEPTEMBER
9.1 Provincetown Harbor Swim for Life	• Event Type: Swim Event. • Date: On a day in September as announced in the Local Notice to Mariners. • Time: Times will vary from 10 a.m. until the last swimmer is ashore, no later than 2 p.m. • Location: The regulated area includes all waters in the vicinity of the Provincetown Harbor along a centerline between the start point, the Long Point Lighthouse. approximate position 42°01′59″ N, 070°10′07″ W (NAD 83), and the end point, the Boatslip Resort, Provincetown, MA., approximate position 42°02′48″ N, 070°11′24″ W (NAD 83). • Safety Zone Dimension: 250 yards on either side of the centerline described above.
9.2 Spirit of Somerset Celebration	• Event Type: Fireworks Display.

TABLE TO § 165.173—Continued

	• Date: One night in September, as announced in the Local Notice to Mariners. • Time: Approximately 8 p.m. to 11:59 p.m. • Location: On the shore, in the vicinity of Mallard Point, Somerset, MA. • Position: Within 500 yards of 41°46′18″ N, 071°07′14″ W (NAD 83). • Safety Zone Dimension: Approximately 200 yard radius circle around the fireworks launch site.
10.0	OCTOBER
10.1 Yarmouth Seaside Festival Fireworks	• Event Type: Fireworks Display. • Date: One night in October, as announced in the Local Notice to Mariners. • Time: Approximately 7 p.m. to 11:59 p.m. • Location: On the shore, in the vicinity of Seagull Beach, West Yarmouth, MA. • Position: Within 500 yards of 41°38′06″ N, 070°13′13″ W (NAD 83). • Safety Zone Dimension: Approximately 300 yard radius circle around the fireworks launch site.

Dated: January 3, 2012.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2012–2391 Filed 2–2–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Periodicals—Recognition of Distribution of Periodicals via Electronic Copies

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 707.6, to allow publishers who use electronic distribution methods to report such circulation as paid or requested distribution, as applicable.

DATES: We must receive your comments on or before March 5, 2012. Early comments are encouraged.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: *Product Classification@usps.gov,* with a subject line of ''epublications.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Susan Thomas at (202) 268–8069.

SUPPLEMENTARY INFORMATION: Recent advances in technology allow distribution of Periodicals publications through various electronic media channels. According to the standards that govern the Periodicals class, all paid circulation for publications authorized in the General category, and all requested circulation for publications authorized in the Requestor category may be counted toward the publication's eligibility for Periodicals prices.

Efforts to identify the conditions that would allow electronic copies of Periodicals (e-pubs) to be counted with other distribution outside the mails have been ongoing for the past two years. During that time, the transition from traditional printed copies of Periodicals to electronic copies of the same publications has grown. Many factors contributed to this migration including the proliferation of electronic reading devices and the desire of subscribers to read news immediately upon publication.

The proposed effective date is September 30, 2012.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

707 Periodicals

* * * * *

6.0 Qualification Categories

6.1 General Publication

* * * * *

6.1.2 Circulation Standards

General publications must meet these circulation standards:

* * * * *

[Revise the first sentence in item 6.1.2c as follows:]

Persons whose subscriptions are obtained at a nominal price and those whose copies bear an alternative form of address (except as allowed for electronic copies in 6.5) must not be included in the legitimate list of subscribers. * * *

* * * * *

6.4 Requester Publications

* * * * *

6.4.2 Circulation Standards

Requester publications must meet these circulation standards:

* * * * *

[Revise the second sentence in 6.4.2e as follows:]

e. * * * Copies addressed using an alternative address format (except as

allowed for electronic copies under 6.5) are not considered requested copies, and persons are not considered to have requested the publication if their copies are addressed in that manner.

* * * * *

[Renumber current 6.5 through 6.6 as new 6.6 through 6.7 and add new 6.5 as follows:]

6.5 Electronic Copies

Copies of Periodicals publications distributed through email or by accessing a password protected Web site (e-pubs) may be counted toward an approved or pending general or requester publications' eligibility for Periodicals prices. The following conditions additionally apply:

a. Copies of e-pubs that may be counted toward a publications eligibility for Periodicals prices:

1. Must be paid at a price above nominal rate for publications approved in the General category.

2. Must be requested in writing or by electronic correspondence for publications approved in the Requester category.

b. Access to electronic copies of a Periodicals publication offered in conjunction with printed copies of the same issues may not be counted when determining total circulation for the publication.

c. At least 40% of the total circulation of each issue must consist of printed copies.

d. Publications for which at least 60% of total circulation consists of printed copies to subscribers or requesters, as applicable, will be exempt from annual circulation audits.

e. If less than 60% of a Periodicals publication's total circulation consists of printed copies distributed to subscribers or requesters, as applicable, annual Postal audits must be conducted by a certified audit bureau

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

[FR Doc. 2012–2374 Filed 2–2–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2012–0035; FRL–9624–9]

40 CFR Parts 141 and 142

Announcement of Public Meeting on the Consumer Confidence Report (CCR) Rule Retrospective Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a public meeting via the Internet on February 23, 2012, to obtain stakeholder input on the Consumer Confidence Report (CCR) Rule as part of the agency's Retrospective Review of Existing Regulations. EPA plans to discuss electronic delivery of CCRs, resource implications for implementing CCR delivery certification, use of CCRs to meet Tier 3 Public Notification requirements, and how contaminant levels are reported in the CCR. EPA invites the public to participate in this information exchange on the CCR rule. The instructions for registration for the meeting are located in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The webinar will be held on February 23, 2012, from 2 p.m. to 4 p.m., Eastern Standard Time. The web dialogue will be available from February 23, 2012, to March 9, 2012.

How To Access Information: EPA has established a docket for this activity under Docket ID No. EPA–HQ–OW–2012–0035; background information (including the CCR and Public Notification rules) are available in this docket. Comments received on the Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations are available for viewing in EPA's Docket No. EPA–HQ–OA–2011–0154. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Adrienne Harris, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 at (202) 250–8793 or *CCRRetrospectiveReview@epa.gov*.

SUPPLEMENTARY INFORMATION:

Listening Session Registration: Individuals planning on participating in the Listening Session must register for the meeting at *https://www3.gotomeeting.com/register/396514342*.

Web Dialogue Registration: Individuals planning on participating in the web dialogue discussions must join the community at *http://CCRRetrospectiveReview.ideascale.com*.

The web dialogue will be available from February 23, 2012, to March 9, 2012, for the public to share and post comments on the dialogue.

Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Adrienne Harris at (202) 250–8793 or by email at *CCRRetrospectiveReview@epa.gov*. Please allow at least five business days prior to the meeting to give EPA time to process your request.

Background: Consumer Confidence Reports are a key part of the public's right-to-know as established in the 1996 Amendments to the Safe Drinking Water Act (SDWA, section 1414(c)). The Consumer Confidence Report, or CCR, is an annual water quality report that a community water system is required by Federal regulations (63 FR 44511, August 19, 1998) to provide to its customers each year. Community water systems (CWSs) serving 10,000 or more persons are required to mail or otherwise directly deliver these reports. States may allow CWSs serving fewer than 10,000 persons to provide these reports by other means. The report lists the regulated contaminants found in the drinking water, as well as health effects information related to violations of the drinking water standards. More information on CCRs can be accessed on EPA's Web site at *http://water.epa.gov/lawsregs/rulesregs/sdwa/ccr/index.cfm*.

In August 2011, the Environmental Protection Agency (EPA) finalized its *Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations* in response to E.O. 13563. Since 1998, when the CCR rule was finalized, the communication of information and the speed with which information can be shared have greatly expanded, along with a corresponding increase in the diversity of communication tools. The EPA included the CCR rule in its retrospective review plan to explore ways to promote greater transparency

and public participation in protecting the nation's drinking water. The agency's CCR retrospective review will look for opportunities to improve the effectiveness of communicating drinking water information to the public, while lowering the burden on water systems and States. One example suggested by water systems is to allow electronic delivery through email, thereby reducing mailing charges. As EPA evaluates alternative delivery options and other opportunities to improve communication with consumers, the agency will consider impacts on consumer burden, environmental justice, and State implementation. By improving communication, customers are better prepared to make informed decisions and the readership of CCRs also may increase.

Dated: January 25, 2012.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2012–2025 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191, 192 and 195

[Docket ID PHMSA–2010–0026]

RIN 2137–AE59

Pipeline Safety: Miscellaneous Changes to Pipeline Safety Regulations

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On November 29, 2011, PHMSA published in the **Federal Register** a Notice of Proposed Rulemaking titled: ''Miscellaneous Changes to Pipeline Safety Regulations'' seeking comments on the need for changes to the regulations covering pipeline safety regulations. The Committee on Pipe and Tube Imports Ad Hoc Large Diameter Line Pipe Producers Group Transportation Subcommittee and the Interstate Natural Gas Association of America petitioned PHMSA to extend the comment period. PHMSA is granting these requests and extending the comment period from February, 3, 2012, to March 6, 2012.

DATES: The closing date for filing comments is extended from February 3, 2012, to March 6, 2012.

ADDRESSES: Comments should reference Docket No. PHMSA–2010–0026 and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–(202) 493–2251.
- *Mail:* DOT Docket Management System: U.S. DOT, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery: U.S. DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the Docket No. PHMSA–2010–0026 at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments to the Docket at *http://www.regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact Kay McIver at 202–366–4046 or by EMail at *kay.mciver@dot.gov*

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2011, PHMSA issued a notice of proposed rulemaking (NPRM) that would make miscellaneous amendments to the pipeline safety regulations (76 FR 73570). On January 12, 2012, the Interstate Natural Gas Association of America requested an extension of the comment period for that NPRM. On January 20, 2012, the Committee on Pipe and Tube Imports Ad Hoc Large Diameter Line Pipe Producers Group Transportation Subcommittee also requested an extension of the comment period to further review a National Transportation Safety Board (NTSB) recommendation that would impact guidelines on the transportation of pipe. PHMSA believes that extension of the comment period is warranted based on the information provided in these requests. Therefore, PHMSA has extended the comment period from February 3, 2012 to March 6, 2012.

Issued in Washington, DC, on January 30, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–2406 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket ID PHMSA–2011–0009]

RIN 2137–AE71

Pipeline Safety: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences

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

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On November 25, 2011, PHMSA published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM), titled: ''Pipeline Safety: Expanding the Use of Excess Flow Valves (EFVs) in Gas Distribution Systems to Applications Other Than Single-Family Residences.'' The ANPRM sought public comment on several issues related to expanding the use of EFVs in gas distribution systems. On January 10, 2012, PHMSA received a request to extend the comment period to provide additional time to respond to the ANPRM. In light of that request, PHMSA is extending the comment period from February 18, 2012, to March 19, 2012.

DATES: The closing date for filing comments is extended from February 18, 2012, until March 19, 2012.

ADDRESSES: Comments should reference Docket No. PHMSA–2011–0009 and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–(202) 493–2251.
- *Mail:* DOT Docket Management System: U.S. DOT, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001.

• *Hand Delivery:* U.S. DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the Docket No. PHMSA–2011–0009 at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact Mike Israni at (202) 366–4566 or by email at *mike.israni@dot.gov.*

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board has made a safety recommendation (P–01–02) to PHMSA that EFVs be installed in all new and renewed gas service lines, regardless of a customer's classification, when the operating conditions are compatible with readily available valves. In response to that recommendation, on November 25, 2011, PHMSA published in the **Federal Register** an ANPRM titled: ''Pipeline Safety: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences'' (76 FR 72666). The ANPRM sought public comment on several issues related to expanding the use of EFVs in gas distribution systems. PHMSA also sought comment from gas distribution system operators on their experiences using EFVs, particularly from a cost-benefit perspective.

On January 10, 2012, the American Gas Association (AGA) and the American Public Gas Associations (APGA) asked PHMSA to extend the ANPRM comment period by at least 30 days. AGA and APGA stated that the depth and scope of the ANPRM requires that stakeholders have substantially more time to respond. AGA and APGA further stated that the existence of two other significant PHMSA rulemakings open for comment and the recent passage of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (PL112–90), have imposed additional demands on their resources for analysis.

PHMSA has posed important questions in the ANPRM on the technical challenges and potential costs and benefits of expanding the use of EFV applications beyond single family residences. Expanded use of EFVs, if implemented, could impose significant cost on the pipeline industry. PHMSA needs thorough responses to the ANPRM to facilitate its consideration of these important and complex issues. Accordingly, PHMSA is granting the request filed by AGA and APGA and extending the comment period from February 18, 2012, to March 19, 2012.

Issued in Washington, DC, on January 30, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–2518 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120106033–2031–01]

RIN 0648–BB68

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC. These measures include the sport fishery allocations and management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, provide greater angler opportunity where available, and protect overfished groundfish species from being incidentally caught in the halibut fisheries.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 21, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0292, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*

• *Fax:* (206) 526–6736, Attn: Sarah Williams

• *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Sarah Williams.

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. National Marine Fisheries Service (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. Information relevant to this proposed rule, which includes a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the National Marine Fisheries Service Northwest Regional Office, 7600 Sand Point Way NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, phone: (206) 526–4646, fax: (206) 526–6736, or email: *sarah.williams@noaa.gov*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm* and at the Council's Web site at *http://www.pcouncil.org.*

Background

The Northern Pacific Halibut Act (Halibut Act) of 1982, 16 U.S.C. 773–773K, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention) (16 U.S.C. 773c). It requires the

Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act also authorizes the regional fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the IPHC to govern the Pacific halibut catch in their corresponding U.S. Convention waters. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A Pacific halibut TAC to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent of the Area 2A TAC to non-tribal fisheries.

The TAC allocation to non-tribal fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation of Pacific halibut TAC, and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30″ N. lat.), Oregon, and California. North of 46°53.30″ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the sablefish primary fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into six geographic subareas, each with separate allocations, seasons, and bag limits.

The Area 2A TAC will be set by the IPHC at its annual meeting on January 24–27, 2012, in Anchorage, AK. Following the annual meeting the IPHC will publish the final TAC on their Web site and produces a news release. Through this proposed rule, NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the resulting proposed domestic fishing regulations by February 21, 2012. This schedule will allow the public the opportunity to consider the final Area 2A TAC before submitting comments on the proposed rule. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the final Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for Areas 2A, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. This final rule will also contain the IPHC regulations for the 2012 Pacific halibut fisheries. A 15-day public comment period is necessary to incorporate the final U.S. domestic regulations into the IPHC regulations in order to have the combined regulations in place as close to March 1 as possible. The regulations need to be in effect in early March because under the 2011 regulations most commercial fishing seasons started on March 12, although this date may need to be changed by the 2012 regulations to be consistent with the IPHC's decisions at its annual meeting in January. This proposed rule cannot be published earlier because the preliminary TAC amounts were announced at the IPHCs interim meeting on November 30 and December 1, 2011. The 2012 commercial season starting date(s) need to be published soon after the IPHC meeting in January 2012 to notify the public of that date so the industry can plan for the season.

Combining the IPHC regulations with the domestic regulations for Washington, Oregon, and California in the final rule is in the best interest of the public because it results in publication of all the halibut regulations in one **Federal Register** notice. Section 300.63(b)(1) of the current regulations provides that NMFS will publish the annual sport fishing regulations for Area 2A in the **Federal Register**, so this notification is where the fishermen get their information. This process reduces confusion for fishery participants because they only have to reference one document for all Pacific halibut regulations on the West Coast and in Alaska. Combining these regulations also eliminates errors that may occur from trying to separate the halibut regulations into two different rules. The separation could be confusing to the public because many of the IPHC regulations apply to all West Coast and Alaska Pacific halibut fisheries in the U.S. Therefore, if the regulations were split between two different rule making processes many U.S. fishermen would have to refer to two separate **Federal Register** documents for one fishery.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, Washington

Preliminary estimates of the 2012 Area 2A TAC are higher than the 2011 TAC. The preliminary IPHC TAC recommendation for area 2A is 989,000 lb (448.6 mt), which results in a Washington sport allocation that is more than 214,110 lb (97.1 mt). According to the catch sharing plan, incidental halibut retention would be allowed in the primary directed sablefish fishery north of Point Chehalis, WA, in 2012 under the current preliminary IPHC TAC recommendation. While the preliminary TAC recommendation for area 2A may change following the IPHC annual meeting, it is not anticipated that the TAC will change enough to prohibit incidental halibut retention in the primary sablefish fishery. Landings restrictions will be recommended by the Council at one of its spring meetings and NMFS will publish the restrictions in the **Federal Register**.

Pacific Council Recommended Changes to the Plan and Domestic Fishing Regulations

Each year, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), and the tribes with treaty fishing rights for halibut consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2011 Pacific Council meeting, WDFW and ODFW recommended changes to the Plan, while NMFS and the tribes did not recommend any changes to the Plan for the 2012 fishing season. Following the meeting, WDFW and ODFW again reviewed their proposals with the public and drafted their recommended revisions for review and recommendation by the Pacific Council.

At its November 2–7, 2011, meeting in Costa Mesa, CA, the Pacific Council considered the results of state-sponsored workshops on the proposed changes to the Plan, and made its final recommendations for modifications to the Plan. The following are the Council's proposed changes to the Plan:

1. Adjust the primary fishery schedule of the Washington South Coast subarea (section (f)(1)(ii)) to be open for the first 3 consecutive weeks Sunday and Tuesday and closed the following week. Previously, the fishery was open the last

Sunday in the month. The goal of this change is to maintain the status quo opening date and to maintain the number of open days prior to the management closure at the end of the month.

2. Adjust the subarea quota split for the Columbia River subarea (section (f)(1)(iv)) between the early and late fishery from 70 percent for the early fishery and 30 percent for the late fishery to 80 percent for the early fishery and 20 percent to the late fishery. The goal of this change is to allocate the subarea quota to match recent year effort in the area and to maximize access to the overall quota. Since 2008, the late season fishery has harvested less than 20 percent of the subarea quota even though the allocation was 30 percent.

3. Set the Oregon TAC contribution to the subarea quota for the Columbia River subarea (section (f)(1)(iv)) equal the Washington contribution. The goal of this change is to better align Oregon's contribution to the subarea with the recent catches in Oregon.

4. Adjust the Oregon Central Coast subarea quota (section (f)(1)(v)) from 67 percent to 63 percent for the spring fishery and from 8 percent to 12 percent for the nearshore fishery and allow any remaining quota to be allocated from the spring fishery to either the summer fishery and/or the nearshore fishery. The goal of these changes is to provide as many fishing days as possible to the nearshore fishery and as many days as possible to the summer season when participation is at its highest. The summer fishery was open only two days in 2011.

The Council-proposed change in the Oregon contribution to the Columbia River subarea would result in a small portion of the overall Oregon/California quota being undistributed. The overall Oregon/California quota is separated into three components: (1) A contribution to the Columbia River (previously 5 percent or amount equal to the Washington contribution, whichever was greater); (2) a 92 percent allocation to the Oregon Central Coast subarea; and (3) a 3 percent allocation to the South of Humbug subarea. In past years the Oregon contribution was set at 5 percent because it was greater than the Washington contribution, meaning that all three allocations equaled 100 percent. This year, the Oregon contribution is set equal to the Washington contribution, which is an amount less than 5 percent of the overall Oregon/California allocation. This change results in a remainder of 2 percent undistributed quota. Therefore the sum of the contribution to the Columbia River subarea and the allocations to the Oregon Central Coast and South of Humbug subareas does not equal the overall Oregon/California quota. To remedy this situation NMFS is not proposing to make any allocation changes, but is proposing to allocate the remainder of the overall Oregon/California quota left after the Columbia River contribution is removed according to the Oregon/California subarea allocations specified in the Plan i.e., the remainder would be distributed 92 percent to the Central Coast subarea and 3 percent to the South of Humbug subarea.

Proposed Changes to the Plan

NMFS is proposing to approve the Pacific Council recommendations and to implement the changes described above. A version of the Plan including these changes can be found at *http://www.nwr.noaa.gov/Groundfish-Halibut/Pacific-Halibut/Index.cfm.*

Proposed Corrections to Federal Regulations

NMFS is proposing to make minor corrections the federal regulations at § 300.63 to make the halibut regulations regarding the sablefish primary fishery consistent with the groundfish regulations which define the sablefish primary fishery. These changes are minor corrections and do not represent a shift in policy regarding the sablefish primary fishery or the halibut fishery.

Proposed 2012 Sport Fishery Management Measures

NMFS also proposes sport fishery management measures that are necessary to implement the Plan in 2012. The annual domestic management measures are published each year through a final rule. For the 2011 fishing season the final rule was published on March 16, 2011 (76 FR 14300), and the following section numbers refer to sections within that final rule. The final 2012 TAC for Area 2A will be determined by the IPHC at its annual meeting on January 24–27, 2012, in Anchorage, AK. Because the final 2012 TAC has not yet been determined, these proposed sport fishery management measures use the IPHC staff's preliminary 2012 Area 2A TAC recommendation of 989,000 lb (448.6 mt), which is higher than the 2011 TAC of 910,000 lb (412.7 mt). Where season dates are not indicated, those dates will be provided in the final rule, following determination of the 2012 TAC and consultation with the states and the public.

In Section 8 of the annual domestic management measures, ''Fishing Periods,'' paragraph (2)–(3) is proposed to read as follows and paragraph (6) is added to read as follows:

(1) * * *

(2) Each fishing period in the Area 2A directed fishery shall begin at 0800 hours and terminate at 1800 hours local time on (*insert season dates)* unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on (insert date) and 1200 hours local time on (insert season date).

(4) * * *

(5) * * *

(6) Notwithstanding paragraph (7) of section 11, an incidental catch fishery is authorized during the sablefish primary fishery in Area 2A in accordance with regulations promulgated by NMFS.

In section 26 of the annual domestic management measures, ''Sport Fishing for Halibut,'' paragraph 1(a)–(b) will be updated with 2012 total allowable catch limits in the final rule. In section 26 of the annual domestic management measures, ''Sport Fishing for Halibut'' paragraph (8) is proposed to read as follows:

(8) * * *

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is (*insert season dates),* and the fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is (*insert season dates),* 5 days a week (Thursday through Monday).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N. lat.), is 108,030 lb (49 mt).

(i) The fishing seasons are:

(A) Commencing on May 10 and continuing 2 days a week (Thursday and Saturday) until 108,030 lb (49 mt) are estimated to have been taken and the season is closed by the Commission or until May 31.

(B) If sufficient quota remains the fishery will reopen on June 7 in the entire north coast subarea, continuing 2

days per week (Thursday and Saturday) until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 108,030 lb (49 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After May 31, any fishery opening will be announced on the NMFS hotline at (800) 662–9825. No halibut fishing will be allowed after May 31 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(*1*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*2*) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The 30-fm depth contour is defined in groundfish regulations at 50 CFR 660.71(e).

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at § 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.), is 42,739 lb (19.3 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N. lat. south to 46°58.00′ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N.lat, 124°37.03′ W. long;

(2) 47°25.67′ N. lat, 124°34.79′ W. long;

(3) 47°12.82′ N. lat, 124°29.12′ W. long;

(4) 46°58.00′ N. lat, 124°24.24′ W. long.

The south coast subarea quota will be allocated as follows: 40,739 lb (18.4 mt) for the primary fishery and 2,000 lb (0.9 mt) for the nearshore fishery. The primary fishery commences on May 6 and continues 2 days a week (Sunday and Tuesday) until May 22. If the primary quota is projected to be obtained sooner than expected the management closure may occur earlier. Beginning on June 3 the primary fishery will be open 2 days per week (Sunday and/or Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 6 and continues seven days per week. Subsequent to closure of the primary fishery the nearshore fishery is open seven days per week, until 42,739 lb (19.3 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, Subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR § 660.70(d). The Westport Offshore YRCA is defined at 50 CFR § 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.) and Cape Falcon, OR (45°46.00′ N. lat.), is 11,895 lb (5.3 mt).

(i) The fishing season commences on May 3, and continues 3 days a week (Thursday, Friday and, Saturday) until 9,516 lb (4.3 mt) are estimated to have been taken and the season is closed by the Commission or until July 15, whichever is earlier. The fishery will reopen on August 3 and continue 3 days a week (Friday through Sunday) until 2,379 lb (1.1 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, when halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.), is 191,780 lb (86.9 mt).

(i) The fishing seasons are:

(A) The first season (the ''inside 40-fm'' fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-

quota for the central Oregon ''inside 40-fm'' fishery (23,014 lb (10.4 mt)) or any in-season revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the ''all-depth'' fishery, is open from May 10, 2012 to (*insert dates*). The projected catch for this season is 120,821 lb (54.8 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Depending on the amount of unharvested catch available, the potential season re-opening dates will be: (*Insert dates no later than July 31*). If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the ''all-depth'' fishery, will be open from August 3, 2012 to (*insert dates*) or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 168,766 lb (76.5 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period (*insert date following establishment of season dates.*) If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning (*insert dates of next possible open period as established preseason*), and ending October 31. If after September 3, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 7 and 8, and ending October 31. After September 3, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at § 660.70(f).

(f) The area south of Humbug Mountain, Oregon (42°40.50′ N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 6,056 lb (2.7 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary of Commerce with the general responsibility to carry out the Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary to carry out the purposes and objectives of the Convention and Halibut Act. This proposed rule is consistent with the Secretary of Commerce's authority under the Halibut Act.

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

NMFS has prepared an RIR/IRFA on the proposed changes to the Plan and the annual domestic Area 2A halibut management measures. Copies of these documents are available from NMFS (see **ADDRESSES**). NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.5 million. All of the businesses that would be affected by this action are considered small businesses under Small Business Administration guidance.

In 2011, 604 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: The directed commercial fishery in Area 2A (147 licenses in 2011); incidental halibut caught in the salmon troll fishery (316 licenses in 2011); and the charterboat fleet (141 licenses in 2011). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

The IRFA analyzed the impacts of the changes to the Plan and regulations. For the 2012 fishing year the proposed changes to the Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, and the federal regulations, would:

1. Adjust the primary fishery schedule for the Washington Southcoast subarea (section (f)(1)(iii)) to be open for the first 3 consecutive weeks Sunday and Tuesday and closed the following week.

2. Adjust the subarea quota split for the Columbia River subarea (section (f)(1)(iv)) between the early and late fishery from 70 percent for the early fishery and 30 percent for the late fishery to 80 percent for the early fishery and 20 percent to the late fishery, and adjust the Oregon contribution to the subarea quota to equal the Washington contribution.

3. Adjust the Oregon Central Coast subarea quota (section (f)(1)(v)) from 67 percent to 63 percent for the spring fishery and from 8 percent to 12 percent for the nearshore fishery and allow remaining quota to be allocated from the spring fishery to either the summer fishery and/or the nearshore fishery.

Because there is no new analysis or information available, the RIR/IRFA relies on the analysis in the 2009 RIR, which used information from the Pacific Fishery Management Council's Draft Environmental Impact Statement (DEIS) (available at **ADDRESSES**) on the 2009–2010 Groundfish Biennial Harvest Specifications and Management Measures to make personal income impact projections of the TAC on coastal communities. Personal income is considered a key indicator of economic activity, and is used in economic analysis to evaluate distributional effects on local and regional economies associated with changes in regulations. Income impacts include the amount of employee salaries and benefits, business owner (proprietor) income, and property-related income (rents, dividends, interest, royalties, etc.) that result from commercial fishing and recreational expenditures. Using available analysis from the DEIS, the 2009 RIR estimated that the 2008 commercial, recreational, and tribal fisheries generated about $8.8 million in personal income for the coastal tribal and non-tribal communities. This 2008 estimate was based on a TAC of 1,220,000 lbs. For 2012, the TAC is projected to be 989,000 lbs, or about 81 percent of the 2008 TAC. On a proportional basis, this decline would suggest that the income impacts for 2012 would be about $8.0 million in 2008 dollars. This projection assumes that prices are constant. However, this is not the case. According to the Pacific States Marine Fisheries Commission PacFIN data reports (Report 307), halibut prices have varied significantly by year: 2008—$3.57/lb, 2009—$2.72/lb, and through November 2010—$4.01 per lb. At $4.01 per lb, the projected ex-vessel value of the 2012 commercial tribal (346,150 lbs) and non-tribal (203,783 lbs) fishery is about $2.2 million. (Note that these ex-vessel price changes only affect the income estimates associated with commercial fishermen and tribal fishermen.)

The proposed changes to the Plan and regulations do not include any reporting or recordkeeping requirements. These changes will not duplicate, overlap or conflict with other laws or regulations. These changes to the Plan and annual domestic Area 2A halibut management measures are not expected to meet any of the RFA tests of having a ''significant'' economic impact on a ''substantial number'' of small entities because the changes will not affect overall allocations. They are designed to provide the best fishing opportunities within the overall TAC. Nonetheless, NMFS has prepared an IRFA. Through this proposed rule, NMFS requests comments on these conclusions.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Section 302(b)(5) of the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

For the 2011 annual management measures and implementation of the catch sharing plan NMFS NWR initiated consultation on the halibut fishery under Section 7 of the ESA because of the listing of yelloweye, canary, and bocaccio rockfish of the Puget Sound/Georgia Basin. Area 2A partially overlaps with the Distinct Population Segments (DPSs) for listed rockfish. NMFS completed a 7(a)(2)/7(d) determination memo under the Endangered Species Act (ESA) finding that bycatch in the 2011 fishery was not likely to be a significant impact on listed species, that direct effects of the fishery (e.g. direct takes) were not likely to jeopardize the continued existence of any listed species, and that in no way did the 2011 fishery make an irreversible or irretrievable commitment of resources by the agency. At this time the consultation is not completed. Therefore for the 2012 fishery the determinations made under the ESA will be updated at the final rule stage.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, and Indian fisheries.

Dated: January 30, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

2. In § 300.63, paragraphs(b)(3), (d)(1)(ii), (d)(3)–(d)(4), (d)(6), and (e)(2) are revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(b) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the sablefish primary fishery north of 46°53.30′ N. lat, (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.231. This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt,) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the sablefish primary fishery north of 46°53.30′ N. lat.

is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30′ N. lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

* * * * *

(d) * * *

(1) * * *

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the sablefish primary fishery described at 50 CFR 660.231; or

* * * * *

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in section 8 of the annual domestic management measures and IPHC regulations and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8 of the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

* * * * *

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations in Area 2A.

* * * * *

(e) * * *

* * * * *

(2) Non-treaty commercial vessels operating in the incidental catch fishery during the sablefish primary fishery north of Pt. Chehalis, Washington, in Area 2A are required to fish outside of a closed area. Under Pacific Coast groundfish regulations at 50 CFR 660.230, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA). It is unlawful to take and retain, possess, or land halibut taken with limited entry fixed gear within the North Coast Commercial YRCA. The North Coast Commercial YRCA is an area off the northern Washington coast, overlapping the northern part of the North Coast Recreational YRCA, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70(b).

* * * * *

[FR Doc. 2012–2362 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 23
Friday, February 3, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0128]

Notice of Request for Approval of an Information Collection; Importation of Animal and Poultry Products (Milk and Eggs) Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection associated with regulations for the importation of animal and poultry products (milk and eggs) into the United States.

DATES: We will consider all comments that we receive on or before April 3, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0128-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0128, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0128* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of animal and poultry products (milk and eggs) into the United States, contact Dr. Lynette Williams-McDuffie, Staff Veterinarian, Technical Trade Services—Products, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Animal and Poultry Products (Milk and Eggs) Into the United States.

OMB Number: 0579–xxxx.

Type of Request: Approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) regulates the importation of certain animal and poultry products and byproducts to prevent the introduction of pests and diseases of livestock and poultry into the United States. These regulations are found at 9 CFR parts 94, 95, 96, and 122.

The regulations require a number of information collection activities to prevent the introduction of livestock and poultry diseases and pests via the importation of animal and poultry products and byproducts, including milk and eggs, into the United States. For milk and eggs, these include applications for approval/report of inspection of establishments to handle restricted animal byproducts or controlled materials; agreements for handling restricted imports of animal byproducts and controlled materials; certifications for eggs (other than hatching eggs); applications for the importation of eggs (other than hatching eggs) in specific cases; applications for the importation of small amounts of milk/milk products for analysis, testing, or examination; certificates of origin for milk and milk products from regions free of foot-and-mouth disease and rinderpest; and marking requirements for eggs from regions with exotic Newcastle disease.

These activities are currently approved by the Office of Management and Budget (OMB) under OMB control number 0579–0015, which also covers information collection activities for a variety of other animal and poultry products imported into the United States. We are proposing to separate the commodities previously approved under OMB control number 0579–0015 into individual collections to better reflect the commodities' specific collection activities and account for the information APHIS collects. Once approved by OMB, only information collection activities associated with the importation of nonfood animal and poultry products and byproducts will be under OMB control number 0579–0015. Information collection activities for milk and eggs and other commodities now covered under OMB control number 0579–0015 will receive new numbers when approved.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities related to the importation of milk and eggs for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.998316334 hours per response.

Respondents: Processing operators; foreign national governments; foreign veterinarians; and importers and exporters.

Estimated annual number of respondents: 227.

Estimated annual number of responses per respondent: 900.0704846.

Estimated annual number of responses: 204,316.

Estimated total annual burden on respondents: 408,288 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–2444 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0113]

Notice of Request for Extension of Approval of an Information Collection; Special Need Requests Under the Plant Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's (APHIS) intention to request an extension of approval of an information collection associated with regulations to allow States to impose prohibitions or restrictions on specific articles in addition to those required by APHIS to help protect against the introduction and establishment of plant pests.

DATES: We will consider all comments that we receive on or before April 3, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0113-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0113, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0113* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on special need requests under the Plant Protection Act, contact Ms. Lynn Evans-Goldner, National Program Manager, EDP, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–7228. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Special Need Request Under the Plant Protection Act.

OMB Number: 0579–0291.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA. Regulations governing the interstate movement of plants, plant products, and other articles are contained in 7 CFR part 301, ''Domestic Quarantine Notices.''

The regulations in ''Subpart-Preemption and Special Need Requests'' allow States or political subdivisions of States to request approval from APHIS to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that pose a plant health risk that are in addition to the prohibitions and restrictions imposed by APHIS. This process requires information collection activities, including a pest data detection survey with a pest risk analysis showing that a pest is not present in a State, or, if already present, the current distribution in the State, and that the pest would harm or injure the environment and/or agricultural resources of the State or political subdivision.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 160 hours per response.

Respondents: State Governments.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 160 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–2445 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0002]

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Food

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on February 23, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 6th Session of the Codex Committee on Contaminants in Food (CCCF) of the Codex Alimentarius Commission (Codex), which will be held in Maastricht, The Netherlands, March 26–30, 2012. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 6th Session of the CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, February 23, 2012, from 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held at the Harvey W. Wiley Federal Building, Room 3B–047, FDA, Center for Food Safety and Applied Nutrition (CFSAN), 5100 Paint Branch Parkway, College Park, MD 20740. Documents related to the 6th Session of the CCCF will be accessible via the World Wide web at *http://www.codexalimentarius.org.*

Nega Beru, U.S. Delegate to the 6th Session of the CCCF, invites interested U.S. parties to submit their comments electronically to the following email address *henry.kim@fda.hhs.gov.*

Registration: Attendees may register electronically at the same email address provided above by February 18, 2012. The meeting will be held in a Federal building; therefore, early registration is encouraged as it will expedite entry into the building and its parking area. You should also bring photo identification and plan for adequate time to pass through security screening systems. If you require parking, please include the vehicle make and tag number when you register. Attendees that are not able to attend the meeting in-person but wish to participate may do so by phone.

Call-In Number: If you wish to participate in the public meeting for the 6th Session of the CCCF by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1–(888) 858–2144.

Participant Code: 6208658.

For Further Information About the 6th Session of the CCCF Contact: Henry Kim, Ph.D., Office of Food Safety, CFSAN/FDA, HFS–317, 5100 Paint Branch Parkway, College Park, MD 20740, telephone: (240) 402–2023, fax: (301) 436–2651, email: *henry.kim@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Henry Kim, Ph.D., Office of Food Safety, CFSAN/FDA, HFS–317, 5100 Paint Branch Parkway, College Park, MD 20740, telephone: (301) 436–2023, fax: (301) 436–2651, email: *henry.kim@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCCF establishes or endorses permitted maximum levels, and where necessary revises existing guideline levels for contaminants and naturally occurring toxicants in food and feed; prepares priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); considers and elaborates methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed; considers and elaborates standards or codes of practice for related subjects; and considers other matters assigned to it by Codex in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee is chaired by The Netherlands.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 6th Session of the CCCF will be discussed during the public meeting:

- Matters Referred to the CCCF by Codex and other Codex Committees/Task Forces.
- Revision of the Risk Analysis Principles Applied by the Codex Committee on Food Additives (CCFA) and the CCCF as to Their Separation from the CCFA and Their Applicability to Feed.
- Revision of the Code of Practice for Source Directed Measures to Reduce Contamination of Food with Chemicals as to Their Applicability to Feed.
- Matters of Interest Arising from FAO and WHO (including JECFA).
- Matters of Interest Arising from other International Organizations—International Atomic Energy Agency (IAEA).
- Draft Maximum Levels for Melamine in Food (liquid infant formula).
- Proposed Draft Maximum Levels for Arsenic in Rice.
- Proposed Draft Maximum Levels for Deoxynivalenol (DON) and its Acetylated Derivatives in Cereals and Cereal-Based Products.
- Proposed Draft Maximum Levels for Total Aflatoxins in Dried Figs including Sampling Plans.
- Editorial Amendments to the General Standard for Contaminants and Toxins in Foods and Feeds (GSCTFF).
- Discussion Paper on Pyrrolizidine Alkaloids in Food and Feed.
- Discussion Paper on Maximum Levels for Lead in Various Foods in the General Standard for Contaminants and Toxins in Food and Feed and the Related Code of Practice for the Prevention and Reduction of Lead Contamination in Foods and the Code of Practice for Source Directed Measure to Reduce Contamination of Foods with Chemicals.
- Discussion Paper on Mycotoxins in Sorghum.
- Discussion Paper on Ochratoxin A in Cocoa.
- Discussion Paper on Guidance for Risk Management Options in Light of Different Risk Assessment Options.
- Priority List of Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by the JECFA.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 23, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Henry Kim for the 6th Session of the CCCF (see **ADDRESSES**). Written comments should state that they relate to activities of the 6th Session of the CCCF.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

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Done at Washington, DC on: January 27, 2012.

Doreen Chen-Moulec,

U.S. office for Codex Alimentarius.

[FR Doc. 2012–2439 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0001]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on February 13, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 44th Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), which will be held in Hangzhou, China March 12–16, 2012. USDA and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 44th Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, February 13, 2012, from 9 a.m. to 12 p.m.

ADDRESSES: The public meeting will be held in Rooms 1A–001 and 1A–002, FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740.

Documents related to the 44th Session of the CCFA will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org.*

The U.S. Delegate to the 44th Session of the CCFA, Dennis Keefe, and FDA, invite interested U.S. parties to submit their comments electronically to the following email address: *cfsan-ccfa@fda.hhs.gov.*

Registration: Attendees may register electronically at the same email address provided above by February 8, 2012. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees that are not able to attend the meeting in-person but wish to participate may do so by phone. Those wishing to participate by phone should request the call-in number and conference code when they register for the meeting.

FOR FURTHER INFORMATION ABOUT THE 44TH SESSION OF THE CCFA CONTACT: Dennis M. Keefe, Ph.D., Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition CFSAN/FDA, HFS–205, 5100 Paint Branch Parkway, College Park, MD 20740, *Telephone:* (240) 402–1200, Fax: (301) 436–2972, email: *dennis.keefe@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Jannavi R. Srinivasan, Ph.D., Chemistry Reviewer, Division of Biotech and GRAS Notice Review, Office of Food Additive Safety CFSAN/FDA HFS–255, 5100 Paint Branch Parkway, College Park, MD 20740, telephone: (240) 402–1199, fax: (301) 436–2965, email: *jannavi.srinivasan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA establishes or endorses permitted maximum levels for individual additives; prepares priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes to individual food additives; recommends specifications of identity and purity for food additives for adoption by Codex; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects such as labeling of food additives when sold as such. The CCFA is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 44th Session of the CCFA will be discussed during the public meeting:

- Matters referred by Codex and other Codex Committees and Task Forces (CX/FA 12/44/2)
- Draft risk analysis principles applied by the CCFA (CX/FA 12/44/3)

- Matters of interest arising from FAO/WHO and from the 74th Meeting of the JECFA (CX/FA 12/44/4)
- Endorsement or revision of maximum levels for food additives and processing aids in Codex standards (CX/FA 12/44/5)
- Discussion paper on the alignment of the food additive provisions of the standards for meat products and relevant provisions of the General Standard for Food Additives (GSFA) (CX/FA 12/44/6)
- Pending draft and proposed draft food additives provisions and related matters (CX/FA 12/44/7)
- Comments and information on several food additives (replies to CL 2011/4–FA, Part B, points 9, 10 and 11 and CL 2011/17–FA) (CX/FA 12/44/8)
- Draft and proposed draft food additive provisions (provisions in Table 1 and 2 of Table 3 food additives with ''acidity regulators'' or ''emulsifier, stabilizer and thickener'' function) (CX/FA 12/44/9) and the proposed horizontal approach for consideration of these provisions (CX/FA 12/44/9 Add. 1)
- Provisions for aluminum-containing food additives in the GSFA (CX/FA 12/44/10)
- Discussion paper on description of food category 16.0 of the GSFA (CX/FA 12/44/11)
- Discussion paper on use of Note 161 in the GSFA (CX/FA 12/44/12)
- Draft revision of the *Standard for Food Grade Salt* (CODEX STAN 150–1985) (N08–2010) (REP11/FA App. IX)
- Proposals for changes or additions to the International Numbering System for Food Additives (CX/FA 12/44/14)
- Specifications for the identity and purity of food additives arising from the 74th JECFA Meeting (CX/FA 12/44/15)
- Proposals for additions and changes to the priority list of food additives proposed for evaluation by JECFA (replies to CL 2011/8–FA) (CX/FA 12/44/16)
- Discussion paper on mechanisms for re-evaluation of substances by JECFA (CX/FA 12/44/17)

Each issue listed will be fully described in documents distributed, or to be distributed, by the Executive Secretariat prior to the meeting. Members of the public may also access these documents at *http://www.codexalimentarius.org.*

Public Meeting

At the February 13, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 44th Session of the CCFA, Dr. Dennis Keefe, (see **ADDRESSES**). Written comments should state that they relate to activities of the 44th Session of the CCFA.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

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Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on January 27, 2012.

Doreen Chen-Moulec,

U.S. Office for Codex Alimentarius.

[FR Doc. 2012–2449 Filed 2–2–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970, C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Amended Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is issuing amended antidumping (''AD'') and countervailing duty (''CVD'') orders on multilayered wood flooring from the People's Republic of China (''PRC'') to remove an incorrect Harmonized Tariff Schedule of the United States (''HTSUS'') number from the scope of the orders.

DATES: *Effective Date:* February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Joshua Morris, AD/CVD Operations, Office 1; Erin Kearney, Brandon Farlander, or Charles Riggle, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779, (202) 482–0167, (202) 482–0182, or (202) 482–0650, respectively.

Background

Following affirmative final determinations by the Department and the International Trade Commission, the Department published AD and CVD orders on multilayered wood flooring from the PRC on December 8, 2011. *See Multilayered Wood Flooring From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) (''*AD Order*'') and *Multilayered Wood Flooring From the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011) (''*CVD Order*''). Subsequently, the Department discovered that a non-existent HTSUS number (specifically, HTSUS number 4412.31.3175) was listed in the scope of the *AD Order* and *CVD Order.*

Scope of the Orders

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) [1] in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.,* ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: Dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes.) The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (''HDF''), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the HTSUS: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Amended AD and CVD Orders

A ministerial error is defined as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' *See* 19 CFR 351.224(f); *see also* sections 705(e) and 735(e) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.224(c). HTSUS number 4412.31.3175, which was originally listed in the scope of the petition, does not exist in the schedule. The inclusion of this number in the scope of these orders was an inadvertent ministerial error within the meaning of 19 CFR 351.224(f). Accordingly, this notice amends the *AD Order* and *CVD Order* with respect to the scope of the orders, by removing the non-existent HTSUS number.

These amended orders are issued and published in accordance with sections 736(a) and 706(a) of the Act, 19 CFR 351.224(e) and 19 CFR 351.211.

Dated: January 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2506 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2012

The following Sunset Reviews are scheduled for initiation in March 2012 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping Duty Proceedings

Activated Carbon From China (A–570–904) (1st Review).

Department Contact

Jennifer Moats, (202) 482–5047.

Countervailing Duty Proceedings

No Sunset Review of suspended investigations is scheduled for initiation in March 2012.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in March 2012.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 13, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2219 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1167, respectively.

Background

On October 28, 2010, the Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the antidumping duty order on certain lined paper products from India.[1]

On October 7, 2011, the Department published the preliminary results of this review.[2] The final results of this review are currently due no later than February 6, 2012.[3]

Extension of Time Limit of the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of a review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that completion of the final results of this review within the original time limit is not practicable. The Department rejected a rebuttal brief from the respondent, Navneet Publications (India) Limited (''Navneet''), due to untimely filed new factual information and received a revised brief on December 23, 2011.[4] Additional time is required by the Department in order to analyze and evaluate all of the issues raised by the parties based on the final version of the brief recently submitted on the record of this proceeding. Accordingly, the Department is extending the time limit for the final results by 30 days. The final results are now due no later than March 5, 2012.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 30, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2508 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Extension of Time Limit for the Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1293 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, the Department of Commerce (Department) published in

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010).

[2] *See Certain Lined Paper Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 62343 (October 7, 2011).

[3] As the due date of February 4, 2012, is a weekend, the due date falls on the next business day of February 6, 2012.

[4] *See* the Department's letter to Navneet, titled ''Rejection of Rebuttal Brief with Untimely Filed New Factual Information,'' dated December 16, 2011; *see* also Memo from George McMahon to the File titled, ''Rejection of Submission Due to Untimely Filed New Factual Information,'' dated December 16, 2011.

the **Federal Register** its initiation of an administrative review of the antidumping duty order on stainless steel bar from India, covering the period February 1, 2010, through January 31, 2011. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011) (*Initiation Notice*). On October 11, 2011, the Department published an extension notice for the preliminary results for this review extending the deadline to January 30, 2012. *See Stainless Steel Bar From India: Extension of Time Limit for the Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review,* 76 FR 62761 (October 11, 2011).

Extension of Time Limit for the Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue its preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department has determined that it requires additional time to complete the preliminary results for this review. The Department needs additional time to issue a supplemental questionnaire regarding the reporting period for sales and to analyze the response. Thus, it is not practicable to complete the preliminary results by January 30, 2012, and the Department is extending the time limit for completion of the preliminary results by an additional 30 days to February 28, 2012. Accordingly, the deadline for completion of the preliminary results is now no later than February 28, 2012.

This notice is published pursuant to sections 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 27, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2480 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 19, 2011, the Department of Commerce (Department) received a countervailing duty (CVD) petition concerning imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC), filed in proper form by SolarWorld Industries America Inc. (Petitioner).[1] The petition included a timely allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206, that critical circumstances exist with respect to imports of the merchandise under investigation. In accordance with section 703(e)(1) of the Act, because Petitioner submitted its critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must promptly issue a preliminary critical circumstances determination.[2] Based on information provided by Petitioner and the data placed on the record of this investigation by the mandatory respondents, Wuxi Suntech Power Co., Ltd. (Suntech) and Changzhou Trina Solar Energy Co., Ltd. (Trina) (collectively, respondents), the Department preliminarily determines that critical circumstances exist for imports of solar cells from the PRC for Suntech, Trina, and all other producers or exporters.

DATES: *Effective Date:* February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, Jun Jack Zhao or Emily Halle, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586, (202) 482–1396 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2011, the Department initiated a CVD investigation of solar cells from the PRC.[3] In the *Initiation Notice,* the Department stated that, if the criteria for a finding of critical circumstances are established, we would issue a critical circumstances finding at the earliest possible date.[4] Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect: (A) That ''the alleged countervailable subsidy'' is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization, and (B) that there have been massive imports of the subject merchandise over a relatively short period. To determine whether imports of the subject merchandise under investigation have been ''massive,'' 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive.'' A ''relatively short period'' is defined in the regulations as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.[5] The regulations also provide, however, that, if the Department finds that importers, or exporters or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.[6]

In determining whether the above statutory and regulatory criteria have been satisfied, we examined the evidence presented in the October 19, 2011 petition, comments from both

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties Against Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, dated October 19, 2011 (Petition).

[2] An allegation of critical circumstances was also included with the antidumping duty (AD) petition. However, the statute establishes an earlier due date for a CVD preliminary determination than for an AD determination. As such, a critical circumstances determination in the AD proceeding will be issued subsequent to this determination.

[3] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 70966 (November 16, 2011) (*Initiation Notice*).

[4] *See id.* at 70969.

[5] *See* 19 CFR 351.206(i).

[6] *Id.*

Petitioner and Suntech,[7] and the respondents' shipment volume submissions.[8]

Alleged Countervailable Subsidy is Inconsistent With the Subsidies Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, the Department considered the evidence currently on the record of this investigation. Specifically, the petition included allegations, supported by factual information reasonably available to Petitioner, that the following export subsidy programs were available to solar cell producers: Export Product Research and Development Fund; Subsidies for Development of ''Famous Brands'' and ''China World Top Brands;'' Sub-Central Government Subsidies for Development of ''Famous Brands'' and ''China World Top Brands;'' Funds for Outward Expansion of Industries in Guangdong Province; Income Tax Reductions for Export-Oriented FIEs; Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises; Export Credit Subsidy Programs; and Export Guarantees and Insurance for Green Technology. In addition, the petition included allegations that two import substitution programs were provided to solar cell producers: Tax Reductions for FIEs Purchasing Chinese-Made Equipment and VAT Rebates on FIE Purchases of Chinese-Made Equipment. The Department has determined in previous CVD investigations of imports from the PRC that a number of these programs constitute export subsidies and import substitution subsidies.[9]

Based on the record evidence available to the Department at this time, the Department has a reasonable basis to believe or suspect that the subsidy allegations identified above are inconsistent with the SCM Agreement.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.,* the ''comparison period''). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Based on evidence provided by Petitioner, the Department finds that pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. Specifically, the Department concludes that the available factual information provided by Petitioner indicates that importers, exporters or producers had reason to believe that a proceeding was likely during September 2011.

The petition included factual information from August 24, 2009, through October 11, 2011. The factual information included commentary about the closing and/or bankruptcy of U.S. solar cell companies, articles discussing subsidies given to Chinese solar cell producers in the PRC, and articles concerning actions being taken by the U.S. Trade Representative. However, it is not until September 2011 that the information submitted explicitly refers to AD and CVD remedies.[10] Given the factual information in the petition, we find that knowledge was imputed to importers, exporters or producers during September 2011.

In analyzing whether there have been massive imports, the Department typically determines whether to include a month in the base or comparison period depending on whether the prior notice took place in the first or second half of the month. However, in this case, regardless of whether knowledge was imputed to importers, exporters or producers in the first or second half of September 2011, we find that imports have been massive over a relatively short period of time. First, the Department compared imports during a base period of May through August 2011 to imports from September through December 2011 (assuming knowledge was imputed in early September, putting that month into the comparison period). Second, we compared imports during a July through September 2011 base period to imports from October through December 2011 (assuming knowledge was imputed in late September, putting that month into the base period).

According to the monthly shipment information provided by the respondents, the volume of shipments of solar cells to the United States increased by substantially more than 15 percent for Suntech and Trina, regardless of which of these two base and comparison periods we examined.[11] The data provided by the two respondents is business proprietary information (BPI), and, therefore, the exact figures are included in a separate, BPI memorandum.[12]

In determining if U.S. shipments from all other producers or exporters were massive, we relied on the experience of the mandatory respondents. We did not rely on data from the ITC to determine if critical circumstances existed for all other producers or exporters. After examining the ITC data for Harmonized Tariff Schedule of the United States numbers 8541.40.6020 (solar cells assembled into modules or panels) and 8541.40.6030 (solar cells, not assembled into modules or made up into panels) for the time period of June to November 2011, we found that the reported quantity amount is not uniform because it includes both modules and cells in its calculation of quantity. Therefore, based on the experience of the respondents, we find that shipments by all other producers or exporters also increased by more than 15 percent.

[7] *See* letter from Suntech, ''Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Opposition to Petitioner's Request for a Critical Circumstances Inquiry,'' November 28, 2011, and letter from SolarWorld, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic Of China: Petitioner's Critical Circumstances Rebuttal Comments,'' December 8, 2011.

[8] The Department requested that both mandatory respondents provide data on monthly quantity and value of shipments to the United States, to be updated within two weeks after the end of each month up until a preliminary determination is issued. We requested that the respondents report quantity in terms of solar cells, solar modules, and watts. *See* Memorandum to the File, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Request for Critical Circumstances Information,'' December 15, 2011.

[9] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59212 (September 27, 2010); *Certain Kitchen Shelving and Racks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009); *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007).

[10] *See, e.g.,* Petition at Volume IV, exhibit 13 (an article by Bloomberg, dated September 8, 2011) and exhibit 16 (an article by Bloomberg, dated September 28, 2011).

[11] At the Department's request, the respondents provided three measures of quantity (modules, cells, and wattage). The increase is more than 15 percent regardless of which quantity figure is used.

[12] *See* Memorandum to The File, from Jun Jack Zhao, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China—Monthly Shipment Q&V Analysis for Critical Circumstances'' (Preliminary Critical Circumstances Memorandum), dated concurrently with this notice.

Conclusion

In summary, in accordance with section 703(e)(1) of the Act, we find that there is a reasonable basis to believe or suspect that certain subsidy allegations under investigation are inconsistent with the SCM Agreement, and we find that there have been massive imports of solar cells over a relatively short period from Suntech, Trina, and all other producers or exporters. Given the analysis summarized above, and described in more detail in the Preliminary Critical Circumstances Memorandum, we preliminarily determine that critical circumstances exist with respect to imports of solar cells from the PRC for Suntech, Trina, and all other producers or exporters.[13]

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for solar cells from the PRC when we make our final determination in this CVD investigation. All interested parties will have the opportunity to address this determination further in case briefs to be submitted after completion of the preliminary subsidies determination.

ITC Notification

In accordance with section 703(f) of the Act, we have notified the ITC of our determination.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports exported by Suntech, Trina and all other producers or exporters, if we make an affirmative preliminary determination that countervailable subsidies have been provided to respondents at above *de minimis* rates,[14] we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of solar cells from the PRC, as described in the ''Scope of Investigation'' section of the *Initiation Notice,*[15] that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of ''provisional measures'' (*e.g.,* the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination that countervailable subsidies have been provided to respondents at above *de minimis* rates).

At such time, we will also instruct CBP to require a cash deposit or the posting of a bond equal to the estimated preliminary subsidy rates reflected in the preliminary subsidies determination published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2479 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See* Preliminary Critical Circumstances Memorandum.

[14] The preliminary determination concerning the provision of countervailable subsidies is currently scheduled for February 13, 2012.

[15] *See Initiation Notice,* 76 FR at 70969; *see also* Appendix 1.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 120104006–2006–01]

Identification of Human Cell Lines Project

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) Biochemical Science Division announces its intent to identify by short tandem repeat (STR) profiling up to 1500 human cell line samples as part of the Identification of Human Cell Lines Project. All data and corresponding information will be posted in a publically held database at the National Center For Biotechnology Information (NCBI).

DATES: On the first of each month beginning after February 3, 2012 NIST will post the number of cell lines accepted on the NIST Applied Genetics Group Web site at *http://www.nist.gov/mml/biochemical/genetics/index.cfm.* Once the total number of accepted submissions has reached 1400 cell lines, the next month will be the final month NIST will accept submissions, with the total time for acceptance not to exceed one year beyond February 3, 2012.

ADDRESSES: Hard copies of submissions must be submitted to the attention of Margaret Kline at the National Institute of Standards and Technology; 100 Bureau Drive, Stop 8314; Gaithersburg, MD 20899–8314. Electronic submissions must be submitted to *Margaret.Kline@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Kline via email at *Margaret.Kline@nist.gov* or telephone (301) 975–3134.

SUPPLEMENTARY INFORMATION:

Program Description: The National Institute of Standards and Technology (NIST) Biochemical Science Division announces its intent to unambiguously identify by short tandem repeat (STR) profiling up to 1500 human cell line samples as part of the Identification of Human Cell Lines Project. All data and corresponding information will be posted in a publically held database.

The use of misidentified cell lines in cancer and other biomedical research continues to occur, resulting in the possibility that a significant proportion of the literature describing studies employing cell lines may be misleading or even false. The end result of this unfortunate situation is that millions of dollars may be spent on research using misidentified cell lines every year worldwide. This, in turn, may delay discoveries and the effective translation of research findings from the laboratory to the clinic or the market. Scientists may believe or claim that they are working with cells derived from one individual or animal species, only to eventually learn that the cells were derived from a different individual or species. With the advent of standardized, simple, and rapid methods for human cell line authentication the identity of a cell line need no longer be in doubt. NIST is undertaking this project to provide that cell line authentication.

Human cell lines submitted for identification as part of this project will undergo STR profiling, a DNA profiling method that examines/screens for STRs (DNA elements 2–6 bps long repeated in tandem) in the human chromosomes, that has been shown to be not only rapid and inexpensive, but also able to generate reproducible data in a format suitable for use in a standard reference database. STR analysis involves simultaneous amplification of eight STR markers (e.g., D5S818, D13S317, D7S820, D16S539. vWA, THO1, TPOX, CSF1PO) and the amelogenin gene for gender determination. For each STR marker used, the power of discrimination improves by about an order of magnitude. Thus, with 8 STRs, random match probabilities on the order of 1 in 100 million are expected between cell line DNA samples originating from unrelated individuals. Each unique human cell line has a distinct DNA profile and when the STR DNA fragment sizes are converted to numeric values, the DNA profiles are readily compared among different laboratories. It should be noted,

however, that STR profiling cannot detect interspecies cross-contamination. For this reason, cell lines grown on non-human feeder cells will not be accepted for this project.

The attributes of STR-profiling which have driven the selection of this technology over other possible candidates for this project include: (i) The ability to discriminate human cell lines to the individual level upon evaluating a relatively limited number of allelic markers; (ii) reproducibility of the endpoint across different laboratories and therefore the feasibility of assembling and maintaining a searchable and public (freely accessible) database for authenticating established cell lines; (iii) the commercial availability of STR-profiling kits, allowing individual laboratories to bring this technology in-house; (iv) relatively low cost; (v) rapidity; and (vi) reduced need for specialized technical expertise and/or reagents, compared with many of the other authentication technologies. Presently, cell line STR profiling appears to represent the greatest value to the scientific community for authenticating human cell lines unambiguously, quickly, and for the least expense.

There is a tremendous need for scientific researchers using cell lines to know with confidence that the cells they are using are of the desired origin. This interactive database will be used by the research and development community to validate cell lines of interest. The database will offer DNA profiles of commonly used standard cell lines, primary, differentiating, and commonly used immortalized and transformed cell lines, as donated by interested parties.

Furthermore, the database will allow disparate laboratories to compare their lines, thereby facilitating the validation of experimental data. Thus, the database will address the need for investigators to know much more about the samples used in their research, and will fulfill an overarching need of researchers to characterize their substrates with an accepted standard.

The current databases for cell lines generated using various numbers of STR loci will be useful as long as the new extended set of STR loci include the current loci. Thus, the current database will not be absolute and can be updated when existing cell lines are retyped as a routine measure using the extended set of STR loci.

Information on cell lines in the database will include multiple attributes of the cell lines (name and possible synonyms of cell line, organism, tissue of origin, morphology, pathologic or disease-state, hybrid or mixed culture, feeder cells, date of origin, etc), the STR markers and procedures used in identification, the submitter and appropriate links, other descriptive material, and the STR profile (electropherogram) of the cell line.

Scientists at NIST will evaluate data from STR profiling as described in *Designation: ASN–0002 Authentication of Human Cell Lines: Standardization of STR Profiling* by NIST will make no conclusions regarding uniqueness of cell line, whether the cell line matches another cell line, whether the cell line is misidentified, cross-contaminated, or genetically unstable.

Identification by STR profiling of human cell lines will be provided by the Biochemical Science Division (BSD)/Material Measurement Laboratory (MML)/NIST. This program is contingent upon the availability of BSD/MML/NIST program funds, BSD/MML/NIST program objectives, and the discretion of BSD/MML/NIST advisors. The timeline for completing the STR profiling will be contingent on resources available.

NIST anticipates entering into a Materials Transfer Agreement with each submitter. To obtain a copy of the NIST Materials Transfer Agreement to be used for this project, please contact Margaret Kline, whose contact information is given in the **ADDRESSES** section above.

Applicants who submit complete information about their cell lines and who enter into a Material Transfer Agreement with NIST will be eligible to participate in the Identification of Human Cell Lines Project on a first-come, first served basis. Once the Material Transfer Agreement is executed, institutions will have 30 business days to submit the agreed-upon cell lines. Note that submitters must be willing to have submitter information made public in the aforementioned database.

Submission Process: Submitters should contact Margaret Kline with a list of proposed cell lines for identification. Each submitter may submit up to 15 cell lines. Note that no cell lines grown on non-human feeder cells will be accepted due to the possibility of contamination. NIST will perform STR profiling of up to 1500 cell lines submitted with complete information on a first-come, first-serve basis. As part of the submission, the following information, using standard nomenclature, should be included for each cell line or DNA extract, as applicable. Please do not include any personally identifiable information regarding the source of the cell lines.

Submitter

Name:
Title:
Department:
Institution:
Institution Address:
Phone number:
Fax number:
Email:

Originator

Name:
Title:
Department:
Institution:
Institution Address:
Phone number:
Fax number:
Email:

Generic Information:

Cell Line Name =

Organism =

Tissue of Origin =

Morphology =

Pathologic or Disease-State =

Hybrid or Mixed Culture =

Specialized Information

Feeder Cells (species):
Passage Number:
Population Doubling Level (PDL):
Complete Growth Media:
Date of Origin/Date Established:
Reference:

If DNA extracts are submitted, the following information is required:

Source of DNA:

Cell line or derivatives
Fresh biopsy/tissue
Frozen biopsy/tissue
OCT-treated tissue
FFPE-treated tissue

DNA Isolation Method:

Organic (phenol/chloroform)
Salting-out
Other (Cellmark kit)

Method of DNA Quantitation:

PicoGreen
Spectrophotometer (Nanodrop, etc.)
PCR
Syber Green
Other (qRT–PCR)

Amount of DNA Used for Analysis:

Other Characterization and Authentication Methods: (example: cytogenetic analysis i.e. G-banding or SKY; Microarray analysis; SNP; isoenzymology).

Other Characterization and Authentication Methods: provide reference and data.

Are the cell lines genetically engineered? If yes, explain how.

Costs for shipping accepted cell lines to NIST are the responsibility of the donating party, and will not be paid for by NIST.

Review and Selection Process: All submissions will be reviewed to determine whether they are complete. All complete submissions will be accepted based on date and time of receipt of submission. Up to 15 cell lines per submitter or establishment will be accepted, with a final limit of 1500 cell lines. No cell lines grown on non-human feeder cells will be accepted due to the possibility of cross-species contamination.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: NIST has determined that this project does not include research involving human subjects that falls under the Common Rule for the Protection of Human Subjects.

Paperwork Reduction Act: This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The collection of information has been approved by OMB under control number 0693–0064, and completion of this information for a single cell line is expected to take 2 hours and 30 minutes. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: January 27, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–2459 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA977

Endangered and Threatened Species; Initiation of 5-Year Review for Sei Whales

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

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces a 5-year review of sei whales (*Balaenoptera borealis*) under the Endangered Species Act of 1973, as amended (ESA). A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on sei whales that has become available since that has become available since their last status review in 1999.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than April 3, 2012. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0014, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0014 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail or hand-delivery:* Angela Somma, National Marine Fisheries Service, Office of Protected Resources, Endangered Species Division, 1325 East West Highway, Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, (301) 427–8437; or Larissa Plants, Office of Protected Resources, (301) 427–8471.

SUPPLEMENTARY INFORMATION: Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the sei whale currently listed as endangered.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of sei whales. The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) status and trends of threats; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery program for sei whales. For example, information on conservation measures will assist in tracking implementation of recovery actions.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 30, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–2510 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seat for the Florida Keys National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following positions on the Florida Keys National Marine Sanctuary Advisory Council: Tourism—Lower Keys (member), and Tourism—Lower Keys (alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by March 2, 2012.

ADDRESSES: Application kits may be obtained from Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 292–0311 x245; *Lilli.Ferguson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 13, 2012.

Daniel J. Basta

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–2417 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA958

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: NMFS is soliciting public comment on an exempted fishing permit application that would exempt up to three commercial fishing vessels from the Atlantic surfclam and ocean quahog Georges Bank Closure Area. This would continue research to assess the performance of an approved sampling protocol and to allow for continued sample collection and testing to obtain additional data in locations where toxin levels may be higher than were present during the pilot phase of the study. NMFS has made a preliminary determination that the exempted fishing permit application contains all of the required information and warrants further consideration.

DATES: Comments must be received on or before February 21, 2012.

ADDRESSES: Comments on this notice may be submitted by email. The mailbox address for providing email comments is *NERO.EFP@noaa.gov.* Include in the subject line of the email comment the following document identifier: ''Comments on 2012 GB PSP Closed Area Exemption.''

Written comments should be sent to Daniel Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2012 GB PSP Closed Area Exemption.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

Copies of supporting documents referenced in this notice are available from NMFS, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at *www.nero.noaa.gov/sfd/clams.*

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, phone (978) 281–9177.

SUPPLEMENTARY INFORMATION: This notice is a revision to a previously published **Federal Register** notice (76 FR 65698). Complete project history is available in the previously published notice. This **Federal Register** notice is being published because the objective of the proposed project and the list of participating vessels have changed.

Truex Enterprises initially submitted an EFP application on September 20, 2011. Truex requested the EFP to authorize one fishing vessel to access the Georges Bank Paralytic Shellfish Poisoning (PSP) Closed Area in order to harvest clams and test them for the presence of PSP using a developmental sampling protocol. While this application was being reviewed and was available for public comment, the sampling protocol being tested was adopted into the National Shellfish Sanitation Program by the International Shellfish Sanitation Conference. Because testing of the sampling protocol was the primary objective of the pilot project, NMFS requested that Truex Enterprises resubmit an application for an EFP, as such testing no longer appeared necessary or relevant.

Truex Enterprises submitted a revised application on January 10, 2012. The revised purpose and goal of the project is to continue research to assess the performance of the approved protocol and to allow for sample collection and testing for another year to gain additional data from locations where toxin levels may be higher than were present during the pilot phase of the study. Although the onboard screening protocol was approved in October 2011, the protocol has only been fully evaluated at sea under the pilot study conditions where toxin levels were relatively low, below the regulatory action level. This EFP would allow industry to continue testing through another year, increasing the possibility to evaluate the protocol under varying toxin concentrations.

The revised application also requests up to two additional vessels, for a total of up to three vessels, to be listed under the EFP. With the additional vessels, it is expected that harvest levels would increase from 250,000 bushels (2,007,813 L) total in the original proposal, to approximately 250,000 bushels to 300,000 bushels (2,007,813 L–2,409,375 L) per vessel. It is expected that harvesting under an EFP would occur on approximately 70 fishing trips per vessel. Species to be harvested are surfclams and ocean quahogs utilizing a 170-inch (432-cm) hydraulic clam dredge for the vessel *F/V SEAWATCHER I,* and two 150-inch (381-cm) hydraulic clam dredges on the *F/V PRIDE* and *F/V PURSUIT.* Each vessel would make approximately 30 tows per day of 10 minutes each, at a speed of about 2.5 knots. There are no discards or known interactions with

protected species and there would be no activity in any areas closed for Northeast multispecies. All harvest would be accounted for under Atlantic surfclam and ocean quahog quota allocations under the Federal individual transferable quota program.

The additional vessels would help to study the expansion of the protocol from one vessel in a pilot study to more fishing vessels for a wider-spread implementation. Also, the area designated on GB where the research is proposed would be divided into three even sections in which each vessel would collect samples on a regular basis. If it appears that an algal bloom is forming in a given area, spatial and temporal sampling would be increased as needed. This also allows for samples to be collected over a wider area, ensuring samples collected are representative of evenly distributed portions of the entire closure area.

State and Federal agencies will be notified of each trip, place and time of landing, the results of onboard screening, and the dockside laboratory results. Harvested clams would be landed in Massachusetts and Delaware. New Jersey and Rhode Island may be added as additional landing states pending agreements being developed according to the terms of the protocol. Harvested clams would be processed at Sea Watch International in New Bedford, MA, with independent samples from each trip landed being taken for shipment to an independent FDA certified laboratory in Brunswick, ME, and the shellfish held at the processing site under State supervision until the dockside tests are complete. All of the results from activities under the EFPs would be compiled, archived, and made public by the FDA.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The Assistant Regional Administrator has made an initial determination that, based on a preliminary review of the proposed subject research and the criteria provided in section 5.05a–c and section 6.03c.3(a) of NOAA's Administrative Order 216–6, a Categorical Exclusion appears to be justified for this EFP. In accordance with NOAA's Administrative Order 216–6, a Categorical Exclusion, or other appropriate National Environmental Policy Act document, would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: January 31, 2012.

Steven Thur,

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

[FR Doc. 2012–2515 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA978

Southwest Fisheries Science Center; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: A methods review of the Collaborative Optically-assisted Acoustic Survey Technique (COAST) by the Center for Independent Experts (CIE) and the Pacific Fishery Management Council (PFMC) and will be held February 15–17, 2012, that is open to the public.

DATES: The methods review of the COAST process will be held beginning at 8:30 a.m., Wednesday, February 15, 2012, and end at 5:30 p.m. or as necessary to complete business for the day. The panel will reconvene on Thursday, February 16, 2012, and will continue through Friday, February 17, 2012, beginning at 8 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business.

ADDRESSES: The COAST methods review will be held at the Southwest Fisheries Science Center; Southwest Fisheries Science Center, 3333 North Torrey Pines Court, La Jolla, CA 92037–1023; (858) 546–7000.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Sweetnam, NMFS Southwest Fisheries Science Center; telephone: (858) 546–7170.

SUPPLEMENTARY INFORMATION: The COAST uses high-precision acoustic sampling to efficiently map the distributions of rockfishes on large scales and to direct the optical sampling. The COAST also uses accurate optical sampling to provide estimates of species composition and their length distributions. Thus, the COAST combines information from acoustic and optical sampling to obtain relatively precise and accurate estimates of the distributions and abundances of rockfishes, by species. The COAST was developed by the NOAA/NMFS Southwest Fisheries Science Center, Advanced Sampling Technology Program, and the Sportfishing Association of California. It may also have broad appeal to fisheries managers and researchers as a tool for ecosystem-based management as well as evaluating the performance of marine protected areas.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam (858) 546–7170 at least five days prior to the meeting date.

Dated: January 31, 2012.

Steven Thur,

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

[FR Doc. 2012–2491 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA603

Marine Mammals; File No. 15802

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

ACTION: Notice; requested change to permit application.

SUMMARY: Notice is hereby given that the Florida Fish and Wildlife Conservation Commission, 100 Eighth Avenue SE., St. Petersburg, FL 33701 [Gregg Poulakis, Responsible Party], has requested a change to the application for a permit (File No. 15802).

DATES: Written, telefaxed, or email comments must be received on or before March 5, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected

Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15802 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division:

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. 15802 in the subject line of the email),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301)427–8401.

SUPPLEMENTARY INFORMATION:

The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

On July 28, 2011 (76 FR 45230), notice was published that a permit had been requested by the applicant for scientific research and monitoring of smalltooth sawfish (*Pristis pectinata*) populations of Florida, primarily in the greater Charlotte Harbor estuarine system by gillnet, seine, or longline. These animals would be handled, measured, passive integrated transponder, roto, and external satellite tagged, tissue and biopsy sampled, examined by ultrasound, and released. Receipt of sawfish samples acquired through strandings, law enforcement confiscations, or other permitted researchers is also requested. The applicant also seeks authorization to capture green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and loggerhead (*Caretta caretta*) sea turtles. Sea turtles would be measured, photographed, and released. On December 14, 2011 (76 FR 77781), notice was published clarifying the number of sawfish takes requested and the addition of blood sampling to the proposed activities. The applicant is requesting to amend the application to request the modification of the acoustic/satellite attachment methods to be the same as those currently authorized under another sawfish permit. The permit is requested for a duration of 5 years.

Dated: January 31, 2012.

Carrie W. Hubard,

Acting Chief, Permits and Conservation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–2486 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on March 1, 2012 from 9 a.m. to 12 p.m., Pacific Standard Time.

ADDRESSES: The meeting will be held at the Stanford Institute for Economic Policy Research (SIEPR), Room 130, 366 Galvez Street, Stanford, CA 04305. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/CSMAC.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. (*See* charter, at *http://www.ntia.doc.gov//page/2011/csmac-charter*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee, visit: *http://www.ntia.doc.gov/category/CSMAC.*

Matters To Be Considered: The Committee will deliberate on the findings and recommendations from its four subcommittees (Search for 500 MHz, Spectrum Sharing, Spectrum Management Improvements, and Unlicensed), and identify future requirements for assessments. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on March 1, 2012, from 9 a.m. to 12 p.m., Pacific Standard Time. The times and the agenda topics are subject to change. The meeting may be webcast or made available via audio link. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Stanford Institute for Economic Policy Research (SIEPR) Room 130, 366 Galvez Street, Stanford, CA 94305. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov,* at least ten (10) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on February 23, 2012, to provide sufficient time for review. Comments received after February 23, 2012, will be

distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/catergory/CSMAC.*

Dated: January 31, 2012.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2012–2468 Filed 2–2–12; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 16 February 2012, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling (202) 504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: January 26, 2012, in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2012–2300 Filed 2–2–12; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes products previously furnished by such agencies.

Comments Must be Received on or Before: 3/5/2012.

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 products 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 products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products 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. 8501–8506) in connection with the products 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 products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Lubricant, 5-in-1 Penetrating Multipurpose oil, Biobased, Aerosol

NSN: 8030–00–NIB–0004—11 oz. net.
NSN: 8030–00–NIB–0005—18 oz. net.
NPA: The Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: General Services Administration, Tools Acquisition Division I, Kansas City, MO.
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Service

Service Type/Location: Dining Facility Attendant and Cook Support, 120th Fighter Wing, Montana Air National Guard, 2800 Airport Ave B, Bldg. 62, Big Sky Diner, Great Falls, MT.
NPA: Skils'kin, Spokane, WA
Contracting Activity: Dept of the Army, W7NK USPFO Activity MT ARNG, Fort Harrison, MT.

The requirement covered by this proposed addition to the Procurement List includes Dining Facility Attendant (DFA) services at the Big Sky Diner that provides subsistence support to the 120th Fighter Wing, Montana Air National Guard, Great Falls, Montana. The Big Sky Diner is a weekend-only dining facility that is operated by military personnel who are assigned management, control, and supervision of the facility. Supervision of the facility is provided by a Senior Cook/Shift Leader, Dining Hall Supervisor, and Quality Assurance evaluators who range in military rank from Senior Airman to Master Sergeant. The acquisition strategy for the dining facility includes obtaining DFA and Cook Support from the AbilityOne Program.

The duties of the Dining Facility Attendant are cleaning and sanitation of facilities and equipment, washing of tableware, pots, pans, and all cooking utensils, subsistence and material handling, quality control, limited food preparation for salad bar and ground support/flight meals, serving and replenishing food, condiments and table items. Two weekends per year (4 days),

the nonprofit agency will provide Cook Support for preparation of meats, vegetables, starches, gravies, soups, breads, etc., cleaning tables and chairs in dining areas, ensuring operator maintenance and minor repair of food service equipment. Cashier duties will be performed for all meals.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

JR Deluxe Time Management System

NSN: 7510–01–564–6053—JR Tabbed Month Divider

Calendars

NSN: 7530–01–564–6052L—JR Deluxe Time Management System-JR Deluxe Version.
NSN: 7530–01–564–6052—JR Deluxe Time Management System-JR Deluxe Version.
NSN: 7530–01–564–6051L—JR Deluxe Time Management System-JR Deluxe Version.
NSN: 7530–01–564–6051—JR Deluxe Time Management System-JR Deluxe Version.
NSN: 7530–01–545–3741—Appt. Book Refill, 2010.
NSN: 7530–01–537–7869L—DAYMAX System, Woodland Camouflage Planner, 2010 w/Logo.
NSN: 7530–01–537–7869—DAYMAX System, Woodland, Camouflage Planner, 2010.
NSN: 7530–01–537–7865L—DAYMAX System, DOD Planner, 2010 w/Logo.
NSN: 7530–01–537–7865—DAYMAX System, DOD Planner, 2010.
NSN: 7530–01–537–7862L—DAYMAX System, Desert, Camouflage Planner, 2010 w/Logo.
NSN: 7530–01–537–7862—DAYMAX System, Desert, Camouflage Planner, 2010.
NSN: 7530–01–537–7860L—DAYMAX System, GLE, 2010, Burgundy w/Logo.
NSN: 7530–01–537–7860—DAYMAX System, GLE, 2010, Burgundy.
NSN: 7530–01–537–7855L—DAYMAX System, GLE, 2010, Navy w/Logo.
NSN: 7530–01–537–7855—DAYMAX System, GLE, 2010, Navy.
NSN: 7530–01–537–7851L—DAYMAX System, GLE, 2010, Black w/Logo.
NSN: 7530–01–537–7851—DAYMAX System, GLE, 2010, Black.
NSN: 7530–01–537–7836L—DAYMAX System, LE, 2010, Burgundy w/Logo.
NSN: 7530–01–537–7836—DAYMAX System, LE, 2010, Burgundy.
NSN: 7530–01–537–7835L—DAYMAX System, LE, 2010, Navy w/Logo.
NSN: 7530–01–537–7835—DAYMAX System, LE, 2010, Navy.
NSN: 7530–01–537–7834L—DAYMAX System, LE, 2010, Black w/Logo.
NSN: 7530–01–537–7834—DAYMAX System, LE, 2010, Black.
NSN: 7530–01–537–7833L—DAYMAX System, IE, 2010, Navy w/Logo.
NSN: 7530–01–537–7833—DAYMAX System, IE, 2010, Navy.
NSN: 7530–01–537–7832L—DAYMAX System, JR Version, 2010, Navy w/Logo.
NSN: 7530–01–537–7832—DAYMAX System, JR Version, 2010, Navy.
NSN: 7530–01–537–7831L—DAYMAX System, IE, 2010, Burgundy w/Logo.
NSN: 7530–01–537–7831—DAYMAX System, IE, 2010, Burgundy.
NSN: 7530–01–537–7830L—DAYMAX System, IE, 2010, Black w/Logo.
NSN: 7530–01–537–7830—DAYMAX System, IE, 2010, Black.
NSN: 7530–01–537–7829L—DAYMAX System, JR Version, 2010, Black w/Logo.
NSN: 7530–01–537–7829—DAYMAX System, JR Version, 2010, Black.
NSN: 7530–01–537–7828L—DAYMAX System, JR Version, 2010, Burgundy w/Logo.
NSN: 7530–01–537–7828—DAYMAX System, JR Version, 2010, Burgundy.
NSN: 7510–01–545–3781—Calendar Pad, Type 2, 2010.
NSN: 7510–01–537–7880—DAYMAX, GLE Day at a View, 2010, 7-hole.
NSN: 7510–01–537–7878—DAYMAX, Tabbed Monthly, 2010, 7-hole.
NSN: 7510–01–537–7877—DAYMAX, Tabbed Monthly, 2010, 3-hole.
NSN: 7510–01–537–7866—DAYMAX, IE/LE Month at a View, 2010, 3-hole.
NSN: 7510–01–537–7872—DAYMAX, IE/LE Day at a View, 2010, 3-hole.
NSN: 7510–01–537–7876—DAYMAX, GLE Week at a View, 2010, 7-hole.
NSN: 7510–01–537–7874—DAYMAX, GLE Month at a View, 2010, 7-hole.
NSN: 7510–01–537–7871—DAYMAX, IE/LE Week at a View, 2010, 3-hole.
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA.
Contracting Activity: General Services Administration, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–2415 Filed 2–2–12; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, February 8, 2012, 10 a.m.–11 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: *Briefing Matter:* Bed Rails—Rulemaking.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast* For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: January 31, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–2513 Filed 2–1–12; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of the AmeriCorps Member Application Form. Applicants will respond to the questions included

in this ICR in order to apply to serve as AmeriCorps members.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 3, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, AmeriCorps State & National; ATTN: Thomas Howard Jr., Program Officer, 9508A, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3476, ATTN: Thomas Howard, Jr., Program Officer.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–(800) 833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas Howard, Jr., (202) 606–6697, or by email at *thoward@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

This Member Application Form will be used by applicants who are interested in serving as AmeriCorps members. The information requested in the application form makes it possible for programs to select members to serve. Programs also use this form as an example that they customize to develop their own recruitment materials.

Current Action

Changes have been made to align the form with current program and technological needs and resources. The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on April 30, 2012.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Application Form

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Applicants to serve in AmeriCorps.

Total Respondents: 225,000.

Frequency: Ongoing.

Average Time Per Response: Averages 1.25 hours.

Estimated Total Burden Hours: 281,250.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 27, 2012.

Idara Nickelson,

Chief of Program Operations.

[FR Doc. 2012–2367 Filed 2–2–12; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its Child Care application forms. These forms are submitted by members of AmeriCorps and by the child care providers identified by the member for the purpose of applying for, and receiving payment for, the care of children during the day while the member is in service. Completion of this information is required to be approved and required to receive payment for invoices.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 3, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Jim Feaster, Room 9111, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3475 Jim Feaster, Management Analyst.

(4) Electronically through *jfeaster@cns.gov* or *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–(800) 833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Feaster, 202–606–6862 *jfeaster@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The information is provided by the AmeriCorps member and by the child care provider. The information is collected by GAP Solutions, Inc. 12054 North Shore Drive, Reston, VA 20190 and is not currently collected electronically. This is a new information request.

Current Action

The information collected will be used to analyze applications to participate in the AmeriCorps child care subsidy program submitted by AmeriCorps members and child care providers. The information is used to determine eligibility for this benefit. The eligibility requirements used are those used by the state in which the care is provided in accordance with the Child Care Development and Block Grant program administered by the Department of Health and Human Services.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Child Care Application.

OMB Number: TBD.

Agency Number: None.

Affected Public: AmeriCorps members and child care providers for AmeriCorps members.

Total Respondents: 750 members, 1,500 child care providers.

Frequency: Once a year.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 1,125 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 30, 2011.

Idara Nickelson,

Chief of Program Operations.

[FR Doc. 2012–2368 Filed 2–2–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will deliberate on the findings and proposed recommendations of the Personnel Policy Subcommittee study. The meeting will consist of discussions regarding military and civilian personnel legislation, military and civilian personnel skills mix and diversity efforts, and corporate diversity/engagement strategies.

DATES: The meeting will be held on February 29, 2012 from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the 2nd Floor Idea Center at CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: LCDR Don Rauch, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, 703–681–4941.

SUPPLEMENTARY INFORMATION: Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson, and ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: January 30, 2012.

J. M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–2416 Filed 2–2–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before April 3, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in

public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 31, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title of Collection: Evaluation of State Vocational Rehabilitation Agency Administration of Supported Employment Programs.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 249.

Abstract: The Vocational Rehabilitation (VR) Program provides a wide range of services to help individuals with disabilities to prepare for and engage in gainful employment. Eligible individuals are those who have a physical or mental impairment that results in a substantial impediment to employment, who can benefit from VR services for employment, and who require VR services. If a State is unable to serve all eligible individuals, priority must be given to serving individuals with the most significant disabilities. The program is funded through formula-based grants awarded by the Rehabilitation Services Administration (RSA) to State VR agencies to receive funding from the basic Title I formula grant program.

The Supported Employment (SE) Grant Program provides funding to assist States in developing and implementing collaborative programs with appropriate entities to provide SE services to individuals with the most significant disabilities who require SE services to achieve employment outcomes under Title VI Part B of the Rehabilitation Act for the SE State Grants Program. SE funds are used to supplement funds provided under the State VR grants program for the cost of providing SE services. Funds cannot be used to provide extended services necessary to maintain individuals in employment after the end of SE services, which usually do not exceed 18 months.

RSA proposes to conduct a national survey of all 80 state VR agencies. RSA seeks to evaluate how State VR agencies implement supported employment services for individuals with disabilities, how state VR agencies use Title VI Part B funds in conjunction with Title I funds to fund supported employment programs, and whether State VR agencies are effective in obtaining supported employment outcomes for individuals with disabilities. The evaluation also seeks to identify the factors that contribute to successful supported employment outcomes.

RSA will address the following objectives:

- Identify agency practices with respect to providing SE services;
- Determine how agencies use Title VI–B, Title I and other funds to provide SE; and
- Determine how agency practices affect the achievement of SE outcomes.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4796. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2012–2455 Filed 2–2–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L.104–13).

DATES: Interested persons are invited to submit comments on or before April 3, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 30, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Teacher Cancellation Low Income Directory.

OMB Control Number: 1845–0077.

Total Estimated Number of Responses: 57.

Total Estimated Number of Burden Hours: 6,840.

Abstract: The Teacher Cancellation Low Income (TCLI) Directory is the online data repository of elementary and secondary schools and educational service agencies that serve low-income families. State and Territory agencies report these schools to the TCLI Directory. The purpose of the TCLI Directory is to provide a single location for the public to find the list of schools and educational service agencies that are reported. By teaching at one of these schools, recipients of Federal Perkins Loans and Direct Loans may qualify for loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965. Additionally teaching at one of these schools is a requirement for the Teacher Education Assistance for College and Higher Education (TEACH) Grant program. Institutions of higher education, as well as the Department, use the TCLI Directory to assist students in determining if the schools at which they may teach, upon completing their degrees, meet the qualifications for receiving the loan cancellations or receiving the TEACH Grant as grant funds.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4769. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2012–2458 Filed 2–2–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L.104–13).

DATES: Interested persons are invited to submit comments on or before April 3, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 30, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Comprehensive Transition Programs for Students with Intellectual Disabilities Expenditure Report.

OMB Control Number: Pending.

Total Estimated Number of Responses: 20.

Total Estimated Number of Burden Hours: 40.

Abstract: The Higher Education Opportunity Act, Public Law 110–315, added provisions for the Higher Education Act, as amended in section 750 and 766 that enable eligible students with intellectual disabilities to receive Federal Pell Grant, Supplemental Educational Opportunity Grant, and Federal Work Study funds if they are enrolled in an approved program. The Comprehensive Transition Programs for Students with Intellectual Disabilities Expenditure Report is the tool for reporting the use of these specific funds.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4770. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2012–2456 Filed 2–2–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12667–031]

City of Hamilton, Ohio; American Municipal Power, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change transmission line route.

b. *Project No.:* 12667–031.

c. *Date Filed:* November 30, 2011.

d. *Applicant:* City of Hamilton, Ohio and American Municipal Power, Inc.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* When constructed, the project will be located at the U.S. Army Corps of Engineers' Captain Anthony Meldahl locks and dam on the Ohio River, near the City of Augusta, Bracken County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Debra Roby, Jennings, Strouss & Salmon, PLC, 1350 I Street NW., Suite 810, Washington, DC 20005–3305; telephone (202) 464–0539.

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and email address: *linda.stewart@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, and terms and conditions is 30 days from the issuance of this notice; reply comments are due 55 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* 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. Please include the project number (P–12667–031) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *Description of Request:* The City of Hamilton, Ohio and American Municipal Power, Inc. (licensees) propose to change the transmission line route authorized in the June 25, 2008 Order Issuing Original License (Major Project). Instead of constructing an approximately 5-mile-long, 138-kilovolt (kV) transmission line connecting the powerhouse to a new switching station adjacent to East Kentucky Electric Cooperative, Inc.'s Boone-Spurlock transmission line as authorized in the license, the licensees propose to construct an approximately 3-mile-long, 138-kV transmission line connecting the powerhouse to a new switching station at the Zimmer-Spurlock transmission line in Clermont County, Ohio. The proposed transmission line route would extend from the powerhouse in Bracken County, Kentucky, span the Ohio River into Clermont County, Ohio, and then interconnect with the transmission grid inside the PJM regional transmission organization.

l. *Locations of the Application:* 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations or terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations or terms and conditions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2384 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696–033]

Stuyvesant Falls Hydroelectric Project; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2696–033.

c. *Date filed:* July 31, 2009.

d. *Applicants:* Albany Engineering Corporation and the Town of Stuyvesant, New York.

e. *Name of Project:* Stuyvesant Falls Hydroelectric Project.

f. *Location:* On Kinderhook Creek, near the Town of Stuyvesant, in Columbia County, New York. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. James A. Besha, P.E., Albany Engineering Corporation, 5 Washington Square, Albany, New York 12205. Tel: (518) 456–7712.

i. *FERC Contact:* Andy Bernick, (202) 502–8660 or *andrew.bernick@FERC.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 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 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 and is now ready for environmental analysis.

l. The existing Stuyvesant Falls Hydroelectric Project is currently being restored to operation under the existing license. The proposed project would consist of: (1) An existing 13-foot-high, 240-foot-long, masonry gravity dam (Stuyvesant Falls dam) on Kinderhook Creek; (2) an existing 46-acre impoundment with a normal water surface elevation of 174.3 feet National Geodetic Vertical Datum 1929; (3) an existing stone and concrete intake structure, Taintor gate, and trash sluice located near the south abutment of the gravity dam; (4) a proposed 120-kilowatt (kW) minimum flow turbine located adjacent to the intake structure; (5) two existing 7.5-foot-diameter, 2,860-foot-long, riveted-steel penstocks; (6) an existing concrete, steel, and brick powerhouse, approximately 144 feet long, 84 feet wide, and 60 feet high; (7) two single-runner Francis turbines, each with a nameplate capacity of 4,511 kW, connected to two 2,100-kW generators; (8) an existing 34.5-kilovolt (kV) primary circuit breaker, step up transformer, and 34.5-kV, 20-foot-long primary leads supplying an existing National Grid substation adjacent to the powerhouse, and a new station service line connecting the minimum flow turbine to the powerhouse; and (9) ancillary plant equipment. The existing project, following restoration, is expected to generate an estimated 11,133 megawatt-hours (MWh) annually. The proposed project would generate an estimated 14,945 megawatt-hours annually.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notices of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of wavier of water quality certification.

Dated: January 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2380 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1056–005.
Applicants: Entergy Services, Inc.
Description: Compliance Filing of Entergy Services, Inc.
Filed Date: 12/6/11.
Accession Number: 20111206–5090.
Comments Due: 5 p.m. ET 2/16/12.

Docket Numbers: ER10–1257–002; *ER10–1258–002.*
Applicants: Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc.
Description: Notice of Change of Status of Wabash Valley Power Association, Inc. and Wabash Valley Energy Marketing, Inc.
Filed Date: 1/25/12.
Accession Number: 20120125–5245.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER10–2319–004; ER10–2320–004; ER10–2317–003; ER10–2322–005; ER10–2324–004; ER10–2325–003; ER10–2332–004; ER10–2326–005; ER10–2327–006; ER10–2328–004; ER10–2343–005; ER10–2331–005; ER10–2330–005; ER11–4609–003.
Applicants: J.P. Morgan Ventures Energy Corporation, Triton Power Michigan LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, BE Allegheny LLC, BE Alabama LLC.
Description: Notice of Non-Material Change in Status of BE Alabama LLC, et al.
Filed Date: 1/26/12.
Accession Number: 20120126–5035.
Comments Due: 5 p.m. ET 2/16/12.

Docket Numbers: ER10–2432–001; ER10–2435–001; ER10–2440–001; ER10–2442–001; ER10–2443–001; ER10–2444–001; ER10–2446–001; ER10–2447–001; ER10–2449–001.
Applicants: York Generation Company LLC, Lowell Cogeneration Company Limited Partnership, Dartmouth Power Associates Limited Partnership, Camden Plant Holding, L.L.C., Pedricktown Cogeneration Company LP, Elmwood Park Power LLC, Newark Bay Cogeneration Partnership, L.P, Power City Partners, L.P., Bayonne Plant Holding, L.L.C.
Description: Bayonne Plant Holding, L.L.C., et al.—Supplement to Updated Market Power Analysis for the Northeast Region.
Filed Date: 1/25/12.
Accession Number: 20120125–5242.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–889–000.
Applicants: Dominion Retail, Inc.
Description: Compliance Filing—Designation of Filer to be effective 1/25/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5171.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–890–000.
Applicants: State Line Energy, L.L.C.
Description: Compliance Filing—Designation of Filer to be effective 1/24/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5183.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–891–000.
Applicants: Southwest Power Pool, Inc.
Description: 1886R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/25/12.
Accession Number: 20120125–5186.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–892–000.
Applicants: Southwest Power Pool, Inc.
Description: 2041R1 Kansas City Board of Public Utilities PTP to be effective 12/1/2011.
Filed Date: 1/25/12.
Accession Number: 20120125–5187.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–893–000.
Applicants: Dominion Energy Salem Harbor, LLC.
Description: Compliance Filing—Designation of Filer to be effective 1/25/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5188.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–894–000.
Applicants: Southwest Power Pool, Inc.
Description: 2014R2 City of Lindsborg, KS NITSA NOA to be effective 12/1/2011.
Filed Date: 1/25/12.
Accession Number: 20120125–5194.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–895–000.
Applicants: Minco Wind Interconnection Services, LLC.
Description: Minco Wind Interconnection Services, LLC MBR Application to be effective 3/15/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5211.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–896–000.
Applicants: Mariposa Energy, LLC.
Description: Mariposa Energy, LLC submits tariff filing per 35.12: Mariposa Energy, LLC Market Based Rate Filing to be effective 1/26/2012.
Filed Date: 1/26/12.
Accession Number: 20120126–5001.
Comments Due: 5 p.m. ET 2/16/12.

Docket Numbers: ER12–897–000.
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corporation submits tariff filing per 35: 2012–01–25 CAISO Petition for Waiver of Tariff Provisions to be effective N/A.
Filed Date: 1/26/12.
Accession Number: 20120126–5004.
Comments Due: 5 p.m. ET 2/16/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–12–000.
Applicants: Prairie Wind Transmission, LLC
Description: Amendment to Application of Prairie Wind Transmission, LLC.
Filed Date: 01/26/2012.
Accession Number: 20120126–5034.
Comment Date: 5 p.m. ET 2/6/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 pm Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2426 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–36–000]

Tres Palacios Gas Storage, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Copano Plant Interconnect Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental affects of the Copano Plant Interconnect Project (Project) proposed by Tres Palacios Gas Storage, L.L.C. (TPGS) in Colorado and Wharton Counties, Texas. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on February 29, 2012.

You may submit comments in written form. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

TPGS provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

TPGS plans to construct, own, and operate approximately 19.7 miles of 24-inch diameter pipeline, appurtenances, and one interconnect and metering station that connects the existing Copano Energy Houston Central Plant in Colorado County, Texas to TPGS' existing pipeline system in Wharton County, Texas. The Copano Energy Houston Central Plant, which processes natural gas produced from Eagle Ford Shale in southern Texas, would send refined natural gas to TPGS storage and wheeling facilities where it would either be sent to the ten interstate and intrastate pipeline with which TPGS interconnects, or be stored in TPGS facilities for later delivery to any of these pipelines for transportation to markets in the United States and Mexico.

The general location of the Project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the Project would impact a total of approximately 227.4 acres, including lands affected for the pipeline construction, additional temporary workspaces and the aboveground interconnect and metering site. Following construction, about 96.4 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. About 97 percent of the planned pipeline route parallels an existing pipeline right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss environmental affects that could occur as a result of the construction and operation of the proposed Project, under these general headings:

- Geology and soils;
- Land use and recreation;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary (FERC's records information system, see the Additional Information section of this Notice). To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. Comments on the EA will be considered before we make our recommendations to the Commission.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the

[1] The appendices referenced in this notice are not printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

Texas State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before February 29, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP12–36–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* This is a method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field; i.e., CP12–36). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2450 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13123–002—California]

Eagle Crest Energy Company; Notice of Availability of the Final Environmental Impact Statement for the Eagle Mountain Pumped Storage Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR part 380 [FERC Order No. 486,52 FR 47897]), the Office of Energy Projects has reviewed the application for license for the Eagle Mountain Pumped Storage Hydroelectric Project (FERC No. 13123), located on the site of the largely inactive Eagle Mountain mine in Riverside County, California, near the town of Desert Center and prepared a final environmental impact statement (EIS) for the project. The project would occupy 675.63 acres of Federal lands

administered by the U.S. Bureau of Land Management.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for a licensee for the Eagle Mountain Pumped Storage Hydroelectric Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS 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 at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

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.

For further information, please contact Kenneth Hogan at (202) 502–8434 or at *kenneth.hogan@ferc.gov.*

Dated: January 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2453 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14331–000]

ORPC Maine, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 2, 2011, ORPC Maine, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lubec Narrows Tidal Energy Project to be located in Lubec Narrows and Johnson Bay, near the Town of Lubec, Washington County, Maine. 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) 10 RivGen™ hydrokinetic tidal devices each measuring 39 feet long, 4.9 feet high, and 4.9 feet wide, and consisting of a bottom support frame and a single 60-kilowatt turbine-generator unit for a total capacity of 600 kilowatts; (2) a new 866-foot-long, 13-kilovolt subsea transmission cable; (3) a new 208-foot-long or 540-foot-long, 13-kilovolt transmission line connecting to an existing distribution system; and (4) appurtenant facilities. The estimated annual generation of the proposed project would be 540 to 1,080 megawatt-hours.

Applicant Contact: Herbert C. Scribner, Director of Environmental Affairs, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, ME 04101; phone: (207) 772–7707.

FERC Contact: Brandon Cherry; phone: (202) 502–8328.

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–14331) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2452 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14330–000]

ORPC Maine, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 2, 2011, ORPC Maine, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Treat Island Tidal Energy Project to be located in Passamaquoddy Bay, between the Town of Eastport and Treat Island, Washington County, Maine. 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) 15 TidGen™ hydrokinetic tidal devices each measuring 98 feet long, 17 feet high, and 17 feet wide, and consisting of a bottom support frame and a single 150-kilowatt turbine-generator unit for a total capacity of 2.25 megawatts; (2) a new 1,742-foot-long, 13-kilovolt subsea transmission cable; (3) a new 341-foot-long, 13-kilovolt transmission line connecting to an existing distribution system; and (4) appurtenant facilities. The estimated annual generation of the proposed project would be 4,050 to 5,625 megawatt-hours.

Applicant Contact: Herbert C. Scribner, Director of Environmental Affairs, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, ME 04101; phone: (207) 772–7707.

FERC Contact: Brandon Cherry; phone: (202) 502–8328.

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–14330) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2454 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2299–075]

Turlock Irrigation District, Modesto Irrigation District; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the California State Historic Preservation Officer (hereinafter, California SHPO), and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Don Pedro Hydroelectric Project No. 2299.

The programmatic agreement, when executed by the Commission and the California SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Don Pedro Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Turlock Irrigation District and Modesto Irrigation District, as the licensees for the Don Pedro Hydroelectric Project No. 2299, and the Central Sierra Me-Wuk, Tuolumne Band of Me-Wuk Indians, North Fork Mono Tribe, Southern Sierra Miwuk Nation, Chicken Ranch Rancheria of Me-Wuk Indians, Buena Vista Rancheria, California Valley Miwok Tribe, Picayune Rancheria of the Chukchansi Indians, National Park Service, and Bureau of Land Management have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

John Eddins or Representative, Office of Planning and Review, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW, Suite 809, Washington, D.C. 20004.

Kevin Day or Representative, Tuolumne Band of Me-Wuk Indians, P.O. Box 699, Tuolumne, CA 95379.

Sandy Vasquez or Representative, Southern Sierra Miwuk Nation, P.O. Box 1200, Mariposa, CA 95338.

Amanda Blosser or Representative, Office of Historic Preservation, Department of Parks and Recreation, 1725 23rd Street, Suite 100, Sacramento, CA 95816–7100.

Rhonda Morningstar Pope or Representative, Buena Vista Rancheria, P.O. Box 162283, Sacramento, CA 95816.

Robert Nees, or Representative, Turlock Irrigation District, P.O. Box 949, Turlock, CA 95381.

James Barnes or Representative, Bureau of Land Management, Mother Load Field Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762

Reba Fuller or Representative, Central Sierra Me-Wuk Cultural and Historic Preservation Committee, P.O. Box 699, Tuolumne, CA 95379.

Ron Goode or Representative, North Fork Mono Tribe, 13396 Tollhouse Road, Clovis, CA 93611.

Stephen Bowes or Representative, National Park Service, 111 Jackson Street, Suite 700, Oakland, CA 94607.

Lloyd Mathiesen or Representative, Chicken Ranch Rancheria of Me-Wuk Indians, P.O. Box 1159, Jamestown, CA 95327.

Silvia Burley or Representative, California Valley Miwok Tribe, 10601 N. Escondido Place, Stockton, CA 95212.

Greg Dias, or Representative, Modesto Irrigation District, P.O. Box 4060, Modesto, CA 95352.

Reggie Lewis or Representative, Picayune Rancheria of the Chukchansi Indians, 46575 Road, 417#A, Coarsegold, CA 93614.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

Any such motions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''eComment.''

[1] 18 CFR 385.2010.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the project number (P–2299–075) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Dated: January 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2379 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order on Intent To Revoke Market-Based Rate Authority

Issued January 31, 2012.

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

In the matter of: ER02–2001–017, Electric Quarterly Reports, ER07–491–000, Acacia Energy, Inc., ER07–155–000, LBPC Power, Inc., ER01–2311–000, Nordic Energy, L.L.C., ER03–888–000, Nordic Marketing of Illinois, L.L.C., ER04–264–000, Nordic Marketing of Michigan, L.L.C., ER00–774–000, Nordic Marketing, L.L.C., ER07–594–000, Pirin Solutions, Inc., ER95–581–000, Tennessee Power Company.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2006), and 18 CFR part 35 (2011), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. Commission staff's review of the Electric Quarterly Report submittals indicates that eight public utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[2]

4. The Commission further stated that,

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[3]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.[4]

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified eight public utilities with authority to sell power at market-based rates that failed to file Electric Quarterly Reports.[5] Commission staff contacted these entities to remind them of their regulatory obligations.[6] Despite these reminders, the eight public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make these filings, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of

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[1] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filings,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[2] Order No. 2001, FERC Stats & Regs. ¶ 31,127 at P 222.

[3] *Id.* P 223.

[4] *See, e.g., Electric Quarterly Reports,* 75 FR 63,468 (Oct. 15, 2010); *Electric Quarterly Reports,* 75 FR 45,111 (Aug. 2, 2010).

[5] According to the Commission's records, the companies subject to this order last filed their Electric Quarterly Reports in the quarters and years shown below:

Respondent and Last Quarter Filed

Acacia Energy, Inc.—2010, Quarter 1

LBPC Power, Inc.—2010, Quarter 1

Nordic Energy, L.L.C.—2010, Quarter 2

Nordic Marketing of Illinois, L.L.C.—2010, Quarter 2

Nordic Marketing of Michigan, L.L.C.—2010, Quarter 2

Nordic Marketing, L.L.C.—2010, Quarter 2

Pirin Solutions, Inc.—2010, Quarter 1

Tennessee Power Company—2010, Quarter 1

[6] *See Acacia Energy, Inc.,* Docket No. ER07–491–000 (Aug. 18, 2011) (unpublished letter order); *LBPC Power, Inc.,* Docket No. ER07–155–000 (Aug. 18, 2011) (unpublished letter order); *Nordic Energy, L.L.C.,* Docket No. ER01–2311–000 (Aug. 18, 2011) (unpublished letter order); *Nordic Marketing of Illinois, L.L.C.,* Docket No. ER03–888–000 (Aug. 18, 2011) (unpublished letter order); *Nordic Marketing of Michigan, L.L.C.,* Docket No. ER04–264–000 (Aug. 18, 2011) (unpublished letter order); *Nordic Marketing, L.L.C.,* Docket No. ER00–774–000 (Aug. 18, 2011) (unpublished letter order); *Pirin Solutions, Inc.,* Docket No. ER07–594–000 (Aug. 18, 2011) (unpublished letter order); *Tennessee Power Company,* Docket No. ER95–581–000 (Aug. 18, 2011) (unpublished letter order).

issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2451 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS12–88–000]

Dixie Pipeline Company LLC; Notice of Technical Conference

Take notice that the Commission will convene a technical conference on Tuesday, February 28, 2012, at 9 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.[1]

The technical conference will address all aspects of Dixie's FERC Tariff No. 99.1.0, which cancels FERC Tariff No. 99.0.0 and modifies language regarding Injection Capacity Allocation under Item 70 ''Proration,'' as discussed in the Commission's Order issued on January 13, 2012.[2] Dixie's proposed revision would affect the manner in which long-haul shippers' historical volumes are used in allocating capacity during periods of constraint.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Jenifer Lucas at (202) 502–8362 or email *jenifer.lucas@ferc.gov.*

Dated: January 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2385 Filed 2–2–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Dixie Pipeline Company has changed its name to Dixie Pipeline Company LLC.

[2] *Dixie Pipeline Co.,* 138 FERC ¶ 61,022 (2012).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0051; FRL–9335–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from January 2, 2012 to January 13, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 5, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0051, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be

provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *Mudd.Bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through 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.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from January 2, 2012 to January 13, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—20 PMNS RECEIVED FROM 01/02/2012 TO 01/13/2012

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0130	01/03/2012	04/01/2012	CBI	(G) Urethane coating	(S) Propenoic acid, 3-hydroxy-2-(hydroxymethyl) -2-methyl-, polymer with hydrazine, .alpha.-hydro-.omega.-hydroxypoly[oxy (methyl-1,2-ethanediyl)] and 1,1′-methylenebis (4-isocyanatocyclohexane], compound with *N,N* -diethylethanamine

TABLE I—20 PMNS RECEIVED FROM 01/02/2012 TO 01/13/2012—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0131	01/03/2012	04/01/2012	CBI	(S) Industrial polymer manufacture for coatings.	(S) 3-hydroxy-2-(hydroxymethyl)- 2-methylpropanoic acid polymer with hydrazine, .alpha.-hydro-.omega.-hydroxypoly (oxy-1,4-butanediyl) and 5-isocyanato-1 -(isocyanatomethyl)- 1,3,3-trimethylcyclohexane compound with *N,N* -diethylethanamine
P–12–0132	01/03/2012	04/01/2012	CBI	(S) Industrial polymer manufacture for coatings.	(S) Hexanedioic acid, polymer with 2,2-dimethyl- 1,3-propanediol, 1,6-hexanediol, hydrazine, 3-hydroxy-2- (hydroxymethyl) -2-methylpropanoic acid and 1,1′-methylenebis [4-isocyanatocyclohexane], compound with *N,N* -diethylethanamine
P–12–0133	01/03/2012	04/01/2012	CBI	(S) Coating for wind craft wings.	(S) 2-oxepanone, polymer with 1,6-diisocyanatohexane, 2,2-dimethyl-1,3-propanediol and 2,2 ′-oxybis[ethanol]*
P–12–0134	01/03/2012	04/01/2012	CBI	(S) Catalyst component for polymerization and oligomerizatinn.	(S) Poly[oxy(methylaluminio)]*
P–12–0135	01/03/2012	04/01/2012	Dow Chemical Company	(S) Hardener for epoxy thermosetting coatings.	(G) Epoxy amine polymer
P–12–0136	010/3/2012	04/01/2012	CBI	(G) Adhesive for rubber bonding.	(G) Nitrososilane
P–12–0137	01/04/2012	04/02/2012	Essential Industries	(S) A polymer in printing applications; a polymer for pigment and or ink dispersions.	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1, 3-propanediol, 1,2-ethanediamine, 3-hydroxy-2- (hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis [4-isocyanatocyclohexane], diethylamine-blocked, compds. with triethylamine
P–12–0138	01/05/2012	04/03/2012	CBI	(G) Raw material for industry	(G) Hydroxy phenyl fatty acids
P–12–0139	01/04/2012	04/02/2012	CBI	(G) Fluid used during oil recovery.	(S) 1-octene, manufacture of, by-products from, distillation residues
P–12–0140	01/05/2012	04/03/2012	CBI	(G) Scale control function	(G) Alkylphosphonate
P–12–0141	01/05/2012	04/03/2012	CBI	(G) Control of hydrogen sulfide function.	(G) Triazine
P–12–0142	01/05/2012	04/03/2012	CBI	(G) Corrosion control function	(G) Quarternary ammonium chloride
P–12–0143	01/05/2012	04/03/2012	CBI	(G) Crosslinking resin	(G) Poly(oxy-1,4-butanediyl), -hydro-hydroxy-, polymer with alkyldiisocyanates

TABLE I—20 PMNS RECEIVED FROM 01/02/2012 TO 01/13/2012—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0144	01/06/2012	04/04/2012	CBI	(G) Polymeric binder	(G) 2-propenoic acid, 2-methyl-, polymer with substitutedoxirane, ethenylbenzene, ethenylbenzene telomer with substitutedpropanoic acid 2-hdyroxy-3- [(2-methyl-1-oxo-2-propen-1-yl) oxy]propyl ester, 2-ethyl-2-(hydroxymethyl)-1,3-propanedoil and .alpha.-(2-methyl-1-oxo-2-propen-1-yl) -.omega.-(2-ethylhexyloxy)poly (oxy-1,2-ethanediyl), alkali metal salt
P–12–0145	01/09/2012	04/07/2012	CBI	(G) Open, non-dispersive use	(G) Styrene acryl copolymer
P–12–0146	01/10/2012	04/08/2012	CBI	(G) Modifier for polymers	(S) Phosphinous amide, *N*-(1,2-dimethylpropyl) -*N*-(diphenylphosphino) -*P,P*-diphenyl-
P–12–0147	01/10/2012	04/08/2012	CBI	(G) Chemical intermediate	(S) Phosphine, diphenyl-
P–12–0148	01/10/2012	04/08/2012	CBI	(G) Scale control function	(G) Alkylphosphonate
P–12–0149	01/12/2012	04/10/2012	CBI	(G) Destuctive use	(G) Brominated distillation bottoms
P–12–0150	01/13/2012	04/11/2012	Croda Inc.	(G) Additive for lubricating oils	(G) Isosorbide diester

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—11 NOCS RECEIVED FROM 01/02/2012 TO 01/13/2012

Case No.	Received date	Commencement notice end date	Chemical
P–09–0627	01/05/2012	12/19/2011	(G) Polyethylene glycol dicarylate, modified
P–10–0116	01/11/2012	12/21/2011	(S) Nanofiber type: PR–19 (nanofiber grade: xt-lht)
P–10–0401	01/05/2012	11/28/2011	(G) Styrene, copolymer with acrylic acid, salt with alkoxylated alkenylamine
P–10–0452	01/06/2012	01/04/2012	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.,.alpha.′-[1,4-cyclohexanediylbis(methylene)]bis[.omega.-(2-aminoethylethoxy)-
P–11–0085	01/11/2012	12/11/2011	(G) Polyfluoroalkylpropionic acid ethyl ester
P–11–0449	01/12/2012	10/14/2011	(S) Glycerides, C_{16-18} and C_{18} unsaturated mono-and di-, polymers with a-[[[5-[[bis(2-hydroxyethyl)amino]carbonyl]amino]-2 (or 4)-methylphenyl]amino]carbonyl]-W-methoxypoly(oxy-1,2-ethanediyl), Bisphenol A-epichlorohydrin polymer linoleate, hydrazine, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1′-methylenebis [4-isocyantocyclohexane], compounds, with triethylamine
P–11–0525	01/04/2012	12/08/2011	(G) Oxibiscarbomonocyclic acid, polymer wth oxibis[heteropolycyclic ketone], (alkyl(C=1-5)substituted) bis [alkane(c=2-6)amine],[halo(haloalkyl(c=1-5)) alkylidene]bis[aminocarbomonocyclic alcohol] and [[halo(haloalkyl(c=1-5)) alkylidene]]bis(hydroxycarbomonocycle)]bis[aminobenzamide]
P–11–0535	01/13/2012	12/23/2011	(G) Carboxy functional polydimethylsiloxane
P–11–0536	01/03/2012	12/23/2011	(G) Modified aminosiloxane
P–11–0641	01/12/2012	01/11/2012	(S) 1,3-benzenediol, 4,4′-[[3-(1h-imidazol-1-yl)propyl]carbonimidoyl]bis-
P–11–0648	01/05/2012	12/21/2011	(G) Substituted carbomoncycle, polymer with alkyl diol, bis[substituted carbomonocycle ester]

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: January 24, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–2440 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9001–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 01/23/2012 Through 01/27/2012 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. 20120019, Draft EIS, BLM, 00, Programmatic—Allocation of Oil Shale and Tar Sands Resources on Lands Administered, Propose to Amend 10 Land Use Plans in Colorado, Utah, and Wyoming, Comment Period Ends: 05/02/2012, Contact: Sherri Thompson (303) 239–3758.

EIS No. 20120020, Final EIS, FHWA, MN, US–14 Reconstruction Project, Improvements to Truck Highway 14 from Front Street in New Ulm to Nicollet County Road 6 in North Mankato, Funding, USACE Section 10 and 404 Permits, Brown and Nicollet Counties, MN, Review Period Ends: 03/12/2012, Contact: Philip Forst (651) 291–6110.

EIS No. 20120021, Draft Supplement, USFWS, CA, Tehachapi Uplands Multiple Species Habitat Conservation Plan (TUMSHCP), Propose Issuance of a 50-Year Incidental Take Permit for 27 Federal- and State-Listed and Unlisted Species, New Information and a Revised Range of Alternatives, Kern County, CA, Comment Period Ends: 05/02/2012 Contact: John Robles (916) 414–6731.

EIS No. 20120022, Final EIS, BLM, NM, HB In-Situ Solution Mining Project, Proposal to Extract the Potash Remaining in Inactive Underground Mine, NPDES Permit, Eddy County, NM, Review Period Ends: 03/05/2012, Contact: Jim Stovall (575) 234–5972.

EIS No. 20120023, Final Supplement, USFS, ID, Bussel 484 Project Area, Updated and New Information, Manage the Project Area to Achieve Desired Future Conditions for Vegetation, Fire, Fuels, Recreation, Access, Wildlife, Fisheries, Soil and Water, Idaho Panhandle National Forest, St. Joe Ranger District, Shoshone County, ID, Review Period Ends: 03/19/2012, Contact: Mary Farnsworth (208) 765–7369.

EIS No. 20120024, Final EIS, FTA, CA, Alameda-Contra Transit (AC Transit) East Bay Bus Rapid Transit Project, Implement High Level Bus Rapid Transit Improvements Connecting Berkeley, Oakland and San Leandro, San Francisco Bay Area, Funding, Alameda County, CA, Review Period Ends: 03/05/2012, Contact: Lucinda Eagle (415) 744–0140.

EIS No. 20120025, Final EIS, USFS, 00, Programmatic—National Forest System Land Management Planning, Proposing a New Rule at 36 CFR Part 219 Guide Development, Revision, and Amendment of Land Management Plans for Unit of the National Forest System, Review Period Ends: 03/05/2012, Contact: Brenda Halter-Glenn (202) 260–9400.

EIS No. 20120026, Draft Supplement, NOAA, 00, Amendment 11 to the Fishery Management Plan for Spiny Lobster, Establish Trap Line Marking Requirements and Closed Areas to Protect Coral Species, Gulf of Mexico and South Atlantic Regions, Comment Period Ends: 03/19/2012, Contact: Roy Crabtree (727) 824–5301.

Amended Notices

EIS No. 20110430, Draft EIS, HUD, CA, Alice Griffith Redevelopment Project, Redevelopment of the #4–Acre ''Project Site'' for 1,200 New Dwelling Units, Retail Development, Open Space and Associated Infrastructure, City and County of San Francisco, CA, Comment Period Ends: 03/13/2012, Contact: Eugene T. Flannery (415) 701–5598, Revision to FR Notice Published 12/30/11: Extending Comment Period from 2/13/2012 to 3/13/2012.

Dated: January 31, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–2435 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0058; FRL–9626–9]

Public Availability of Environmental Protection Agency FY 2011 Service Contract Inventory

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Environmental Protection Agency is publishing this notice to advise the public of the availability of the FY 2011 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), *Service Contract Inventories (December 19, 2011).* Environmental Protection Agency has posted its inventory and a summary of the inventory on the EPA's homepage at the following link: *http://www.epa.gov/oam/inventory/inventory.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Linear Cherry in the Office of Acquisition Management, Headquarters Procurement Operations Division (3803R), Business Analysis Strategic Sourcing, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4403; email address: *cherry.linear@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

How can I get copies of this docket and other related information?

1. EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2011–0058. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the FY 2011 Service Contract Inventory Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the FY 2011 Service Contract Inventory Docket is (202) 566–1752.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

Dated: January 27, 2012.

John R. Bashista,

Director, Office of Acquisition Management.

[FR Doc. 2012–2446 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0927; FRL–9626–8]

Mandatory Reporting of Greenhouse Gases: Notice of Preliminary Determinations Regarding Requests To Use Provisional Global Warming Potentials Under the Fluorinated Gas Production Category of the Greenhouse Gas Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: The EPA is announcing and explaining to the public its preliminary determinations regarding requests to use provisional global warming potentials for eight fluorinated greenhouse gases submitted by DuPont de Nemours, Inc. and Honeywell International for purposes of certain calculations in the Fluorinated Gas Production portion of the Mandatory Greenhouse Gas Reporting Rule. EPA's preliminary determination is that the requests for seven of the eight fluorinated GHGs meet the requirements of the rule.

DATES: Comments must be received on or before February 21, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0927, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: GHGReportingRule@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center, Attention Docket OAR–2009–0927, Mail code: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, Attention Docket EPA–HQ–OAR–2009–0927, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0927. 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.* The *http://www.regulations.gov.* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *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 EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Deborah Ottinger, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343–9149; fax number: (202) 343–2342; email address: *ottinger.deborah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice applies to five facilities considered to be fluorinated gas production facilities under subpart L (Fluorinated Gas Production) of the Mandatory Greenhouse Gas Reporting rule (40 CFR part 98). These facilities are Honeywell International's Buffalo Research Laboratory and DuPont's Fayetteville, North Carolina; Deepwater, New Jersey; Washington Works, West Virginia; and Eldorado, Arkansas facilities. This notice may also be of interest to members of the public with knowledge of or interest in the estimation of global warming potentials.

B. What is this notice about?

This notice announces and explains to the public EPA's preliminary determinations regarding the provisional global warming potentials (GWPs) for eight fluorinated greenhouse gases (GHGs) submitted by E. DuPont de Nemours, Inc. (DuPont) and Honeywell International (Honeywell) for the purposes of the calculations in 40 CFR 98.123(c)(1) (a provision of subpart L of the Mandatory Greenhouse Gas Reporting rule). EPA's preliminary determination is that the requests for seven of the eight fluorinated GHGs meet the requirements of the rule. As discussed further below, the calculations in 40 CFR 98.123(c)(1) are used to determine whether a facility must use stack testing to establish an emission factor for a continuous process vent. For continuous process vents that are calculated to emit less than 10,000 metric tons carbon-dioxide equivalent ($mtCO_2e$) annually, facilities have the option to use engineering calculations rather than stack testing to establish an emission factor.

C. What information is EPA making available for review and comment?

EPA is making available for review and comment provisional GWPs for fluorinated GHGs submitted by Dupont and Honeywell for the purposes of the calculations in 40 CFR 98.123(c)(1). EPA is also making available to the public the underlying materials in the submitted requests that were used to estimate the provisional GWPs, and EPA's analysis of those materials.

D. Where can I get more information?

All of the information can be obtained through the Docket and at *http://www.regulations.gov* (see **ADDRESSES** section above for docket contact information).

E. Submitting Confidential Business Information (CBI).

Do not submit information you are claiming as CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part of the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

II. Background

Under 40 CFR 98.123(c)(1), fluorinated gas producers that wish to use 40 CFR 98.123(c) (the Emission Factor Method or Emission Calculation Factor Method) to estimate emissions from a continuous process must make a preliminary estimate of the annual carbon dioxide equivalent (CO_2e) emissions of fluorinated GHGs from each process vent. They are required to do so using the engineering calculations or assessments specified in the rule. If the preliminary estimate indicates that a vent emits 10,000 $mtCO_2e$ or more annually, facilities must use stack testing to establish an emission factor for that vent. If the preliminary estimate indicates that a vent emits less than 10,000 $mtCO_2e$ annually, facilities may use engineering calculations or assessments to establish an emission calculation factor.

Under 40 CFR 98.123(c)(1)(v), to convert the fluorinated GHG emissions to CO_2e, fluorinated gas producers must use Equation A–1 of 40 CFR 98.2. For fluorinated GHGs whose GWPs are not listed in Table A–1 to subpart A of part 98, producers must use a default GWP of 2,000 unless they submit a request to use other GWPs for those fluorinated GHGs in that process under 40 CFR 98.123(c)(1)(vi), and EPA approves that request.

Under 40 CFR 98.123(c)(1)(vi), fluorinated gas producers may submit a request to use a GWP other than 2,000 for fluorinated GHGs whose GWPs are not listed in Table A–1 to subpart A if their process vent emits one or more fluorinated GHGs (1) whose GWPs are not listed in Table A–1 to subpart A, (2) that are emitted in quantities that, with a default GWP of 2,000, result in total calculated annual emissions equal to or greater than 10,000 metric tons CO_2e for the vent, and (3) that they believe have GWPs that would result in total calculated annual emissions less than 10,000 metric tons CO_2e.

Under 40 CFR 98.123(c)(1)(vi)(B), EPA reviews each request to determine whether it is complete, substantiates each of the provisional GWPs, and demonstrates that the process vents are calculated to emit less than 10,000 metric tons CO_2e of fluorinated GHGs only when the proposed provisional GWPs, not the default GWP of 2,000, are used for the fluorinated GHGs for which the provisional GWPs are requested. If EPA makes a preliminary determination that each of these criteria is met, EPA publishes a notice for public comment including the determination and the data and analysis submitted by the producers under 40 CFR 98.123(c)(1)(vi)(A)(1) through (3).

Under 40 CFR 98.123(c)(1)(vi)(A)(1) through (3), fluorinated gas producers must include the following information in the request for each fluorinated GHG that does not have a GWP listed in Table A–1 to subpart A of part 98 and that constitutes more than one percent by mass of the stream emitted from the vent:

(1) The identity of the fluorinated GHG, including its chemical formula and, if available, CAS number.

(2) The estimated GWP of the fluorinated GHG.

(3) The data and analysis that supports the estimate of the GWP of the fluorinated GHG, including:

(i) Data and analysis related to the low-pressure gas phase infrared absorption spectrum of the fluorinated GHG.

(ii) Data and analysis related to the estimated atmospheric lifetime of the fluorinated GHG (reaction mechanisms and rates, including for example, photolysis and reaction with atmospheric components such as hydroxyl radicals (OH), ozone (O_3), carbon monoxide (CO), and water).

(iii) The radiative transfer analysis that integrates the lifetime and infrared absorption spectrum data to calculate the GWP.

(iv) Any published or unpublished studies of the GWP of the gas.

A. Requests to Use Provisional GWPs

On February 25, 2011, Honeywell requested to use provisional GWPs for two fluorinated GHGs for the purposes of the calculations in paragraph (c)(1) of 40 CFR 98.123. Honeywell requested to use provisional (*i.e.,* lower) GWPs for two commercial chemicals produced at their Buffalo Research Laboratory: HFC–1234ze and HFC–1234yf. Honeywell included published scientific papers and other information to fulfill the requirements under paragraphs (c)(1)(vi)(A)(1) through (3) of 40 CFR 98.123.

On February 28, 2011, DuPont requested to use provisional GWPs for six fluorinated GHGs for the purposes of calculations in 40 CFR 98.123(c)(1). DuPont requested to use provisional (*i.e.,* lower) GWPs for six chemicals at DuPont plant sites subject to subpart L: hexafluoropropylene (HFP), perfluoromethyl vinyl ether (PMVE), tetrafluoroethylene (TFE), 3,3,3-trifluoropropene (TFP), vinyl fluoride (VF), and vinylidine fluoride (VF2). For each chemical, DuPont included peer-reviewed scientific data and other information to fulfill the requirements under paragraphs (c)(1)(vi)(A)(1) through (3).

B. Preliminary Determinations and Their Rationale

In accordance with 40 CFR 98.123(c)(1)(vi)(B), EPA reviewed the requests from both Honeywell and DuPont to determine whether each was complete, substantiated each of the provisional GWPs, and demonstrated that the process vents were calculated to emit less than 10,000 metric tons CO_2e of fluorinated GHGs only when the proposed provisional GWPs, not the default GWP of 2,000, were used for the fluorinated GHGs for which the provisional GWPs were requested.

EPA made a preliminary determination that each of these criteria was met for the requests submitted by both Honeywell and DuPont, with one exception. The exception was for HFC–1234yf, which was emitted in quantities that, with a default GWP of 2,000, resulted in total calculated annual emissions of less than 10,000 $mtCO_2e$. Because the calculated emissions did not meet the threshold criterion, EPA is not evaluating the provisional GWP for HFC–1234yf in this action. EPA notes, however, that the provisional GWP submitted by Honeywell is the same as the GWP recognized in other EPA final actions (*e.g.,* March 29, 2011; 76 FR 17488). EPA will consider this information in future updates to Table A–1 of 40 CFR part 98.

The remainder of this section includes a summary of the determination and the data and analysis submitted by the producers under 40 CFR 98.123(c)(1)(vi)(A)(1) through (3).

EPA's preliminary determination included review of the submitted information by a leading subject matter expert on GWP estimation who was also a co-developer of the GWP concept. EPA concluded that the methods overall

were likely to overestimate GWPs (maybe by an order of magnitude or more) rather than underestimate them. Because 40 CFR 98.123(c)(1) allows the use of engineering calculations only when estimated emissions fall below 10,000 metric tons CO_2e, an overestimated GWP is considered acceptable by EPA in the context of 40 CFR 98.123(c)(1). Therefore, the conclusion of EPA's review was that the background information was adequate and that it justified the use of the alternative GWPs in the context of 40 CFR 98.123(c)(1)(vi).

The overestimation of the GWPs submitted by both Honeywell and DuPont results from the fact that the commonly-used estimation techniques employed in the analyses cited by both companies use simplifying assumptions that are not fully applicable to compounds that are short-lived in the atmosphere—defined here as any compound with an atmospheric lifetime less than 1 year. (All of the compounds for which provisional GWPs were requested are short-lived based on this definition.) Essentially, the estimation techniques assume that the compounds are well-mixed in the atmosphere, but short-lived compounds do not last long enough to become well mixed (*i.e.,* spread evenly over all longitudes, latitudes, and altitudes). Instead, their concentrations decrease rapidly with distance from their emission point, particularly with changing latitude and altitude.

The assumption that the compounds are well mixed affects the estimates of both of the primary components of GWPs: Atmospheric lifetime and radiative forcing. In the analyses cited by the companies, atmospheric lifetimes are estimated either by assuming that the short-lived compound is exposed to the global average concentration of hydroxyl radicals (OH) or by deriving the lifetime of the short-lived (*i.e.,* not well mixed) compound from the known lifetime of a long-lived (*i.e.,* well mixed) reference compound based on the compounds' respective reaction rates with OH. Both approaches are likely to overestimate the lifetime (and therefore the GWP) of the short-lived compound because they essentially assume that the concentration of the short-lived compound remains constant with altitude. This overestimates the share of the short-lived compound that resides higher in the atmosphere, where lower OH concentrations, temperatures, and pressures slow reaction rates and lengthen lifetimes. Radiative forcing is also estimated based on the assumption that the concentration of the short-lived compound remains constant with altitude. This assumption is likely to overestimate the radiative forcing (and therefore the GWP) of short-lived compounds because, again, it overestimates the share of the short-lived compound that resides higher in the atmosphere. GHGs higher in the atmosphere (*i.e.,* near the tropopause) are responsible for more radiative forcing than the same GHGs lower in the atmosphere. (As discussed in the Supporting Analysis, this is related to the fact that temperatures near the tropopause are lower than those at the surface.) Together, these assumptions may result in overestimates of the GWP by a factor of ten or more. The rationale for EPA's preliminary determination is discussed in more detail in the Supporting Analysis, which is available in the docket.

The provisional GWPs are shown in Table 1.

TABLE 1—PROVISIONAL GLOBAL WARMING POTENTIALS FOR FLUORINATED GREENHOUSE GASES FOR WHICH EPA HAS MADE PRELIMINARY DETERMINATIONS THAT ALL APPROVAL CRITERIA HAVE BEEN MET FOR THE PURPOSES OF THE CALCULATIONS IN 98.123(C)(1) OF SUBPART L

Fluorinated GHG	CAS No.	Provisional GWP
HFC–1234ze	29118–24–9	6
Hexafluoropropylene (HFP)	116–15–4	0.25
Perfluoromethyl vinyl ether (PMVE)	1187–93–5	3
Tetrafluoroethylene (TFE)	116–14–3	0.02
Trifluoro propene (TFP)	677–21–4	3
Vinyl fluoride (VF)	75–02–5	0.7
Vinylidine fluoride (VF_2)	75–38–7	0.9

EPA will review public comment on this notice prior to taking final action on its preliminary determinations. The final determinations will be placed in the docket for this action.

Dated: January 27, 2012.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2012–2442 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9627–3]

Notice of a Project Waiver of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Cuyahoga County Board of Health for the Bear Creek Restoration Project in Warrensville Heights, OH, and the Laurel Creek Restoration Project in Twinsburg, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Cuyahoga County Board of Health (County) for the Bear Creek Restoration Project in Warrensville Heights, Ohio, and the Laurel Creek Restoration Project in Twinsburg, Ohio, for coconut fiber (coir) woven mats to be installed as part of their stream bank stabilization/restoration projects. This is a project-specific waiver and only applies to the use of the specified product for the ARRA funded projects being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. The coir woven mats under consideration are manufactured in India and Sri Lanka and meet the projects' technical specifications and requirements. The

Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. The County has provided sufficient documentation to support each individual request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of the ARRA. This action permits the purchase of coir woven mats for the proposed projects that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew Lausted, SRF Program Manager, (312) 886–0189, or Meonii Bristol, SRF Program Manager, (312) 353–4716, EPA Water Division, State and Tribal Branch, 77 West Jackson Boulevard, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Cuyahoga County Board of Health for the Bear Creek Restoration Project in Warrensville Heights, Ohio, and the Laurel Creek Restoration Project in Twinsburg, Ohio, for the acquisition of coir woven mats manufactured outside of the United States.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; (3) inclusion of iron, steel, and the cost of the overall project by more than 25 percent.

These manufactured goods will be used for streambank stabilization and erosion control. Only coir woven mats meet the specific needs of each project because they are completely biodegradable, have a high resistance to shear stresses and flows, and are visually unobtrusive. The County contends that coconut fibers are more durable than straw and other materials used in alternative mat products, and they do not require the incorporation of polypropylene and/or other synthetic products that are not 100% biodegradable.

The April 28, 2009, EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009,' '' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The OMB ARRA Buy American Guidance cites the Federal Acquisition Regulation (FAR) as an appropriate reference for availability waiver inquiries. Specifically, the OMB Guidance at Section 176.80(a)(1) states (at 77 FR 18452) that ''The determinations of nonavailability of the articles includes '' 'Fibers of the following types: * * * coir,' '' thereby establishing a presumption of lack of U.S. availability. The FAR procedures at 48 CFR 25.103(b)(1) specified as required in the OMB Guidance state that: (1)(i) A nonavailability determination had been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. government and nongovernment demand; (ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. The applicant met the procedures specified for the availability inquiry as appropriate to the circumstances by conducting online research and contacting suppliers, and all sources indicated that coir woven mats are only manufactured outside of the United States.

EPA's national contractor prepared a technical assessment report based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the coir woven mats necessary for these projects are not manufactured in the United States, and no other domestically manufactured products can meet the County's project performance specifications and requirements.

EPA has also evaluated the County's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the award official may deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the County's project specifications for the purchase of coir woven mats. The loans for both projects were signed on January 28, 2010, making them two of the last projects to receive ARRA money in Ohio. Both loans were design/build, meaning that much design work had to be done before construction could be undertaken. Further delaying construction activities was the need to negotiate and sign easement and land-use convenants with neighboring landowners. Therefore, the County was not aware that there were no domestic equivalents for the coir woven mats in question until early 2011. There is no indication that the County failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider the County's waiver request a foreseeable late request, as though it had been timely made since there is no gain by the County and no loss by the government due to the late request.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring agencies, such as the County, to revise their standards and specifications. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further

delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA has reviewed this waiver request and has determined that the information and supporting documentation provided by the County is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the County's performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for these projects, and that this manufactured good was not available from a producer in the United States, the County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of coir woven mats using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: September 15, 2011.

Susan Hedman,

Regional Administrator.

[FR Doc. 2012–2438 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9627–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed consent decree; Request for public comment

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to settle a lawsuit filed by WildEarth Guardians in the United States District Court for the District of Colorado: *WildEarth Guardians* v. *Jackson,* Case No. 1:11–cv–02227–WJM–KLM (D. Colo.). Plaintiff filed this suit to compel the Administrator to respond to an administrative petition requesting that EPA object to a CAA Title V operating permit issued by the Colorado Department of Public Health and Environment, Air Pollution Division, to CF&I Steel, d/b/a EVRAZ Rocky Mountain Steel, to operate its steelmaking facility in Pueblo, Colorado. Under the terms of the proposed consent decree, EPA agrees to respond to the petition by May 31, 2012, or within 30 days of the entry date of the consent decree by the court, whichever is later.

DATES: Written comments on the proposed consent decree must be received by *March 5, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0094, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Melina Williams, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3406; fax number (202) 564–5603; email address: *williams.melina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Colorado Department of Public Health and Environment, Air Pollution Division, to CF&I Steel, d/b/a EVRAZ Rocky Mountain Steel, to operate its steelmaking facility in Pueblo, Colorado. Under the terms of the proposed consent decree, EPA agrees to respond to the petition by May 31, 2012, or within 30 days of the entry date of the consent decree by the court, whichever is later. In addition, the proposed consent decree provides that the United States agrees to pay $2,535.00 as full settlement of all claims for attorney's fees, costs, and expenses incurred in this lawsuit through the date of lodging the consent decree. The proposed consent decree also states that when EPA's obligations under Paragraphs 2 and 3, which include the aforementioned obligations to sign a response to the administrative petition by a certain date and to pay attorney fees and litigation costs, have been completed the case shall be terminated and dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0094) contains a copy of the proposed consent decree.

The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute are not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 27, 2012.

Patricia Embrey,

Acting Associate General Counsel.

[FR Doc. 2012–2443 Filed 2–2–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Availability of the Federal Communications Commission's FY 2011 Service Contract Inventory and FY 2010 Service Contract Inventory Analysis

AGENCY: Federal Communications Commission.

ACTION: Notice of public availability of service contract inventory and analysis.

SUMMARY: The Federal Communications Commission is publishing this notice to advise the public of the availability of its FY 2011 Service Contract Inventory and FY 2010 Service Contract Inventory Analysis as required by Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117). The FY 2011 inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The FY 2010 analysis provides additional information about the Federal Communications Commission's FY 2010 inventory. The FY 2011 inventory and analysis of the FY 2010 inventory have been developed in accordance with guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) on November 5, 2010 and December 19, 2011. The guidance is available online at: *http://www.whitehouse.gov/omb/procurement_index_memo.*

The Federal Communications Commission has posted its FY 2011 inventory, a summary of the FY 2011 inventory, and its analysis of its FY 2010 inventory on the Federal Communications Commission's Web site at the following link: *http://www.fcc.gov/encyclopedia/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory or analysis should be directed to Mr. Daniel Daly, Chief of Staff, Office of the Managing Director at (202) 418–1832 or *Daniel.Daly@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–2386 Filed 2–2–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–11KS]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Pilot Study of Community-Based Surveillance of Supports for Healthy Eating/Active Living (HE/AL)—New—

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC proposes to conduct a pilot study to examine the feasibility of establishing a national community-level surveillance system on policy supports for healthful eating and active living. Results of the feasibility study will be used to assess the feasibility of establishing a national surveillance system and the best methods for encouraging a high response rate in a representative sample of communities. The pilot study will be conducted in two states with a representative sample of 400 communities, 200 municipalities in each state. The sample frame will be generated from the U.S. Census of Governments.

The proposed pilot study is designed to address three key methodological objectives. The first objective is to test the feasibility of the proposed sampling frame and to answer sample design issues related to determining sampling criteria for inclusion, as well as the development of weights and estimates.

The second objective is to identify and critically evaluate whether respondents in diverse municipalities of various sizes and organizational structures are able to answer a self-administered survey questionnaire. The survey questionnaire includes 42 items on the following topics: Community-wide planning efforts for healthy eating and active living, the built environment and policies that support physical activity, and policies and practices that support access to healthy food and healthy eating. The estimated burden per response is one hour. Issues to be addressed include critical assessment of the strengths and weaknesses of methods for identifying the best respondents for completing the survey questionnaire; conducting a limited process evaluation that identifies the barriers and challenges respondents may incur in providing reasonable and current data for the questionnaire; and arriving at a data collection instrument with the lowest possible threshold for respondent burden.

The third objective is to identify and critically evaluate different methods of study recruitment and non-response follow-up. A split-sample approach will be used to assign each target respondent to one of two groups: a low-intensity recruitment group or a moderate-intensity recruitment group. All target respondents in the study sample will receive email reminders to encourage participation in the survey. Target respondents in the moderate-intensity recruitment group will also receive up to three telephone contacts to address questions and serve as reminders. The estimated burden per contact is five minutes.

Respondents will be city/town planners and managers, or individuals with similar responsibilities. The majority of survey responses will be collected using a secure, web-based survey data collection system. Respondents who prefer to complete a paper survey will be able to print the survey from the web-based data collection system, complete it, and return it using instructions that will be provided. OMB approval is requested for one year. Participation is voluntary and there are no costs to respondents other than their time. The total estimated burden hours are 450.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
City/Town Manager-Planner	Survey of Community-Based Policy and Environmental Supports for Healthy Eating and Active Living	400	1	1
	Telephone Non-Response Follow-up Contact Script	200	3	5/60

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–2413 Filed 2–2–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 20, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–(800) 741–8138 (301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 20, 2012, during the morning session, the committee will discuss supplemental new drug

application (NDA) 022465/S–010, VOTRIENT (pazopanib hydrochloride) Tablets, application submitted by Glaxo Wellcome Manufacturing Pte Ltd. doing business as GlaxoSmithKline. The proposed indication (use) for this product is for the treatment of patients with advanced soft tissue sarcoma (STS) who have received prior chemotherapy. The phase 3 STS trial population excluded patients with adipocytic STS or gastrointestinal stromal tumors.

During the afternoon session, the committee will discuss NDA 022576, with the proposed trade name TALTORVIC (ridaforolimus) Tablets, application submitted by Merck Sharp & Dohme Corp. The proposed indication (use) for this product is for the treatment of adult and pediatric patients (aged 13 through 17 years with weight over 100 lb or 45.4 kg) with metastatic soft tissue sarcoma or bone sarcoma as a maintenance therapy for patients who have completed at least 4 cycles of chemotherapy without evidence of disease progression.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 6, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m. and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 27, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 28, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 31, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–2462 Filed 2–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2012–0001]

Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on February 21, 2012, in Washington, DC. The meeting will be open to the public. As an alternative to on-site attendance, U.S. Customs and Border Protection (CBP) will also offer a live webcast of the COAC meeting via the Internet.

DATED: COAC will meet on Tuesday, February 21, 2012, from 10 a.m. to 4 p.m. Please note that the meeting may close early if the committee has completed its business.

REGISTRATION: If you plan on attending via webcast, please register online at *https://apps.cbp.gov/te_registration/?w=73* by close-of-business on February 17, 2012. Please feel free to share this information with interested members of your organizations or associations. If you plan on attending on-site, please register either online at *https://apps.cbp.gov/te_registration/?w=72,* or by email to *tradeevents@dhs.gov,* or by fax to (202) 325–4290 by close-of-business on February 17, 2012.

If you have completed an online webcast registration and wish to cancel your registration, you may do so at *https://apps.cbp.gov/te_registration/cancel.asp?w=73.* If you have completed an online on-site registration and wish to cancel your registration, you may do so at *https://apps.cbp.gov/te_registration/cancel.asp?w=72.*

ADDRESSES: The meeting will be held at U.S. Access Board Conference, 1331 F Street NW., Suite 800 in Washington, DC 20004. All visitors report to the lobby in the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than February 15, 2012, and must be identified by USCBP–2012–0001 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 5.2A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to *http://www.regulations.gov.*

There will be three public comment periods held during the meeting on

February 21, 2012. On-site speakers are requested to limit their comments to three (3) minutes. Contact the individual listed below to register as a speaker. Please note that the public comment period for on-site speakers may end before the time indicated on the schedule that is posted on the CBP web page at the time of the meeting. Comments can also be made electronically anytime during the COAC meeting webcast, but please note that webcast participants will not be able to provide oral comments. Comments submitted electronically will be read into the record during the three (3) public comment periods.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 5.2A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

Agenda

The COAC will hear from the following subcommittees on the topics listed below and then will review, deliberate, and formulate recommendations on how to proceed on those topics:

- The work of the Global Supply Chain Security Air Cargo Subcommittee: Air Cargo Advance Screening (ACAS) strategic plan for public release.
- The work of the One U.S. Government at the Border Subcommittee: Discussions on the 2012 subcommittee work plan.
- The work of the Intellectual Property Rights (IPR) Enforcement Subcommittee: IPR Distribution Chain Management concept.

Prior to the COAC taking action on any of these topics of the three above-mentioned subcommittees, members of the public will have an opportunity to provide comments orally or, for comments submitted electronically during the meeting, by reading the comments into the record.

The COAC will also receive an update and discuss the following Initiatives and Subcommittee topics that were discussed at its December 7, 2011 meeting:

- The National Supply Chain Security Strategy.
- The CBP Initiatives of the Customs and Trade Partnership Against Terrorism (C–TPAT) program and Beyond the Border (BTB)—Report by the Global Supply Chain Security Land Border Subcommittee.
- The automation of Ocean and Rail manifest, Cargo Release, and other CBP automation pilots in the Automated Commercial Environment (ACE).
- Centralization of single transaction bonds and Coordination of bond issues that apply to other subcommittees—Report by the Bond Subcommittee.
- The evaluation plan regarding Centers of Expertise and Simplified Entry pilot—Report by the Trade Facilitation Subcommittee.
- Feedback received by the agency on previously submitted recommendations—Report by the AD/CVD Subcommittee.
- Feedback received by the agency on previously submitted recommendations—Report by the Role of the Broker Subcommittee.

Dated: January 31, 2012.

Maria Luisa O'Connell,

Senior Advisor for Trade, Office of Trade Relations.

[FR Doc. 2012–2478 Filed 2–2–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–07]

Notice of Submission of Proposed Information Collection to OMB Inspector Candidate Assessment Questionnaire

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Individuals interested in conducting Uniform Physical Condition Standards inspections on behalf of PIH–REAC are requested to complete this form. The form is a questionnaire that provides PIH–REAC with basic background information about the individual's inspection skills and abilities.

DATES: *Comments Due Date: March 5, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0243) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov.* Fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Inspector Candidate Assessment Questionnaire.

OMB Approval Number: 2577–0243.

Form Numbers: HUD–50002.

Description of the Need for the Information and Its Proposed Use:

Individuals interested in conducting Uniform Physical Condition Standards inspections on behalf of PIH–REAC are requested to complete this form. The form is a questionnaire that provides PIH–REAC with basic background information about the individual's inspection skills and abilities.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	800	1		1		800

Total Estimated Burden Hours: 800.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 27, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–2469 Filed 2–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–08]

Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request Emergency Solutions Grants Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 5, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0089) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Emergency Solutions Grants Program.

OMB Approval Number: 2506–0089.

Form Numbers: HUD–4150.

Description of the Need for the Information and Its Proposed Use: This submission is to request a reinstatement with revisions of an expired information collection for the reporting burden associated with program and recordkeeping requirements that Emergency Solutions Grants (ESG) program recipients will be expected to implement and retain. This submission is limited to the reporting burden under the ESG entitlement program, formerly titled, Emergency Shelter Grants Program and changed to match the new program name created through the HEARTH Act. To see the regulations for the new ESG program and applicable supplementary documents, visit HUD's Homeless Resource Exchange ESG page at *http://www.hudhre.info/esg/.* The statutory provisions and the implementing interim regulations (also found at 24 CFR part 576) that govern the program require new program and recordkeeping requirements.

Members of the Affected Public: ESG grantee and subgrantee lead persons.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	2,360	222		0.698		367,081

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 27, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–2488 Filed 2–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–02]

Notice of Proposed Information Collection: Comment Request; Single Family Mortgage Insurance on Hawaiian Homelands

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of

Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–(800) 877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Control Number, if applicable: 2502–0358.

Description of the need for the information and proposed use: FHA insures mortgages on single-family dwellings under provisions of the National Housing Act (12 U.S.C. 1709). The Housing and Urban Rural Recovery Act (HURRA), Public Law 98–181, amended the National Housing Act to add Section 247 (12 U.S.C. 1715z–12) to permit FHA to insure mortgages for properties located on Hawaiian Homelands. Under this program, the mortgagor must be a native Hawaiian. Section 247 requires that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) will be a co-mortgagor; (b) guarantees or reimburses the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian homelands; or (c) offers other security acceptable to the Secretary.

In accordance with 24 CFR 203.43i, the collection of information is verification that a loan applicant is a native Hawaiian and that the applicant holds a lease on land in a Hawaiian Homelands area. A borrower must obtain verification of eligibility from DHHL and submit it to the lender. A borrower cannot obtain a loan under these provisions without proof of status as a native Hawaiian. United States citizens living in Hawaii are not eligible for this leasehold program unless they are native Hawaiians. The eligibility document is required to obtain benefits.

In accordance with 24 CFR 203.439(c), lenders must report monthly to HUD and the DHHL on delinquent borrowers and provide documentation to HUD to support that the loss mitigation requirements of 24 CFR 203.604 have been met. To assist the DHHL in identifying delinquent loans, lenders report monthly. A delinquent mortgage that is reported timely would allow DHHL to intervene and prevent foreclosure. This collection of data is cited in 2502–0060.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 109. The number of respondents is 272, the number of responses is 544, the frequency of response is on occasion, and the burden hour per response is one hour and four minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 30, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–2484 Filed 2–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–02]

Notice of Proposed Information Collection for Public Comment; Public Housing Agency (PHA) 5-Year and Annual Plan

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department is soliciting public comments on the subject proposal. PHAs are required to submit annual and 5-Year Plans to HUD as required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1). The purpose of the plan is to provide a framework for local accountability and an easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

DATES: *Comment Due Date:* April 3, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Collette.Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 490 L'Enfant Plaza, Room 2206, Washington, DC 20024; telephone (202) 402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed

information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) 5-Year and Annual Plan.

OMB Control Number, if applicable: 2577–0226.

Description of the Need for the Information and Proposed Use: The PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. The PHA Plan informs HUD, residents, and the public of the PHA's mission for serving the needs of low, very low-income, and extremely low-income families and its strategy for addressing those needs. This data allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs. The PHA Plan is being revised to address, clarify and provide additional guidance on the submission requirements for qualified and non-qualified PHAs, as well as to address previous public comments. Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act, of the Housing and Economic Recovery Act (HERA) of 2008 amends section 5A(b) of the 1937 Act by establishing ''qualified public housing agencies,'' a category of PHAs with less than 550 public housing units and tenant-based vouchers combined that are provided substantial paperwork relief, primarily with respect to the PHA Annual Plan requirements in section 5(A)(b) of the United States Housing Act of 1937. The paperwork relief exempts qualified PHAs from the requirement to prepare and submit an annual PHA plan to HUD for review.

This Act impacts approximately seventy-four percent, or 2,994 of the 4,053 PHAs that are required to submit an annual PHA plan. In addition to the exemption from submitting annual plans for qualified agencies, because of the different annual plan submission requirements of agencies that are considered standard, high-performer, Housing Choice Voucher (HCV) only, small, and troubled within 24 CFR part 903, the existing approved forms were determined to be incompatible with the program requirements. Therefore, some previously approved forms have been separated into new forms that will be completed by different classes of PHAs. These changes also reflect recommendations made by the public in a previous information collection. Specifically, this information collection revises previously approved OMB forms HUD–50077–SL and HUD–50077–CR; adds Certifications of Compliance with PHA Plans and Related Regulations (form HUD–50077–SM–HP and HUD–50077–ST–HCV) formerly appearing on form HUD 50077 as separate documents; deletes approved OMB form HUD–50075, and replaces that form with five new forms (form HUD–50075–5Y, HUD–50075–ST, HUD–50075–SM–HP, HUD–50075–HCV, and HUD–50075–QA).

Qualified PHAs no longer submit information on discretionary programs (demolition or disposition, HOPE VI, Project-based vouchers, required or voluntary conversion, homeownership, or capital improvements, etc.) as part of an Annual PHA Plan submission. However, Qualified PHAs that intend to implement these activities are still subject to the full application and approval processes that exist for demolition or disposition, designated housing, conversion, homeownership, and other special application processes that will no longer be tied to prior authorization in an Annual PHA Plan for a Qualified PHA. All PHAs, including the PHAs identified as Qualified PHAs under HERA, must continue to submit any demolition or disposition, public housing conversion, homeownership, or other special applications as applicable to HUD's Special Applications Center (SAC) in Chicago for review and approval or to HUD Headquarters for CFFP proposals. It is expected that Qualified PHAs, as a matter of good business practice, continue to keep their residents, the general public, and the local HUD office apprised of any plans to initiate these types of programs and activities.

Agency Form Number, if applicable: HUD–50075–5Y, HUD–50075–ST, HUD–50075–SM–HP, HUD–50075–HCV, HUD–50075–QA, HUD–50075.1, HUD–50075.2, HUD–50077–ST–HCV, HUD–50077–SM–HP, HUD–50077–CR, HUD–50077–SL.

Members of the Affected Public: Local, Regional and State Body Corporate Politic Public Housing Agencies (PHAs) Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of annual burden hours needed to prepare the information collection is 20,290; estimated number of respondents is 4,053; the frequency of response is annually for all PHAs. All PHAs may submit updated PHA Plans when amending or modifying any PHA policy, rule, regulation or other aspect of the plan.

Status of the Proposed Information Collection: Reinstatement, with change, of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 26, 2012.

Merrie Nichol-Dixon,

Deputy Director for Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2012–2481 Filed 2–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–05]

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: COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; ENERGY: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave. SW., Washington, DC 20585: (202) 586–5422; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006: (202) 254–5522; NAVY: Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9305 (These are not toll-free numbers).

Dated: January 26, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 02/03/2012

Suitable/Available Properties

Building

Iowa

Fee Booth
Bridge View Park
Melrose IA 52569
Landholding Agency: COE
Property Number: 31201210001
Status: Unutilized
Comments: Off-site removal only; 180 sq. ft.; current use: Fee booth; need repairs—walls deteriorating due to moisture

Fee Booth
Buck Creek Park
Moravia IA 52571
Landholding Agency: COE
Property Number: 31201210002
Status: Unutilized
Comments: Off-site removal only; 180 sq. ft.; current use: Fee booth; need repairs—walls deteriorating due to moisture

Fee Booth
Prairie Ridge Park
Moravia IA 52571
Landholding Agency: COE
Property Number: 31201210003
Status: Underutilized
Comments: Off-site removal only; 180 sq. ft.; current use: Fee booth; need repairs—walls contaminated with mold

Kansas

Shower/Latrine
Stockdale Park
Manhattan KS 66502
Landholding Agency: COE
Property Number: 31201210004
Status: Underutilized
Comments: Off-site removal only; 576 sq. ft.; current use: Shower/toilet; need repairs—bldg. deteriorating

2 Single Privies
Spillway State Park
Manhattan KS 66502
Landholding Agency: COE
Property Number: 31201210005
Status: Underutilized
Comments: Off-site removal only; 72 sq. ft.; current use: Toilet; need major repairs—bldgs. are deteriorating

Comfort Station
Tuttle Creek Cove
Manhattan KS 66502
Landholding Agency: COE
Property Number: 31201210006
Status: Underutilized
Comments: Off-site removal only; 312 sq. ft.; current use: Toilet; need major repairs—bldg. is deteriorating

2 Vault Toilets
Stockdale Park
Manhattan KS
Landholding Agency: COE
Property Number: 31201210007
Status: Underutilized
Comments: Off-site removal only; 80 sq. ft.; current use: Toilet; bldgs. are deteriorating—need major repairs

Minnesota

Border Patrol Station
1412 Hwy 11–17 W
Intern'l Falls MN 56649
Landholding Agency: GSA
Property Number: 54201210001
Status: Excess
GSA Number: 1–X–MN–0595–AA
Comments: 2,368 sq. ft.; current use: Office, garage, cold storage; possible asbestos and lead base paint

Unsuitable Properties

Building

Arkansas

Armer House
Buffalo Nat'l River
Compton AR 72624
Landholding Agency: Interior
Property Number: 61201210003
Status: Excess
Comments: Beyond repair; does not meet criteria or potential for habitation or other use for homeless persons
Reasons: Extensive deterioration

California

Facility 02747
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77201140022
Status: Excess
Reasons: Secured Area

Florida

Stanfield Property
Daytona Beach Comm. College
New Smyrna Beach FL 32169
Landholding Agency: Interior
Property Number: 61201210001
Status: Unutilized
Comments: Beyond repair; does not meet criteria or potential for habitation or other use for homeless persons
Reasons: Extensive deterioration

Missouri

Water Quality Bldg.
Pomme de Terre Lake Project
Hermitage MO 65668
Landholding Agency: COE
Property Number: 31201210008
Status: Underutilized
Comments: Deteriorated beyond repair; therefore, does not meet criteria or potential for habitation and/or other use for homeless persons
Reasons: Extensive deterioration

New Mexico

15 Bldgs.
Los Alamos Nat'l Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201210001
Status: Excess
Directions: 03–0097, 03–0251, 03–0373, 03–0460, 03–0461, 03–0462 03–0467, 03–0472, 03–0473, 03–1578, 03–1664, 03–1701, 03–1789,03–2260, 16–0363
Reasons: Secured Area

North Carolina

Nat'l Park Service
Superintendent's Quarters
Kills Devil Hill NC 27948
Landholding Agency: Interior
Property Number: 61201210002
Status: Unutilized
Comments: Beyond repair; does not meet criteria or potential for habitation or other use for homeless persons
Reasons: Extensive deterioration

Land

Colorado

Pine River Project
Bureau of Reclamation
Bayfield CO
Landholding Agency: Interior
Property Number: 61201140008
Status: Excess
Comments: Landlocked
Reasons: Not accessible by road

Illinois

FAA Middle Marker Site
467 37th Ave
St. Charles IL 60174
Landholding Agency: GSA
Property Number: 54201140008
Status: Excess
GSA Number: 1–U–IL–798
Comments: 500 gallon above ground tank for diesel storage is 1,356 ft. from the FAA Middle Marker Site
Reasons: Within 2000 ft. of flammable or explosive material

Washington

Shelton-Bangor Bremerton Rail
1011 Tautog Circle
Silverdale WA 98315
Landholding Agency: Navy
Property Number: 77201210001
Status: Excess
Comments: Within 200 to 300 ft. from commercial facilities that handle explosive materials
Reasons: Within 2000 ft. of flammable or explosive material

[FR Doc. 2012–2065 Filed 2–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–42]

Announcement of Funding Awards for Fiscal Year 2010 Sustainable Construction in Indian Country Small Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2010 Sustainable Construction in Indian Country Small Grant (SCinIC) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the award to be used to help develop, deploy, and disseminate innovative approaches of Sustainable Construction methods or practices that are suitable for Indian Country.

FOR FURTHER INFORMATION CONTACT: Mike Blanford, Affordable Housing Research and Technology, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Room 8134, 451 Seventh Street SW., Washington, DC 20410, Telephone at (202) 402–5728. Persons with speech or hearing impairments may call the Federal Relay Service TTY at (800) 877–8339. Except for the ''800'' number, these telephone numbers are not toll-free. Individuals may also reach Mr. Blanford via email at *Michael.D.Blanford@hud.gov.*

SUPPLEMENTARY INFORMATION: HUD invited applicants to submit proposals for funding to develop and disseminate one or more sets of ''Lessons Learned'' that will inform Native American communities of the issues to be considered when taking on sustainable construction efforts. HUD was looking for applications that can provide Native American communities with information from Native American communities that have undertaken some level of Sustainable Construction, and to use their experience to inform other communities as they consider undertaking similar activity. Grants could range from $50,000 to $125,000. Grants are awarded for up to a two-year period.

The Catalog of Federal Domestic Assistance number for this program is 14.525.

On October 14, 2011, HUD posted a Notice of Funds Availability (NOFA) for Fiscal Year 2010 Transformation Initiative: Sustainable Construction in Indian Country Small Grant Program on Grants.gov. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545).

Dated: January 6, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

List of Awardees for Grant Assistance Under the Fiscal Year (FY) 2010 Sustainable Construction in Indian Country Small Grant Program Funding Competition, by Institution, Address, and Grant Amount

1. Enterprise Community Partners, 10227 Wincopin Circle, Columbia, MD 21044–3400. Grant: $120,678.

[FR Doc. 2012–2476 Filed 2–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary is announcing that the National Commission on Indian Trust Administration and Reform (the Commission) will hold its first meeting in Washington, DC. The purpose of the meeting is for the Commission to commence performance of the duties set forth in Secretarial Order No. 3292. This includes a thorough evaluation of the existing management and administration of the trust administration system to support a well-reasoned and factually-based recommendations for potential management and administration improvements.

DATES: The Commission's first meeting will begin at 8:30 a.m. on March 1, 2012, and end at 4 p.m. on March 2, 2012. Attendance is open to the public, but limited space is available. Members of the public who wish to attend should RSVP by February 24, 2012 to: *trustcommission@ios.doi.gov.*

ADDRESSES: The first meeting will be held at the Department of the Interior, 1849 C Street NW., Room 5160, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Meghan Conklin, Associate Deputy Secretary, Office of the Secretary, 1849 C Street NW., Washington, DC 20240; or email to *Meghan_Conklin@ios.doi.gov.* Members of the public who wish to attend the meeting should RSVP to: *trustcommission@ios.doi.gov* by February 24, 2012.

SUPPLEMENTARY INFORMATION: As part of President Obama's commitment to fulfilling this nation's trust responsibilities to Native Americans, the Secretary of the Interior appointed members to serve on the National Commission on Indian Trust Administration and Reform established under Secretarial Order No. 3292, dated December 8, 2009. The Commission will play a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships. The Secretary selected the members after a public solicitation for nominations and evaluated the candidates on the basis of their expertise and experience, including in government and trust, financial, asset and natural resource management. Members were selected in accordance with the Federal Advisory Committee Act and will serve without compensation.

The Commission will complete a comprehensive evaluation of the Department's management and administration of trust assets within a two year period and offer recommendations to the Secretary of the Interior of how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from these Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and make recommendations to the Secretary regarding any such termination.

Meeting Details

At the first meeting, the Commission will be discussing its goals and procedures, developing a meeting schedule and work plan, and reviewing past trust reform and FACA committee efforts. A final agenda will be posted on *www.doi.gov/cobell* prior to the meeting. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public. **Please note:** any member of the public who wishes to attend must RSVP to *trustcommision@ios.doi.gov* by February 24, 2012, and bring valid Government identification (such as a driver's license) on the day of the meeting to obtain access to the building. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Meghan Conklin at *Meghan_Conklin@ios.doi.gov* at least seven calendar days prior to the meeting.

Written comments may be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: January 27, 2012.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2012–2401 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Trust Land Consolidation Draft Plan

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability.

SUMMARY: The Cobell Class Action Settlement Agreement established a trust land consolidation fund to be used for consolidating Indian trust and restricted lands and acquiring fractional interests in these lands. We are seeking comments on the draft plan for accomplishing these goals.

DATES: Submit comments by March 19, 2012.

ADDRESSES: Send comments on the draft plan to: Elizabeth Appel, Bureau of Indian Affairs, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104; Email: *elizabeth.appel@bia.gov.* You can request copies of the draft plan by sending a letter or email to one of the above addresses or by calling 505–563–3805.

FOR FURTHER INFORMATION CONTACT: Meghan Conklin, Department of the Interior, 1849 C Street NW., Washington, DC 20240. Email: meghan_conklin@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

In 1996, Eloise Cobell filed class action litigation seeking redress for the alleged mismanagement of land trust accounts for American Indians. The litigation eventually included hundreds of motions, seven full trials, and dozens of rulings and appeals. On December 8, 2009, the Department reached a negotiated settlement agreement to resolve the issues that gave rise to the litigation. The settlement agreement:

- Ended litigation regarding the federal government's performance of an historical accounting for trust accounts maintained by the United States on behalf of more than 300,000 individual Indians.
- Established a fund to be distributed to class members to compensate them for their historical accounting claims, and to resolve potential claims that

prior U.S. officials mismanaged the administration of trust assets.

• Established a trust land consolidation fund for the voluntary buy-back and consolidation of fractionated land interests.

The draft plan we are making available for comment would implement the last of the above elements by carrying out a program of land consolidation within the 10-year deadline established in the agreement. The trust land consolidation fund is intended to remedy the proliferation of thousands of new trust accounts caused by the increasing subdivision or ''fractionation'' of land interests through succeeding generations. Fractionation is the result of the division among multiple heirs of increasingly smaller land interests. The land consolidation fund and the associated land consolidation program will provide individual American Indians an opportunity to obtain cash payments for fractionated land interests and will make consolidated lands available for use by tribal communities.

The goal of the draft land consolidation plan, developed as a result of consultation with Indian tribal representatives, is to reduce land fractionation as quickly and economically as possible. The draft plan would achieve sufficient capacity and efficiency for the implementation of the land consolidation program under the settlement agreement and includes a land consolidation process consisting of three elements:

• A targeted land fractionation program to focus on areas where land fractionation is greatest;

• A willing seller program to enable sales of fractionated interests from interested owners; and

• The availability of cooperative agreements to maximize tribal involvement in the consolidation process.

Copies of the complete draft plan are available at the address given in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 27, 2012.

David J. Hayes,

Deputy Secretary of the Interior.

[FR Doc. 2012–2400 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[BOEM–2012–0006]

Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) will use Form 0008 to issue commercial renewable energy leases on the Outer Continental Shelf (OCS). In the preamble to the April 29, 2009, Final Rule, ''Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf,'' BOEM stated that ''we intend to develop a model lease form through a public process that will invite all interested and affected parties for their input.'' (74 FR 19638, April 29, 2009).

The BOEM developed a draft of the form included in this Notice, and published it in the **Federal Register** (76 FR 55090, September 6, 2011) with a 30-day comment period (Draft Form). BOEM has reviewed all the comments received and revised the Draft Form where appropriate. For further information, including summaries of comments and BOEM's response to those comments, visit BOEM's Web site, at *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.*

DATES: The lease form will be effective and available for use on February 21, 2012.

FOR FURTHER INFORMATION CONTACT: Maureen A. Bornholdt, Program Manager, Office of Renewable Energy Programs, at (703) 787–1300 for lease questions.

Dated: January 23, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

BILLING CODE 4310–VH–P

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF OCEAN ENERGY MANAGEMENT **COMMERCIAL LEASE OF SUBMERGED LANDS FOR RENEWABLE ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF** ***Paperwork Reduction Act of 1995 statement:*** *This form does not constitute an information collection as defined by 44 U.S.C. § 3501 et seq. and therefore does not require approval by the Office of Management and Budget.*	Office	Renewable Energy Lease Number
	Cash Bonus and/or Acquisition Fee	Resource Type
	Effective Date	Block Number(s)

This lease, which includes any addenda hereto, is hereby entered into by and between the United States of America, ("Lessor"), acting through the Bureau of Ocean Energy Management ("BOEM"), its authorized officer, and

Lessee	Interest Held

("Lessee"). This lease is effective on the date written above ("Effective Date") and will continue in effect until the lease terminates as set forth in Addendum "B." In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, covenants, and stipulations contained herein and attached hereto, the Lessee and the Lessor agree as follows:

Section 1: Statutes and Regulations.

This lease is issued pursuant to subsection 8(p) of the Outer Continental Shelf Lands Act ("the Act"), 43 U.S.C. §§ 1331 *et seq.* This lease is subject to the Act and regulations promulgated pursuant to the Act, including but not limited to, offshore renewable energy and alternate use regulations at 30 C.F.R. Part 585 as well as other applicable statutes and regulations in existence on the Effective Date of this lease. This lease is also subject to those statutes enacted (including amendments to the Act or other statutes) and regulations promulgated thereafter, except to the extent that they explicitly conflict with an express provision of this lease. It is expressly understood that amendments to existing statutes and regulations, including but not limited to the Act, may be made, and/or new statutes may be enacted or new regulations promulgated, which do not explicitly conflict with an express provision of this lease, and that the Lessee bears the risk that such may increase or decrease the Lessee's obligations under the lease.

Section 2: Rights of the Lessee.

(a) The Lessor hereby grants and leases to the Lessee the exclusive right and privilege, subject to the terms and conditions of this lease and applicable regulations, to: (1) submit to the Lessor for approval a Site Assessment Plan (SAP) and Construction and Operations Plan (COP) for the project identified in Addendum "A" of this lease; and (2) conduct activities in the area identified in Addendum A of this lease ("leased area") that are described in a SAP or COP that has been approved by the Lessor. This lease does not, by itself, authorize any activity within the leased area.

(b) The rights granted to the Lessee herein are limited to those activities described in any SAP or COP approved by the Lessor. The rights granted to the Lessee are limited by the lease-specific terms, conditions, and stipulations required by the Lessor per Addendum C.

(c) This lease does not authorize the Lessee to conduct activities on the Outer Continental Shelf (OCS) relating to or associated with the exploration for, or development or production of, oil, gas, other seabed minerals, or renewable energy resources other than those renewable energy resources identified in Addendum "A."

Section 3: Reservations to the Lessor.

(a) All rights in the leased area not expressly granted to the Lessee by the Act, applicable regulations, this lease, or any approved SAP or COP, are hereby reserved to the Lessor.

(b) The Lessor will decide whether to approve a SAP or COP in accordance with the applicable regulations in 30 C.F.R. Part 585. The Lessor retains the right to disapprove a SAP or COP based on the Lessor's determination that the proposed activities would have unacceptable environmental consequences, would conflict with one or more of the requirements set forth in subsection 8(p)(4) of the Act (43 U.S.C. § 1337(p)(4)), or for other reasons provided by the Lessor pursuant to 30 C.F.R. § 585.613(e)(2) or 30 C.F.R. § 585.628(f)(2). Disapproval of plans will not subject the Lessor to liability. The Lessor also retains the right to approve with modifications a SAP or COP, as provided in applicable regulations.

(c) The Lessor reserves the right to suspend the Lessee's operations in accordance with the national security and defense provisions of section 12 of the Act and applicable regulations.

(d) The Lessor reserves the right to authorize other uses within the leased area that will not unreasonably interfere with activities described in Addendum "A."

Section 4: Payments.

(a) The Lessee must make all rent payments to the Lessor in accordance with applicable regulations in 30 C.F.R. Part 585, unless otherwise specified in Addendum "B."

(b) The Lessee must make all operating fee payments to the Lessor in accordance with applicable regulations in 30 C.F.R. Part 585, as specified in Addendum "B."

Section 5: Plans.

The Lessee may conduct those activities described in Addendum "A" only in accordance with a SAP or COP approved by the Lessor. The Lessee may not deviate from an approved SAP or COP except as provided in applicable regulations in 30 C.F.R. Part 585.

Section 6: Associated Project Easements.

Pursuant to 30 C.F.R. § 585.200(b), the Lessee has the right to one or more project easements, without further competition, for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS, as necessary for the full enjoyment of the lease, and under applicable regulations in 30 C.F.R. Part 585. As part of submitting a COP for approval, the Lessee may request that one or more easement(s) be granted by the Lessor. If the Lessee requests that one or more easement(s) be granted when submitting a COP for approval, such project easements will be granted by the Lessor in accordance with the Act and applicable regulations in 30 C.F.R. Part 585 upon approval of the COP in which the Lessee has demonstrated a need for such easements. Such easements must be in a location acceptable to the Lessor, and shall be subject to such conditions as the Lessor may require. The project easement(s) that would be issued in conjunction with an approved COP under this lease will be described in Addendum "D" to this lease, which will be updated as necessary.

Section 7: Conduct of Activities.

The Lessee must conduct, and agrees to conduct, all activities in the leased area in accordance with an approved SAP or COP, and with all applicable laws and regulations.

The Lessee further agrees that no activities authorized by this lease will be carried out in a manner that:

(a) could unreasonably interfere with or endanger activities or operations carried out under any lease or grant issued or maintained pursuant to the Act, or under any other license or approval from any Federal agency;

(b) could cause any undue harm or damage to the environment;

(c) could create hazardous or unsafe conditions; or

(d) could adversely affect sites, structures, or objects of historical, cultural, or archaeological significance, without notice to and direction from the Lessor on how to proceed.

Section 8: Violations, Suspensions, Cancellations, and Remedies.

If the Lessee fails to comply with (1) any of the applicable provisions of the Act or regulations, (2) the approved SAP or COP, or (3) the terms of this lease, including associated Addenda, the Lessor may exercise any of the remedies that are provided under

the Act and applicable regulations, including, without limitation, issuance of cessation of operations orders, suspension or cancellation of the lease, and/or the imposition of penalties, in accordance with the Act and applicable regulations.

The Lessor may also cancel this lease for reasons set forth in subsection 5(a)(2) of the Act (43 U.S.C. § 1334(a)(2)), or for other reasons provided by the Lessor pursuant to 30 C.F.R. § 585.437.

Non-enforcement by the Lessor of a remedy for any particular violation of the applicable provisions of the Act or regulations, or the terms of this lease, shall not prevent the Lessor from exercising any remedy, including cancellation of this lease, for any other violation or for the same violation occurring at any other time.

Section 9: Indemnification.

The Lessee hereby agrees to indemnify the Lessor for, and hold the Lessor harmless from, any claim caused by or resulting from any of the Lessee's operations or activities on the leased area or project easements or arising out of any activities conducted by or on behalf of the Lessee or its employees, contractors (including Operator, if applicable), subcontractors, or their employees, under this lease, including claims for:

a. loss or damage to natural resources,
b. the release of any petroleum or any Hazardous Materials,
c. other environmental injury of any kind,
d. damage to property,
e. injury to persons, and/or
f. costs or expenses incurred by the Lessor.

The Lessee shall not be liable for any losses or damages proximately caused by the activities of the Lessor or the Lessor's employees, contractors, subcontractors, or their employees. The Lessee shall pay the Lessor for damage, cost, or expense due and pursuant to this section within 90 days after written demand by the Lessor. Nothing in this lease shall be construed to waive any liability or relieve the Lessee from any penalties, sanctions, or claims that would otherwise apply by statute, regulation, operation of law, or could be imposed by the Lessor or other government agency acting under such laws.

"Hazardous Material" means

1. Any substance or material defined as hazardous, a pollutant, or a contaminant under the *Comprehensive Environmental Response, Compensation, and Liability Act* at 42 U.S.C. §§ 9601(14) and (33);
2. Any regulated substance as defined by the Resource Conservation and Recovery Act ("RCRA") at 42 U.S.C. § 6991 (7), whether or not contained in or released from underground storage tanks, and any hazardous waste regulated under RCRA pursuant to 42 U.S.C. §§ 6921 *et seq.*;
3. Oil, as defined by the Clean Water Act at 33 U.S.C. § 1321(a)(1) and the Oil Pollution Act at 33 U.S.C. § 2701(23); or

4. Other substances that applicable Federal, state, tribal, or local laws define and regulate as "hazardous."

Section 10: Financial Assurance.

The Lessee must provide and maintain at all times a surety bond(s) or other form(s) of financial assurance approved by the Lessor in the amount specified in Addendum "B." As per the applicable regulations in 30 C.F.R. Part 585, if, at any time during the term of this lease, the Lessor requires additional financial assurance, then the Lessee shall furnish the additional financial assurance required by the Lessor in a form acceptable to the Lessor within ninety (90) days after receipt of the Lessor's notice of such adjustment.

Section 11: Assignment or Transfer of Lease.

This lease may not be assigned or transferred in whole or in part without written approval of the Lessor. The Lessor reserves the right, in its sole discretion, to deny approval of the Lessee's application to transfer or assign all or part of this lease. Any assignment will be effective on the date the Lessor approves the Lessee's application. Any assignment made in contravention of this section is void.

Section 12: Relinquishment of Lease.

The Lessee may relinquish this entire lease or any officially designated subdivision thereof by filing with the appropriate office of the Lessor a written relinquishment application, in accordance with applicable regulations in 30 C.F.R. Part 585. No relinquishment of this lease or any portion thereof will relieve the Lessee or its surety of the obligations accrued hereunder, including but not limited to, the responsibility to remove property and restore the leased area pursuant to section 13 of this lease and applicable regulations.

Section 13: Removal of Property and Restoration of the Leased Area on Termination of Lease.

Unless otherwise authorized by the Lessor, pursuant to the applicable regulations in 30 C.F.R. Part 585, the Lessee must remove or decommission all facilities, projects, cables, pipelines, and obstructions and clear the seafloor of all obstructions created by activities on the leased area, including any project easements within two years following lease termination, whether by expiration, cancellation, contraction, or relinquishment, in accordance with any approved SAP, COP, or approved Decommissioning Application, and applicable regulations in 30 C.F.R. Part 585.

Section 14: Safety Requirements.

The Lessee must:

a. maintain all places of employment for activities authorized under this lease in compliance with occupational safety and health standards and, in addition, free

from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating under this lease;

b. maintain all operations within the leased area in compliance with regulations in 30 C.F.R. Part 585 and orders from the Lessor and other Federal agencies with jurisdiction, intended to protect persons, property and the environment on the OCS; and

c. must provide any requested documents and records, which are pertinent to occupational or public health, safety, or environmental protection, and allow prompt access, at the site of any operation or activity that is subject to safety regulations, to any inspector authorized by the Lessor or other Federal agency with jurisdiction.

Section 15: Debarment Compliance.

The Lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations set forth in 2 C.F.R. Parts 180 and 1400 and must communicate the requirement to comply with these regulations to persons with whom it does business related to this lease by including this requirement in all relevant contracts and transactions.

Section 16: Notices.

All notices or reports provided to the Lessor by the Lessee under the terms of this lease must be in writing, except as provided herein. Written notices must be delivered to the party's Lease Representative, as specifically listed in Addendum "A," either electronically, by hand, by facsimile, or by United States first class mail, adequate postage prepaid. Either party may notify the other of a change of address by doing so in writing. Until notice of any change of address is delivered as provided in this section, the last recorded address of either party will be deemed the address for all notices required under this lease. For all operational matters, notices must be provided to the party's Operations Representative, as specifically listed in Addendum "A," as well as the Lease Representative.

Section 17: Severability Clause.

If any provision of this lease is held unenforceable, all remaining provisions of this lease will remain in full force and effect.

Section 18: Modification.

This lease may be modified or amended only by mutual agreement of the Lessor and the Lessee. No such modification or amendment shall be binding unless it is in writing and signed by the Lease Representatives of both the Lessor and the Lessee.

	The United States of America
Lessee	Lessor
(Signature of Authorized Officer)	(Signature of Authorized Officer)
(Name of Signatory)	(Name of Signatory)
(Title)	(Title)
(Date)	(Date)

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "A"

DESCRIPTION OF LEASED AREA AND LEASE ACTIVITIES

Lease Number _____

I. Lessor and Lessee Contact Information

Lessee Company Number: _____

(a) Lessor's Contact Information

	Lease Representative	**Operations Representative**
Name		
Title		
Address		
Phone		
Fax		
Email		

(b) Lessee's Contact Information

	Lease Representative	**Operations Representative**
Name		
Title		
Address		
Phone		
Fax		
Email		

II. Description of Leased Area

The total acreage of the lease area is _____.

This area is subject to later adjustment, in accordance with applicable regulations (*e.g.*, contraction, relinquishment, etc.).

The following blocks or portions of blocks lying within Official Protraction Diagram _____, are depicted on the map attached and comprise _____ acres, more or less.

For the purposes of these calculations, the acreage of a full block is _____.

III. Renewable Energy Resource

IV. Description of the Project

V. Description of Project Easement(s)

Once approved, the Lessor will incorporate your project easement(s) in your lease as Addendum "D."

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "B"

LEASE TERM AND FINANCIAL SCHEDULE

Lease Number _____

I. Lease Term

The duration of each term of the lease is described below. The terms may be extended or otherwise modified in accordance with applicable regulations in 30 C.F.R. Part 585.

Lease Term:	**Duration:**
Preliminary Term	
Site Assessment Term	
Operations Term	

Renewal: The Lessee may request renewal of the operations term of this lease, in accordance with applicable regulations in 30 C.F.R. Part 585. The Lessor, at its discretion, may approve a renewal request to conduct substantially similar activities as were originally authorized under this lease or in an approved COP. The Lessor will not approve a renewal request that involves development of a type of renewable energy not originally authorized in the lease. The Lessor may revise or adjust payment terms of the original lease, as a condition of lease renewal.

Unless otherwise described below, the Preliminary Term begins on the Effective Date of this lease for leases issued competitively. Unless otherwise described below, for noncompetitively issued leases, the Site Assessment Term begins on the Effective Date of this lease. The Operations Term begins on the date that the Lessor approves the Lessee's COP.

II. Definitions

III. Payments

(a) ***Rent.*** The Lessee must pay rent as described below:

- Acres in Project Area: _____
- Annual Rental Rate: $_____ per acre or fraction thereof

- Rental Fee for entire project area: $_____ x _____ (rounded up) = $_____

(1) ***Project Easement.***

Rent for any project easement(s) is described in Addendum "D".

(2) ***Relinquishment.***

If the Lessee submits an application for relinquishment of a portion of the leased area within the first 45 days following the Lease's Effective Date, and the Lessor approves that application, no rent payment will be due on that relinquished portion of the leased area. Later relinquishments of any leased area will reduce the Lessee's rent payments due in the year following the Lessor's approval of the relinquishment.

(b) ***Operating Fee.*** The Lessee must pay an operating fee as described below:

(1) **Initial Operating Fee Payment.**

(2) **Annual Operating Fee Payment.**

(3) **Final Operating Fee Payment.**

(4) **The formula for calculating the operating fee in year *t*.**

(c) ***Reporting, Validation, Audits, and Late Payments.***

IV. Financial Assurance

The Lessor will determine the amount of financial assurance requirements in accordance with applicable regulations at 30 CFR Part 585. The amount of the financial assurance must be no less than the amount required to meet all lease obligations, including:

- The projected amount of rent and other payments due the Lessor over the next 12 months;
- Any past due rent and other payments;
- Other monetary obligations; and
- The estimated cost of facility decommissioning.

(a) **Initial Financial Assurance Due Before Lease's Effective Date.**

(b) **Additional Financial Assurance.**

(C) **Adjustments to Financial Assurance Amounts.** The Lessor reserves the right to adjust the amount of any financial assurance requirement (initial, supplemental or decommissioning) associated with this lease and/or reassess the Lessee's cumulative lease obligations, including decommissioning obligations, pursuant to the applicable regulations in 30 C.F.R. Part 585.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "C"[1]

LEASE-SPECIFIC TERMS, CONDITIONS, AND STIPULATIONS

Lease Number _____

The Lessee's rights to conduct activities on the leased area are subject to the following terms, conditions, and stipulations:

[1] Note: Stipulations are developed on a case-by-case basis and relate to location, technology utilized, and other relevant factors, including site-specific findings from project-specific environmental analyses.

The mitigation, monitoring, and reporting requirements listed in this Addendum C are adopted as terms and conditions of the lease. Monitoring results and required reports must be submitted to the Lessor as specified below:

Bureau of Ocean Energy Management
Office of Renewable Energy Programs
381 Elden Street, HM1328
Herndon, Virginia 20170
Phone: 703-787-1300
Fax: 703-787-1708

The Lessor may change this address upon notice to the Lessee in accordance with Section 16 of this lease.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT

ADDENDUM "D"

PROJECT EASEMENT

Lease Number _____

This section includes a description of the Project Easement(s), if any, associated with this lease, and the financial terms associated with it. This section will be updated as necessary.

[END PHOTO]

<FRDOC> [FR Doc. 2012–2496 Filed 2–2–12; 8:45 am]

<BILCOD>BILLING CODE 4310–VH–P

[FR Doc. 2012–2496 Filed 2–2–12; 8:45 am]
BILLING CODE 4310–VH–C

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2011–0093]

Commercial Leasing for Wind Power Development on the Outer Continental Shelf (OCS) Offshore Virginia—Call for Information and Nominations

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations.

SUMMARY: BOEM invites submissions of nominations from parties interested in obtaining one or more commercial leases that would allow a lessee to propose the construction of a wind energy project(s) on the OCS offshore Virginia. Although the publication of this notice is not itself a leasing announcement, the area described herein may be subject to future leasing. BOEM will use the response to this Call for Information and Nominations (Call) to gauge specific interest in the acquisition of commercial wind lease(s) in some or all of the area and to determine whether competitive interest exists in any particular area, as required by 43 U.S.C. 1337(p)(3). Parties wishing to submit a nomination in response to this Call should submit detailed and specific information as described in the section entitled, ''Required Nomination Information.''

BOEM also requests comments from interested and affected parties regarding site conditions, resources, and multiple uses of the identified area that would be relevant to BOEM's review of the nominations submitted and any subsequent decision concerning whether to offer all or part of the area for commercial wind leasing. Information that BOEM is requesting is described in the section entitled, ''Requested Information from Interested or Affected Parties.''

This notice is published pursuant to subsection 8(p)(3) of the OCS Lands Act (43 U.S.C. 1337(p)(3)), which was added by section 388 of the Energy Policy Act of 2005 (EPAct), as well as the implementing regulations at 30 CFR part 585.

The Call Area described in this notice is located on the OCS offshore Virginia. The western edge of the Call Area is approximately 23.5 nautical miles (nmi) from the Virginia Beach coastline, and extends to an eastern edge that is approximately 36.5 nmi from the same location. The longest north/south portion is approximately 10.5 nmi in length and the longest portion of the east/west portion is approximately 13 nmi in length. The area is made up of 19 whole OCS blocks and 13 sub-blocks. The entire area is approximately 112,799 acres, or 45,648 hectares. This area was delineated in consultation with the BOEM Virginia Renewable Energy Task Force. A detailed description of the area is presented later in this notice.

DATES: BOEM must receive your nomination describing your interest in this potential leasing area postmarked by March 19, 2012. BOEM will consider only those nominations received or postmarked by then. Submissions of comments or other submissions of information are also requested by this date.

Submission Procedures: If you are submitting a nomination for a commercial lease in response to this Call, please submit your nomination by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817. In addition to a paper copy of the nomination, include an electronic copy of the nomination on a compact disc (CD). Nominations must be postmarked by March 19, 2012. BOEM will list the parties that submitted nominations and the location of the proposed lease areas (OCS blocks they nominated) on the BOEM Web site after the 45-day comment period closes.

Comments and other submissions of information may be submitted by either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0093, then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. *By U.S. Postal Service or other delivery service, sending your comments and information to the following address:* Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817.

All responses will be reported on *http://www.regulations.gov.*

If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this Call entitled, ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Ms. Erin C. Trager, Project Coordinator, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1320, or *Erin.Trager@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Call for Information and Nominations

The OCS Lands Act requires BOEM to award leases competitively, unless BOEM makes a determination that there is no competitive interest (43 U.S.C. 1337(p)(3)). The issuance of this Call is not intended to indicate that BOEM has determined that competitive interest exists in the area identified. Rather, this notice is the first step in the renewable energy leasing process offshore Virginia and the responses to it will assist BOEM in determining whether competitive interest exists in the area. This notice also requests information from interested and affected parties on issues relevant to BOEM's review of nominations for potential leasing in the area.

BOEM is issuing a Call instead of a Request for Interest (RFI) to facilitate and expedite the leasing process consistent with the goals and objectives of the Secretary of the Interior's ''Smart from the Start'' initiative. If an RFI were issued and the responses to it indicated competitive interest, the applicable regulations would require BOEM to issue a Call, which BOEM believes would be duplicative of the RFI process. Issuance of this Call, without an RFI, is designed to enable BOEM to obtain and analyze the information needed to support consideration of appropriate commercial leasing, while ensuring ample opportunity for input from interested and affected parties.

The responses to this Call could lead to the initiation of a competitive leasing process in some areas of the Call Area (*i.e.,* where competition exists for certain tracts), and a noncompetitive process in others (*i.e.,* where no competitive interest exists for certain tracts). The leasing process is described more completely under ''Competitive Leasing Process'' and ''Noncompetitive Leasing Process'' below. If BOEM determines that there is no competitive interest in some or all of this area offshore Virginia, BOEM may proceed with the noncompetitive lease process

pursuant to 30 CFR 585.232 for any area(s) for which no competitive interest exists. If BOEM determines that there is competitive interest in some or all of the area described in this Call, BOEM may proceed with the competitive leasing process set forth under 30 CFR 585.211(c) through 585.225. Whether the leasing process is competitive or noncompetitive, BOEM will (1) provide additional opportunities for the public to submit input; and (2) review proposed leases thoroughly for potential environmental and multiple use impacts. A lease, whether issued through a competitive or non-competitive process, gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the right to use the leased area to develop its plans, which BOEM must approve before the lessee may proceed to the next stage of the process. *See* 30 CFR 585.600 and 585.601. The area that may be offered for leasing, if any, has not yet been determined and may be reduced further from the area identified in this Call based on various factors.

Background

Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act by adding subsection 8(p)(1)(c), which authorizes the Secretary of the Interior to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support the production, transportation, or transmission of energy from sources other than oil or gas. Subsection 8(p) requires the Secretary to issue regulations to carry out the new energy development authority on the OCS. The Secretary delegated the authority to issue leases, easements, and ROWs, and to promulgate regulations to the Director of BOEM. On April 29, 2009, BOEM promulgated the Renewable Energy and Alternate Uses (REAU) rule, 30 CFR Part 585, which can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Rules_Development.*

BOEM Virginia Renewable Energy Task Force

BOEM formed the BOEM Virginia Renewable Energy Task Force in December 2009 to facilitate coordination among relevant Federal agencies and affected state, local, and tribal governments throughout the leasing process. The BOEM Virginia Renewable Energy Task Force meeting materials are available on the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx*

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

On July 19, 2010, the President signed an Executive Order establishing a national ocean policy and the National Ocean Council (75 FR 43023). The Order establishes a comprehensive, integrated national policy for the stewardship of the ocean, our coasts and the Great Lakes. Where BOEM actions affect the ocean, the Order requires BOEM to take such action as necessary to implement this policy, to adhere to the stewardship principles and national priority objectives adopted by the Order, and follow guidance from the National Ocean Council.

BOEM appreciates the importance of coordinating its planning endeavors with other OCS users and regulators. It intends to follow principles of coastal and marine spatial planning, and coordinate with the regional planning bodies as established by the National Ocean Council, to inform its leasing processes. BOEM anticipates that continued coordination with the state Renewable Energy Task Forces will help inform comprehensive coastal and marine spatial planning efforts.

Actions Taken by the Commonwealth of Virginia in Support of Renewable Energy Development

The Commonwealth of Virginia has taken important steps to encourage and incentivize offshore wind energy development. While a state may promote such development through activities such as the creation of financial incentives, an offshore wind project cannot be developed on the OCS without an OCS renewable energy lease issued by BOEM pursuant to 30 CFR Part 585 and subsequent BOEM approval of a Construction and Operations Plan (COP). Below is a description of the activities that the state has undertaken to support renewable energy development on the OCS off its coast.

- In September 2007, Virginia established a 10-Year Energy Plan, the purpose of which was to chart a path forward to provide for reliable energy supplies at reasonable rates and increase the use of energy efficiency measures in Virginia.
- In a separate chapter of the same state legislation that established the Virginia Energy Plan, the General Assembly created the Virginia Coastal Energy Research Consortium (VCERC), which originally consisted of five state universities, two state agencies, and two industry organizations. VCERC was created to serve as an interdisciplinary research, study, and information resource for the state on Virginia's coastal energy resources, including offshore wind. For more information about VCERC visit *www.vcerc.org.*
- In February 2008, the Commonwealth of Virginia submitted a nomination to BOEM for a four-block area under the BOEM Interim Policy (72 FR 62673 (Nov. 6, 2007)) for authorization of the installation of offshore data collection and technology testing facilities on the OCS. These four blocks were contained within a surrounding ocean space of 50 lease blocks that were then under study by VCERC. Virginia was not selected as a priority area by DOI under the Interim Policy; therefore, this nomination was not selected for leasing consideration.
- In September 2009, former Governor Timothy M. Kaine sent a letter to BOEM requesting the formation of an intergovernmental Renewable Energy Task Force to facilitate communication and coordination among Federal, state, local, and tribal government agencies for OCS renewable energy activities off Virginia and to inform the Federal leasing and lease development process. The BOEM Virginia Renewable Energy Task Force was formed in December 2009.
- In April 2010, Governor Robert F. McDonnell signed legislation to reward investor-owned electric utilities for using offshore wind energy over other forms of energy. The legislation provides for an investor-owned electric utility to receive triple credit toward meeting the goals of the renewable energy portfolio standard program for energy derived from offshore wind. This legislation also created the Virginia Offshore Wind Development Authority for the purposes of facilitating, coordinating, and supporting the development of the offshore wind energy industry, offshore wind energy projects, and associated supply chain vendors.
- In January 2011, the Virginia Department of Mines, Minerals, and Energy (DMME) submitted a draft unsolicited research lease application to BOEM under 30 CFR Part 585.238. Proposed activities included the construction of meteorological towers for early mapping of the offshore wind resource in the Call Area and the installation of research turbines for demonstrating reliability and survivability. In January 2011, Governor Robert F. McDonnell sent BOEM a letter supporting DMME's efforts to obtain a

research lease. The DMME finalized its application in September 2011. More information about the Commonwealth's proposed research activities can be found in the section of this Call entitled ''Research Lease Application.''

The ability of private developers to take advantage of Virginia's incentives for potential projects on the OCS offshore Virginia would be dependent on, among other things, the developers obtaining leases and subsequent approvals from BOEM for their proposed projects on the OCS.

Department of the Interior ''Smart From the Start'' Atlantic Wind Initiative

The Secretary of the Interior, Ken Salazar, announced the ''Smart from the Start'' OCS renewable energy initiative on November 23, 2010. This initiative includes three key elements: (1) Eliminating a redundant step from the REAU rule; (2) identifying Wind Energy Areas (WEA) to be analyzed in an environmental assessment (EA) (prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*)) for the purpose of supporting lease issuance and site assessment activities; and (3) proceeding on a parallel track to process offshore transmission proposals.

A WEA is an OCS area that appears to be suitable for commercial wind energy leasing. The Virginia WEA was delineated based on deliberation and consultation with the BOEM Virginia Renewable Energy Task Force and was selected to be evaluated in a regional EA. A map showing the WEA can be found on the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx.*

As described in the section of this notice entitled, ''Development of the Call Area,'' this area has been further refined based upon input from the BOEM Virginia Renewable Energy Task Force and other stakeholders who commented on the original WEA and the Notice of Intent (NOI) to Prepare an EA for the ''Smart from the Start'' WEAs (76 FR 7226 (Feb. 9, 2011)). The Virginia WEA may be further adjusted in response to comments and information received from this notice as well as future sale notices.

Determination of Competitive Interest

The first step in determining whether there is competitive interest in an area for wind energy projects on the OCS offshore of Virginia will be the evaluation of submissions nominating particular areas for lease. At the conclusion of the comment period for this Call, BOEM will review the information received, undertake a completeness and qualifications review of the nominations received, and make a determination as to whether competitive interest exists.

To support the determination of competitive interest, BOEM will first assess whether there is any geographic overlap of the area(s) nominated. If two areas nominated fully or partially overlap, BOEM will continue to proceed with the competitive lease process as described below. BOEM may consult with the BOEM Virginia Renewable Energy Task Force throughout this process.

Situations may arise in which several parties nominate lease areas that do not overlap. Under these circumstances, BOEM could choose to employ an allocation system of leases that involves the creation of competition across tracts. This system is referred to as intertract competition and could also be implemented under the competitive process outlined in the REAU rule. BOEM may consult with the BOEM Virginia Renewable Energy Task Force in determining whether to use an intertract competition system.

Competitive Leasing Process

If, after receiving responses to this Call, BOEM proceeds with the competitive leasing process for certain areas, it will follow the steps required by 30 CFR 585.211(c) through 585.225:

(1) *Proposed Sale Notice:* BOEM will publish a Proposed Sale Notice (PSN) in the **Federal Register** and send the PSN to the Governor of any affected state, any affected tribes, and the executive of any local government that might be affected. The PSN will describe the areas that BOEM has decided to offer for leasing and the proposed terms and conditions of a lease sale, including the proposed auction format, lease form and lease provisions. Additionally, the PSN will describe the criteria and process for evaluating bids. The PSN would be issued after preparation of various analyses of proposed lease sale economic terms and conditions. The comment period following issuance of a PSN is 60 days.

(2) *Final Sale Notice:* If BOEM decides to proceed with lease issuance after considering comments on the PSN, it will publish the Final Sale Notice (FSN) in the **Federal Register** at least 30 days before the date of the sale. BOEM may use one of the following three auction formats to select the winning bidder(s): Sealed bidding; ascending bidding; or two-stage bidding (a combination of ascending bidding and sealed bidding). BOEM will publish the criteria for winning bid determinations in the FSN.

(3) *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, qualified bidders may submit their bids to BOEM in accordance with procedures specified in the FSN. The bids, including the bid deposits if applicable, would be reviewed for technical and legal adequacy. BOEM would evaluate each bid to determine if the bidder has complied with all applicable regulations and with the terms of the FSN. BOEM reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

(4) *Issuance of a Lease:* Following the selection of a winning bid or bids by BOEM, the submitter(s) is/are notified of the decision and provided a set of official lease documents for execution. The successful bidder(s) will be required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease copies. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEM will issue a lease to the successful bidder(s).

Pursuant to 30 CFR 585.212, BOEM may decide to end the competitive leasing process prior to the publication of a FSN if it believes that competitors have withdrawn and competitive interest no longer exists. A termination of the competitive process would require BOEM to publish an additional notice in the **Federal Register** to confirm that competitive interest no longer exists in the area. BOEM would use the information received in response to this additional notice to determine whether it would continue with the competitive lease sale process or initiate the noncompetitive lease negotiation process.

Noncompetitive Leasing Process

If, after evaluating the responses to this notice, BOEM determines that there is no competitive interest in a proposed lease, it may proceed with the noncompetitive lease issuance process pursuant to 30 CFR 585.232, coordinating with the BOEM Virginia Renewable Energy Task Force, as appropriate. Should BOEM decide to proceed with the noncompetitive leasing process, it will ask if the respondent wants to proceed with acquiring the lease, and if so, the respondent must submit an acquisition fee as specified within 30 CFR 585.502(a). After receiving the acquisition fee, BOEM would publish a notice in the **Federal Register** announcing a determination of no competitive interest. Within 60 days of

the date of that notice, the respondent would be required to submit a Site Assessment Plan (SAP), as described in 30 CFR 585.231(d)(2)(i).

BOEM will comply with the requirements of NEPA, CZMA, and other applicable Federal statutes when in the process of issuing a lease noncompetitively. BOEM coordinates and consults, as appropriate, with relevant Federal agencies, affected tribes, and affected state and local governments, in issuing a noncompetitive lease and developing lease terms and conditions.

It is possible that responses to this notice may result in a determination that there is competitive interest for some areas but not for others. BOEM would announce publicly its determinations before proceeding with a competitive process, a noncompetitive process, both, or neither.

Environmental Reviews

BOEM has prepared an EA considering the environmental impacts and socioeconomic effects of issuing renewable energy leases. The EA includes reasonably foreseeable site characterization activities, such as, geophysical, geotechnical, archaeological, and biological surveys on those leases identified in WEAs offshore New Jersey, Delaware, Maryland, and Virginia. The EA also considers the reasonably foreseeable environmental impacts and socioeconomic effects associated with the approval of site assessment activities (including the installation and operation of meteorological towers and buoys) on the leases that may be issued. The *Commercial Wind Lease Issuance and Site Characterization Activities on the Atlantic Outer Continental Self Offshore New Jersey, Delaware, Maryland, and Virginia* Environmental Assessment (Regional EA) can be found at: *http://www.boem.gov/Renewable-EnergyProgram/Smart-from-the-Start/Index.aspx.* The area identified in this Call matches the Virginia WEA described in the preferred alternative in the Regional EA.

In the event that a particular lease is issued, and the lessee subsequently submits a Site Assessment Plan (SAP), pursuant to 30 CFR 585.605–618, BOEM would then determine whether the EA adequately considers the environmental consequences of the activities proposed in the lessee's SAP. If BOEM determines that the analysis in the EA adequately considers these consequences, then no further analysis under the National Environmental Policy Act (NEPA) would be required before BOEM make a decision on the SAP. If, on the other hand, BOEM determines that the analysis in this EA is inadequate for that purpose, BOEM would prepare additional NEPA analysis before it could make a decision on the SAP. In either event, BOEM would then make a decision to approve, approve with modifications, or disapprove the SAP.

If a lessee is prepared to propose a wind energy generation facility on its lease, it would submit a construction and operations plan (COP). BOEM then would prepare a separate site- and project-specific NEPA analysis of the proposed project. This analysis would likely take the form of an EIS and would provide the public and Federal officials with comprehensive information regarding the reasonably foreseeable environmental impacts of the proposed project. In this NEPA analysis, BOEM would evaluate the potential environmental and socioeconomic consequences of the proposed project. This analysis would inform BOEM's decision to approve, approve with modification, or disapprove a lessee's COP pursuant to 30 CFR 585.628. This NEPA process also would provide additional opportunities for public involvement pursuant to NEPA and the White House Council on Environmental Quality's regulations at 40 CFR parts 1500–1508.

Description of the Call Area

The Call Area offshore Virginia contains 19 whole OCS blocks and 13 sub-blocks. The western edge of the Call is approximately 23.5 nmi from the Virginia Beach coastline, and extends to an eastern edge that is approximately 36.5 nmi from the same location. The longest north/south portion is approximately 10.5 nmi in length and the longest portion of the east/west portion is approximately 13 nmi in length. The entire area is approximately 112,799 acres, or 45,648 hectares. The boundary of the Call Area follows the points listed in the table below in clockwise order beginning in the northwest corner of block 6012–C. Point numbers 1 and 9 are the same. Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (longitude, latitude), NAD83.

Point No.	X Easting UTM)	Y Northing (UTM)	Longitude	Latitude
1	459200	4094400	-75.458518	36.994856
2	480800	4094400	-75.215776	36.995546
3	480800	4075200	-75.215289	36.822467
4	456800	4075200	-75.484393	36.821676
5	456800	4092000	-75.485351	36.973115
6	458000	4092000	-75.471870	36.973169
7	458000	4093200	-75.471937	36.983986
8	459200	4093200	-75.458453	36.984039
9	459200	4094400	-75.458518	36.994856

The following 19 full OCS blocks are included within the Call Area: Currituck Sound NJ18–11, blocks 6013, 6014, 6015, 6016, 6062, 6063, 6064, 6065, 6066, 6112, 6113, 6114, 6115, 6116, 6162, 6163, 6164, 6165, and 6166. The following 13 sub-blocks are included within the Call Area:

Protraction name	Protraction No.	Block No.	Sub block
Currituck Sound	NJ18–11	6012	C,D,F,G,H,I,J,K,L,M,N,O,P

List of OCS Blocks and Sub-Blocks in the Call Area Potentially Subject to Limitations

The Call Area includes areas that BOEM wishes to highlight as areas of special interest or concern based on available information. These areas are described below.

Fish Haven/Artificial Reef Site

An obstruction area has been identified on the National Oceanic and Atmospheric Administration (NOAA) nautical charts within the Call Area that contains a fish haven/artificial reef site. The specific sub-blocks transected by the fish haven/artificial reef site are listed below. Site-specific stipulations may be applied to any leases issued in, or plans approved for, this area.

Protraction name	Protraction No.	Block No.	Sub block
Currituck Sound	NJ18–11	6013	B,C,D,E,F,G,H,I,J,K,L
Currituck Sound	NJ18–11	6014	A,B,E,F,I,J

Navigation

The U.S. Coast Guard (USCG) advises that all blocks included in the Call Area require further study to determine site-specific risks to navigational safety. It is possible that OCS blocks included in the Call Area may not be made available for leasing and/or development due to navigational safety issues, and any blocks that are may require site-specific stipulations and conditions.

Department of Defense (DoD) Activities

The Call Area includes OCS blocks where site-specific conditions and stipulations may need to be developed and applied to any leases issued and/or plans approved to help ensure that projects are compatible with DoD activities. Such stipulations may include, but are not limited to:

1. A hold-and-save-harmless agreement where the lessee assumes all risks of damage or injury to persons or property if such injury or damage to such person or property occurs by reason of the activities of the U.S. Government;
2. A requirement that at times requested by DoD, the lessee control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors when operating in specified DoD Operating Areas (OPAREAs) or warning areas;
3. An agreement with the appropriate DoD commander when operating vessels or aircraft in a designated OPAREA or warning area requiring that these vessel and aircraft movements be coordinated with the appropriate DoD commander;
4. A requirement that at times requested by DoD, the lessee temporarily suspend operations and/or evacuate the lease in the interest of safety and/or national security.

Protected Species

BOEM may consider including stipulations specific to protected species in renewable energy leases that may be issued in the Call Area, as well as in any associated plans that may be approved within the Call Area. Examples of stipulations may include (1) measures to avoid impacts to protected species during site assessment activities and characterization surveys, (2) documentation of the presence or absence of protected species, and (3) sharing of data collected related to protected species. More information on protective measures for site assessment and site characterization activity can be found in the *Environmental Assessment for Commercial Wind Lease Issuance and Site Characterization Activities on the Atlantic Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia.*

Map of the Call Area

A map of the Call Area can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

A large scale map of the Call Area showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817.Phone: (703) 787–1320, Fax: (703) 787–1708.

Development of the Call Area

The Call Area was delineated through consultation with the BOEM Virginia Renewable Energy Task Force and is intended to achieve a balance that provides adequate protection of ecologically sensitive areas, minimizes space-use conflicts, and maximizes the area available for commercial offshore wind development. Specific mitigation, stipulations, or exclusion areas may be developed as a result of environmental reviews and associated consultations, as well as continued coordination with the BOEM Virginia Renewable Energy Task Force.

The development of the Call Area began with consideration of a preliminary 70 OCS block area of interest discussed at the first BOEM Virginia Renewable Energy Task Force meeting in December 2009. The area encompassed the 50 blocks under study by VCERC at the time as part of its offshore wind mapping initiative and was delineated to avoid sensitive ecological areas offshore the barrier islands to the north and take advantage of a region comprised of Class 6 winds. In addition, BOEM had received two commercial unsolicited lease requests within this area, which BOEM will not process, as further described in the section entitled ''Unsolicited Applications Received by BOEM for Areas Offshore Virginia.'' Following the first meeting of the BOEM Virginia Renewable Energy Task Force, and based on continuing dialogue with the Task Force and individual member agencies, the area was further refined to avoid sensitive operating and warning areas under the purview of DoD and National Aeronautics Space Administration (NASA), as well as a dredge disposal area under the regulatory authority of the U.S. Army Corps of Engineers. As part of this effort, BOEM asked DoD, USCG, and NASA to conduct evaluations of the area under consideration and make recommendations to BOEM as to blocks that should be excluded from leasing and/or development due to sensitive agency activities, as well as areas that could be included with appropriate conditions and stipulations.

DoD conducted two evaluations following the first and second task force meetings, and provided to BOEM its recommendations regarding OCS blocks that would be inappropriate for leasing and development in light of existing DoD activities. DoD also recommended that, should leases be issued, subsequent development in the remaining area should be subject to site-specific stipulations. NASA determined that the Call Area was compatible with launch operations at NASA Wallops Flight Facility. In advance of the third Task Force meeting in December 2010, the USCG Fifth District identified a deep-water slough or channel in use by deep-draft vessels exiting and entering the Chesapeake Bay. It recommended that a 3 nmi setback be established

between the charted dredge disposal area at the entrance to the Bay and the western edge of the Call Area.

To better delineate the Call Area to avoid areas heavily used by vessels entering and exiting the Chesapeake Bay, BOEM acquired Automatic Identification System (AIS) data from 2009 and conducted an analysis to identify vessel uses of the area, including deep-draft, barge, tug, and tow. This information was presented to the BOEM Virginia Renewable Energy Task Force on August 17, 2011, and allowed for further refinement of the Call Area. The Call Area described in this notice was further refined on the basis of the USCG's evaluation of the Call Area; which BOEM received in September 2011.

More detailed descriptions of certain issues raised through consultation with the BOEM Virginia Renewable Energy Task Force and other information that may be of interest to potential Call respondents and other relevant parties is included below.

Navigational Issues

The USCG has provided the following information for consideration by potential respondents to this Call and other interested parties. The USCG has a responsibility under the Ports and Waterways Safety Act (PWSA) to ensure the safety of navigation. The PWSA requires USCG to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. USCG meets this requirement through designation of necessary fairways and traffic separation schemes (TSS) for vessels operating in the territorial sea of the United States and in high sea approaches, outside the territorial sea. The USCG may also determine that establishment of other ships' routing measures, such as a precautionary area, would enhance navigational safety. The USCG works with its Federal interagency and International Maritime Organization partners to establish these voluntary measures as necessary.

The potential for navigational safety risk posed by installing structures in proximity to shipping routes is affected by numerous factors including, but not limited to: vessel size; vessel type; density of traffic; prevailing conditions; cumulative impact of multiple obstructions (for example, wind assessment or development facilities); existence of multiple shipping routes (for example, crossing or meeting situations); radar/automatic radar plotting aid (ARPA) interference; and existence of mitigating factors such as navigational aids, vessel traffic services, or pilotage.

Currently, there is no standard recommended separation distance between offshore renewable energy facilities and shipping routes. The USCG has reviewed guidance published by other countries such as the United Kingdom's Maritime Guidance Note MGN–371 and consulted with its own waterways subject matter experts. Currently, USCG considers the placement of offshore wind facilities in any area less than 1 nmi from traditional shipping routes as a high risk to navigational safety and therefore does not recommend placement of offshore wind facilities in such areas. The USCG considers placement of such facilities in areas greater than 5 nmi from existing shipping routes as a minimal risk to navigational safety. Areas considered for placement of offshore wind facilities between 1 nmi and 5 nmi would require additional USCG analysis to determine if mitigation factors could be applied to bring navigational safety risk within acceptable levels.

Respondents to this Call should note that impacts to radar and ARPA may still occur outside of 1 nmi and would have to be evaluated along with other potential impacts. The above considerations are only planning guidelines, and the guidelines may be changed based on the completion of the USCG's Atlantic Coast Port Access Route Study (ACPARS). In addition, these guidelines may be further modified upon completion of a Navigational Safety Risk Assessment (NSRA), which may be required before BOEM could approve a lessee's plan for the construction of any offshore wind facilities.

The USCG is conducting ACPARS to determine how best to route traffic on the Atlantic coast (see 76 FR 27288; May 11, 2011). This study would better inform the USCG about the navigational safety risks, if any, associated with construction of offshore wind facilities. The data gathered during this ACPARS may result in the establishment of new vessel routing measures, modification of existing routing measures, or removal of some existing routing measures off the Atlantic Coast from Maine to Florida.

As a member of the BOEM Virginia Renewable Energy Task Force, the USCG partnered with BOEM to gather existing AIS data, stakeholder input, and information on existing traffic patterns, as well as historical and current coastwise and international uses, within the Call Area offshore Virginia. The USCG conducted an evaluation, using the best available information, of the Virginia Call Area. The USCG identified OCS blocks (including sub-blocks) that, if developed, may have an unacceptable effect on navigational safety, and other OCS blocks (including sub-blocks) that would require further study to determine the potential effect that the installation of offshore wind facilities in these blocks would have on navigational safety.

The USCG commented to BOEM that, it appears at this time, if any offshore wind facilities were to be installed in the future, most of the blocks and sub-blocks included in the Call would require USCG to create significant new routing measures to ensure navigation safety. The USCG cautions that after it has completed its ACPARS and has performed a deliberate evaluation of vessel routing measures, it may conclude that ultimate development of many or all of the blocks now included in the Call would present serious risks to navigation. The USCG has informed BOEM that it cannot make a final determination of the potential risk that ultimate development of the Call Area would present to navigation until it has completed its ACPARS analysis.

Department of Defense Activities

The Call Area is within the DoD Virginia Capes Operating Area (VACAPES OPAREA), which is a subsurface, surface, and air operations area off the Virginia coast that includes both Warning Area 50 (W–50) and Warning Area 72 (W–72).

The W–50 warning area air space overlies that portion beyond 3 nmi from the coast of Dam Neck, Virginia and is subdivided into three sub-areas. All areas encompass the sea surface and airspace up to an altitude of 75,000 feet. Naval operations conducted in W–50 include mine warfare training, surface-to-surface, air-to-surface and surface-to-air gunnery exercises, airborne drone and seaborne target launch, transit and recovery operations, and unit level Fleet and Navy Special Warfare training.

A firing range surface danger zone defined in 33 CFR 334.390(a) underlies most of the W–50 warning area, and DoD activities in this danger zone are the same as described for the warning area. Navy ships, surface craft, and aircraft require freedom of movement to tactically maneuver within the danger zone. Regulations set forth in 33 CFR 334.390(b)(1) require vessels transiting the danger zone to proceed with caution and to not remain in the area longer than necessary for transit. Potential wind energy development in the lease blocks identified in this Call may create a constriction of the danger zone for vessel traffic approaching and departing

Chesapeake Bay. An affected entity would need to ask DoD to modify the area of the danger zone to mitigate the potential vessel traffic constriction.

The W–72 warning area overlies the sea surface and contains the airspace located seaward of W–50 in the VACAPES OPAREA. Special use airspace within the portion of W–72 west of 75° 30'W extends from the sea surface up to, but not including 2,000 feet, (Area 13A) and then again above 60,000 feet (flight level 600) to unlimited (Area 13B). Air operations between 2,000 feet and 60,000 feet are controlled by Naval Air Station Oceana, Virginia (2,000 feet to 23,000 feet) and by the Federal Aviation Administration's (FAA) Washington Center (24,000 feet to 60,000 feet). Naval operations conducted in W–72 include air-to-air, air-to-surface, and surface-to-surface missile, gunnery and bomb training, aircraft carrier launch and recovery operations, and airborne drone and seaborne target launch, transit and recovery operations.

Two Navy Shipboard Electronic Systems Evaluation Facility (SESEF) instrumented buoys are located in the vicinity of Chesapeake Light. Naval vessels conduct electronic systems tests and evaluation in the vicinity of these buoys and require freedom of movement while circumnavigating each buoy in a 1 or 2 nmi radius.

Air Navigation

The FAA coordinates closely with the DoD and has jurisdiction over commercial flight paths out to 12 nmi offshore. Developers may be required to notify the FAA of construction of structures in that area with a Notice of Proposed Construction or Alteration. In response, the FAA would issue an opinion regarding whether or not the proposed structure(s) would constitute a hazard to air navigation.

Protected Species

Within the Call Area there are several species listed as threatened or endangered under the jurisdiction of either the U.S. Fish and Wildlife Service or NOAA's National Marine Fisheries Service (NMFS). These species are described in this Call for informational purposes only. The federally-listed endangered Roseate Tern *(Sturna dougallii dougallii)* and Cahow *(Pterodroma cahow)* may occur occasionally within the Call Area, though neither species is expected to frequent the area based on available data. The Roseate Tern may pass through the area during migration, and the Cahow may occur during some weather conditions or while foraging outside of the breeding season. In addition to these two listed species, seabirds protected under the Migratory Bird Treaty Act may occur in the Call Area. Several species listed as threatened or endangered under the jurisdiction of NMFS occur seasonally in the Call Area. NMFS has not designated any critical habitat within the Call Area. Six species of endangered large whales occur seasonally off the Atlantic coast of the U.S.: the North Atlantic right (*Eubalaena glacialis*), fin (*Balaenoptera physalus*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), sperm (*Physeter macrocephalus*), and blue (*Balaenoptera musculus*). However, of these six species, only three—right, humpback, and fin whales—are likely to occur in the Call Area; sperm, blue, and sei whales are typically found in waters farther offshore.

Four species of listed sea turtles, including endangered leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempi*) and green (*Chelonia mydas*) and threatened loggerhead (*Caretta caretta*), occur seasonally in the Call Area. Sea turtles arrive in the mid-Atlantic, including the Call Area, in the spring and typically begin migrating southward by mid-November.

In addition to these ESA-listed marine mammals and sea turtles, NMFS has proposed to list 5 distinct population segments (DPS) of Atlantic sturgeon as threatened or endangered. The marine range of Atlantic sturgeon from all five of the DPSs extends from the Bay of Fundy, Canada into Florida and includes the Virginia Call Area. NMFS is in the process of final rulemaking regarding the status of Atlantic sturgeon.

Unsolicited Applications Received by BOEM for Areas Offshore Virginia

Research Lease Application

In September 2011, DMME submitted an unsolicited application for a research lease under 30 CFR 585.238. Four of the sub-blocks in this research lease application are within the Call Area and DMME proposes to use these sub-blocks for the siting of two meteorological towers for monitoring of wind velocities, water levels, waves, and bird and bat activities within and around the Call Area. These four sub-blocks are listed below:

Protraction name	Protraction No.	Block No.	Sub block
Currituck Sound	NJ18–11	6014	B,C
Currituck Sound	NJ18–11	6164	N,O

The DMME application states that the proposed meteorological towers can be planned, designed, installed and begin collecting data by the summer of 2013. Installation is contingent upon the acquisition of an OCS lease and subsequent submittal and BOEM review of an adequate plan describing these activities.

This Call will enable BOEM to make a determination regarding competitive commercial interest in the Call Area, which encompasses these portions of DMME's proposed research lease. BOEM believes that potential commercial development in an area should take priority over potential research activities in that area, if the two uses of the area(s) would not be compatible. If BOEM receives a nomination for a commercial wind lease encompassing a portion of the Call Area that DMME has proposed for a research lease. BOEM may issue only a commercial lease in that area. For BOEM to initiate the leasing process for the proposed research lease, BOEM would be required to publish a separate **Federal Register** notice to determine competitive interest, per 30 CFR § 585.238(c).

Commercial Applications

In August and September 2009, two applicants submitted separate unsolicited requests for commercial leases on the OCS offshore Virginia pursuant to 30 CFR 585.230. The unsolicited lease requests were submitted by Apex Offshore Wind LLC (Apex) and Seawind Renewable Energy Corporation (Seawind). BOEM has informed the applicants that BOEM will not proceed with processing these unsolicited requests and invited them to submit a nomination pursuant to this Call instead. If either applicant is interested in obtaining a lease in the Call Area offshore Virginia, it must submit a complete nomination that describes that applicant's commercial interest in direct response to the Call.

Required Nomination Information

Nomination for a commercial wind energy lease in the area identified in this notice must include the following:

(1) The BOEM Protraction name, number, and specific whole or partial OCS blocks within the Call Area that are of interest for commercial wind leasing, including any required buffer area. This information should be submitted as a spatial file compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83) in addition to a hard copy submittal. If the proposed project area includes one or more partial blocks, please describe those partial blocks in terms of a sixteenth (i.e., sub-block) of an OCS block. BOEM will not consider any areas outside of the Call Area in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives;

(3) A preliminary schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area that you wish to lease, including energy and resource data and information used to evaluate the Call Area. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83);

(5) If your nomination includes any of the sub-blocks that the Commonwealth of Virginia has identified for potential research activities, state whether you would consider such activities to be compatible with the commercial wind activities you ultimately plan to undertake on the lease. If it would be necessary for BOEM to exclude or restrict those activities from occurring in your commercial lease area, please provide an explanation;

(6) Documentation demonstrating that you are legally qualified to hold a lease as set forth in 30 CFR 585.106 and 107. Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the BOEM Renewable Energy Framework Guide Book available at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Notices_to_Lessees,_Operators_and_Applicants.* Legal qualification documents will be placed in an official file that may be made available for public review; and

(7) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in (2) above. Guidance regarding the required documentation to demonstrate your technical and financial qualifications can be found at *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Notices_to_Lessees,_Operators_and_Applicants.*

Documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy.

It is critical that you submit a complete nomination so that BOEM may evaluate your submission in a timely manner. If BOEM reviews your nomination and determines that it is incomplete, BOEM will inform you of this determination in writing. This letter will describe the information that BOEM determined to be missing from your nomination, and which you must submit in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to submit the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines this second submittal is insufficient and has failed to complete your nomination, then BOEM retains the right to deem your nomination invalid. In that case, BOEM would not process your nomination.

Requested Information From Interested or Affected Parties

BOEM is requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

(1) Geological and geophysical conditions (including bottom and shallow hazards) in the area described in this notice;

(2) Known archaeological and/or cultural resource sites on the seabed in the area described in this notice;

(3) Historic properties potentially affected by the construction of meteorological towers, the installation of meteorological buoys, or commercial wind development in the area identified in this Call;

(4) Multiple uses of the area, including navigation (in particular, commercial and recreational vessel use), recreation, and fisheries (commercial and recreational); and

(5) Other relevant socioeconomic, biological, and environmental information.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information submitted as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating. Finally, information that is not labeled as privileged or confidential would be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA as confidential.

Dated: January 23, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–2516 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2011–0058]

Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Maryland—Call for Information and Nominations

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations for Commercial Leases for Wind Power on the Outer Continental Shelf Offshore Maryland.

SUMMARY: In November 2010, the Bureau of Ocean Energy Management, Regulation and Enforcement, now BOEM, issued a Request for Interest (RFI) to gauge specific interest in obtaining commercial wind leases in an area on the Outer Continental Shelf (OCS) offshore Maryland. Based on the expressions of interest received in response to the RFI, BOEM has determined that competitive interest exists in the area identified. The publication of this Call for Information and Nominations (Call) initiates the competitive leasing process on the OCS offshore Maryland for the area identified herein.

The publication of this notice does not mean that BOEM will ultimately grant a lease to any particular party in the area identified offshore Maryland. Rather, the publication of this notice indicates that the area described may be subject to future leasing. BOEM is using this notice both to solicit any additional lease nominations and to request comments from interested and affected parties regarding site conditions, resources, and multiple uses of the area identified that would be relevant to BOEM's potential leasing and development authorization process. Parties wishing to submit a nomination in response to this Call should submit detailed and specific information as described in the section entitled, ''Required Nomination Information.'' The information that BOEM is requesting from the public is described in the section entitled, ''Requested Information from Interested or Affected Parties.''

This notice is published pursuant to subsection 8(p)(3) of the OCS Lands Act, 43 U.S.C. 1337(p)(3), which was added by section 388 of the Energy Policy Act of 2005 (EPAct), as well as the implementing regulations at 30 CFR part 585.

The Call area described in this notice is located on the OCS offshore Maryland. The western edge of the Call is approximately 10 nautical miles (nmi) from the Ocean City, Maryland coast, and the eastern edge is approximately 23 nmi from the Ocean City, Maryland coast. The longest portion of the north/south portion is approximately 13 nmi in length and the longest portion of the east/west portion is approximately 13 nmi in length. This Call area was established in consultation with the BOEM Maryland Renewable Energy Task Force, and comments received in response to the RFI were considered when delineating the area. A detailed description of the area and its development is found later in this notice.

DATES: Nominations submitted in response to this notice must be postmarked no later than March 19, 2012. Submissions of comments or other submissions of information are also requested by this date.

Submission Procedures: If you are submitting a nomination for a lease in response to this Call, please submit your nomination by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, Mail Stop HM 1328, Herndon, Virginia 20170. In addition to a paper copy of the nomination, include an electronic copy of the nomination on a compact disc (CD). Nominations must be postmarked by March 19, 2012. BOEM will list the parties that submitted nominations and the location of the proposed lease areas (OCS blocks they nominated) on the BOEM Web site after the 45-day comment period has closed.

Comments and other submissions of information may be submitted by either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0058, then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. By U.S. Postal Service or other delivery service, sending your comments and information to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, Mail Stop HM 1328, Herndon, Virginia 20170.

All responses will be reported on *http://www.regulations.gov.* If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this Call entitled, ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Aditi Mirani, Project Coordinator, BOEM, Office of Renewable Energy Programs, 381 Elden Street, Mail Stop HM 1328, Herndon, Virginia 20170, (703) 787–1320.

SUPPLEMENTARY INFORMATION:

Purpose of the Call for Information and Nominations

The OCS Lands Act requires BOEM to award leases competitively, unless BOEM makes a determination that there is no competitive interest (43 U.S.C. 1337(p)(3)). The purpose of this notice is to inform the public that BOEM has determined that competitive interest exists in the area identified, solicit any additional expressions of interest in obtaining a lease in the area identified, and request information from interested and affected parties on issues relevant to BOEM's review of nominations for potential leases in the area identified.

Background

Energy Policy Act of 2005

The EPAct amended the OCS Lands Act by adding subsection 8(p), which authorizes the Secretary of the Department of the Interior (DOI) to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas. Subsection 8(p) also requires the Secretary to issue regulations to carry out the new energy development authority on the OCS. The Secretary delegated the authority to issue such leases, easements, and ROWs, and to promulgate such regulations to the Director of BOEM. On April 29, 2009, BOEM promulgated the Renewable Energy and Alternate Uses (REAU) rule, at 30 CFR Part 585, which can be found at: *http://www.boem.gov/UploadedFiles/FinalRenewableEnergyRule.pdf.*

BOEM Maryland Renewable Energy Task Force

BOEM formed the BOEM Maryland Renewable Energy Task Force to facilitate coordination among relevant Federal agencies and affected state, local, and tribal governments throughout the leasing process. The BOEM Maryland Renewable Energy Task Force meeting materials are available on the BOEM web site at: *www.boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx*

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

On July 19, 2010, the President signed Executive Order 13547 establishing a

national ocean policy and the National Ocean Council (75 FR 43023). The Order establishes a comprehensive, integrated national policy for the stewardship of the ocean, our coasts and the Great Lakes. Where BOEM actions affect the ocean, the Order requires BOEM to take such action as necessary to implement this policy, to adhere to the stewardship principles and national priority objectives adopted by the Order, and follow guidance from the National Ocean Council.

BOEM appreciates the importance of coordinating its planning endeavors with other OCS users and regulators and intends to follow the principles of coastal and marine spatial planning, and coordinate with the regional planning bodies as established by the National Ocean Council, to inform its leasing processes. BOEM anticipates that continued coordination with the State Renewable Energy Task Forces will help inform comprehensive coastal and marine spatial planning efforts.

Actions Taken by the State of Maryland in Support of Offshore Renewable Energy Development

BOEM recognizes the importance of the steps that the State of Maryland has taken to encourage and incentivize offshore wind energy development. While a state may promote such development through activities such as the creation of financial incentives, it is important to note that an offshore wind project cannot be sited on the OCS without an OCS renewable energy lease issued by BOEM pursuant to 30 CFR Part 585. Below is a description of the activities that the state has undertaken to support renewable energy development on the OCS off its coast.

The State of Maryland has engaged in a planning process to evaluate and determine areas of the OCS that may be suitable for offshore wind energy development. This process was intended to inform state recommendations to BOEM regarding potentially suitable areas for BOEM to consider when moving forward with its offshore wind energy leasing process.

Since 2009, the Maryland Department of Natural Resources (DNR) has been working with resource experts, user groups, The Nature Conservancy (TNC), Towson University and the Maryland Energy Administration (MEA) to compile data and information about habitats, human uses, and resources offshore Maryland. Using the state's foundation of ocean data and information, ocean planning tools were used to help identify areas most suitable for various types of activities to reduce the potential for conflict among uses, facilitate compatible uses, and reduce environmental impacts to preserve crucial ecosystem services. Information gathered through this state interagency marine spatial planning process allowed the development of the Maryland Coastal Atlas—a comprehensive internet-based tool that allows stakeholders to review the compiled data in an interactive format. The Maryland Coastal Atlas can be found at *http://www.dnr.state.md.us/ccp/coastalatlas/ocean.asp.*

In November 2009, the MEA issued a Request for Expressions of Interest and Information for the development of areas of the OCS offshore Maryland. The Request, which closed on March 1, 2010, called for information about areas considered most desirable for offshore wind energy development and comment on what technologies were most appropriate for the geophysical conditions present in this area of the OCS. Additionally, information was requested on what policies and incentives would be most helpful for the development of offshore wind energy in this area.

In addition to providing input to the BOEM Maryland Renewable Energy Task Force, Maryland State agencies have continued to conduct outreach to stakeholders. In April 2010, DNR and MEA conducted two open houses to allow citizens to ask questions and provide feedback. Experts from both agencies and project partners were on hand to answer questions and provide information about ocean mapping and planning, offshore wind, prospective project timelines, anticipated processes and opportunities for community response. In addition, MEA and DNR conducted comprehensive outreach to Ocean City and other coastal communities to gather input on potential viewshed impact and share information on planning processes.

To inform the state recommendations to BOEM during the planning and leasing process, the DNR has maintained a dialogue with the recreational and commercial fishing sectors to collect more detailed information about fishing use areas. Information about general recreational and commercial fishing use areas, more specific pot and trawl fishing areas, and other fishing use and offshore renewable wind energy concerns is being collected. DNR has conducted outreach through: (1) Existing Fishery Advisory Committees; (2) discussions with DNR's Fisheries Service regarding fishing tournaments and specific fishing industries; (3) individual commercial fishing mapping meetings; (4) phone calls with affected individuals; and (5) mailed mapping charts.

At the March 23, 2011, BOEM Maryland Task Force meeting the MEA requested the formation of a Marine Transportation, Navigation and Safety working group to specifically address commercial shipping, navigation and safety concerns associated with the development of offshore wind resources off the coast of Maryland. The working group met on May 11, 2011, to discuss possible leasing areas and the various potential implications for maritime safety and navigation matters. Additionally, MEA staff has participated in stakeholder-led discussions on these issues. After extensive consultation with the Maryland Department of Transportation, the Maryland Port Administration and other interested stakeholders, the working group's discussions informed the recommendation of state agencies to BOEM regarding the geographical area described in this Call.

Department of the Interior ''Smart from the Start'' Atlantic Wind Initiative

Secretary of the Interior Ken Salazar announced the ''Smart from the Start'' OCS renewable energy initiative on November 23, 2010. This initiative includes three key elements: (1) Eliminating a redundant step from the REAU rule; (2) the identification of Wind Energy Areas (WEA) to be analyzed in an Environmental Assessment (EA) (prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*)) for the purpose of supporting lease issuance with associated site characterization and site assessment activities; and (3) proceeding on a parallel track to process offshore transmission proposals.

A WEA is an OCS area that appears to be most suitable for commercial wind energy leasing. The area that was included in the Maryland RFI, published in November 2010, was designated as the WEA in February 2011 (76 FR 7226 (Feb. 9, 2011)). A map showing the WEA can be found on the BOEM Web site at: *www.boem.gov/Renewable-Energy-Program/Smart-from-the-start/index.aspx.*

As described in the section of this notice entitled, ''Development of the RFI and Call Area'' this area has been further refined based upon input from the BOEM Maryland Renewable Energy Task Force, the United States Coast Guard (USCG), and other stakeholders who commented on the original RFI and the Notice of Intent (NOI) to Prepare an EA for the ''Smart from the Start'' WEAs (76 FR 7226 (Feb. 9, 2011)). The Maryland WEA may be further adjusted

in response to comments and information received from this notice as well as future notices.

Publication of RFI and Responses Received

The first step in determining whether there is competitive interest in acquiring commercial wind energy leases in the WEA on the OCS offshore Maryland was the issuance of an RFI in November 2010. By the close of the comment period for the RFI, BOEM received nine expressions of interest from eight individual entities. A table showing the parties and the OCS blocks nominated for leasing can be found at: *www.boem.gov/UploadedFiles/TableSummarizingMDRFI012011.pdf.* Of the eight entities that submitted nominations, two entities nominated the entire area described in the RFI.

BOEM also received comments from members of the public as well as state and Federal agencies in response to the RFI. Most of the comments discussed shipping and navigational concerns. Two comments focused on the impacts of commercial wind lease development on fishing interests. The comments received in response to the RFI can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx.*

Competitive Leasing Process

The following are the next steps in the competitive leasing process after this Call:

(1) *Proposed Sale Notice (PSN):* BOEM publishes a PSN in the **Federal Register** and sends the PSN to the Governor of any affected state, any affected tribes, and the executive of any local government that might be affected. The PSN describes the areas that BOEM has decided to offer for leasing and the proposed terms and conditions of a lease sale, including the proposed auction format, lease form, and lease provisions. Additionally, the PSN describes the criteria and process for evaluating bids. The PSN is issued after preparation of various analyses of proposed lease sale terms and conditions. The comment period following the issuance of a PSN is 60 days.

(2) *Final Sale Notice:* BOEM publishes the Final Sale Notice (FSN) in the **Federal Register** at least 30 days before the date of the sale. BOEM may use one of the following three auction formats to select the winning bidder(s): Sealed bidding; ascending bidding; or two-stage bidding (a combination of ascending bidding and sealed bidding). BOEM publishes the criteria for winning bid determinations in the FSN.

(3) *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, qualified bidders may submit their bids to BOEM in accordance with procedures specified in the FSN. The bids, including the bid deposits if applicable, are reviewed for technical and legal adequacy. BOEM evaluates each bid to determine if the bidder has complied with all applicable regulations. BOEM reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

(4) *Issuance of a Lease:* Following the selection of a winning bid(s) by BOEM, the submitter(s) is notified of the decision and provided a set of official lease documents for execution. The successful bidder(s) is required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease copies. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEM issues a lease to the successful bidder(s).

Pursuant to 30 CFR 585.212, BOEM may decide to end the competitive leasing process prior to the publication of a FSN if it believes that competitors have withdrawn and competitive interest no longer exists. This would require BOEM to publish an additional notice in the **Federal Register** to confirm that competitive interest no longer exists in the area. BOEM would use the information received in response to this additional notice to determine whether we would continue with the competitive lease sale process or initiate the non-competitive lease negotiation process.

Environmental Reviews

BOEM has prepared an EA considering the environmental impacts and socioeconomic effects of issuing renewable energy leases (which includes reasonably foreseeable site characterization activities—geophysical, geotechnical, archeological, and biological surveys—on those leases) in identified WEAs offshore New Jersey, Delaware, Maryland, and Virginia. The EA also considers the reasonably foreseeable environmental impacts and socioeconomic effects associated with the approval of site assessment activities (including the installation and operation of meteorological towers and buoys) on the leases that may be issued. The *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia* Environmental Assessment (Regional EA) can be found at: *www.boem.gov/Renewable-Energy-Program/Smart-from-the-start/index.aspx.*

The area identified in this Call matches the Maryland area described in the preferred alternative in the Regional EA.

In the event that a lease is issued in the area identified offshore Maryland, and the lessee submits a Site Assessment Plan (SAP) pursuant to 30 CFR 585.605–618, BOEM will consider whether the regional NEPA analysis adequately analyzed all the reasonably foreseeable environmental consequences associated with the activities proposed in the lessee's SAP. If BOEM determines that the existing NEPA document adequately analyzed these consequences, then no further NEPA analysis would be required before BOEM may approve the SAP. If the NEPA analysis is inadequate or there is new information, additional NEPA review would be conducted before the SAP could be approved.

If and when a lessee is ready to construct and operate a specific renewable energy facility on the lease, it would submit a Construction and Operations Plan (COP) pursuant to 30 CFR 585.601 and 620–638. Pursuant to 30 CFR 585.626, a lessee must submit certain site characterization and site assessment information with its COP. Once a COP is submitted for a particular project, BOEM will prepare a separate NEPA analysis evaluating the reasonably foreseeable environmental consequences of the activities described in the COP. This would likely take the form of an Environmental Impact Statement (EIS), which would provide additional opportunities for public involvement. The NEPA review conducted for the COP would provide Federal, state, local, and tribal officials and the public with comprehensive site- and project-specific information regarding potential environmental impacts of the project activities. These potential impacts would be taken into account prior to BOEM deciding whether to approve, approve with modification, or disapprove the COP.

Development of the Call Area

The Call area was delineated by BOEM in consultation with the BOEM Maryland Renewable Energy Task Force, and is intended to minimize user conflicts while making an appropriate area available for commercial offshore wind energy development. Specific mitigation, stipulations, or exclusion areas may be developed and applied at the leasing, site assessment, and/or the construction and operations stages as a result of environmental reviews and

associated consultations, as well as continued coordination through the BOEM Maryland Renewable Energy Task Force. Issues discussed during consultation with the BOEM Maryland Renewable Task Force, and OCS areas where site-specific stipulations may be required, are described below.

Initially, the MEA and the DNR proposed to BOEM an area consisting of 45 whole OCS blocks for consideration as an RFI area. As described earlier in the section entitled, ''Actions Taken by the State of Maryland in Support of Renewable Energy Development,'' this area reflected DNR's consideration of numerous factors, including shipping lanes, artificial reefs, wind speed, water depths, Assateague Island proposed wilderness, sand mining shoals, initial fisheries stakeholder feedback, waterbird habitat and density, onshore electric transmission systems, and wind energy developer interest. As a result of consultations with the BOEM Maryland Renewable Energy Task Force, and input from the Department of Defense (DoD) and DNR, BOEM excluded from the area certain blocks that were included in the area originally proposed by MEA and DNR. The DoD identified 15 blocks located in the southern part of this area as a ''Wind Energy Exclusion Area'' and recommended that those blocks be removed from consideration mainly due to DoD testing and training activities conducted in these blocks. Further, the DNR recommended that 6 blocks located in the southwest portion of the area be removed from consideration, because of the existence of bird concentrations, summer fishing tournaments and boating corridors, recreational and sport-fishing, ship wrecks, important fishing grounds, artificial reefs, natural corals, and unique benthic habitats in these blocks. Based on the input of both the DoD and the DNR, BOEM reduced the size of the area that was originally put forward by the DNR and MEA, and published the resulting area in the RFI.

Navigational safety issues that were raised at the initial BOEM Maryland Renewable Energy Task Force meetings were acknowledged in the RFI. The notice provided an explanation of the USCG's concerns about renewable energy leasing in the area identified and acknowledged that the RFI area may need to be modified in consideration of these issues. Twenty two blocks were highlighted for particular consideration of USCG concerns. The RFI can be found on BOEM's Web site at: *http://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/State_Activities/FederalRegisterdocument.pdf* under Docket Number BOEM–2010–0038.

The comment period for the RFI closed on January 10, 2011. Based on public comments received in response to the RFI and engagement with the BOEM Maryland Renewable Energy Task Force, BOEM determined that revisions to the RFI area were appropriate. In particular, BOEM decided that, based on an evaluation conducted by USCG, using best available information, as well as comments received from the maritime and shipping industry, certain areas identified in the RFI would not be suitable for inclusion in this leasing initiative at this time, as described below.

Navigational Issues

The USCG has provided the following information for consideration by potential respondents to this Call and other interested parties. The USCG has a responsibility to ensure the safety of navigation under the Ports and Waterways Safety Act (PWSA). The PWSA requires the USCG to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. This is accomplished through designation of necessary fairways and traffic separation schemes (TSS) for vessels operating in the territorial sea of the United States and in high sea approaches, outside the territorial sea. The USCG may also determine that establishment of other ships' routing measures would enhance navigational safety, and it works with its Federal interagency and International Maritime Organization partners to establish these voluntary measures as necessary.

The potential for navigational safety risk posed by building structures in proximity to shipping routes is affected by numerous factors including, but not limited to: vessel size, vessel type, density of traffic, prevailing conditions, cumulative impact of multiple obstructions (for example, wind assessment or development facilities), existence of multiple shipping routes (for example, crossing or meeting situations), radar/automatic radar plotting aid (ARPA) interference, and existence of mitigating factors such as navigational aids, vessel traffic services, or pilotage.

Currently, there is no standard recommended separation distance between offshore renewable energy facilities and shipping routes. The USCG has reviewed guidance published by other countries such as the United Kingdom's Maritime Guidance Note MGN–371 and consulted with its own waterways subject matter experts. Currently, the USCG considers that the placement of offshore wind assessment and generation facilities in any area less than 1 nmi from traditional shipping routes poses a high risk to navigational safety and therefore does not recommend placement of offshore renewable energy facilities in such areas. The USCG considers placement of such wind facilities in areas greater than 5 nmi from existing shipping routes to pose minimal risk to navigational safety. Areas considered for placement of wind facilities between 1 nmi and 5 nmi would require additional USCG analysis to determine if mitigation factors could be applied to bring navigational safety risk within acceptable levels. Respondents to this Call should note that impacts to radar and ARPA may still occur outside of 1 nmi and will have to be evaluated along with other potential impacts. The above are only planning guidelines and may be changed based on the completion of the Atlantic Coast Port Access Route Study (ACPARS) which is described below. In addition, these guidelines may be further modified upon completion of a Navigational Safety Risk Assessment (NSRA) that may be required before BOEM approves construction of any offshore renewable energy facilities.

The USCG is conducting an ACPARS to determine how best to route traffic on the Atlantic coast. (See **Federal Register** 76 FR 27288; May 11, 2011). This study will better inform the USCG about the navigational safety risks, if any, associated with construction of offshore renewable energy facilities. The data gathered during this ACPARS may result in the establishment of new vessel routing measures, modification of existing routing measures, or removal of some existing routing measures off the Atlantic Coast from Maine to Florida.

As a member of the BOEM Maryland Renewable Energy Task Force, the USCG partnered with BOEM to gather existing Automated Information System (AIS) data, stakeholder input, and information on existing traffic patterns and historical and current coastwise and international uses in the area offshore Maryland. The USCG conducted an evaluation, using the best available information, of the Maryland RFI area. The USCG identified OCS blocks (including sub-blocks) that, if developed, may have an unacceptable effect on navigational safety, and other OCS blocks (including sub-blocks) that would require further study to determine the potential effect that the installation of wind facilities in these

blocks would have on navigational safety.

The USCG has advised BOEM that, at this time, all blocks included in the Call area may be appropriate for leasing and potential development. However, the USCG also recommended that our two agencies work together to further evaluate all blocks included in the Call area with regard to: (1) Existing traffic usage and patterns, (2) projected future traffic increases in the area based on the development of nearby blocks, and (3) the potential for modifications to existing routing measures and the possible creation of new routing measures in the area. The USCG will collect data that is relevant to these issues during the development of the ACPARS that USCG will share with BOEM as it becomes available. This additional information will also help the USCG determine what, if any, risks exist and whether USCG will amend its initial recommendation that all blocks included in the Call area appear to be appropriate for leasing and prospective development. Any additional evaluation will also inform the USCG's recommendations for potential mitigation measures for any blocks that may be made available for leasing.

Department of Defense (DoD) Activities

The DoD conducts offshore testing, training, and operations in the majority of the Call area. Site specific stipulations may be necessary at the leasing and/or development stages to avoid and minimize conflicts with existing DoD activities in most of the lease blocks included in the Call area. A list of these lease blocks is included in a table in the section entitled, ''Description of the Call Area.'' BOEM will continue to consult with the DoD regarding potential issues concerning offshore testing, training, and operational activities, and will use best management practices to develop appropriate stipulations to avoid conflicts with DoD within the Call area.

Description of the Call Area

The Call area offshore Maryland contains 9 whole OCS blocks and 11 partial blocks. The western edge of the Call area is approximately 10 nmi from the Ocean City, Maryland coast, and the eastern edge is approximately 23 nmi from the Ocean City, Maryland coast. The longest portion of the north/south portion is approximately 13 nmi in length and the longest portion of the east/west portion is approximately 13 nmi in length. The entire area is approximately 94.04 square nautical miles; 79,706 acres; or 32,256 hectares. The boundary of the Call area follows the points listed in the table below in clockwise order. Point numbers 1 and 35 are the same. Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (longitude, latitude), NAD83.

Point No.	X (Easting)	Y (Northing)	Longitude	Latitude
1	512000	4257600	−74.862445	38.466634
2	519200	4257600	−74.779913	38.466508
3	519200	4256400	−74.779946	38.455693
4	520400	4256400	−74.766193	38.455666
5	520400	4254000	−74.766263	38.434037
6	521600	4254000	−74.752513	38.434009
7	521600	4252800	−74.752550	38.423194
8	522800	4252800	−74.738803	38.423165
9	522800	4251600	−74.738842	38.412350
10	524000	4251600	−74.725097	38.412319
11	524000	4249200	−74.725179	38.390689
12	525200	4249200	−74.711438	38.390656
13	525200	4248000	−74.711481	38.379842
14	526400	4248000	−74.697742	38.379807
15	526400	4245600	−74.697832	38.358178
16	527600	4245600	−74.684098	38.358142
17	527600	4244400	−74.684144	38.347327
18	528800	4244400	−74.670412	38.347289
19	528800	4242000	−74.670510	38.325660
20	530000	4242000	−74.656781	38.325620
21	530000	4240800	−74.656832	38.314806
22	531200	4240800	−74.643106	38.314765
23	531200	4238400	−74.643212	38.293135
24	532400	4238400	−74.629489	38.293093
25	532400	4237200	−74.629544	38.282278
26	533600	4237200	−74.615824	38.282234
27	533600	4234800	−74.615938	38.260604
28	534800	4234800	−74.602222	38.260559
29	534800	4233600	−74.602281	38.249744
30	519200	4233600	−74.780567	38.250213
31	519200	4238400	−74.780437	38.293472
32	514400	4238400	−74.835327	38.293562
33	514400	4240800	−74.835278	38.315192
34	512000	4240800	−74.862732	38.315227
35	512000	4257600	−74.862445	38.466634

The following 9 whole OCS blocks are included within the Call area: Salisbury NJ18–05 Blocks 6624, 6674, 6724, 6774, 6725, 6775, 6825, 6776, 6826. In addition, parts of the following 11 OCS blocks are included within the Call area: Salisbury NJ18–05 Blocks 6623, 6625, 6673, 6675, 6676, 6723, 6726, 6773, 6777, 6827 and 6828.

LIST OF OCS BLOCKS INCLUDED IN THE CALL AREA

Protraction name	Protraction No.	Block No.	Sub block
Salisbury	NJ18–05	6623	C,D,G,H,K,L,O,P.
Salisbury	NJ18–05	6624	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6625	E, I, M ,N.
Salisbury	NJ18–05	6673	C,D,G,H,K,L,O,P.
Salisbury	NJ18–05	6674	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6675	A,B,C,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6676	M.
Salisbury	NJ18–05	6723	C,D,G,H,K,L,O,P.
Salisbury	NJ18–05	6724	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6725	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6726	A,B,E,F,I,J,K,M,N,O,P.
Salisbury	NJ18–05	6773	C,D,G,H.
Salisbury	NJ18–05	6774	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6775	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6776	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6777	E,I,J,M,N.
Salisbury	NJ18–05	6825	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6826	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6827	A,B,C,E,F,G,H,I,J,K,L,M,N,O,P.
Salisbury	NJ18–05	6828	M.

List of OCS Blocks in the Call Area With Potential Stipulations

The USCG advises that all blocks included in the Call area require further study to determine risks to navigational safety. It is possible that OCS blocks included in the Call area may not be made available for leasing and/or development. If the entire Call area were to be made available for leasing and development, portions of a number of sub-blocks may not be available for surface occupancy, (i.e. the placement of wind facilities), because of proximity to the TSS. These sub-blocks are listed in the table below.

Protraction name	Protraction No.	Block No.	Sub block
Salisbury	NJ18–05	6624	D,H.
Salisbury	NJ18–05	6625	E, I, N.
Salisbury	NJ18–05	6675	B,C,G,H,L,P.
Salisbury	NJ18–05	6676	M.
Salisbury	NJ18–05	6726	A,B,F,J,K,O,P.
Salisbury	NJ18–05	6776	D,H.
Salisbury	NJ18–05	6777	E,I,J,N.
Salisbury	NJ18–05	6827	B,C,G,H,L,P.
Salisbury	NJ18–05	6828	M.

To avoid conflicts with existing DoD activities, site specific stipulations may be necessary in the following lease blocks.

Protraction name	Protraction No.	Block No.	Sub block
Salisbury	NJ18–05	6624	All Sub blocks.
Salisbury	NJ18–05	6625	All Sub blocks.
Salisbury	NJ18–05	6674	All Sub blocks.
Salisbury	NJ18–05	6675	All Sub blocks.
Salisbury	NJ18–05	6676	All Sub blocks.
Salisbury	NJ18–05	6724	All Sub blocks.
Salisbury	NJ18–05	6725	All Sub blocks.
Salisbury	NJ18–05	6726	All Sub blocks.
Salisbury	NJ18–05	6774	All Sub blocks.
Salisbury	NJ18–05	6775	All Sub blocks.
Salisbury	NJ18–05	6776	All Sub blocks.
Salisbury	NJ18–05	6777	All Sub blocks.
Salisbury	NJ18–05	6825	All Sub blocks.
Salisbury	NJ18–05	6826	All Sub blocks.
Salisbury	NJ18–05	6827	All Sub blocks.
Salisbury	NJ18–05	6623	C,D,G,H,K,L,O,P.
Salisbury	NJ18–05	6673	C,D,G,H,K,L,O,P.
Salisbury	NJ18–05	6723	C,D,G,H,K,L,O,P.
Salisbury	NJ18–05	6773	C,D,G,H.

Map of the Call Area

A map of the Call area can be found at: *www.boem.gov/Renewable-Energy-Program/State-Activities/Maryland.aspx.*

A large scale map of the Call area showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, Mail Stop HM 1328, Herndon, Virginia 20170. Phone: (703) 787–1320, Fax: (703) 787–1708.

Required Nomination Information

If you intend to submit a nomination for a commercial wind energy lease in the area(s) identified in this notice, you must provide the following information. If you have already submitted this information in response to the RFI, there is no need to re-submit these materials in response to this Call. If you wish to modify any information submitted in response to the RFI, including the area described in your submission, you may do so in response to this Call.

(1) The BOEM Protraction name, number, and specific whole or partial OCS blocks within the Call area that are of interest for commercial wind leasing, including any required buffer area. This information should be submitted as a spatial file compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83) in addition to your hard copy submittal. If your proposed lease area includes one or more partial blocks, please describe those partial blocks in terms of a sixteenth (i.e. sub-block) of an OCS block. BOEM will not consider any areas outside of the Call area in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives;

(3) A preliminary schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area that you wish to lease, including energy and resource data and information used to evaluate the Call area. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83);

(5) Documentation demonstrating that you are legally qualified to hold a lease as set forth in 30 CFR 585.106 and 107. Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the BOEM Renewable Energy Framework Guide Book available at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section,'' below); and

(6) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in (2) above. Guidance regarding the required documentation to demonstrate your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.*

Documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy.

It is critical that you submit a complete nomination so that BOEM may evaluate your submission in a timely manner. If BOEM reviews your nomination and determines that it is incomplete, BOEM will inform you of this determination in writing. This letter will describe the information that BOEM determined to be missing from your nomination, and that you must submit in order for BOEM to deem your submission complete. You will be given 15 business days from the date of that letter to submit the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines this second submission is insufficient and has failed to complete your nomination, then BOEM retains the right to deem your nomination invalid. In such a case, BOEM will not process your nomination.

It is not required that you submit a nomination in response to this Call if you intend to submit a bid in the potential lease sale offshore Maryland. However, you would not be able to participate in this lease sale unless, prior to the sale, you had been legally qualified to hold a BOEM renewable energy lease, and you had demonstrated that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities you would propose to install on your lease. To ensure that BOEM has sufficient time to process your qualifications package, BOEM requests that you submit this package during the PSN 60-day public comment period. Failure to meet this deadline makes it unlikely that you would be able to participate in this lease sale. More information can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.*

Requested Information From Interested or Affected Parties

BOEM is requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

(1) Geological and geophysical conditions (including bottom and shallow hazards) in the area described in this notice;

(2) Known archeological and/or cultural resource sites on the seabed in the area described in this notice;

(3) Historic properties potentially affected by the construction of meteorological towers, the installation of meteorological buoys, or commercial wind development in the area identified in this Call;

(4) Multiple uses of the area, including navigation (in particular, commercial and recreational vessel use), recreation, and fisheries (commercial and recreational); and

(5) Other relevant socioeconomic, biological, and environmental information.

The Maryland Call Area has been identified as an area where commercial and recreational fishing occurs. During the comment period for the Maryland RFI, BOEM received comments with regard to commercial fishing. Specifically, the comments noted that the RFI area is fished and navigated by scallop, surfclam, quahog, fluke, squid, purse seine, and otter trawl fishers. In light of the comments received, BOEM is interested in obtaining input from the fishing industry in its planning process. Therefore, BOEM encourages the fishing industry to submit, in response to this Call, any potential concerns they would like prospective developers to address in their future plans and applications to BOEM.

In addition, the waters off Maryland's coast are home to a variety of natural coral and other bottom-dwelling communities, including relatively rare and ecologically vital live, hard bottom patch habitats. These habitats may require special attention during the siting and construction phases of wind turbines. This Call is soliciting information that can be used to

characterize and map these communities.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating. Finally, information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA as confidential.

Dated: December 2, 2011.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–2497 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2011–0088]

Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore New Jersey, Delaware, Maryland, and Virginia

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the Availability (NOA) of an Environmental Assessment (EA) and a Finding of No Significant Impact.

SUMMARY: BOEM has prepared an EA considering the environmental impacts of issuing renewable energy leases and authorizing site characterization activities (geophysical, geotechnical, archaeological, and biological surveys needed to develop specific project proposals on those leases) in identified Wind Energy Areas (WEAs) on the OCS offshore New Jersey, Delaware, Maryland, and Virginia. This final EA also considers the reasonably foreseeable environmental impacts associated with the approval of site assessment activities (including the installation and operation of meteorological towers and buoys) on the leases that may be issued.

As a result of its analysis in the final EA, BOEM issued a Finding of No Significant Impact (FONSI). The FONSI concluded that the environmental impacts associated with the preferred alternative would not significantly impact the environment; therefore, the preparation of an environmental impact statement (EIS) is not required.

The purpose of this notice is to inform the public of the availability of the EA and FONSI, which can be accessed online at: *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx.*

Authority: This NOA of an EA and FONSI is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@boem.gov.*

SUPPLEMENTARY INFORMATION: On November 23, 2010, Secretary of the Interior Ken Salazar announced the ''Smart from the Start'' renewable energy initiative to accelerate the responsible development of renewable energy resources on the Atlantic OCS. One of the focuses of the initiative is the identification and refinement of areas on the OCS that appear to be suitable for renewable energy development (WEAs), within which BOEM will focus its leasing efforts. In consultation with other Federal agencies and BOEM's Intergovernmental Renewable Energy Task Forces, BOEM identified WEAs on the OCS offshore New Jersey, Delaware, Maryland, and Virginia.

On February 9, 2011, BOEM identified these WEAs in a Notice of Intent (NOI) to prepare an EA for Mid-Atlantic WEAs (76 FR 7226). The NOI requested public input to identify the important environmental issues associated with leasing and site assessment within the identified WEAs, and alternatives to be considered in the EA. BOEM considered these public comments in drafting the alternatives and assessing the reasonably foreseeable environmental impacts associated with each alternative. Comments received in response to the NOI can be viewed at *http://www.regulations.gov,* by searching for Docket ID BOEM–2010–0077.

On July 12, 2011, BOEM published in the **Federal Register** a NOA of a draft of the EA for Mid-Atlantic WEAs (76 FR 40925). Public comments on the draft EA were considered in the preparation of this final EA and in determining whether the proposed activities would lead to significant environmental impacts. Comments received in response to the NOA can be viewed at *http://www.regulations.gov,* by searching for Docket ID BOEM–2011–0053.

BOEM will use this EA to inform decisions to issue leases in the refined WEAs, and to subsequently approve site assessment plans (SAPs) on those leases. BOEM may issue one or more commercial wind energy leases in the WEAs. The competitive lease process is set forth at 30 CFR 585.210–585.225, and the noncompetitive process is set forth at 30 CFR 585.230–585.232 (as amended by a rulemaking effective as of June 15, 2011).

A commercial lease, whether issued through a competitive or non-competitive process, gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the right to use the leased area to develop its plans, which BOEM must approve before the lessee may proceed to the next stage of the process. *See* 30 CFR 585.600 and 585.601. In the event that a particular lease is issued, and the lessee subsequently submits a SAP, BOEM would then determine whether the EA adequately considers the environmental consequences of the

activities proposed in the lessee's SAP. If BOEM determines that the analysis in the EA adequately considers these consequences, then no further analysis under the National Environmental Policy Act (NEPA) would be required before BOEM could approve a SAP. If, on the other hand, BOEM determines that the analysis in this EA is inadequate for that purpose, BOEM would prepare additional NEPA analysis before it could approve the SAP.

If a lessee is prepared to propose a wind energy generation facility on its lease, it would submit a construction and operations plan (COP). BOEM then would prepare a separate site- and project-specific NEPA analysis of the proposed project. This analysis would likely take the form of an EIS and would provide the public and Federal officials with comprehensive information regarding the reasonably foreseeable environmental impacts of the proposed project. In this NEPA analysis, BOEM would evaluate the potential environmental and socioeconomic consequences of the proposed project. This analysis would inform BOEM's decision to approve, approve with modification, or disapprove a lessee's COP pursuant to 30 CFR 585.628. This NEPA process also would provide additional opportunities for public involvement pursuant to NEPA and the White House Council on Environmental Quality's regulations at 40 CFR Parts 1500–1508.

Dated: January 20, 2012.

Walter D. Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–2494 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID No. BSEE–2011–0006; OMB Control Number 1014–NEW]

Information Collection Activities: Oil, Gas, and Sulphur Operations in the Outer Continental Shelf, Subpart A, General; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a revision to the paperwork requirements in the regulations under ''Oil, Gas, and Sulphur Operations in the Outer Continental Shelf,'' Subpart A, General.

DATES: Submit comments by April 3, 2012.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BSEE–2011–0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email: nicole.mason@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Attention: Nicole Mason; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1014–NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations Development Branch at (703) 787–1605 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Oil, Gas, and Sulphur Operations in the Outer Continental Shelf, Subpart A, General.

Form(s): BSEE–0132, BSEE–0143, and BSEE–1832.

OMB Control Number: 1014–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, Bureau of Safety and Environmental Enforcement (BSEE) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. A request for approval required in Subpart A is subject to cost recovery, and BSEE regulations specify a service fee for this request.

This ICR covers 30 CFR 250, Subpart A, General. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify and provide additional guidance on some aspects of our regulations. To accommodate the split of regulations from the Bureau of Ocean Energy Management, Regulation and Enforcement to BSEE, BSEE is requesting OMB approval of the already approved burden hours that were previously under 1010–0114 to reflect BSEE's new 1014 numbering system.

Frequency: On occasion; monthly, or varies by section.

Description of Respondents: Potential respondents comprise Federal OCS lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: We estimate that the reporting burden for this collection will be approximately 50,859 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden / Non-hour cost burden
Authority and Definition of Terms		
104; Form BSEE–1832	Appeal orders or decisions; appeal INCs [exempt under 5 CFR 1320.4(a)(2), (c)]	0
Performance Standards		
109(a); 110	Submit welding, burning, and hot tapping plans	2
118; 121; 124	Apply for injection of gas; use BSEE-approved formula to determine original gas from injected/stored.	10
Cost Recovery Fees		
125; 126	Cost Recovery Fees; confirmation receipt etc; verbal approvals pertaining to fees [cost recovery fees and related items are covered individually throughout this subpart].	0
Forms		
130–133	Submit "green" response copy of Form BSEE–1832 indicating date violations (INCs) corrected	2
145	Submit designation of agent and local agent for Regional Supervisor's and/or Regional Director's approval.	1
186(a)(3); NTL	Apply to receive administrative entitlements to eWell (electronic/digital form submittals) [not considered information collection under 5 CFR 1320.3(h)(1)].	0
192	Daily report of evacuation statistics for natural occurrence/hurricane (GOMR Form BSEE–0132 (form takes 1 hour)) when circumstances warrant; inform BSEE when you resume production.	1.5
192(b)	Use Form BSEE–0143 to submit an initial damage report to the Regional Supervisor	3
192(b)	Use Form BSEE–0143 to submit subsequent damage reports on a monthly basis until damaged structure or equipment is returned to service; immediately when information changes; date item returned to service must be in final report.	1
Inspection of Operations		
130–133	Request reconsideration from issuance of an INC	2
	Request waiver of 14-day response time	1
	Notify BSEE before returning to operations if shut-in	1
133	Request reimbursement for food, quarters, and transportation provided to BSEE representatives (no requests received in many years; minimal burden).	1.5
Disqualification		
135 BSEE internal process	Submit PIP under BSEE implementing procedures for enforcement actions	40
Special Types of Approval		
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements	1
140(c)	Submit letter when stopping approved flaring with required information	0
141; 198	Request approval to use new or alternative procedures, along with supporting documentation if applicable, including BAST not specifically covered elsewhere in regulatory requirements.	20
142; 198	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements, along with supporting documentation if applicable.	2.5
Naming and Identifying Facilities and Wells (Does Not Include MODUs)		
150; 151; 152; 154(a)	Name and identify facilities, artificial islands, MODUs, helo landing facilities etc., with signs	3
150; 154(b)	Name and identify wells with signs	2
Suspensions		
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operation or production; submit schedule of work leading to commencement; supporting information; include pay.gov confirmation receipt.	10 $1,968 fee
	Submit progress reports on SOO or SOP as condition of approval	3
172(b); 177(a)	Conduct site-specific study; submit results; request payment by another party. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100
177(b), (c), (d)	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document [burden covered under BOEM's 30 CFR 550, subpart B, 1010–0151].	0
Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations		
180(a), (h), (i),	Notify and submit report on various leaseholding operations and lease production activities	2

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden
		Non-hour cost burden
180(f), (g), (h), (i)	Submit various operations and production data to demonstrate production in paying quantities to maintain lease beyond primary term; notify BSEE when you begin conducting operations beyond its primary term.	2 0.5
180(e), (j)	Request more than 180 days to resume operations; notify BSEE if operations do not begin within 180 days.	4 0.5
Information and Reporting Requirements		
186; NTL	Submit information and reports as BSEE requires	10
187; 188(a–b); 189; 190(a–c); 192; NTL.	Report to the District Manager immediately via oral communication and written follow-up within 15 calendar days, incidents pertaining to: fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including firefighting systems); include hurricane reports such as platform/rig evacuation, rig damage, P/L damage, and platform damage; operations personnel to muster for evacuation not related to weather or drills; any additional information required. If requested, submit copy marked as public information.	Oral 0.5 Written 2.5
187(d)	Report all spills of oil or other liquid pollutants [burden covered under 30 CFR 254, 1014–0007]	0
188(a)(5)	Report to District Manager hydrogen sulfide (H2S) gas releases immediately by oral communication [burden covered under 30 CFR 250, subpart D, 1014–0018].	0
191	Submit written statement/Request compensation mileage and services for testimony re: accident investigation [exempt under 5 CFR 1320.4(a)(2), (c)].	0
193	Report apparent violations or non-compliance	1.5
194(c)	Report archaeological discoveries	2
195	Notify District Manager within 5 workdays of putting well in production status (usually oral). Follow-up with either fax/email within same 5 day period (burden includes oral and written).	1
196	Submit data/information for post-lease G&G activity and request reimbursement [burden covered under BOEM's 30 CFR 551, 1010–0048].	0
197(c)	Submit confidentiality agreement	1
101–199	General departure or alternative compliance requests not specifically covered elsewhere in Subpart A.	2
Recordkeeping		
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years.	1.5
109(b); 113(c)	Retain welding plan and drawings of safe-welding areas at site; designated person advises in writing that it is safe to weld.	1
132(b)(3)	During inspections make records available as requested by inspectors	2

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden. Section 250.171 requests a cost recovery fee for either a Suspension of Operations or Production Request (SOO/SOP) for $1,968 per request. We estimate a total reporting non-hour cost burden of $3,268,848. We have not identified any other non-hour paperwork cost burdens associated with this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 19, 2012.

Douglas W. Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–2363 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–2011–N270; FF08E00000–FXES11120800000F2–112]

Tehachapi Uplands Multiple Species Habitat Conservation Plan; Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of Supplemental Draft Environmental Impact Statement.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of a Supplemental Draft Environmental Impact Statement (SDEIS) for the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) and the draft TU MSHCP and Implementing Agreement (IA), for public review and comment. The SDEIS updates the analysis presented in the 2009 Draft EIS on the TU MSHCP, which we released for public comment on February 4, 2009. Specifically, the SDEIS addresses comments on the 2009 Draft EIS, and considers a 2010 analysis by the U.S. Geological Survey on occurrence of California condor in and around the TU MSHCP Covered Lands. We are considering the issuance of a 50-year incidental take permit (permit) for 27 species in response to receipt of an application prepared by Tejon Ranch Corporation (Tejon or Applicant) pursuant to the Endangered Species Act of 1973, as amended (Act).

DATES: Written comments must be received by on or before May 3, 2012.

ADDRESSES: *Obtaining Documents:* You may download copies of the SDEIS, TU MSHCP and IA on the Internet at *http://www.fws.gov/ventura/*. Alternatively, you may use one of the methods below to request hard copies or a CD–ROM of the documents.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email: [fw8tumshcp@fws.gov].* Include ''Tehachapi Upland Draft MSHCP/SEIS Comments'' in the subject line of the message.
- *U.S. Mail:* Roger Root, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *In-Person Drop-off, Viewing, or Pickup:* Call (805) 644–1766 to make an appointment during regular business hours at the above address.
- *Fax:* Roger Root, Assistant Field Supervisor, (805) 644–3958, Attn.: Tehachapi Upland Draft MSHCP/SEIS Comments.

Hard bound copies of the SDEIS, TU MSHCP, and IA are available for viewing at the following locations:

1. U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
2. Kern County Library, Frazier Park Branch, 3732 Park Drive, Frazier Park, CA 93225.

FOR FURTHER INFORMATION CONTACT: Steve Kirkland, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, at 805–644–1766.

SUPPLEMENTARY INFORMATION:

Introduction

We have received an application for an incidental take permit covering 27 listed and unlisted species that may be taken or otherwise affected by on-going ranch activities and future low density residential and commercial development activities on a portion of the Tejon Ranch. The Applicant has prepared the plan to satisfy the requirements for a section 10(a)(1)(B) permit (''permit'') under the Act (16 U.S.C. 1531 *et seq.*). The permit is requested to authorize the incidental take of species that could potentially result from plan-wide activities occurring throughout the 141,886 acres of lands proposed to be covered by the permit (''covered lands''), and from approximately 5,533 acres of mountain resort and other development within and adjacent to the Interstate 5 corridor and Lebec community within the covered lands in Kern County, California. The TU MSHCP proposes a conservation strategy to minimize and mitigate to the maximum extent practicable any impacts that could occur to covered species as the result of the covered activities.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of wildlife species listed as endangered or threatened (16 U.S.C. 1538). The Act defines the term ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, the Service may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental Take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized by an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them by a habitat conservation plan. All species included on an incidental take permit would receive assurances under the Service's ''No Surprises'' regulation [50 CFR 17.22(b)(5) and 17.32(b)(5)].

The Applicant seeks a 50-year incidental take permit for covered activities within 141,886 acres of covered lands on Tejon Ranch lands in Kern County, California. Activities covered by the permit would include ongoing activities that have historically occurred at the Ranch, such as grazing and film production, as well as planned future community development of approximately 5,533 acres within and adjacent to the Interstate-5 corridor in the Tejon Mountain Village Planning Area and the Lebec/Existing Headquarters area, and take minimization, mitigation and conservation measures provided under the TU MSHCP. The permit would not cover hunting or mineral extraction.

Species proposed for coverage in the TU MSHCP are species that are currently listed as federally threatened or endangered or have the potential to become listed during the term of the permit and have some likelihood to occur within the plan area. Should any of the unlisted covered wildlife species become listed under the Act during the term of the permit, take authorization for those species would become effective upon listing. Twenty-one animal species and six plant species are known or have the potential to occur within the plan area and are proposed to be covered by the permit (Covered Species). The permit would include the following federally listed animal species: California condor (*Gymnogyps californianus*—federally listed as endangered and state listed as endangered and fully protected), least Bell's vireo (*Vireo bellii pusillus*—federally listed as endangered), southwestern willow flycatcher (*Empidonax traillii extimus*—federally listed as endangered), and Valley elderberry longhorn beetle (*Democerus californicus dimorphus*—federally listed as threatened). The permit would also include the following species currently unlisted under the Act: western yellow-

billed cuckoo *(Coccyzus americanus occidentalis*—Federal candidate for listing); Tehachapi slender salamander (*Batrachoseps stebbinsi*), bald eagle (*Haliaeetus leucocephalus*), American peregrine falcon (*Falco peregrinus anatum*), little willow flycatcher (*Empidonax traillii brewsteri*), golden eagle (*Aquila chrysaetos*), white-tailed kite (*Elanus leucurus*), ringtail (*Bassariscus astutus*), tricolored blackbird (*Agelaius tricolor*), Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), burrowing owl (*Athene cunicularia*), yellow-blotched salamander (*Ensatina eschscholtzii croceater*), western spadefoot (*Spea hammondii),* purple martin (*Progne subis*), yellow warbler (*Dendroica petechia brewsteri*), coast horned lizard) (*Phrynosoma coronatum* (both *frontale* and *blainvillii* populations), two-striped garter snake (*Thamnophis hammondii*), round-leaved filaree (*Erodium macrophyllum*), Fort Tejon woolly sunflower (*Eriophyllum lanatum* var. *hallii*), Kusche's sandwort (*Arenaria macradenia* var. *kuschei*), Tehachapi buckwheat (*Eriogonum callistum*), striped adobe lily (*Fritillaria striata*), and Tejon poppy (*Eschscholzia lemmonii* ssp. *kernensis*).

The TU MSHCP includes a conservation strategy intended to avoid, minimize, and mitigate to the maximum extent practicable any impacts that would occur to covered species as the result of the covered activities. Under the plan, and consistent with the Tejon Ranch Conservation and Land Use Agreement between Tejon and the Sierra Club, National Audubon Society, Natural Resources Defense Council, Endangered Habitats League, and Planning and Conservation League, no land development would be allowed within approximately 93,522 acres of Covered Lands, including the approximately 37,100 acre Tunis and Winters ridge area, which is designated as the Condor Study Area under the plan and is the area of the ranch most likely to be frequented by condors. An additional 23,001 acres would be preserved as open space within the Tejon Mountain Village planning area, resulting in the permanent conservation of approximately 82 percent of the Covered Lands (TU MSHCP Mitigation Lands).

Upon initiation of construction of the Tejon Mountain Village development, the TU MSCHP requires that the Mitigation Lands be permanently protected by phased recordation of conservation easements or equivalent legal restrictions over all such lands by the end of the permit term. The TU MSCHP also requires implementation of general and species-specific take avoidance, minimization, and mitigation measures to reduce potential impacts to the covered species. With regard to the California condor, the plan requires the ongoing monitoring of covered activities by a qualified biologist to reduce the potential for any human/condor interactions and the permanent enforcement of covenants, conditions, and restrictions on residential development to minimize any impacts to condors. The plan also provides funding for condor capture, care, and relocation in the unlikely event that a condor becomes habituated to human activities. No lethal take of condors would be authorized under the permit.

National Environmental Policy Act Compliance

The Service's proposed issuance of an incidental take permit is a Federal action and triggers the need for compliance with the National Environmental Policy Act (NEPA). The Service has prepared a SDEIS that evaluates the impacts of proposed issuance of the permit and implementation of the TU MSHCP, and also evaluates the impacts of a reasonable range of alternatives.

The SDEIS analyzes four alternatives in addition to the proposed TU MSHCP, summarized above. The Service has identified the proposed TU MSHCP as the Preferred Alternative. Additional alternatives are described below.

The No Action Alternative (referred to as the No Action/No MSCHP Alternative in the 2009 Draft EIS) has been revised. For the purposes of analysis, this alternative now assumes that the Ranchwide Agreement would remain in effect, that development of the TMV Project and other future commercial or residential development allowed within the Covered Lands under the Ranchwide Agreement would not occur, and that Existing Ranch Uses would continue at current levels into the future. The conditions of approval for the TMV Project by Kern County identify certain actions to be undertaken by the Service, including directing the operation of a feeding station and capture of condors that have become habituated. The No Action Alternative does not assume future action on the part of the Service, including future action identified as a condition of Kern County's approval of the TMV Project. Instead, it is assumed the Service would continue to provide technical assistance to Tejon regarding the California condor.

The proposed TU MSHCP Alternative generally remains the same as described in the 2009 Draft EIS. The alternative has been updated to reflect the TMV Project Approvals, including approved mitigation measures required by the County, to reflect clarifications made to the California condor mitigation measures proposed in the applicant's revised MSCHP, and to reflect that the options to purchase easements over the areas formerly referred to as Potential Open Space have been recorded per the terms of the Ranchwide Agreement (referred to as Existing Conservation Easement Areas). Where appropriate, we added information or required mitigation measures associated with the TMV Project approvals to the SDEIS.

The Condor Only HCP Alternative continues to represent a species management approach that addresses only the California condor; the protection measures for the other federally listed species would be determined as a result of project-specific review and approval processes triggered by applicant requests. Like the Proposed TU MSHCP Alternative, the Condor Only HCP Alternative has been updated to reflect the TMV Project Approvals and to include the land conservation requirements contained in the Ranchwide Agreement. Under the Ranchwide Agreement, general plan development areas previously identified for the Condor Only HCP Alternative become Established Open Space Areas. Therefore, the development area under the Condor Only HCP Alternative is now the same as the development area under the Proposed TU MSHCP Alternative.

A new alternative, the Condor Critical Habitat (CCH) Avoidance MSHCP Alternative, has been added to this SDEIS to address several public comments that proposed development areas be reconfigured to avoid federally designed critical habitat for California condor. Under this alternative, no commercial or residential development would occur in any designated critical habitat for California condor. The TMV Project would not occur, as that project would extend into California condor critical habitat. Instead, development would follow Kern County General Plan designations and would cluster most commercial and residential development in the southwestern portion of the Covered Lands, in the portion of the TMV Planning Area nearest to Interstate 5 (I–5), and in areas outside condor critical habitat. The CCH Avoidance MSHCP Alternative also assumes implementation of the Ranchwide Agreement, where development boundaries outside critical habitat conform to the development

setbacks and general boundaries provided in that agreement.

The Kern County General Plan Buildout Alternative (referred to as the MSHCP General Plan Buildout Alternative in the 2009 Draft EIS) has also been revised. While the Ranchwide Agreement has resulted in the recordation of conservation easements on 12,795 acres of the Covered Lands (Existing Conservation Easement Areas), the remainder of the Covered Lands to be precluded from development under the Ranchwide Agreement do not currently have conservation easements recorded. As noted above, because the Ranchwide Agreement is a private agreement between parties and Service is not a party to and has no contractual standing under the agreement, it can be amended (or even terminated) by mutual agreement of the parties such that the land preservation outcome of the Ranchwide Agreement on Covered Lands may not be realized. While the Service considers the likelihood remote that the Ranchwide Agreement would be terminated, for purposes of comprehensive NEPA analysis, this alternative does not assume continuation of the Ranchwide Agreement except for the permanent protection of the already-recorded conservation easements on the Existing Conservation Easement Lands.

Under the Kern County General Plan Buildout Alternative, development is assumed to proceed in accordance with the Kern County General Plan, including implementation of the TMV Project (per the TMV Project Approvals). Development of the Covered Lands would require Kern County approval, and the SDEIS assumes that it would proceed on a project-by-project basis and that the Service would issue incidental take authorization as appropriate through either the ESA Section 7 or Section 10 process.

Public Comments

If you wish to comment on the permit application, SDEIS, TU MSHCP, or draft IA, you may submit your comments to the address listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Decision

The Service will evaluate the application, associated documents, and comments submitted before preparing a final EIS. A permit decision will be made no sooner than 30 days after the final EIS is filed with EPA, published and the Record of Decision is completed.

This notice is provided pursuant to section 10(a) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: January 19, 2012.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2012–2294 Filed 2–2–12; 8:45 am]

BILLING CODE: P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal—State Class III Gaming Compact Taking Effect.

SUMMARY: This publishes notice of the Tribal-State Compact between the State of California and the Pinoleville Pomo Nation Taking Effect.

DATES: *Effective Date:* February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Compact allows for one gaming facility and authorizes up to 900 gaming devices, any banking or percentage card games, and any devices or games authorized under State law to the State lottery. The Compact also authorizes limited annual payments to the State for statewide exclusivity. Finally, the term of the compact is until December 31, 2031. This Compact is considered to have been approved, but only to the extent that the Compact is consistent with the provisions of IGRA.

Dated: January 26, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–2441 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000 L71220000.EX0000 LVTFGX9G4200]

Notice of Availability of the Final EIS for the HB In-Situ Solution Mine Project, Eddy County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (Final EIS) for the HB In-Situ Solution Mine Project, and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**.

ADDRESSES: Copies of the HB In-Situ Solution Mining EIS are available for public inspection at the Carlsbad Field Office, 620 E. Greene St., Carlsbad, New Mexico 88220. Interested persons may also review the Final EIS on the Internet at *http://www.nm.blm.gov/cfo/HBIS/index.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact David Alderman, Project Manager; telephone 575–234–6232; address 620 E. Greene St. Carlsbad, New Mexico 88220; email *david_alderman@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Intrepid Potash, Inc. (Intrepid) is proposing to extract the potash, a potassium compound commonly used for fertilizer, remaining in inactive underground mine workings using the solution mining method. Intrepid proposes to

construct and operate a solution mine project in an existing deep mine located approximately 20 miles northeast of Carlsbad in Eddy County, New Mexico, in the Secretary's Potash Area.

The remaining potash left in the underground pillars and walls of the inactive workings is no longer accessible through conventional mining methods. The proposed action is to inject saline water into the mine workings and extract a mineral-rich solution. This mineral-rich solution would be pumped to the surface and transported through a series of surface pipelines to evaporation ponds. Once the solution evaporates in the ponds, the potassium-bearing salts would be harvested from the ponds and transported to a newly constructed mill for ore refinement.

The project area includes portions of the following:

New Mexico Principal Meridian

T. 19 S., R. 30 E., T. 19 S., R. 31 E., T. 20 S., R. 29 E., T. 20 S., R. 30 E., T. 20 S., R. 31 E., T. 21 S., R. 29 E., T. 21 S., R. 30 E.

Containing 38,453 acres more or less.

Eighty-two percent of the project area is on public lands managed by the BLM. There are 4,330 acres of open mine workings that are targeted for flooding and the total surface footprint of the project would range from 822 acres to 962 acres, depending on the alternative chosen. The surface footprint for the alternatives described in the draft EIS ranged from 822 acres to 907 acres. The 962-acre footprint evaluated in the final EIS is associated with Alternative D, the preferred alternative. Although it includes 55 more acres than Alternative B, evaluated in the draft and final EIS, this is not a substantial change relevant to environmental concerns because it does not result in substantially increased impacts to the environment. The surface disturbance for Alternative D represents an increase of only 6 percent over the proposed surface disturbance evaluated for Alternative B in the draft EIS and would not lead to any substantial change in impacts on water resources, ground subsidence, wildlife, vegetation, or any other environmental resource.

The BLM initiated the National Environmental Policy Act (NEPA) process for the HB In-Situ Solution Mine Project by preparing an environmental assessment (EA) in 2008. Two public scoping meetings were held on September 16, 2008, to receive public input and comments on the proposed project. During development of the EA and prior to publication, the BLM determined that the preparation of an EIS would be required for the proposed project. The Notice of Intent (NOI) to prepare an EIS for the HB In-Situ Solution Mine Project was published in the **Federal Register** on January 12, 2010, and two public scoping meetings were conducted on January 26, 2010. A scoping report was compiled and published on April 1, 2010. Major issues identified for this project include water use, ground subsidence, and the concurrent development of oil and gas resources in the same area.

Alternatives developed include the proposed action (Alternative A), which utilizes non-potable water supplied by seven wells in the Rustler Formation. Alternative B includes six of the seven wells from the proposed action but also assumes that a substantial portion of the water needed for the project would be supplied from fresh water wells in the Caprock Formation (Ogallala Aquifer) 30 miles northeast of the project area. An alternate routing of pipelines to the Caprock is also being considered under Alternative B. Alternative C buries the pipelines to reduce surface impacts. The Notice of Availability for the Draft EIS was published on April 15, 2011, starting a 60-day public comment period. Public scoping meetings were held in Carlsbad on May 10, 2011, and in Hobbs on May 11, 2011. Briefings were also held for several cooperating agencies. The comment period was extended by 2 weeks at the request of one of the cooperating agencies. Two hundred and seventeen unique comments were received and analyzed.

After considering the comments received on the Draft EIS, the BLM designed a preferred alternative, Alternative D, consisting of elements from the existing action alternatives. The preferred alternative includes: Using water from the southern Rustler wells only, with any shortfall made up with water from the Caprock well field; building the alternate Caprock pipeline from Alternative B to minimize impacts to sand dune lizard habitat; burying 68 percent of the pipelines in the project area including all the pipelines in the Hackberry Lake Special Recreation Management Area; increasing the size of the evaporation ponds by 60 acres; and incorporating minor changes to the power and pipeline routes to protect resources and improve efficiency.

Comments on the Draft EIS were considered and incorporated as appropriate into the proposed Final EIS. Public comments resulted in the addition of clarifying text and a preferred alternative consisting of elements from the other alternatives but did not significantly change the EIS.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Jim Stovall,

Field Manager, Carlsbad Field Office.

[FR Doc. 2012–2375 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–OX–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L19100000–BK0000–LRCMM0E0015P]

Eastern States: Filing of Plat of Survey, North Carolina

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the land described below in the BLM—Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Dominica Van Koten. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The land surveyed is:

Swain County, North Carolina

The plat of survey represents the dependent resurvey of a portion of the 3200 acre tract, lands held in trust for the Eastern Band of Cherokee Indians, Swain County, in the State of North Carolina, and was accepted December 30, 2011.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have

become final, including decisions on appeals.

Dated: January 30, 2012.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2012–2424 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000; WYW164812]

Notice of Availability of the Record of Decision for the Wright Area North Hilight Field Coal Lease-by-Application and Environmental Impact Statement, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the North Hilight Field Coal Lease-by-Application (LBA) included in the Wright Area Coal Lease Applications Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/Wright-Coal.html.* Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604.

FOR FURTHER INFORMATION CONTACT: Kathy Muller Ogle, Coal Program Coordinator, at (307) 775–6206, or Sarah Bucklin, EIS Project Manager, at (307) 261–7541. Ms. Ogle's office is located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Ms. Bucklin's office is located at the BLM High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability is for the North Hilight Field Coal Tract and addresses leasing Federal coal in Campbell County, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 2, the preferred alternative for this LBA in the Wright Area Coal Final EIS. Under Alternative 2, the BLM will offer to lease the North Hilight Field Coal LBA area, as modified by the BLM. The LBA area includes approximately 4,530 acres. The BLM estimates that it contains approximately 467,596,000 tons of mineable Federal coal reserves under the selected configuration.

The BLM will announce a competitive coal lease sale in the **Federal Register** at a later date. The Environmental Protection Agency published a **Federal Register** notice announcing the Final EIS was publicly available on July 30, 2010 (75 FR 44951).

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register**. The ROD contains instructions for filing an appeal with the IBLA.

Donald A. Simpson,

State Director.

[FR Doc. 2012–2360 Filed 2–2–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–1111–8900; 0004–SYM]

Notice of Availability of Draft Director's Order #79 Concerning National Park Service Policies and Procedures Governing Integrity of Scientific and Scholarly Activities

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is proposing to adopt a Director's Order setting forth policies and procedures that guide NPS practices to ensure the integrity of NPS scientific and scholarly activities. This NPS guidance will ensure proper application in the NPS of Department of the Interior guidance on Integrity of Scientific and Scholarly Activities, which is found in Part 305, Chapter 3, of the Department of the Interior Manual (on the Internet at *http://elips.doi.gov/app_dm/act_getfiles.cfm?relnum=3889*).

DATES: Written comments will be accepted until April 3, 2012.

ADDRESSES: Draft Director's Order #79 is available on the Internet at *http://www.nps.gov/policy/DO–79draft.pdf.* Requests for copies of, and written comments on, the draft Director's Order should be sent to Dr. Gary Machlis, Science Advisor to the Director, 1849 C Street NW., Washington DC 20240, or to his Internet address: *gary_machlis@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Machlis at (202) 219–8933 or John G. Dennis at (202) 513–7174 (or *john_dennis@nps.gov*).

SUPPLEMENTARY INFORMATION: Draft Director's Order #79 addresses Code of Scientific and Scholarly Conduct; reporting and resolving allegations regarding loss of scientific and scholarly integrity; whistleblower protections; ombudsman responsibilities; participation of NPS employees as officers or members on the board of directors of professional societies or other non–federal organizations; participation by non-NPS employees on NPS scientific and scholarly boards, panels, and advisory groups; and maintenance of a reference manual regarding integrity of scientific and scholarly activities.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Gary Machlis,

Science Advisor to the Director.

[FR Doc. 2012–2437 Filed 2–2–12; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–777]

Certain Muzzle-Loading Firearms and Components Thereof Determination Not To Review an Initial Determination Terminating the 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. 29) issued by the presiding administrative law judge (''ALJ'') on January 10, 2012, granting a joint motion to terminate the investigation as to the last remaining respondents.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3104. 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 (*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 June 17, 2011, based on a complaint filed by Thompson/Center Arms Company, Inc. and Smith & Wesson Corp. (''complainants''). 76 FR 35469 (Jun. 17, 2011). The Commission's Notice of Investigation names seven respondents, including Blackpowder Products Inc., Connecticut Valley Arms, and Bergara Barrels North America, all of Duluth Georgia, and Dikar Sociedad Cooperativa Limitada and Bergara Barrels Europe, both of Bergara, Spain (collectively ''the BPI respondents''). The complaint alleges violations of section 337 by reason of infringement of U.S. Patent Nos. 7,908,781 (''the '781 patent''); 7,814,694; 7,140,138 (''the '138 patent''); 6,604,311; 5,782,030; and 5,639,981. On July 8, 2011, the ALJ granted complainants' motion to terminate the investigation as to the '781 and '138 patents. Order No. 7 (July 8, 2011). The Commission did not review this determination. Notice of Determination Not to Review (July 22, 2011).

The complainants also filed a motion for temporary relief directed to only respondents Ardesa Firearms (Ardesa) of Zamudio-Vizcaya, Spain and Traditional Sporting Goods, Inc., d/b/a Traditions Sporting Firearms of Old Saybrook, Connecticut (''Traditions''). On August 31, 2011, the ALJ issued an ID denying temporary relief. On November 10, 2011, the Commission determined to review the denial of temporary relief. 76 FR 71354 (November 17, 2011). On review the Commission affirmed the denial of temporary relief based on the ALJ's finding of no irreparable harm and took no position on the other temporary relief factors. *Id.*

On November 29, 2011, complainants and respondents Ardesa and Traditions filed a joint motion to terminate the investigation based on a settlement agreement. On December 12, 2011, the ALJ granted the motion in Order 26, and the Commission did not review. Notice of Commission Determination Not To Review (January 9, 2012).

On December 23, 2011, complainants and the BPI respondents jointly filed a motion to terminate the investigation with respect to the BPI respondents based on a settlement agreement based on licensing. The Commission investigative attorney supported the motion. The ALJ granted the joint motion on January 10, 2012, finding that the motion met all the requirements of Commission rule 210.21(b) and that termination of the investigation with respect to the BPI respondents did not impose any burdens on the public interest. No petitions for review of the ID were received. There being no other respondents remaining in the investigation, this ID terminates the investigation in its entirety.

No petitions for review of this ID were received, and the Commission has determined not to review the ID.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: January 31, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–2447 Filed 2–2–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act *and* the Resource Conservation and Recovery Act

Notice is hereby given that on January 30, 2012, a proposed Consent Decree and Settlement Agreement (the ''Non-Owned Site Settlement Agreement'') in the bankruptcy matter, *Motors Liquidation Corp, et al., f/k/a General Motors Corp., et al.,* Jointly Administered Case No. 09–50026 (REG), was lodged with the United States Bankruptcy Court for the Southern District of New York. The Parties to the Non-Owned Site Settlement Agreement are the estates of debtors Motors Liquidation Corporation, formerly known as General Motors Corporation, Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc. (collectively, the ''Debtors' Estates''), the Motors Liquidation General Unsecured Creditors Trust (collectively with the Debtors' Estates, ''Old GM''), and the United States of America. The Settlement Agreement resolves claims and causes of action of the Environmental Protection Agency (''EPA'') against Old GM under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601–9675, with respect to the following sites:

1. The Diamond Alkali Superfund Site in New Jersey (the ''Diamond Alkali Site'');
2. The Kane & Lombard Street Drum Superfund Site in Maryland (the ''Kane & Lombard Site''); and
3. The Hayford Bridge Road Groundwater Superfund Site in Missouri (the ''Hayford Bridge Site'').

Under the Non-Owned Site Settlement Agreement, EPA will receive an allowed general unsecured claim of $19,500,000 for the Diamond Alkali Site and an allowed general unsecured claim of $1,402,000 for the Hayford Bridge Site. EPA will also receive work up to the amount of $448,000 in accordance with bond requirements at the Hayford Bridge Site, and work up to the amount of $2,448,334 in accordance with bond requirements at the Kane & Lombard Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Non-Owned Site Settlement Agreement. 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 *In re Motors Liquidation Corp., et al.,* D.J. Ref. 90–11–3–09754.

The Non-Owned Site Settlement Agreement may be examined at the Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, and at the U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460. During the public comment period, the Non-Owned Site Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the Non-Owned Site Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, please 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. 2012–2471 Filed 2–2–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on January 30, 2012, a proposed First Amended Consent Decree in *United States of America and State of Hawaii* v. *City and County of Honolulu,* Civil No. 94–00765 DAE–KSC (D. Hawaii), was lodged with the United States District Court for the District of Hawaii.

On January 30, 2012, the United States, the State of Hawaii, the City and County of Honolulu, and three Intervenors (Sierra Club, Hawai'i Chapter, Hawai'i's Thousand Friends, and Our Children's Earth Foundation) filed a joint stipulation to amend the Consent Decree that was entered by the Court on December 17, 2010. The proposed First Amended Consent Decree amends the Consent Decree to provide for construction of a Kaneohe-Kailua Tunnel and an associated influent pump station instead of construction of the Kaneohe-Kailua Force Main required by the Consent Decree. In addition, the proposed First Amended Consent Decree will eliminate certain storage projects that will not be needed following completion of the tunnel project.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the First Amended 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 Hawaii* v. *City and County of Honolulu,* D.J. Ref. 90–5–1–1–3825.

The First Amended Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the First Amended Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the First Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5241. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $25.50 (without appendices) or $38.75 (with appendices) (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 stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–2436 Filed 2–2–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 001–2012]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of a new system of records and removal of five system of records notices.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice (Department or DOJ) proposes to establish a new Department-wide system of records entitled, ''Department of Justice Employee Assistance Program (EAP) Records,'' JUSTICE/DOJ–015. The purpose of publishing this Department-wide notice is to consolidate existing EAP notices published by separate DOJ components and provide a comprehensive notice to cover all Department EAP records, thereby increasing administrative efficiency and promoting consistent maintenance of DOJ EAP records. Accordingly, this Department-wide system notice replaces, and the Department hereby removes, the following system notices previously published by individual DOJ components:

Executive Office for United States Attorneys (EOUSA), ''Employee Assistance Program (EAP) Counseling and Referral Records,'' JUSTICE/USA–020, 66 FR 15755 (Mar. 20, 2001);

Federal Bureau of Investigation (FBI), ''FBI Alcoholism Program,'' JUSTICE/FBI–014, 52 FR 47251 (Dec. 11, 1987);

Federal Bureau of Prisons (BOP), ''Employee Assistance Program Record System,'' JUSTICE/BOP–014, 65 FR 46739 (July 31, 2000);

Justice Management Division (JMD), ''Employee Assistance Program (EAP) Counseling and Referral Records,'' JUSTICE/JMD–016, 65 FR 36718 (June 9, 2000); and

United States Marshals Service (USMS), ''U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records,'' JUSTICE/USM–015, 72 FR 49015, (Aug. 27, 2007).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by March 5, 2012.

ADDRESSES: The public, Office of Management and Budget (OMB) and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, or by facsimile at (202) 307–0693. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Dr. Leo Shea, Department of Justice, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1055, Washington, DC 20530, or by facsimile at (202) 514–8797.

SUPPLEMENTARY INFORMATION: The records in this system of records document the work performed by the EAP on behalf of the EAP client and allow for the tracking of the EAP client's progress and the EAP client's participation in the EAP or EAP related community programs.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated; January 12, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/DOJ–015

SYSTEM NAME:

Department of Justice Employee Assistance Program (EAP) Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Employee Assistance Program (EAP) records are located at the U.S. Department of Justice, 1331 Pennsylvania Avenue NW., Washington, DC 20530, and other Department of Justice (DOJ) offices throughout the country. For those components that operate component-specific EAPs, records are located at the component's primary location and/or its field division sites. The main address for each DOJ component is posted on the DOJ Web site, *www.justice.gov.* EAP records for components that utilize contractors in providing EAP services may also be maintained by such contractors, on behalf of the Department, at the contractor's location. To determine the location of particular EAP records, contact the appropriate EAP Privacy Act system manager, whose contact information is listed below in the System Managers and Addresses section.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Department, and in limited instances their family members, who have sought counseling or have been referred for counseling or treatment through the EAP. The remainder of this notice will refer to these individuals as ''EAP client(s).''

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include any record, written or electronic, which may assist in diagnosing, evaluating, counseling, and/or treating an EAP client, or resolving an EAP client's complaint or management's concerns (management consultation) regarding the EAP client's performance, attendance, or conduct issues. Included are client identification data, such as name, home and/or work address, email address, employee identification numbers, job title/series, telephone numbers, date of birth, race, gender, marital status, relationship of family member to employee, and emergency contacts; the EAP counselor's intake/termination and outcome documents; case notes; pertinent personal, family, employment, disciplinary, financial, legal, psychosocial, medical, and/or employment histories; medical tests or screenings, including drug and alcohol tests and information on positive drug tests generated by the staff of the Drug Free Workplace Program or treatment facilities from which the EAP client may be receiving treatment; treatment and rehabilitation plans; insurance data; behavioral improvement plans; and records of referrals. Referrals include those to community treatment resources and social service agencies that provide legal, financial, or other assistance not related to mental health or general medical services. Where clinical referrals have been made, records may include relevant information related to counseling, diagnosis, prognosis, treatment, and evaluation, together with follow-up data that may be generated by the community program providing the relevant services. Other records included in the system are the written consent forms used to permit the disclosure of information outside the EAP. EAP client records may also include account information, such as contractor billings and government payments, when EAP services are provided by an EAP contractor to the client.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 7361, 7362, 7901, 7904; 42 U.S.C. 290dd, 290dd–2; 44 U.S.C. 3101; 5 CFR part 792, subpart A; 42 CFR part 2; Sec. 503, Pub. L. 100–71, 101 Stat. 391, as amended; E.O. 12564, 51 FR 32889; and DOJ Order No. 1200.1.

PURPOSE(S):

The EAP is a voluntary program designed to assist EAP clients in obtaining help in handling personal problems that may affect job performance, and to provide emotional support and assistance during periods of crisis. Records are maintained to document and track a client's participation in the EAP or community programs and the nature and effects of the employee's personal problems. If an EAP client so consents, these records may also be used to track compliance with Abeyance or Last Chance Agreements that include treatment options, in which the EAP is an integral part of establishing and/or monitoring treatment compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), relevant records or information in this system may be disclosed without EAP client consent as follows:

(Note: To the extent that disclosure of substance abuse patient records is more restricted than disclosure of other EAP records, the EAP staff will follow such restrictions. *See* 42 U.S.C. 290dd–2; 42 CFR part 2. Similarly, nothing in these routine uses should be construed as authorizing a disclosure which is prohibited under State law; nor may any State law either authorize or compel any disclosure of substance abuse patient records not encompassed by this notice and governing EAP regulations. *See* 42 CFR 2.20.)

(a) To appropriate State or local authorities to report, where required under State law, incidents of suspected child, elder, or domestic abuse or neglect.

(b) To any person or entity to the extent necessary to prevent an imminent crime which directly threatens loss of life or serious bodily injury.

(c) To contractors or authorized EAP community health care providers that provide counseling and other services through referrals from the EAP staff to the extent that it is appropriate, relevant, and necessary to enable the contractor or provider to perform his or her counseling, treatment, rehabilitation, and evaluation responsibilities.

(d) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, grant, cooperative agreement, or other assignment providing other services to an EAP program, when necessary to provide these services. In the case of substance abuse patient records, a service provider must meet the qualifications established by 42 CFR 2.11.

(e) To any person who is responsible for the care of an EAP client when the EAP client to whom the records pertain

is mentally incompetent or under legal disability.

(f) To any person or entity to the extent necessary to meet a bona fide medical emergency.

(g) To law enforcement officers to report information directly related to an EAP client's commission of a crime on the premises of the EAP program or against EAP program personnel or a threat to commit such a crime, provided that the disclosure is limited to the circumstances of the incident, including the client status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(h) To a former EAP employee of the Department for purposes of: Responding to an official inquiry by a federal, State, or local government entity or professional licensing authority, in accordance with applicable Departmental regulations; or facilitating communications with the employee or contractor that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the employee or contractor regarding a matter within that person's current or former area of responsibility.

(i) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information in this system may be maintained in paper or electronic format. Records in paper format include hardcopy manual files and index cards. Records in electronic format are kept in computerized databases and electronic media.

RETRIEVABILITY:

Records in this system may be indexed and retrieved by the name of the EAP client or by an identifying case number or symbol that is cross-indexed to the EAP client's name, in accordance with policies and procedures outlined in DOJ Order 1200.1.

SAFEGUARDS:

Internal EAP records are maintained by component EAP staff. In most cases, access to Department buildings is restricted by 24-hour guard service and electronic identification. EAP records are secured in a GSA security-approved safe or equivalent as approved by the component's Security Program Office. Safes are locked when staff members are not in their offices. Access to these files is strictly limited to approved EAP personnel only. Only the case number appears on the file label. The file is cross-referenced with a separately secured list with corresponding name and case number. EAP case-sensitive information in electronic format is only stored on a computer hard drive or equivalent device if it is an approved system with firewall and password protection. Systems operating on a component's LAN-based system encrypt stored EAP sensitive data. Electronic media are accessible only by a confidential password and secured in a safe as referenced above, within a locked room when not in use. Department contractors that maintain EAP records are required to provide adequate file security to prevent the theft of client files or inadvertent release of personal health information. Adequate file security may include the removal of an EAP client's personal information in a payment voucher prepared to effect payment for services rendered by the contractor in performance of the contract. Further, contractor invoices or documents in support of payment which do include specific EAP client information are hand-carried by local contractors to the component's EAP Administrator when feasible.

RETENTION AND DISPOSAL:

Records are retained during their useful life in accordance with records retention schedules approved by the National Archives and Records Administration. All records regardless of the storage medium are destroyed three years after the date of the last counseling session, unless a longer retention period is necessary because the EAP has actual notice of an administrative or judicial proceeding specific to the client. In such cases, the records are retained for six months after the conclusion of the proceedings. Destruction is by EAP personnel. Paper records are destroyed through the use of a high-grade shredder. Any electronic storage device that was used to store sensitive EAP information is degaussed before it is discarded, transferred, or donated outside the EAP.

SYSTEM MANAGERS AND ADDRESSES:

EAP records are located at various DOJ-operated and contractor-operated facilities. Six components of the DOJ operate component-specific EAPs. The primary Privacy Act system manager and address for component-specific EAPs are as follows:

ATF: EAP Administrator, Human Resources Division, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Ave. NE., Washington, DC 20226.

DEA: EAP Administrator, Drug Enforcement Administration, 8701 Morrissette Drive Springfield, VA 22152.

EOUSA: EAP Administrator, Executive Office for United States Attorneys, 600 E St. NW., Room 2800, Washington, DC 20530.

FBI: EAP Administrator, Federal Bureau of Investigation, 935 Pennsylvania Ave. NW., Room 10190, Washington, DC, 20535–0001.

BOP: EAP Administrator, Federal Bureau of Prisons, 320 First St. NW., Room HOLC–871, Washington, DC 20534.

USMS: EAP Administrator, United States Marshals Service, Room 750, CS–3, Washington, DC 20530.

For all other DOJ components, the primary Privacy Act system manager and address is EAP Administrator, Justice Management Division, U.S. Department of Justice, 1331 Pennsylvania Ave. NW., Suite 1055, Washington, DC 20530.

NOTIFICATION PROCEDURE:

If you wish to be notified if the system contains a record pertaining to you, please follow the Record Access Procedures, below.

RECORD ACCESS PROCEDURES:

You may request notice about or access to any EAP records pertaining to you, request an accounting of any DOJ disclosure of these records, or request amendment or correction of these records as provided in the Department's Privacy Act regulations set forth in 28 CFR subpart D, Protection of Privacy and Access to Individual Records Under

the Privacy Act of 1974. EAP records are located at various DOJ-operated and contractor-operated facilities, and you may make your request by writing directly to the Privacy Act Office of the component that maintains your EAP records. The appropriate address to use, and any additional requirements for submitting a request to a given component, are listed in Appendix I of 28 CFR part 16. Further details are provided in Attachment B of the Department's FOIA Reference Guide, available on the Department's Web site here: *http://www.justice.gov/oip/04_3.html.* If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, Room 115, LOC Building, Washington, DC 20530–0001, and the Mail Referral Unit will forward your request to the component(s) that it determines to be most likely to maintain your records.

For the quickest possible handling, both the request letter and the envelope should be marked ''Privacy Act Request.'' The request should include a description of the records sought and must include sufficient information to verify your identity, including your full name, current address, and date and place of birth. You must sign and date your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. (While no specific form is required, you may obtain a form (Form DOJ–361) for use in certification of your identity from the FOIA/PA Mail Referral Unit at the address listed above, or on the Department's Web site at *http://www.justice.gov/oip/forms/cert_ind.pdf.*) If you desire to request amendment or correction of information maintained in your records, you should also comply with the additional provisions in Contesting Record Procedures, below.

CONTESTING RECORD PROCEDURES:

If you desire to contest and request amendment or correction of information about you maintained in the system, please follow the Record Access Procedures, above. In addition, you should also comply with the provisions of 28 CFR 16.46, which include requirements that you identify each particular record in question and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment or correction that you want.

RECORD SOURCE CATEGORIES:

Records are generated by EAP personnel, the EAP client who is the subject of the record, the personnel office, employee relations/labor relations counsel, the EAP client's supervisor, the EAP client's co-workers, employee bargaining units, EAP contractors, referral counseling and treatment programs or individuals, and other outside sources. In the case of drug abuse counseling, records may also be generated by the staff of the Drug-Free Workplace Program and the medical review officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–2463 Filed 2–2–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993— Institute of Electrical and Electronics Engineers

Notice is hereby given that, on January 10, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 43 new standards have been initiated and 27 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/about/sba/sep2011.html, http://standards.ieee.org/about/sba/oct2011.html, http://standards.ieee.org/about/sba/dec2011.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on July 1, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2011 (76 FR 48884).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–2381 Filed 2–2–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, W. L. Gore, Newark, DE, has been added as a party to this venture. Also, Texas-Lehigh Cement Company, Buda, TX; Arizona Cement Association, Phoenix, AZ; Concrete Promotion Council of Northern California, Roseville, CA; and Slag Cement Association, Sugar Land, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notifications disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on May 12, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 2011 (76 FR 34252).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–2383 Filed 2–2–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Grupo Bimbo, S.A.B. de C.V., et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Grupo Bimbo, S.A.B. de C. V., et al.,* Civil Action No. 1:11–cv–01857, which was filed in the United States District Court for the District of Columbia on January 23, 2012, together with the response of the United States to the comment.

Copies of the comment and the response are available for inspection at the U.S. Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481); on the Department of Justice's Web site at *http://www.usdoj.gov/atr;* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District Of Columbia

United States of America, Plaintiff, v. *Grupo Bimbo, S.A.B. de C.V., et al.* Defendants.

CASE NO.: 1:11–cv–01857 (EGS) FILED: January 23, 2012

Response of Plaintiff United States to Public Comment on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), plaintiff, the United States of America (''United States'') hereby files the public comment concerning the proposed Final Judgment in this case and the United States' response to that comment. After careful consideration of the comment submitted, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. § 16(d).

I. Procedural History

On October 21, 2011, the United States filed a civil antitrust lawsuit against Defendants Grupo Bimbo S.A.B. de C.V., BBU, Inc., and Sara Lee Corporation to enjoin Grupo Bimbo and BBU's proposed acquisition of Sara Lee's North American Fresh Bakery business. The Complaint alleged that the acquisition would substantially lessen competition in the market for sliced bread in eight geographic markets in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and result in higher prices for consumers in these markets.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and Stipulation signed by the United States, Grupo Bimbo, BBU, and Sara Lee consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA, 15 U.S.C. § 16. The United States filed an Amended Stipulation signed by the United States, Grupo Bimbo, BBU, and Sara Lee on November 17, 2011.[1] Pursuant to the requirements of the APPA, the United States (1) filed its Competitive Impact Statement (''CIS'') with the Court on October 21, 2011; (2) published the proposed Final Judgment and CIS in the **Federal Register** on October 31, 2011 (see 76 Fed. Reg. 67209); and (3) had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in The Washington Post on October 28, 2011, and for six days beginning on October 31, 2011, and ending on November 5, 2011. The Defendants filed the statement required by 15 U.S.C. § 16(g) on October 31, 2011. The sixty-day public comment period ended on January 4, 2012. One comment was received, as described below and attached hereto.

II. The Investigation and Proposed Resolution

On November 9, 2010, Grupo Bimbo and BBU (collectively ''BBU'') agreed to acquire the North American Fresh Bakery business of Sara Lee. The United States Department of Justice (the ''Department'') conducted an extensive, detailed investigation into the competitive effects of the proposed transaction. As part of this investigation, the Department obtained and considered more than 30,000 documents. The Department deposed officials of BBU and Sara Lee and interviewed retail store customers, sliced bread manufacturers, and other individuals with knowledge of the sliced bread industry.

After conducting a detailed analysis of the acquisition, the Department concluded that the combination of BBU and Sara Lee likely would substantially lessen competition for the sale of sliced bread in the metropolitan and surrounding areas of San Francisco, San Diego, Sacramento, and Los Angeles, California; Harrisburg/Scranton, Pennsylvania; Kansas City, Kansas; Omaha, Nebraska; and Oklahoma City, Oklahoma.

As more fully explained in the CIS, the Amended Stipulation and proposed Final Judgment in this case are designed to preserve competition in the sale of sliced bread in the eight geographic areas set forth in the Complaint by requiring BBU to divest the following assets (''Divestiture Assets''). In Los Angeles, San Diego, San Francisco, and Sacramento, California, BBU is required to divest the Sara Lee family of brands of sliced bread (which includes Sara Lee, Sara Lee Classic, Sara Lee Soft & Smooth, Sara Lee Hearty & Delicious, and Sara Lee Delightful) and the EarthGrains brand of sliced bread. In Harrisburg/Scranton, Pennsylvania, BBU is required to divest the Holsum and Milano brands of sliced bread. In Kansas City, Kansas, BBU is required to divest the EarthGrains and Mrs Baird's brands of sliced bread. In Omaha, Nebraska, BBU is required to divest the EarthGrains and Healthy Choice brands of sliced bread. In Oklahoma City, Oklahoma, BBU is required to divest the EarthGrains brand of sliced bread. See Sections II.E, H, and K of the Proposed Final Judgment.

In addition to a perpetual, royalty-free, assignable, transferable, exclusive license to use the particular brands of sliced bread, the proposed Final Judgment requires with respect to each relevant geographic market the divestiture of related tangible assets, including records, customer information, and other assets related to the divested brands. Id. at II.D, G, and J. It also requires the divestiture of related intangible assets, including the rights to trade dress, trademarks, trade secrets, and other intellectual property used in the research, development,

[1] On November 17, 2011, the United States filed a Notice of Amended Hold Separate Stipulation and Order to correct an inadvertent clerical error relating to the definition of ''Central Pennsylvania Area'' in the Hold Separate Stipulation and Order originally filed on October 21, 2011. The Court entered the Amended Hold Separate Stipulation and Order on November 30, 2011.

production, marketing, servicing, distribution, or sale of the brands being divested. Id. The proposed Final Judgment additionally requires the divestiture of brand-related plants and plant-related assets, but it also provides that BBU need not divest those assets in the event that (1) the acquirer does not want those assets, and (2) the United States determines in its sole discretion that a divestiture of some or all of such assets is not reasonably necessary to enable the acquirer to replace the competition that otherwise would have been lost pursuant to BBU's acquisition of Sara Lee's fresh bakery business. Id.

In the Department's judgment, the divestiture of the Divestiture Assets, along with the other requirements contained in the Amended Stipulation and proposed Final Judgment, are sufficient to remedy the anticompetitive effects identified in the Complaint.

III. Standard of Judicial Review

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' United States v. Microsoft Corp., 56 F.3d 1448, 1461 (DC Cir. 1995). See also United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); United States v. InBev N.V./S.A., 2009–2 Trade Cas. (CCH)

76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia Circuit has held, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Akan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *United States* v. *Abitibi-Consolidated, Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008) (citing SBC Commc'ns, 489 F. Supp. 2d at 17).

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459; see also InBev, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,''

[2] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Microsoft, 56 F.3d at 1459–60. As this court recently confirmed in SBC Communications, courts cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments,[3] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). This clause reflects what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.

IV. Summary of Public Comment and the United States' Response

During the 60-day comment period, the United States received one public comment, from Donald Steinhauer, a current BBU, and former Sara Lee, employee in Central California.[4]

A. Summary of Comment

Mr. Steinhauer argues that requiring the divestiture of the Sara Lee and EarthGrains brands of sliced bread in Central California will result in job losses, and that concern for lost jobs should outweigh any concerns the Department has about the anticompetitive effects of BBU's acquisition of Sara Lee's fresh bakery business.

B. The United States' Response

This action was brought in order to prevent a potential violation of Section 7 of the Clayton Act, which protects consumers from the economic consequences of anticompetitive mergers and acquisitions. The Clayton Act seeks to prevent the higher prices, lower quality, or reduced innovation that may result from such transactions.

The Tunney Act, as amended in 2004, requires the Court to evaluate the effect of the proposed Final Judgment ''upon competition'' as alleged in the Complaint. The purpose of this Tunney Act proceeding is to determine whether the proposed divestiture of the brands of sliced bread and related assets resolves the violation identified in the Complaint in a manner that is within the reaches of the public interest. In his comment, Mr. Steinhauer does not criticize the efficacy of the relief contained in the proposed Final Judgment to remedy the competitive harm alleged in the Complaint. Accordingly, Mr. Steinhauer's letter does not provide an appropriate rationale for rejecting the proposed Final Judgment.

V. Conclusion

After careful consideration of the public comment, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. Accordingly, after the comment and this Response are published, the United States will move this Court to enter the proposed Final Judgment.

Dated: January 23, 2012.

Respectfully submitted,
United States of America
/s/Michelle R. Seltzer
Michelle R. Seltzer (DC Bar #475482), Attorney.
Litigation I Section
Antitrust Division
U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.
Telephone: (202) 353–3865
Facsimile: (202) 307–5802
Email: Michelle.Seltzer@usdoj.gov.

Certificate of Service

I, Michelle R. Seltzer, hereby certify that on January 23, 2012, I electronically filed the Response of Plaintiff United States to Public Comment on the Proposed Final Judgment and the attached Public Comment with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to the following counsel:

For Defendants Grupo Bimbo S.A.B. de C.V. and BBU Inc.:
Jaime M. Crowe, *Esq., White & Case LLP, Washington, DC 20005.*
Telephone: (202) 626–3640
Facsimile: (202) 639–9355
Email: jcrowe@whitecase.com.

For Defendant Sara Lee Corporation:
Marimichael O'Halloran Skubel, *Esq., Kirkland & Ellis LLP 655 Fifteenth Street, NW Washington, DC 20005–5793.*
Telephone: (202) 879–5034
Facsimile: (202) 879–5200
Email: mskubel@kirkland.com.

/s/Michelle R. Seltzer
Michelle R. Seltzer (DC Bar #475482), Attorney.
Litigation I Section
Antitrust Division
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Email: michelle.seltzer@usdoj.gov.

November 16, 2011

To Whom It May Concern:

On your ruling over the Grupo Bimbo buyout of Sara Lee, I was stunned at this ruling that requires Bimbo to divest the Sara Lee and Earthgrains products in our area, Central California Do you realize the job loss that will occur from this ruling over what you call ''higher prices'' that people will pay for bread in the stores? If the consumer feels that specific bread is too high they will buy another brand and would still have other choices.

Knowing that this letter by no means will change the outcome of this ruling, I thought that jobs were the focal point of a lot decisions that are being made in this administration. I hope for my family's well-being that I won't be one that loses out after being employed with Sara Lee for 20+ years. In respect for what the Department of Justice does to stop immorality in American businesses and individuals, in this case, job loss that will occur outweighs the concerns that you have about Bimbo monopolizing. I hope in the coming months I could write you another letter apologizing to you about this letter.

Respectfully, *Donald Steinhauer.*

Redacted.

[FR Doc. 2012–2332 Filed 2–2–12; 8:45 am]

BILLING CODE 4410–11–M

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for the court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[4] Pursuant to a specific request, the Department has redacted Mr. Steinhauer's mailing address from his comment.

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued.

TA–W–80,035; Ericsson Services, Inc., Kentwood, MI

TA–W–80,281; Priceline.Com, Inc., Grand Rapids, MI

I hereby certify that the aforementioned negative determinations on reconsideration were issued on January 20, 2012. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: January 24, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–2371 Filed 2–2–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

T*A–W–80,089; Parkdale America, LLC, Galax, VA: May 31, 2010.*

TA–W–80,143; Globaltex, Inc., Hudson, MA: April 29, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on January 20, 2012. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: January 24, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–2370 Filed 2–2–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0003]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

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

ACTION: Notice of MACOSH meeting.

SUMMARY: This **Federal Register** notice announces meetings of the full Committee and the workgroups on February 22–23, 2012, in Washington, DC.

DATES: *MACOSH meeting:* MACOSH will meet from 9 a.m. until approximately 5 p.m. on February 22 and 23, 2012.

Submission of written statements, requests to speak, and requests for special accommodation: Written statements, requests to speak at the full Committee meeting, and requests for special accommodations for these meetings must be submitted (postmarked, sent, or transmitted) by February 15, 2012.

ADDRESSES: The Committee and workgroups will meet at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of written statements and requests to speak: You may submit written statements and requests to speak at the MACOSH meetings, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2012–0003), by one of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand (courier) delivery, and messenger service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0003, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (express mail, hand (courier) delivery, and messenger service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Requests for special accommodations: Submit requests for special accommodations for MACOSH and its workgroup meetings by hard copy, telephone, or email to: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0003). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by express mail, hand (courier) delivery, and messenger service.

OSHA will place written statements and requests to speak, including personal information provided, in the public docket which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and, when permitted, copying, at the OSHA Docket Office at the above address. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the docket.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email *Meilinger.frank2@dol.gov.*

For general information about MACOSH and this meeting: Bill Perry, Acting Director, Office of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2086; email *perry.bill@dol.gov.*

Copies of this Federal Register notice: Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's Web page at: *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: All MACOSH committee and workgroup meetings are open to the public. Interested persons may attend the full Committee and its workgroup meetings at the time and place listed above. The tentative agenda will include discussions on: Working safely around radiation; person in water (man overboard); confined space ventilation; safe entry and cleaning practices for vessel sewage tanks; best practices for eye injury reduction; hot work on hollow structures; injury and illness prevention programs; container handling equipment; semi-tractor tip-over; top/side handler operation safety; stay focused on safety while working on or around cargo handling equipment; safety zones between railcars and cargo handling equipment; and preventing chassis drivers from jostling in cabs.

The workgroups, which include Longshoring and Shipyard, will meet from 9 a.m. until approximately 5 p.m. on February 22, 2012, in Room S–4215. The workgroups will discuss topics listed in the previous paragraph, as well as other topics that may arise during the remainder of the current Committee charter. The full Committee will meet from 9 a.m. until about 5 p.m. on February 23, 2012, in Room N–3437 A, B, and C.

Public Participation

Any individual attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance at 3rd and C Streets NW., and pass through Building Security. Attendees must have valid government-issued photo identification to enter the building. Please contact Vanessa L. Welch at (202) 693–2080, email *welch.vanessa@dol.gov* for additional information about building security measures for attending the Committee and workgroup meetings. Interested parties may submit a request to make an oral presentation to MACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (*e.g.,* organization name), if any, and a brief outline of the presentation. Requests to address the full Committee may be granted as time permits and at the discretion of the MACOSH Chair.

Interested parties also may submit written statements, including data and other information, using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to MACOSH members prior to the meeting. Individuals who need special accommodations to attend the MACOSH meeting should contact Ms. Veneta Chatmon by one of the methods listed in the **ADDRESSES** section.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on January 30, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–2372 Filed 2–2–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Founding Fathers Advisory Committee

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), and the Presidential Historical Records Preservation Act of 2008 (Pub. L. 110–404), the National Archives and Records Administration (NARA) announces a meeting of the Founding Fathers Advisory Committee. The Committee will advise the Archivist of the United States on the progress of the Founding Fathers editorial projects funded by the National Historical Publications and Records Commission (NHPRC), the grant making arm of the National Archives. The meeting will discuss the Founders Online Initiative being undertaken through two cooperative agreements between NARA and the University of Virginia, and the workflows and performance goals and targets of the Founding Fathers editorial projects.

DATES: The meeting will be held on Tuesday, February 28, 2012 from 9 a.m. to 2:30 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Board Room, Room 119, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kathleen Williams, Executive Director of the NHPRC, National Archives Building, 700 Pennsylvania Avenue NW., Room 116, Washington, DC 20408, telephone number: (202) 357–5010, or at *kathleen.williams@nara.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name, email address, and telephone number of individuals planning to attend must be submitted to the National Archives no later than Thursday, February 21st. NARA staff will provide additional instructions for gaining access to the location of the meeting. Please RSVP to: *christine.dunham@nara.gov* or (202) 357–5094.

Dated: January 18, 2012.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2012–2366 Filed 2–2–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 5, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (N1–145–09–2, 31 items, 31 temporary items.) Master files of electronic information systems used in production adjustments, compliance, disaster assistance, and risk management support for crops and livestock.

2. Department of the Army, Agency-wide (N1–AU–10–97, 1 item, 1 temporary item). Master files of an electronic information system that contains information used to substantiate benefits for Non-Appropriated Fund employees.

3. Department of Energy, Federal Energy Regulatory Commission (N1–138–11–2, 2 items, 1 temporary item). Reports on historic and prehistoric sites for land regulated by the Commission.

4. Department of Homeland Security, Transportation Security Administration (N1–560–11–8, 1 item, 1 temporary item). Master files of an electronic information system containing information on canine handler teams,

such as personal information, contact information, biographies, and training, used to identify, locate, and manage mobilization for operations and training activities.

5. Department of Justice, Civil Rights Division (DAA–0060–2011–22, 2 items, 2 temporary items). Master files and outputs for an electronic information system used to track contact information for potential claimants in the US vs. City of New York class action suit.

6. Department of Justice, Federal Bureau of Investigation (N1–65–11–14, 4 items, 4 temporary items). Records relating to the language quality program, including reviews, certifications, and training.

7. Department of Transportation, Federal Railroad Administration (N1–399–08–10, 10 items, 10 temporary items). Master files of electronic information systems containing track survey data used to determine rail safety violations.

8. Department of the Treasury, Internal Revenue Service (N1–58–10–23, 1 item, 1 temporary item). Records consist of evidence collected but not used during criminal investigations.

9. Department of the Treasury, Internal Revenue Service (N1–58–11–18, 3 items, 3 temporary items). Master files, audit data, and documentation for an electronic information system used to capture tax information on foreign partners.

10. Department of the Treasury, Internal Revenue Service (N1–58–11–19, 3 items, 3 temporary items). Master files, audit data, and documentation for an electronic information system used to capture tax information on foreign individuals and entities.

11. Commodities Futures Trading Commission, Agency-wide (N1–180–11–1, 3 items, 3 temporary items). Non-policy intranet records and Web site operations records.

12. Commodities Futures Trading Commission, Agency-wide (N1–180–11–2, 2 items, 2 temporary items). Reports and working files for lost, stolen, or destroyed government and personal property.

Dated: January 30, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–2432 Filed 2–2–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by April 3, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

OMB Number: 3145–0194.

Expiration Date of Approval: May 31, 2012.

Type of Request: Intent to seek approval to extend an information collection.

Abstract

Proposed Project:

The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress toward achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress toward goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 100 hours per center for seventeen centers for a total of 1700 hours.

Respondents: Non-profit institutions; Federal Government.

Estimated Number of Responses per Report: One from each of the seventeen centers.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 31, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–2402 Filed 2–2–12; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Information Collection; Interview Survey Form (INV 10)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: Federal Investigative Services (FIS), U.S. Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–0106, Interview Survey Form (INV 10). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until April 3, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Donna McLeod or sent via electronic mail to *FISFormsComments@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Donna McLeod or sent via electronic mail to *FISFormsComments@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM mails the INV 10 questionnaire to a random sampling of record and personal sources contacted during background investigations when investigators have performed fieldwork. The INV 10 is used as a quality control instrument designed to ensure the accuracy and integrity of the investigative product, as it inquires of the sources about the investigative procedure employed by the investigator, the investigator's professionalism, and the information discussed and reported. In addition to the preformatted response options, OPM invites the recipients to respond with any other relevant comments or suggestions. It is estimated that 63,869 individuals will respond annually. The INV 10 takes approximately 6 minutes to complete. The estimated annual burden is 6,387 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–2473 Filed 2–2–12; 8:45 am]

BILLING CODE 6325–53–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Financial Resources Questionnaire (RI 34–1, RI 34–17) and Notice of Amount Due Because of Annuity Overpayment (RI 34–3, RI 34–19)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0167, Financial Resources Questionnaire (RI 34–1 and RI 34–17) and Notice of Amount Due Because of Annuity Overpayment (RI 34–3 and RI 34–19). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on August 16, 2011 at Volume 76 FR 50770 allowing for a 60-day public comment period. No comments were received for this information collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 5, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Financial Resources Questionnaire (RI 34–1), Financial Resources Questionnaire—Federal Employees' Group Life Insurance Premiums Underpaid (RI 34–17), collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. Notice of Amount Due Because Of Annuity Overpayment (RI 34–3) and Notice of Amount Due Because of FEGLI Premium Underpayment (RI 34–19), informs the annuitant about the overpayment and collects information from the annuitant about how repayment will be made.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Financial Resources Questionnaire and Amount Due Because of Annuity Overpayment.

OMB Number: 3206–0167.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,081.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 2,081.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–2475 Filed 2–2–12; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of Council Meeting.

SUMMARY: The Hispanic Council on Federal Employment will hold its third meeting on Thursday, February 16, 2012, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: February 16th, 2012 from 2–4 p.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Building, the Pendleton, 5th Floor, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0040, Fax (202) 606–2183, or email at *Jesse.Frank@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–2389 Filed 2–2–12; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–124; Order No. 1180]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Balm, Florida 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: *Deadline for Petitioner's Form 61:* March 1, 2012, 4:30 p.m., eastern time; *deadline for answering brief in support of the Postal Service:* March 21, 2012, 4:30 p.m., eastern time. *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 a petition for review of the Postal Service's determination to close the Balm post office in Balm, Florida. The petition for review received January 26, 2012, was filed by George and Marilyn Fears and is postmarked January 4, 2012.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–124 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 March 1, 2012.

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 adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

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 with the Commission is February 10, 2012. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by

the Postal Service to this Notice is February 10, 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).

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 participants' submissions also will be posted on the Commission's 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 or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The 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 Petitioners and respondent, 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 February 21, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site 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 the 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 Postal Service shall file the applicable administrative record regarding this appeal no later than February 10, 2012.

2. Any responsive pleading by the Postal Service to this notice is due no later than February 10, 2012.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–2429 Filed 2–2–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, (Notice).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, *Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–1 and Form NRSRO, SEC File No. 270–563, OMB Control No. 3235–0625.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–1, Form NRSRO and Instructions to Form NRSRO under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).[1] The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for NRSROs. Currently, there are nine credit rating agencies registered as NRSROs with the Commission. The Commission estimates that the total burden for respondents to comply with Rule 17g–1 and Form NRSRO is 838 hours, which includes one-time reporting burdens for new registration applications, registration for additional categories of credit ratings, withdrawals of NRSRO applications, and withdrawals of NRSRO registration.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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 in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be

[1] *See* 17 CFR 240.17g–1 and 17 CFR 249b.300.

subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2397 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–2, SEC File No. S7–04–07, OMB Control No. 3235–0628.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–2 (17 CFR 240.17g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17g–2, ''Records to be made and retained by nationally recognized statistical rating organizations,'' implements the Commission's recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.[1] The rule requires a Nationally Recognized Statistical Rating Organization to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained. The Commission estimates that the burden associated with Rule 17g–2 is 2,987, which includes one-time reporting burdens for processing reports, and a cost of $5,933, which includes a one-time cost for recordkeeping software.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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 in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2398 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C 78q.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29938]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 27, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January 2012. 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 February 21, 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.

ABT Utility Income Fund Inc.

[File No. 811–2533]

ABT Growth and Income Trust

[File No. 811–1482]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On or about June 30, 1995, and July 1, 1995, respectively, each applicant transferred its assets to a series of First Union Funds, based on net asset value. Records are not available concerning the expenses incurred in connection with the reorganizations.

Filing Date: The applications were filed on January 3, 2012.

Applicants' Address: 200 Berkeley St., Boston, MA 02116.

PayPal Funds

[File No. 811–9381]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 1, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Substantially all of the $65,000 in expenses incurred in connection with the liquidation were paid by PayPal Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 29, 2011.

Applicant's Address: 2211 North First St., San Jose, CA 95131.

DWS RREEF Real Estate Fund, Inc.

[File No. 811–21172]

DWS RREEF Real Estate Fund II, Inc.

[File No. 811–21340]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 16, 2011, each applicant made its final

liquidating distribution to its shareholders, based on net asset value. Expenses of $175,623 and $321,286, respectively, incurred in connection with the liquidations were paid by each applicant.

Filing Date: The applications were filed on December 28, 2011.

Applicants' Address: 345 Park Ave., New York, NY 10154.

BlackRock Healthcare Fund, Inc.

[File No. 811–3595]

BlackRock Global Growth Fund, Inc.

[File No. 811–8327]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 12, 2011, the applicants transferred their assets to BlackRock Health Sciences Opportunities Portfolio and BlackRock Global Opportunities Portfolio, respectively, each a series of BlackRock Funds, based on net asset value. Expenses of $430,722 incurred in connection with the reorganization of BlackRock Healthcare Fund, Inc. were paid by applicant and BlackRock Advisors, LLC, its investment adviser. Expenses of $351,814 incurred in connection with the reorganization of BlackRock Global Growth Fund, Inc. were paid by BlackRock Advisors, LLC, applicant's investment adviser.

Filing Date: The applications were filed on December 22, 2011.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Short-Term Bond Master LLC

[File No. 811–10089]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 18, 2011, applicant made a liquidating distribution to its sole shareholder, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on December 22, 2011.

Applicant's Address: 55 East 52nd St., New York, NY 10055.

Nakoma Mutual Funds

[File No. 811–21865]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 4, 2011, applicant transferred its assets to Schooner Global Absolute Return Fund, a series of Trust for Professional Managers, based on net asset value. Expenses of $91,982 incurred in connection with the reorganization were paid by Nakoma Capital Management, LLC, applicant's investment adviser, and Schooner Investment Group, LLC, investment adviser to the acquiring fund.

Filing Date: The application was filed on December 20, 2011.

Applicant's Address: 8040 Excelsior Dr., Suite 401, Madison, WI 53717.

BlackRock International Value Trust

[File No. 811–4182]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 15, 2011, applicant transferred its assets to BlackRock International Fund, a series of BlackRock Series, Inc., based on net asset value. Expenses of approximately $616,476 incurred in connection with the reorganization were paid by BlackRock Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on December 22, 2011.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

BlackRock Focus Value Fund, Inc.

[File No. 811–3450]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 12, 2011, applicant transferred its assets to BlackRock Basic Value Fund, Inc., based on net asset value. Of approximately $182,755 in expenses incurred in connection with the reorganization, $141,006 was paid by applicant and $41,749 was paid by BlackRock Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on December 22, 2011.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

BlackRock Utilities and Telecommunications Fund, Inc.

[File No. 811–6180]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 12, 2011, applicant transferred its assets to BlackRock Equity Dividend Fund, based on net asset value. Of approximately $158,715 in expenses incurred in connection with the reorganization $137,046 was paid by applicant and $21,669 was paid by BlackRock Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on December 22, 2011.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Keystone America Fund of Growth Stock

[File No. 811–5310]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about August 28, 1992, applicant transferred its assets to Keystone America Omega Fund, based on net asset value. Records are not available concerning the expenses incurred in connection with the reorganization.

Filing Date: The application was filed on January 3, 2012.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Continental Assurance Company Separate Account B

[File No. 811–1402]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 2011, the Applicant's governing body approved the termination of its Investment Advisory Agreement (IAA) effective November 1, 2011. The termination of the IAA required the liquidation of the Applicant, an insurance company management separate account. Shareholder approval of the liquidation was not required. Applicant distributed all its assets to shareholders on or about November 1, 2011. Total expenses of the liquidation were $9,467.60. Continental Assurance Company, the investment adviser of the Applicant, either paid these expenses directly or reimbursed the Applicant for these expenses.

Filing Date: The application was filed on November 4, 2011 and amended on December 29, 2011.

Applicant's Address: 333 South Wabash Avenue, Chicago IL 60604.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2399 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29939; File No. 812–13982]

Northwestern Mutual Series Fund, Inc. and Mason Street Advisors, LLC; Notice of Application

January 30, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company

Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Northwestern Mutual Series Fund, Inc. (''Company'') and Mason Street Advisors, LLC (''MSA'').

DATES: *Filing Dates:* The application was filed on November 30, 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 application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

The Company is organized as a Maryland corporation and is registered under the Act as an open-end management investment company. MSA, a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and currently serves as investment adviser to each existing Applicant Series (as defined below).

Applicants request the exemption to the extent necessary to permit any existing or future series of the Company and any other existing or future registered open-end investment company or series thereof that (i) is advised by MSA or any person now or in the future controlling, controlled by or under common control with MSA (any such adviser or MSA, an ''Adviser'') [1]; (ii) invests in other registered open-end investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each an ''Applicant Series''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt any entity, including any entity controlled by or under common control with an Adviser, that now or in the future acts as principal underwriter, or broker or dealer (if registered under the Securities Exchange Act of 1934, as amended (''Exchange Act'')), with respect to the transactions described in the application.

Consistent with its fiduciary obligations under the Act, each Applicant Series' board of directors will review the advisory fees charged by the Applicant Series' Adviser to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Series may invest.

Applicants' Legal Analysis

Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act, or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is

[1] Any other Adviser will also be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the requested order will do so only in accordance with the terms and condition in the application.

necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants state that the Applicant Series will comply with rule 12d1–2 under the Act, but for the fact that the Applicant Series may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Series to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Applicant Series to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Applicant Series from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2433 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66271; File No. SR–ISE–2012–05]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Relating to Individual Securities Circuit Breakers

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2102 (Hours of Business) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 2102 to extend the expiration of the pilot rule. Initial amendments to ISE Rule 2102 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause were approved by the Securities and Exchange Commission (''Commission'') on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was then extended to expire on April 11, 2011.[4] On March 21, 2011, ISE Rule 2101 was amended to state that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, would apply.[5] On August 9, 2011, ISE Rule 2101 was once again amended to extend the pilot to January 31, 2012.[6]

On September 10, 2010, ISE Rule 2102 was amended to expand the pilot rule to apply to the Russell 1000® Index and other specified exchange traded products.[7] On June 23, 2011, ISE Rule 2102 was amended again to expand the pilot rule to apply to all NMS Stocks.[8] The Exchange now proposes to extend the date by which this pilot rule will expire to July 31, 2012. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–ISE–2010–48).

[4] *See* Securities Exchange Act Release No. 63506 (December 9, 2010), 75 FR 78301 (December 15, 2010) (SR–ISE–2010–117).

[5] *See* Securities Exchange Act Release No. 64193 (April 5, 2011), 76 FR 20062 (April 11, 2011) (SR–ISE–2011–17).

[6] *See* Securities Exchange Act Release No. 65072 (August 9, 2011), 76 FR 50513 (August 15, 2011) (SR–ISE–2011–52).

[7] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–ISE–2010–66).

[8] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–ISE–2011–028).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2012–05 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66273; File No. SR–BATS–2012–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2012 BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes [sic] amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently proposed and received approval of rules governing auctions conducted on the Exchange for securities listed on the Exchange (''Exchange Auctions'').[6] Specifically, the Exchange adopted rules for conducting an opening auction on the Exchange (''Opening Auction''), a closing auction on the Exchange (''Closing Auction''), an auction in the event of an initial public offering (''IPO'') or a halt of trading in the security (''IPO Auction'' or ''Halt Auction,'' respectively). In preparation for commencement of its listings business, and in turn, the commencement of Exchange Auctions, the Exchange proposes pricing for executions that occur in Exchange Auctions, as set forth below.

The Exchange proposes to charge fees of $0.0005 per share that executes in an Opening Auction, IPO Auction or Halt Auction and $0.0010 per share that executes in a Closing Auction. These rates are equivalent to the fees assessed by the NASDAQ Stock Market LLC (''NASDAQ'') for executions that occur in crosses on NASDAQ.[7]

Also similar to NASDAQ, the Exchange proposes to exempt certain executions from fees, specifically any executions in an Exchange Auction of any Continuous Book,[8] Late-Limit-On-Open (''LLOO'')[9] or Late-Limit-On-Close (''LLOC'')[10] orders as defined in BZX Exchange Rule 11.23(a). Accordingly, excluding LLOOs and LLOCs, the Exchange will assess fees of either $0.0005 per share or $0.0010 per share (depending on the applicable Exchange Auction) for all ''Eligible Auction Orders,'' which term includes Market-On-Open,[11] Limit-On-Open,[12] Market-On-Close,[13] Limit-On-Close,[14] any Regular Hours Only[15] order prior to the Opening Auction, and any limit or market order not designated to exclusively participate in the Opening Auction or Closing Auction entered during the Quote-Only Period[16] of an IPO Auction or Halt Auction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[17] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed fees for executions of Eligible Auction Orders that occur in Exchange Auctions (other than LLOOs and LLOCs) are reasonable in that they are equivalent to the fees charged by at least one of the Exchange's competitors, as described above. The Exchange also believes that the proposed fees are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange participants. The Exchange believes that excluding Continuous Book orders from fee liability in Exchange Auctions is reasonable because such orders, if already posted to the Exchange's order book, would be eligible for rebates provided by the Exchange, and would not be assessed fees. Accordingly, while the Exchange does not propose to provide a rebate for any execution that occurs in an Exchange Auction, the Exchange believes it is reasonable to provide executions of Continuous Book orders free of charge. Similarly, the Exchange believes that excluding LLOOs and LLOCs from fee liability in Exchange Auctions is reasonable because such orders are late arriving orders that are likely to improve the execution quality received by other orders submitted to the Auction. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. As is true for the fees to be assessed on executions that occur in Exchange Auctions, the exclusion of fees for Continuous Book orders, LLOOs and LLOCs is fair and equitable and not unreasonably discriminatory because this fee treatment is equally available to all Exchange Users.

The Exchange notes that NASDAQ also excludes its equivalent of Continuous Book orders from fee liability in the NASDAQ opening and closing crosses.[19] While the Exchange does not have a direct equivalent to the NASDAQ ''imbalance only'' order, which are also executed free of charge by NASDAQ in the NASDAQ opening and closing crosses,[20] the Exchange's LLOOs and LLOCs are analogous in some ways in that LLOOs and LLOCs are late arriving limit orders that are likely to provide additional liquidity against which Eligible Auction Orders will be able to execute.

[6] *See* Securities Exchange Act Release No. 65619 (October 25, 2011), 76 FR 67238 (October 31, 2011) (SR–BATS–2011–032).

[7] *See* NASDAQ Rule 7018(d)–(f).

[8] A ''Continuous Book Order'' is defined in Rule 11.23(a) as all orders on the Exchange's order book that are not Eligible Auction Orders.

[9] The term ''Late-Limit-On-Open'' or ''LLOO'' is defined in Rule 11.23(a) as a ''BATS limit order that is designated for execution only in the Opening Auction.'' Users may only submit LLOO orders between 9:28 a.m. and 9:30 a.m. Eastern Time. A ''User'' is defined in Rule 1.5(cc) as any Member or sponsored participant with access to the Exchange.

[10] The term ''Late-Limit-On-Close'' or ''LLOC'' is defined in Rule 11.23(a) as a ''BATS limit order that is designated for execution only in the Closing Auction.'' Users may only submit LLOC orders between 3:55 p.m. and 4 p.m. Eastern Time.

[11] A ''Market-On-Open'' order is defined in Rule 11.23(a) as a ''BATS market order that is designated for execution only in the Opening Auction.''

[12] A ''Limit-On-Open'' order is defined in Rule 11.23(a) as a ''BATS limit order that is designated for execution only in the Opening Auction.''

[13] A ''Market-On-Close'' order is defined in Rule 11.23(a) as a ''BATS market order that is designated for execution only in the Closing Auction.''

[14] A ''Limit-On-Close'' order is defined in Rule 11.23(a) as a ''BATS limit order that is designated for execution only in the Closing Auction.''

[15] A ''Regular Hours Only'' order is defined in Rule 11.23(a) as a ''BATS order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions.'' ''Regular Trading Hours'' is defined in Rule 1.5(w) as ''the time between 9:30 a.m. and 4 p.m. Eastern Time.''

[16] The ''Quote Only Period'' is defined in Rule 11.23(a) as ''a designated period of time prior to a Halt Auction or an IPO during which Users may submit orders to the Exchange for participation in the auction.''

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4).

[19] *See* NASDAQ Rule 7018(d) and (e).

[20] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [21] and Rule 19b–4(f)(2) thereunder,[22] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–003. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–003 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2393 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66278; File No. SR–BX–2011–046]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1, To Amend the BOX Fee Schedule With Respect to Credits and Fees for Transactions in the BOX PIP

January 30, 2012.

On July 15, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX'') to increase the credits and fees for certain transactions in the BOX Price Improvement Period (''PIP'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] Notice of filing of the proposed rule change was published in the **Federal Register** on August 3, 2011.[5] The Commission received four comment letters on the Notice [6] and a response from BOX.[7]

On September 13, 2011, the Commission temporarily suspended BOX's proposal and simultaneously instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8] On September 20, 2011, the Commission received notice of BOX's intention to petition for review of the Division's action by delegated authority to suspend its PIP fee filing, which triggered a stay of the suspension order. On September 27, 2011, the Commission received BOX's petition to review the Division of Trading and Markets' suspension by delegated authority.[9] On October 19, 2011, the Commission issued an order denying BOX's petition, lifting the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PIP is a mechanism in which a BOX Options Participant submits an agency order on behalf of a customer for price improvement, paired with a contra-order guaranteeing execution of the agency order at or better than the National Best Bid or Offer (''NBBO''). The contra-order could be for the account of the Options Participant, or an order solicited from someone else. The agency order is exposed for a one-second auction in which other BOX Options Participants (''Initiating Participant'') may submit competing interest at the same price or better. The initiating BOX Options Participant is guaranteed 40% of the order (after public customers) at the final price for the PIP order, assuming it is at the best price. *See* Chapter V, Section 18 of the BOX Rules.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* Securities Exchange Act Release No. 64981 (July 28, 2011), 76 FR 46858 (''Notice'').

[6] *See* Letters to Elizabeth Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Citadel Securities LLC (''Citadel''), dated August 12, 2011 (''Citadel Letter''); Andrew Stevens, Legal Counsel, IMC Financial Markets (''IMC''), dated August 15, 2011 (''IMC Letter''); Michael J. Simon, Secretary, International Securities Exchange (''ISE''), dated August 22, 2011 (''ISE Letter''), and Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, Inc. (''TD Ameritrade''), dated September 12, 2011 (''TD Ameritrade Letter'').

[7] *See* Letter to Elizabeth Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX, dated September 9, 2011 (''BOX Letter'').

[8] *See* Securities Exchange Act Release No. 65330 (September 13, 2011), 76 FR 58065 (September 19, 2011) (''Suspension Order'').

[9] Petition for Review of Action by Delegated Authority from BOX, dated September 27, 2011 (''BOX Petition'').

automatic stay, and designating a longer comment period for the proceedings.[10]

The Commission thereafter received an additional four comment letters on the proposal.[11] The Exchange submitted a response letter to the comments on December 9, 2011.[12] The Exchange also submitted data for the Commission's consideration under separate cover.[13]

On January 30, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. In Amendment No. 1, the Exchange proposed to put its fee change on a formal pilot and undertook to provide the Commission with data during the course of such pilot. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to increase the credits and fees for certain transactions in the PIP by modifying Section 7d of the BOX Fee Schedule. Specifically, the Exchange proposes to: (1) Increase both the credits and the fees for PIP transactions in classes that are not subject to the Penny Pilot (''Non-Penny classes'') from $0.30 to $0.75 per contract; and (2) increase both the credits and the fees for PIP transactions in Penny Pilot classes (other than in QQQQ, SPY, and IWM) where the trade price is equal to or greater than $3.00 per contract from $0.30 to $0.75 per contract. The credits and the fees for PIP transactions QQQQ, SPY, and IWM and in all other Penny Pilot classes where the trade price is less than $3.00 per contract will remain at $0.30 per contract. The credits are paid by the Exchange on the agency order that is submitted to the PIP auction on behalf of a customer. The fees are charged by the Exchange to the order that is executed against the agency order, whether such order is the contra order submitted by the Initiating Participant or an order submitted by another BOX Options Participant in response to the PIP auction (''Responding Participant''). The credits and fees are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule.[14]

In addition, on January 30, 2012, BOX submitted Amendment No. 1 to the proposed rule change, which added language to make the proposed rule change, subject to Commission approval, operative on a pilot basis beginning February 1, 2012, and continuing until February 28, 2013. Further, BOX agreed to submit to the Commission on a quarterly basis during the pilot period certain monthly PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) Volume by number of contracts traded; (2) number of contracts executed by the Initiating Participant as compared to others (''retention rate''); (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of participants responding in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of contracts receiving price improvement greater than $0.01, $0.02 and $0.03 when the Initiating Participant is the contra party and when others are the contra party.[15] BOX also agreed to make such data publicly available.

II. Discussion

After careful review of the proposal and consideration of the comment letters, the Commission finds that the proposed rule change to amend the BOX Fee Schedule to increase the credits and fees for certain transactions in the PIP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[16] Specifically, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires that rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers, and Section 6(b)(8) of the Act,[18] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(4) of the Act,[19] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Further, as discussed below, in approving this proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.[20]

As noted above, the Exchange's proposal increased: (1) Both the credits and the fees for PIP transactions in classes that are not subject to the Penny Pilot from $0.30 to $0.75 per contract; and (2) both the credits and the fees for PIP transactions in Penny Pilot classes where the trade price is equal to or greater than $3.00 per contract (other than transactions in QQQQ, SPY, and IWM) from $0.30 to $0.75 per contract. In other words, the Exchange's proposal applies only to options with a minimum price variation larger than one cent. The Exchange's proposal did not modify its existing PIP-related fees that apply to transactions in series that have a minimum pricing variation of one cent. Accordingly, the issue before the Commission in this filing is whether the PIP fee changes applicable to options quoting in an increment larger than a penny are consistent with the Act.

Prior to the institution of proceedings, the Commission received four comment letters on the Exchange's proposed rule change.[21] Three commenters

[10] *See* Securities Exchange Act Release No. 65592, 76 FR 66103 (October 25, 2011).

[11] *See* Letters to Elizabeth Murphy, Secretary, Commission, from Anthony J. Saliba, Chief Executive Officer, LiquidPoint, LLC (''LiquidPoint''), dated October 10, 2011 (''LiquidPoint Letter''); Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, dated November 14, 2011 (''TD Ameritrade Letter II''); Michael J. Simon, Secretary, ISE, dated November 17, 2011 (''ISE Letter II''); and John C. Nagel, Managing Director and General Counsel, Citadel, dated November 17, 2011 (''Citadel Letter II'').

[12] *See* Letter to Elizabeth Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX, dated December 9, 2011 (''BOX Response Letter'').

[13] *See* Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Michael J. Burbach, Vice President, Legal Affairs, BOX, dated December 9, 2011 (''BOX Data Letter'').

[14] Sections 1 through 3 of the BOX Fee Schedule include a $0.25 per contract transaction fee for contracts traded in the PIP. Depending on its average daily volume (''ADV''), a Participant who initiates PIP auctions may be charged a lower per contract fee. *See* Section 7d. of the BOX Fee Schedule.

[15] The data set forth in Amendment No. 1 to be provided during the pilot period includes substantially the same information as the Order Size Cumulative data provided by BOX in pages 26 through 30 of the BOX Data Letter.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(8).

[19] 15 U.S.C. 78f(b)(4).

[20] *See* 15 U.S.C. 78c(f).

[21] *See* Citadel Letter, *supra* note 6, IMC Letter, *supra* note 6, ISE Letter, *supra* note 6, and TD Ameritrade Letter, *supra* note 6.

recommended that the Commission temporarily suspend SR–BX–2011–046 and institute proceedings to disapprove the filing.[22] The fourth commenter supported the Exchange's proposed rule change and urged the Commission not to institute proceedings to disapprove the filing.[23]

Citadel argued that the magnitude of the disparity between the fees an initiator pays and the fees a competitive responder pays, on a net basis,[24] make it ''economically prohibitive for anyone other than the initiator to respond'' to a PIP auction.[25] Citadel also argued that the fees proposed by SR–BX–2011–046 are ''solely structured to benefit one group of BOX participants over another,'' and thus are discriminatory and an undue burden on competition.[26]

IMC also noted its belief that the BOX PIP fee structure unduly burdened competition and unreasonably discriminated amongst participants.[27] It argued that the increase in fees is borne solely by PIP competitive responders and effectively bars certain participants from competing with initiators.[28]

ISE challenged BOX's assertion that the fees proposed in SR–BX–2011–046 have a uniform application across all members, noting that the differential in net fees between PIP initiator and competitive responders is between $0.75 and $0.90 per contract.[29] ISE also argued that SR–BX–2011–046 was deficient in that it failed to: Provide an adequate basis to determine that the proposed rule change is consistent with the Act because it did not address the pricing differential for participants who seek to compete with a PIP initiator; discuss the burden on competition imposed by the pricing structure; or provide support for its assertion that the fee change will allow it to compete with other exchanges.[30]

TD Ameritrade strongly supported the proposed rule change, noting that it had already seen significant benefits to its retail investors.[31] TD Ameritrade stated that the BOX fee structure provides incentives for market participants to submit customer order flow to BOX and thus, creates a greater opportunity for retail customers to receive additional price improvement.[32]

In its response letter, BOX argued that its market model and fee structure are intended to benefit retail customers.[33] BOX stated that its fee structure in the PIP is more transparent than payment for order flow (''PFOF'') arrangements and notes its belief that the credit to remove liquidity on BOX is generally less than what firms receive through PFOF.[34] BOX stated that since the PIP began operating in 2004, customers have received more than $355 million in savings through better executions on BOX, including $7.3 million in August 2011, and stated its belief that the proposal is consistent with the public interest, and with the Exchange Act.[35]

As noted above, the Commission received an additional four comment letters on the proposal during the proceedings,[36] in addition to rebuttal comment from the Exchange[37] and a separate data letter.[38] Of these comment letters, one supported the proposal[39] and three opposed the proposal.[40]

In support of the proposal, both BOX and TD Ameritrade stated that they believed that the proposed fees did not inhibit competition or foster internalization.[41] TD Ameritrade stated that its experience with the BOX PIP has shown ''price improvement rates superior to that available through other programs in the market.''[42]

The commenters opposed to the proposal all expressed concern about the impact of the net fees on competition in the PIP, and thus on the opportunity for price improvement for the customer order being exposed in the auction.[43] Citadel argues that because of the disparity between the net fee charged to competitive responders and the initiators, BOX effectively is discouraging competition in the PIP and is thereby encouraging internalization at worse prices for investors.[44] Citadel further argues that BOX's PIP fees are not equitably allocated and unfairly discriminate in violation of the Act.[45] Citadel claims that BOX's PIP fees, which it believes have reduced competition, have resulted in PIP auctions offering price improvement to fewer numbers of contracts and by lower amounts.[46] Likewise, LiquidPoint maintains that the filing imposes a burden on competition because of the higher net costs to a competitive responder in a PIP auction, which it believes prevents responders from competing on equal footing in the auction with the firm that submitted the original PIP order.[47] ISE argues that BOX's PIP fees impose an unreasonable burden on competition and that BOX appears to be using its PIP fees to increase interaction rates, thereby denying investors the opportunity to receive the best possible prices for their orders.[48] ISE notes that BOX data shows that only 15% of orders in penny classes in the PIP receive price improvement over the NBBO and that BOX data shows a 58% retention rate in the penny classes.[49]

[22] *See* Citadel Letter, *supra* note 6, at 4; IMC Letter, *supra* note 6, at 1 and 4; and ISE Letter, *supra* note 6, at 5.

[23] *See* TD Ameritrade Letter, *supra* note 6, at 2.

[24] Under the proposed rule change, the Exchange would charge both the Initiating Participant and the Responding Participant the same fee for executing an order in the PIP. However, if the Initiating Participant also submits the agency order into the PIP, the Initiating Participant receives the rebate paid to the agency order that is auctioned in the PIP. As a result, if the fee the Initiating Participant pays is aggregated with the rebate the Initiating Participant receives for the agency order (*i.e.,* a ''net'' fee), the Initiating Participant would pay a lower net fee compared to Responding Participants.

[25] *See* Citadel Letter, *supra* note 6, at 2.

[26] *Id.* at 3.

[27] *See* IMC Letter, *supra* note 6, at 1–2.

[28] *See id.*

[29] *See* ISE Letter, *supra* note 6, at 2.

[30] *See* ISE Letter, *supra* note 6, at 5.

[31] *See* TD Ameritrade Letter, *supra* note 6, at 1.

[32] *See id.*

[33] *See* BOX Letter, *supra* note 7, at 2.

[34] *See id.*

[35] *See id.*

[36] *See* TD Ameritrade Letter II, *supra* note 11, LiquidPoint Letter, *supra* note 11, ISE Letter II, *supra* note 11, and Citadel Letter II, *supra* note 11.

[37] *See* BOX Response Letter, *supra* note 12.

[38] *See* BOX Data Letter, *supra* note 13.

[39] *See* TD Ameritrade Letter II, *supra* note 11.

[40] *See* LiquidPoint Letter, *supra* note 11, ISE Letter II, *supra* note 11, and Citadel Letter II, *supra* note 11.

[41] *See* BOX Response Letter, *supra* note 12, at 3–5; TD Ameritrade Letter II, *supra* note 11, at 2.

[42] TD Ameritrade Letter II, *supra* note 11, at 2.

[43] Some of the commenters opposed to the proposal expressed concerns about the competitiveness of the PIP in general and did not limit their comments to the fee change applicable to non-penny series that is before the Commission in this particular proposal. *See, e.g.,* Citadel Letter II, *supra* note 11, at 3 and ISE Letter II, *supra* note 11, at 1–2.

[44] *See* Citadel Letter II, *supra* note 11, at 2.

[45] *See* Citadel Letter II, *supra* note 11, at 1.

[46] *See* Citadel Letter II, *supra* note 11, at 3. Citadel provided statistics on the amount and percent of average price improvement per month for BOX's PIP and compared it to similar price improvement mechanisms on ISE, Phlx, and CBOE, for February to October 2011. Although these statistics provided do show a downward trend for price improvement on BOX's PIP during the period covered by Citadel's statistics, the Commission notes they are not broken out by penny and non-penny series, and thus do not show the statistics only for the specific options subject to the fee change in this proposed rule change.

Citadel also argues that other BOX fees, in particular the fee to add liquidity to the BOX book, have increased quoted spreads on BOX and amplified the negative impact of the PIP fee by facilitating internalization at the NBBO through PIP auctions. *See* Citadel Letter II, *supra* note 11, at 6–7. Although the Commission has considered the proposed fee change that is the subject of this proposed rule change in the context of these other fees, the Commission notes that these other BOX fees are not within the scope of this proposed rule change.

[47] *See* LiquidPoint Letter, *supra* note 11, at 2.

[48] *See* ISE Letter II, *supra* note 11, at 2.

[49] *See* ISE Letter II, *supra* note 11, at 1. ISE notes that this level of retention exceeds the 40% execution guarantee. In contrast, ISE notes that 81% of the contracts executed through the ISE's Price Improvement Mechanism received price improvement over the NBBO during September 2011, whereas only 23% of PIP transactions were executed at a price that improved the NBBO in

To assess the impact of the proposed fee change, the Commission's review of the data focused on issues relating to the competitiveness of the PIP auction and extent of price improvement obtained for customers. In the BOX Data Letter, BOX provided monthly PIP execution quality statistics for the period of June through October 2011, broken down by order size (1–10 contracts, 11–25 contracts, 26–50 contracts, 51–100 contracts, and 101 or more contracts). BOX also provided summary data for the period when the fee was in effect (August 1, 2011 to October 18, 2011, excluding September 13–20, 2011), as well as NBBO data for BOX for the period of June through October 2011. The data provided by BOX covers the few months before and after the fee change, and includes statistics on percent and amount of price improvement, the number of responders to a PIP auction, and the retention rates of Initiating Participants and those market makers who received PIP directed orders. This data included information on both penny and non-penny series, although, as noted, this proposed rule change only applies to PIP transactions in non-penny series.

The data provided by BOX in the BOX Data Letter does not demonstrate a decline in the execution quality of orders executed in the PIP auction, in series trading in an increment larger than a penny, during the period that the proposed rule change was in effect as compared to the months immediately preceding the proposed rule change. The data does show that the nature of the PIP auction and the execution of orders within the auction varies significantly depending on whether the auction relates to a penny series or series with a larger increment, and on whether BOX is quoting at the NBBO or outside the NBBO when the auction is initiated. The following discussion of the data focuses on the non-penny series, which are the series affected by the proposed rule change.

With respect to the non-penny series that were affected by the PIP fee change, the data show that the initiated order and directed order retention rate remained largely the same (both when BOX was outside the NBBO and when BOX was at the NBBO) during the period the fee change was in effect as compared to the two months prior.[50] Specifically, although the retention rate varied significantly between when BOX was outside the NBBO (52%) and when BOX was at the NBBO (22%), it remained relatively stable within those categories during the period covered by the BOX Data Letter, varying no more than 3%.[51]

For non-penny series, the price improvement percentages declined slightly for transactions when BOX was at the NBBO (despite the increase in the number of responders), and increased slightly when BOX was not at the NBBO (despite the decrease in the number of responders). Overall, the data shows that BOX's PIP provided very significant price improvement for non-penny series both before and after the PIP fee change.[52] As noted below in connection with BOX's agreement to continue to make publicly available PIP execution quality data during the pilot period, such data is relevant for the consideration of broker-dealers when managing their best execution obligations.

Thus, the data provided by BOX for the non-penny series do not suggest any significant adverse impact of the proposed PIP fee change on the competitiveness of the PIP auction or the extent of price improvement for orders executed in the PIP in those series.[53] Both ISE and Citadel emphasized low price improvement and high retention rates, but their statistics focus on either penny classes, only part of which are affected by the proposed rule change, or overall price improvement statistics, which are heavily influenced by the penny series because of the high volumes in the penny series in the BOX PIP.[54]

The Commission acknowledges that data BOX provided is based on a sample period that was both short and included an anomalous month, August 2011, which was characterized by extraordinarily high volatility. This fact was noted by Citadel, which stated that during periods of high volatility, spreads tend to widen, which in turn provides more opportunity for price improvement.[55] Citadel also provided data showing spikes in price improvement in price improvement mechanisms on other exchanges during the month of August 2011.[56] Two commenters also cautioned that it takes time for the market to react to fee changes.[57] One noted that the full

September 2011. We note that the BOX PIP retention rate statistics cited by ISE refer to data on penny series, which are not affected by the fee change in this proposed rule change.

[50] *See* BOX Data Letter, *supra* note 13, at 32.

[51] *See id.* The Commission does recognize that, in the non-penny series, the number of responders declined in auctions that were initiated when BOX was quoting outside the NBBO and increased in auctions that were initiated when BOX was quoting at the NBBO during this time period, as compared to the two months prior to the fee change. For example, in July 2011, the average number of responders when BOX was at the NBBO was 1.31. In contrast, during the entire period that the proposed fee change was in effect, the average number of responders when BOX was at the NBBO was 3.11. Further, in July 2011, the average number of responders when BOX was not at the NBBO was 2.12. In contrast, during the entire period that the proposed fee change was in effect, the average number of responders when BOX was not at the NBBO was 1.75. *See* BOX Data Letter, *supra* note 13, at 29 and 31. However, as noted, even with these changes, the retention rate during these time periods did not change significantly.

[52] *See* BOX Data Letter, *supra* note 13, at 32–33. The percentage of contracts receiving price improvement in non-penny series ranged from 55%–57% and the average price improvement amount ranged from $0.02 to $0.0269. *See id.*

[53] Although the proposed rule change does not affect the PIP fee for options series in penny classes quoting in a penny increment, data for those series included in the BOX Data Letter does show that the majority of BOX's PIP volume is in the series in penny classes quoting in penny increments when BOX is quoting outside the NBBO. *See* BOX Data Letter, *supra* note 13, at 32. Commission staff examined the total number of contracts executed in the PIP compared to the total number of contracts executed in penny series when BOX is not at the NBBO, as provided by BOX. Staff calculated that the following percentages of total monthly volume in the PIP occurred in penny series when BOX is outside the NBBO: June 2011, 66.3%; July 2011, 63.0%; August 2011, 64.5%; September 2011, 67.0%; and October 2011, 70.9%.

In these series, the data show high retention rates by the Initiating Participant along with a low rate of price improvement. *See* BOX Data Letter, *supra* note 13, at 32. The retention rates in penny series when BOX is not at the NBBO ranges from 62% to 64% during the time period covered by the data. Further, the overall percentage of contracts receiving price improvement in the penny series ranges from 15% to 21% during the time period covered by the data (with the highest percentage being in August 2011). *See id.* ISE also notes high retention rates and low price improvement percentages in the BOX PIP in the penny classes. *See* ISE Letter II, *supra* note 11, at 1.

This should be considered against the low percentage of time that BOX is at the NBBO, which one commenter argued is a result of BOX's overall fee structure. *See* Citadel Letter II, *supra* note 11, at 8. BOX's data show that the percentage of time BOX was at the NBBO in all options classes ranges from 30.00% to 32.70%. *See* BOX Data Letter, *supra* note 13, at 34. Citadel provided statistics for 60 penny pilot symbols in September and October 2011 that calculate BOX's percentage of time at the NBBO at 18% for each month. *See* Citadel Letter II, *supra* note 11, at 8.

The data suggests that some market participants may seek to route orders to BOX's PIP when BOX is not at the NBBO. We note that BOX established comparably structured PIP fees in the penny series in August 2010 and subsequently increased the levels of in April 2011. *See* Securities Exchange Act Release Nos. 62632 (August 3, 2010), 75 FR 47869 (August 9, 2010) (SR–BX–2010–049) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change) and 64198 (April 6, 2011), 76 FR 20426 (April 12, 2011) (SR–BX–2011–020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

[54] *See* BOX Data Letter, *supra* note 13, at 32. During the period covered by the BOX data provided, the volume in the penny series ranged from 77% to 82% of total volume in the PIP. *See id.*

[55] *See* Citadel Letter II, *supra* note 11, at 10.

[56] *See* Citadel Letter II, *supra* note 11, at 12.

[57] *See* Citadel Letter II, *supra* note 11, at note 28 and ISE Letter II, *supra* note 11, at 1.

impact of the proposal might not be reflected in recent data.[58]

In the BOX Response Letter, BOX offered to put the fee change on a pilot.[59] As noted above, BOX filed Amendment No. 1 to the proposed rule change on January 30, 2012, which amended the filing so that if the Commission approved the changes to the BOX Fee Schedule, although such changes would become effective upon any such Commission approval, BOX would make the changes operative on a pilot basis beginning February 1, 2012, and continuing until February 28, 2013. BOX also represented that it will provide publicly-available data to the Commission on a quarterly basis for the duration of the pilot, which data would be substantially similar to that provided in the BOX Data Letter. This will allow the Commission to further evaluate the effect of the fee structure on competition and the extent of price improvement for orders executed in the PIP, in the affected series, over a longer period of time with a data set that should be more representative and less subject to the effect of potentially anomalous periods.

In light of the data received, which showed no adverse impact of the proposed rule change on the competitiveness of the PIP auction or the extent of price improvement in series that trade in non-penny increments that are the subject of the current proposal before the Commission, and the Exchange's commitment to provide data during the course of a pilot, which will allow the Commission to further evaluate the impact of the fee during the course of the pilot, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

Further, because BOX provided data to the Commission and agreed to make the data publicly available, broker-dealers now have access to data on execution quality for BOX's PIP that they did not previously have, which is relevant for their consideration when managing their best execution obligations.[60] On numerous occasions, the Commission has articulated that in meeting their best-execution obligations,[61] broker-dealers should regularly and rigorously examine execution quality likely to be obtained from different markets trading a security.[62] The Commission welcomes BOX's willingness to make public data available, and notes that the data assisted the Commission in evaluating the proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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–2011–046 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–2011–046. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2011–046 and should be submitted on or before February 24, 2012.

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

Amendment No. 1 revised the proposed rule change to, among other things, specify that the proposed rule change will be operative on a pilot basis, beginning February 1, 2012, and continuing until February 28, 2013. Also in Amendment No. 1, BOX committed to provide to the Commission, on a quarterly basis, certain monthly PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) Volume by number of contracts traded; (2) retention rate; (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of participants responding in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of contracts receiving price improvement greater than $0.01, $0.02 and $0.03 when the Initiating Participant is the contra party and when others are the contra party. The amendment addresses potential concerns that the data is based on a sample period that was both short and included an anomalous month (August 2011), and will provide the Commission with additional data with which to continue to assess the proposed rule change during the pilot period. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2)

[58] *See* Citadel Letter II, *supra* note 11, at note 28.

[59] *See* BOX Response Letter, *supra* note 12, at 6.

[60] This proposal, the comment letters it has generated, and the proceedings the Commission has conducted, have highlighted the lack of visibility into publicly-available options execution quality statistics across all of the exchanges, including for price improvement mechanisms. *See also* Citadel Letter II, *supra* note 11, at note 7 (advocating the adoption of rules mandating publication of listed options execution quality metrics similar to Regulation NMS Rules 605 and 606) and TD Ameritrade Letter II, *supra* note 11, at 2–3 (recommending expansion of Rule 605 to the options markets). Although certain exchanges provide price improvement statistics to the Commission for their price improvement mechanisms, the statistics are not made publicly available.

[61] *See, e.g.,* Rule 2320 of the NASD's Conduct Rules, NASD Notice to Members 06–58, Best Execution, *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p017607.pdf* (Oct. 2006) and NASD Notice to Members 01–22, Best Execution, *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p005080.pdf* (April 2001).

[62] *See, e.g.,* Securities Exchange Release Nos. 37619A (September 6, 1996), 61 FR 48290, (September 12, 1996); 37046 (March 29, 1996), 61 FR 15322, (April 5, 1996) and 34902 (October 27, 1994), 59 FR 55066 (November 22, 1994). *See also* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000).

of the Act,[63] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[64] that the proposed rule change (SR–BX–2011–046), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2395 Filed 2–2–12; 8:45 am]

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[63] 15 U.S.C. 78s(b)(2).

[64] 15 U.S.C. 78s(b)(2).

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66277; File No. SR–CBOE–2012–008]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a series of amendments to its Fees Schedule for 2012. First, the Exchange proposes to eliminate the waiver for customer fees for transactions in options on the Nasdaq 100 Index Tracking Stock (''QQQQ''). Such transactions will now be assessed a fee of $0.18 per contract, equivalent to the fee assessed for customer transactions in options on other exchange-traded funds (''ETFs''), exchange-traded notes (''ETNs'') and HOLDRs. The purpose of this proposed change is to make the fees for QQQQ options transactions equivalent to the fees for transactions on other ETFs.

The Exchange also proposes to modify the Liquidity Provider Sliding Scale to exclude SPX, VIX or other volatility indexes, OEX and XEO. This scale offers consistently-lowering fees for market participants who provide increasing liquidity. The Exchange would have preferred to modify the Liquidity Provider Sliding Scale to include only multiply-listed products because the Exchange has expended considerable resources in developing its proprietary, singly-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (for example, the singly-listed XSP options compete with the multiply-listed SPY options, both of which approximate 1/10 of the S&P 500 Index, and the singly-listed DJX options compete with the multiply-listed DIA options, both of which are based on 1/100 of the value of the Dow Jones Industrial Average). Including the multiply-listed products for qualification towards the Liquidity Provider Sliding Scale while excluding their singly-listed competitors might create a pricing advantage that might discourage trading in some of the singly-listed products that the Exchange expended resources to develop. As such, the Exchange now proposes to include the singly-listed products for qualification towards the Liquidity Provider Sliding Scale along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the Liquidity Provider Sliding Scale. The Exchange also proposes lowering the tier levels in the Liquidity Provider Sliding Scale to reflect the exclusion of SPX, VIX or other volatility indexes, OEX and XEO. The Exchange also proposes amending the prepay amounts relating to the Liquidity Provider Sliding Scale that are listed in Footnote 10 to reflect the changed tier levels.

The Exchange proposes changing the name of the ''Multiply-Listed Options Fee Cap'' to the ''Clearing Trading Permit Holder Fee Cap in All Products Except SPX, VIX or other Volatility Indexes, OEX or XEO.'' In actuality, the Multiply-Listed Options Fee Cap has always applied to some singly-listed products, and only excluded the products listed above. As such, the name has been somewhat inaccurate, and the Exchange hereby proposes to fix this issue in order to clear up any confusion.

The Exchange also proposes, for competitive reasons, to limit the Clearing Trading Permit Holder (''CTPH'') Fee Cap in All Products Except SPX, VIX or other Volatility Indexes, OEX or XEO (the ''Cap'') to include only orders executed in open outcry or the Exchange's Automated Improvement Mechanism (''AIM''), or as qualified contingent cross (''QCC'') or FLEXible Options (''FLEX Options'') transactions. NASDAQ OMX PHLX LLC (''PHLX'') provides for a similar $75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.[3] The Exchange also proposes to include fees from QCCs and FLEX Options transactions towards the Cap to attract such orders to the Exchange. Limiting the Cap to include only orders executed in open outcry or AIM or as QCC or FLEX Options transactions allows CBOE to compete with PHLX while not foregoing collecting the necessary fees to continue to operate the Exchange.

Correspondingly, the Exchange also proposes to cease excluding AIM Contra Execution Fees from counting towards the Cap. Going forward, AIM Contra

[3] *See* PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7).

Execution Fees will be considered in helping a CTPH reach the Cap (though CTPHs will still continue to pay the AIM Contra Execution Fees after reaching the Cap). The purpose of this change is to align and improve the Exchange's competitive position in relation to other exchanges. PHLX, as previously stated, has a similar $75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.[4] By including AIM Contra Execution Fees towards the Cap, and at a lower rate than that which PHLX charges in its PIXL mechanism, the Exchange is providing a demonstrably advantageous pricing schedule for this business.[5] Additionally, as at PHLX, electronic fees in the busiest options classes are not counted towards the Cap. As such, the Exchange proposes to include all AIM transaction fees, including the AIM Contra Execution Fees, towards reaching the Cap (when they apply) to improve our competitive position. The Exchange would also like to encourage the use of AIM, which is a price improvement mechanism. Finally, it should be clarified that while a responder to an AIM auction pays a fee that is not counted towards the Cap, this is because only Market-Makers can respond to an AIM auction, and the Cap only applies to CTPHs (and not Market-Makers). The Cap will remain limited to CTPHs, as they contribute capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants.

Similarly, PHLX waives its equity options transaction fees for firms executing facilitation orders when the firms are trading in their own proprietary accounts.[6] As such, the Exchange, for competitive reasons, proposes to waive the transaction fees for CTPH Proprietary facilitation orders (other than SPX, VIX or other volatility indexes, OEX or XEO) executed in AIM or open outcry, or as a QCC or FLEX Options transaction (the ''CTPH Proprietary Facilitation Waiver'') in order to align our competitive position and even improve upon it (as PHLX does not waive such a fee for orders executed in its PIXL mechanism, in the select symbols). The Exchange would have preferred to include only multiply-listed products in the CTPH Proprietary Facilitation Waiver because those are the only products in which the Exchange faces competitive pricing pressures, and the Exchange has expended considerable resources in developing its proprietary, singly-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (as explained above). Including the multiply-listed products in the CTPH Proprietary Facilitation Waiver while excluding their singly-listed competitors might create a pricing advantage that might discourage trading in some of the singly-listed products that the Exchange expended resources to develop. As such, the Exchange proposes to include the singly-listed products in the CTPH Proprietary Facilitation Waiver along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the CTPH Proprietary Facilitation Waiver. The CTPH Proprietary Facilitation Waiver is limited to executions in AIM or open outcry, or as a QCC or FLEX Options transaction, because those are the only ways to execute a facilitation trade on the Exchange.

It should be noted that, for the purposes of the CTPH Proprietary Facilitation Waiver, the Exchange is defining ''facilitation order'' as any paired order in which a CTPH (''F'') origin code is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order. The reason only CTPH orders can qualify as ''facilitation orders'' is that the Exchange's systems cannot determine whether or not an order is a facilitation order unless such order comes in with the ''F'' origin code, and only CTPH orders come in with the ''F'' origin code. As such, the Exchange's systems would be unable to determine whether or not an order from any other market participant is a facilitation order. Further, PHLX only waives fees on facilitation orders for firms (which are similar to CTPHs).[7]

Along with ceasing excluding AIM Contra Execution Fees from counting towards the Cap, the Exchange also proposes ceasing excluding contracts executed in AIM that incur the AIM Contra Execution Fee from counting towards the CBOE Proprietary Products Sliding Scale. Going forward, contracts executed in AIM that incur the AIM Contra Execution Fee will count towards helping a CTPH reach a higher tier in the CBOE Proprietary Products Sliding Scale, and thereby pay lower fees for executions in CBOE proprietary products. The purpose of this change is to improve the Exchange's competitive position. The Exchange would also like to encourage the use of AIM, which is a price improvement mechanism. The purpose of these changes is to lower fees for CTPHs and thereby encourage CTPHs to transact more business on the Exchange, thereby increasing volume and liquidity.

Currently, the Exchange does not assess the marketing fee on transactions in a number of securities. The Exchange now proposes to remove the ETFs EWC, EWT, MNX, MVR, QQQQ, RSP, VPL, VWO and XBI (the ''New Marketing Fee Options'') from the list of securities that are not assessed the marketing fee, and begin assessing the marketing fee on qualifying transactions in those securities. Going forward, transactions in the New Marketing Fee Options will be assessed a marketing fee of $0.25 per contract, like nearly all other ETFs. The purpose of this change is to increase volume on the New Marketing Fee Options. By assessing a marketing fee on the New Marketing Fee Options transactions, the Exchange will be able to use the money collected to attract volume, pursuant to the Exchange's marketing fee plan. The Exchange believes that the demographics of the New Marketing Fee Options order flow is inclined to seek economic considerations such as payment for order flow, so a marketing fee for the New Marketing Fee Options trades is necessary to attract volume and liquidity in the New Marketing Fee Options.

CBOE implemented on December 1, 2010,[8] and extended on April 1, 2011,[9] July 1, 2011,[10] and October 1, 2011 [11] a pilot program relating to the assessment of the marketing fee in the SPY option class. Specifically, CBOE previously determined not to assess the marketing fee on electronic transactions in options on Standard & Poor's Depositary Receipts (''SPY options'') (a unique and active class), except that it would continue to assess the marketing fee on electronic transactions resulting from AIM pursuant to CBOE Rule 6.74A and transactions in open outcry (the ''SPY Marketing Fee Waiver''). The SPY Marketing Fee Waiver is intended to

[4] *See* PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7).

[5] *See* PHLX Fee Schedule, Section IV (page 10).

[6] *See* PHLX Fee Schedule, Section II (pages 7–8).

[7] *See* PHLX Fee Schedule Section II (pages 7–8).

[8] *See* Securities Exchange Act Release No. 63470 (December 8, 2010), 75 FR 78284 (December 15, 2010) (SR–CBOE–2010–108).

[9] *See* Securities Exchange Act Release No. 64212 (April 6, 2011), 76 FR 20411 (April 12, 2011) (SR–CBOE–2011–033).

[10] *See* Securities Exchange Act Release No. 64818 (July 6, 2011), 76 FR 40978 (July 12, 2011) (SR–CBOE–2011–060).

[11] *See* Securities Exchange Act Release No. 65517 (October 7, 2011), 76 FR 63976 (October 14, 2011) (SR–CBOE–2011–097).

attract more SPY customer volume and allow CBOE market-makers to better compete for order flow. The Exchange hereby proposes to extend the SPY Marketing Fee Waiver to also include qualifying transactions in QQQQ under the same terms as those that now apply to SPY (the ''SPY and QQQQ Marketing Fee Waiver'') (previously, transactions in QQQQ were not subject to the marketing fee, but as QQQQ is one of the New Marketing Fee Options, the Exchange above proposes to make QQQQ transactions subject to the marketing fee). Designated Primary Market-Makers and Preferred Market-Makers can utilize the marketing fee funds to attract orders from payment accepting firms that are executed in AIM and in open outcry. The marketing fee funds received by payment-accepting firms may be used to offset transaction and other costs related to the execution of an order in AIM and in open outcry, including in the SPY and QQQQ option classes. CBOE believes that the current demographics of electronic, non-AIM SPY and QQQQ option order flow is more driven by the displayed best bid or offer (''BBO'') and size than payment for order flow considerations, and thus assessment of the marketing fee for those transactions is not a differentiator at this time. Going forward, the marketing fee will continue to be assessed on open outcry transactions in SPY and be assessed on open outcry transactions in QQQQ (as QQQQ is one of the New Marketing Fee Options).

This SPY Marketing Fee Waiver pilot program is scheduled to terminate on December 31, 2011. The Exchange has periodically continued to extend the SPY Marketing Fee Waiver for successive three-month periods so that the Exchange could simply allow the SPY Marketing Fee Waiver to expire should the Exchange desire that the SPY Marketing Fee Waiver would no longer apply. The Exchange now proposes to cease extending the SPY Marketing Fee Waiver for three-month periods and simply leave the SPY and QQQQ Marketing Fee Waiver in the Fees Schedule. If the Exchange later determines that the SPY and QQQQ Marketing Fee Waiver should no longer apply, the Exchange would have to file to remove the SPY and QQQQ Marketing Fee Waiver from the Fees Schedule, just like any other non-temporary provision in the Fees Schedule.

As reflected in Footnote 8 of the Fees Schedule, the Exchange currently waives the $.18 per contract transaction fee for public customer (''C'' origin code) orders in SPY and XLF options that are executed in open outcry or AIM (the ''C Waiver'').[12] This fee waiver is due to expire on December 31, 2011. The Exchange has periodically continued to extend the C Waiver for successive three-month periods so that the Exchange could simply allow the C Waiver to expire should the Exchange desire that the C Waiver would no longer apply. The Exchange now proposes to cease extending the C Waiver for three-month periods and simply leave the C Waiver in the Fees Schedule. If the Exchange later determines that the C Waiver should no longer apply, the Exchange would have to file to remove the C Waiver from the Fees Schedule, just like any other non-temporary provision in the Fees Schedule.

The Exchange also proposes to extend the C Waiver to all ETF, ETN and HOLDRs options (the ''C Waiver for Index Options''). The C Waiver for Index Options is intended to attract more customer volume on the Exchange in these products. For competitive reasons, the customer base for open outcry and AIM trading in ETF, ETN and HOLDRs options appears more sensitive to fees than the customer base for such trading in other products. Moreover, CBOE proposes the C Waiver to compete with other exchanges. For example, NYSE Arca, Inc. (''Arca'') does not charge customer transaction fees for customer transactions in ETF, ETN and HOLDRs options.[13] As such, the Exchange desires to waive customer transaction fees for ETF, ETN and HOLDRs options executed in open outcry or via AIM in order to better compete (while Arca does not have a price improvement mechanism comparable to AIM, the Exchange desires to include AIM in the C Waiver to encourage the use of this price improvement mechanism). The Exchange also desires to apply the C Waiver for Index Options to QCC trades because a QCC trade is a paired order, and the only ways to execute paired orders are via AIM and open outcry, so QCC trades should then be included in the C Waiver for Index Options, too. The Exchange also believes that waiving the transaction fee for such customer trades in ETF, ETN and HOLDRs options will encourage greater customer trading in these products. The increased volume and liquidity resulting from greater customer trading in those products will benefit all market participants trading in these products. The Exchange also proposes adding trades executed as a FLEX Options transaction to the C Waiver for Index Options for competitive reasons. A number of other exchanges do not charge for public customer FLEX Options transactions in ETF, ETN and HOLDRs options.[14]

The Exchange proposes raising the Floor Broker Workstation (''FBW'') fee from $225 per month (per login ID) to $350 per month (per login ID). The Exchange's vendor that provides the FBW charges the Exchange more than $225 per month (per login ID) for the FBW (actually, more than $350 per month (per login ID)), and the Exchange had been subsidizing those costs for FBW users. However, it is no longer economically feasible to subsidize those costs to that great an extent. As such, the Exchange proposes increasing the FBW fee to $350 per month (per login ID), which still includes a subsidy for FBW users (though smaller).

The Exchange also proposes raising the PULSe On-Floor Workstation (''PULSe'') fee from $225 per month (per login ID) to $350 per month (per login ID). The Exchange expended significant resources developing PULSe, and intends to recoup some of those costs. Further, because PULSe and FBW serve similar functions, the Exchange desires to assess equivalent fees for each so as not to offer a pricing advantage for one over the other.

The Exchange also proposes to reduce Market-Maker Trading Permit monthly costs from $6,000 per permit to $5,500 per permit. Furthermore, for those who commit to the Market-Maker Trading Permit Holder Sliding Scale, which is available for all Market-Maker Trading Permits held by affiliated Trading Permit Holders and Trading Permit Holder (''TPH'') organizations that are used for appointments in any options classes other than SPX, VIX, OEX and XEO, the Exchange proposes to reduce the monthly cost from $6,000 per permit to $5,500 per permit for the first 10 permits, from $4,800 to $4,000 per permit for permits 11–20, and from $3,000 to $2,500 per permit for permits 21 and greater. The purpose of this change is to reduce access costs and thereby encourage greater Market-Maker access, which thereby brings greater

[12] *See* Securities Exchange Act Release No. 34–62902 (September 14, 2010), 75 FR 57313 (September 20, 2010), Securities Exchange Act Release No. 34–63422 (December 3, 2010), 75 FR 76770 (December 9, 2010), Securities Exchange Act Release No. 34–64197 (April 6, 2011), 76 FR 20390 (April 12, 2011), Securities Exchange Act Release No. 34–64817 (July 6, 2011), 76 FR 40948 (July 12, 2011), Securities Exchange Act Release No. 34–65518 (October 7, 2011), 76 FR 63971 (October 14, 2011) and CBOE Fees Schedule, footnote 8.

[13] *See* Arca Options Fee Schedule, page 3.

[14] *See* NYSE Amex Options Fee Schedule, page 3, which shows Non BD Customer Manual transactions (the manner by which FLEX Options are traded on the NYSE Amex Options market) to be assessed a $0.00 transaction fee.

trading activity, volume and liquidity, benefitting all market participants.

The Exchange would also like to amend the date by which a Market-Maker TPH (''MMTPH'') must commit to the Market-Maker Trading Permit Sliding Scale. The Market-Maker Trading Permit Holder Sliding Scale was instituted in SR–CBOE–2011–004, which was filed on January 3, 2011. As such, the text of the Market-Maker Trading Permit Sliding Scale was drafted to allow MMTPHs to notify the Registration Services Department of their commitments to the Market-Maker Trading Permit Sliding Scale for a year as late as January 25 of that year. However, since the rule is now in place, and the Exchange notified MMTPHs of this proposed change on December 8, 2011,[15] giving them ample time to commit, the Exchange proposes to amend the language to require that a MMTPH notify the Registration Services Department of such a commitment by December 25th (or the preceding business day if the 25th is not a business day) of the year prior to each year in which the MMTPH would like to commit to the Market-Maker Trading Permit Sliding Scale.

The Exchange also proposes to raise the VIX Tier Appointment fee from $1,000 per month to $2,000 per month. ''VIX'' stands for CBOE Market Volatility Index, and VIX options are a proprietary product developed by the Exchange. In order for a Market-Maker Trading Permit to be used to act as a Market-Maker in VIX options, the TPH must obtain a VIX Tier Appointment for that Market-Maker Trading Permit. Each VIX Tier Appointment may only be used with one designated Market-Maker Trading Permit. The VIX Tier Appointment fee is currently assessed to any Market-Maker Trading Permit Holder that either (a) has a VIX Tier Appointment at any time during a calendar month; or (b) trades at least 1,000 VIX options contracts in open outcry during a calendar month. VIX trading volume has increased recently, and due to increased demand, the Exchange proposes to raise the VIX Tier Appointment fee in order to recoup costs from developing VIX options, as well as other administrative costs. In a related change, the Exchange also proposes to raise the amount of the fee assessed to any Floor Broker Trading Permit Holder that executes more than 20,000 VIX contracts during a month from $1,000 to $2,000 in order to remain consistent with the amount of the VIX Tier Appointment fee assessed to Market-Makers. If and to the extent that a TPH or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute VIX options transactions, the VIX options executions of that TPH or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single $2,000 fee for the combined VIX options executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month.

Also, the Exchange proposes to remove from the regulatory circular regarding Trading Permit Holder Application and Other Fees language that would apply this fee to any Floor Broker Trading Permit Holder whose aggregate VIX options executed contracts during the month comprise more than 30% of the Floor Broker Trading Permit Holder's exchange-wide total executed contracts. This language was to have been removed in SR–CBOE–2011–073, and indeed was removed from one section of the regulatory circular, as well as the Fees Schedule, but was inadvertently left in another section of the regulatory circular.[16] Removing this language will alleviate any confusion.

The Exchange also proposes to amend the qualification for the VIX Tier Appointment fee to state that a Market-Maker TPH that has a VIX Tier Appointment during a given month will not be assessed the VIX Tier Appointment fee unless that Market-Maker TPH trades at least 100 VIX options contracts electronically while that appointment is active. Occasionally, a Market-Maker accidentally elects for a VIX Tier Appointment, or elects for a VIX Tier Appointment and for some reason does not end up trading VIX options. Under the current language of the Fees Schedule, such a Market-Maker would still be assessed the VIX Tier Appointment fee, despite not actually trading in VIX options. The VIX Tier Appointment fee is intended to be assessed only to those Market-Makers that actually trade in VIX options. As such, the proposed change would ensure that only those Market-Makers that actually do trade in VIX options are assessed the VIX Tier Appointment fee.

The Exchange proposes to institute a Floor Broker Trading Permit Sliding Scale, which will be available for all Floor Broker Trading Permits held by affiliated TPHs and TPH organizations. Most floor broker firms have, and need, at least two floor brokers: One to answer the phones and receive trade and order information, and another to execute trades. However, for floor broker ''firms'' that only have one floor broker, that broker answers the phones and the Exchange often ends up executing the trades for the floor broker. As such, in order to recoup the costs involved for the Exchange, as well as normalize base business costs across Floor Broker Trading Permit Holder operations to ensure that the Exchange is not unduly subsidizing one operation over another, the base rate for Floor Broker Trading Permits will be $9,000 per month. However, the Exchange will also institute a sliding scale for Floor Broker Trading Permit Holders that commit to a minimum number of Floor Broker Trading Permits for the calendar year. For those who do, the TPH's first Floor Broker Trading Permit will cost $9,000 per month. Permits 2 through 7 will cost $6,000 per month per permit (Tier 1), and any permits above 7 will cost a TPH $3,000 per permit per month (Tier 2). The purpose of the Floor Broker Trading Permit Sliding Scale is to encourage floor broker firms to increase their scale and commitment to the Exchange, thereby bringing more business to the Exchange, resulting in greater trading volume and liquidity, which benefits all market participants.

To qualify for the rates set forth in Tiers 1 and 2 in the Floor Broker Trading Permit Sliding Scale, the applicable Trading Permit Holder(s) and/or TPH organization(s) must commit in advance to a specific tier that includes a minimum number of eligible Floor Broker Trading Permits for each calendar year. To do so, a Floor Broker Trading Permit Holder must notify the Exchange's Registration Services Department by December 25th (or the preceding business day if the 25th is not a business day) of the year prior to each year in which the Floor Broker Trading Permit Holder would like to commit to this sliding scale of the tier of eligible Floor Broker Trading Permits committed to by that Floor Broker Trading Permit Holder for that year (Floor Brokers were notified of this on December 8, 2011 [17]). Floor Brokers are not obligated to commit to either tier. However, the discounts will apply only to those that do commit to Tier 1 or Tier 2 for the calendar year. Trading Permit Holders that are not eligible for and/or do not commit to Tier 1 or Tier 2 will pay the standard rate of $9,000 for each Floor Broker Trading Permit, regardless of the total number of Floor Broker Trading Permits used. If a TPH chooses to

[15] *See* Exchange Regulatory Circular RG11–158.

[16] *See* Securities Exchange Act Release No. 65019 (August 3, 2011), 76 FR 48931 (August 9, 2011) (SR–CBOE–2011–073).

[17] *See* Exchange Regulatory Circular RG11–158.

commit to either Tier 1 or Tier 2, that TPH will be responsible for the minimum number of permits in the commitment tier for the remainder of the calendar year. Even if a TPH does not maintain the minimum level of eligible Trading Permits in the tier, that TPH is still responsible for the minimum payment for that commitment tier for the remainder of the calendar year. For example, a TPH that commits to eight eligible permits per month will be subject to a minimum monthly access fee of $48,000 (1 at $9,000 plus 6 at $6,000 plus 1 at $3,000 = $48,000) for that calendar year. Any additional Permits will increase the fee by the applicable amount.

A TPH will be able to commit to a higher tier of the sliding scale for the remainder of a calendar year, during a commitment year, if the TPH obtains enough eligible Floor Broker Trading Permits and provides written notification to the Registration Services Department by the 25th day of the month preceding the month in which the higher tier will be effective (or the preceding business day if the 25th is not a business day). For example, a TPH may provide written notice to commit to Tier 1 effective July 1 for the remainder of the calendar year as long as the TPH obtains enough eligible Trading Permits and provides written notice by June 25th that the TPH would like to participate in the sliding scale starting in July for the remainder of that calendar year. Even if that TPH subsequently falls below the minimum number of eligible Floor Broker Trading Permits (in the committed calendar year), for the committed tier, the TPH will remain responsible for paying for the tier minimum for the remainder of the calendar year.

TPHs will be responsible to pay for at least the minimum amount of eligible Floor Broker Trading Permits in the committed tier for the calendar year on a monthly basis unless the TPH entirely terminates as a TPH during the year. If a TPH combines, merges, or is acquired during the course of the calendar year, the surviving TPH will maintain responsibility for the committed number of eligible Floor Broker Trading Permits.

The proposed Floor Broker Trading Permit Sliding Scale is available to all floor brokers. In essence, CBOE is offering a discounted fee in return for a commitment for a designated period of time. Trading Permit Holders are not precluded from providing notice that they wish to participate in the Floor Broker Trading Permit Sliding Scale throughout a calendar year as long as such notice is provided by the 25th day of the preceding month of effectiveness. CBOE is proposing to offer the Floor Broker Trading Permit Sliding Scale as a benefit to those Trading Permit Holders that commit in advance. There is no obligation to commit to either Tier 1 or Tier 2 of the Floor Broker Trading Permit Sliding Scale.

The Exchange also proposes to assess an additional monthly fee of $3,000 per month to any Floor Broker Trading Permit Holder that executes more than 20,000 SPX contracts during the month. If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute SPX options transactions, the SPX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single $3,000 fee for the combined SPX executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month. The Exchange already assesses a similar fee to Floor Broker Trading Permit Holders that execute more than 20,000 VIX transactions during a month. The purpose of this change is to reflect the opportunity provided to agents servicing customers in such a high-volume product. Further, this fee will equalize the opportunity between Market-Makers and Floor Brokers in SPX options. Also, the Exchange expended considerable resources developing SPX options and desires to recoup such expenses and other administrative costs.

The Exchange also proposes to lower the fee for the Quoting and Order Entry Bandwidth Packet (the ''Packet'') from $3,000 per month to $2,750 per month. The amount of the fee for the Packet has always been set at half the price of the base rate for a Market-Maker Trading Permit. Since the Exchange proposes to lower that amount from $6,000 to $5,500, the Exchange correspondingly proposes to lower the amount of the fee for the Packet to $2,750.

The Exchange proposes amending a number of the TPH Application fees, as listed below:

Fee	Current fee amount	Proposed new fee amount
Individual	$2,500	$3,000
Non-Trading Permit Holder Customer Business	2,500	3,000
Associated Person	350	500
TPH Organization Application	4,000	5,000
Subject to Statutory Disqualification	2,750	5,000
Inactive Nominee Status Change (Trading Permit Swap).		
a. Submission before 4pm (day prior to effective date)	50	55
b. Submission after 4pm (day prior to effective date)	100	110
c. Submission after effective date	200	220
TPH Organization Renewal Fee	2,000	2,500

As before, application fees related to a TPH organization's structural change are capped at $10,000 (e.g. change from a limited partnership to a limited liability corporation). The Trading Permit Transfer Fee is capped at $2,000 for a Trading Permit transfer request covering multiple Trading Permits. The costs of processing of these applications and activities have increased, and the Exchange therefore proposes increasing the fees in order to recoup such increased costs.

The Exchange proposes to adopt an Initial Proprietary Registration fee of $50 and an Annual Proprietary Registration fee of $25. During 2011 CBOE implemented a new proprietary trading registration requirement (the ''Proprietary Trading Registration Program''), primarily at the direction of the Commission. The Proprietary Trading Registration Program, which is operated through WebCRD, caused a significant workload increase in the Exchange's Registration Department. Over the course of the year, CBOE processed over 4,000 registrations via Web-CRD under this new requirement, of which about 2,500 required further consideration of a waiver request. The Proprietary Trading Registration Program involved significant work in

implementing the registrations, examining waiver requests and answering testing related questions. Due to the Proprietary Trading Registration Program, the Exchange hired an extra staff member to address this increased workload, as well as paid a sizable set-up fee to FINRA and incurred significant testing costs. The Proprietary Trading Registration Program will continue to require on-going work and testing and monitoring of the Web-CRD system, as well as consideration of new applicants and waiver requests. In order to offset these costs, the Exchange proposes the Initial Proprietary Registration fee and the Annual Proprietary Registration fee. The Initial Proprietary Registration fee will be payable by any TPH organization for the registration of any associated person on WebCRD with the Proprietary Trader registration. The Annual Proprietary Registration fee will be payable annually by any TPH organization for each associated person that the TPH organization maintains registered on WebCRD with the Proprietary Trader registration.

The Exchange also proposes to increase the fees charged for access to a Network Access Port (1 Gigabyte) to $500 per month for regular access and $1000 per month for Sponsored User access. The Exchange recently made a sizable investment to upgrade the equipment involved in the Network Access Port, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion. Moreover, this change in Network Access Port fees is in line with the amounts assessed for similar access at other exchanges. The International Securities Exchange, Inc. (''ISE'') assesses a fee of $500 for network access up to and including 1 gigabyte.[18]

The Exchange also proposes to increase the fees charged for a CMI Login ID and FIX Login ID to $500 per month for regular access and $1000 per month for Sponsored User access. Firms may access CBOEdirect via either a CMI Client Application Server or a FIX Port, depending on how their systems are configured. As with the Network Access Port, the Exchange recently made a sizable investment to upgrade the equipment involved in the CMI Client Application Servers and FIX Ports, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. Moreover, these changes are in line with amounts assessed for connectivity at other exchanges. ISE assesses a FIX fee of $1000 for a minimum of two monthly login IDs (so, $500 for one).[19] The NASDAQ Stock Market LLC's Options Market (''NOM'') assesses a fee of $500 per FIX port per month, as well.[20] Regarding the Sponsored User fees, the Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion.

These proposed changes to the Fees Schedule took effect on January 1, 2012, per SR–CBOE–2011–121, which was withdrawn on January 17, 2012, the same day that this rule filing is being submitted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(4)[22] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. Amending the fee for customer QQQQ transactions is reasonable because the amount of the fee is equivalent for customer transactions on all other ETF options, and is equitable and not unfairly discriminatory because the same fee will be assessed for all customer transactions in QQQQ options. The amount being charged to customers, less than that assessed to other market participants for similar transactions, recognizes a historical preference towards encouraging customer transactions. Further, offering lower transaction fees for customer transactions incentivizes customers to execute trades on the Exchange, and this increased customer activity provides greater market volume and liquidity, which benefit all market participants.

Excluding SPX, VIX or other volatility indexes, OEX or XEO from the Liquidity Provider Sliding Scale is reasonable because market participants trading in those products will simply pay the normal execution fees for trading in such products, fees which have been and currently are accepted fee levels. Excluding SPX, VIX or other volatility indexes, OEX or XEO from the Liquidity Provider Sliding Scale is equitable and not unfairly discriminatory because all similarly-situated market participants trading in those products will be charged the same fees for such transactions, and because the Exchange expended significant resources in developing those products. The Exchange would have preferred to modify the Liquidity Provider Sliding Scale to include only multiply-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (as explained above). Therefore, the Exchange proposes to include the singly-listed products for qualification towards the Liquidity Provider Sliding Scale along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the Liquidity Provider Sliding Scale. Finally, lowering the tier levels in the Liquidity Provider Sliding Scale is reasonable because these lowered amounts reflect the subtraction of trades in the products that are being excluded, and because this will allow market participants to more easily reach those tiers and pay lower fees, and is equitable and not unfairly discriminatory because the same tier amounts are applicable to all market participants that qualify for the Liquidity Provider Sliding Scale.

Limiting the Cap to include only orders executed in open outcry and AIM or as a QCC or FLEX Options transaction, and thereby excluding regular non-AIM electronic orders, is reasonable because the execution of regular non-AIM electronic orders will merely continue to incur the same transaction fees they normally would; the only change is that they will no longer be cut off at the amount of the Cap. Further, other exchanges also limit similar firm fee caps in a similar, and even less-inclusive, manner.[23] Limiting the Cap in this fashion is equitable and not unfairly discriminatory because AIM and open outcry, as auction mechanisms, are used by CTPHs to bring liquidity to the Exchange, which benefits all market participants, while regular electronic transactions are used by CTPHs to take liquidity (since only Market-Makers can send quotes through the regular electronic system, while CTPHs can only send orders, which take liquidity) (QCC transactions can only be executed via AIM, and FLEX Options transactions can only be executed via the auction mechanisms of open outcry

[18] *See* ISE Schedule of Fees, page 9.

[19] *See* ISE Schedule of Fees, page 8.

[20] *See* NOM Rule 7053.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

[23] *See* PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7), provides for a similar $75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.

and CFLEX (which is a FLEX Options auction platform similar to AIM)). Moreover, limiting the Cap in this fashion is equitable and not unfairly discriminatory because other exchanges also limit similar firm fee caps in a similar, and even less-inclusive, manner,[24] and because these limits apply to all CTPHs equally. Further, while a responder to an AIM auction pays a transaction fee that is not counted towards the Cap, this is equitable and not unfairly discriminatory because only Market-Makers can respond to an AIM auction, and the Cap only applies to CTPHs, and not Market-Makers. This situation is the same for open outcry. The Cap is limited to CTPHs because they contribute capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants.

Assessing no transaction fees for CTPH Proprietary facilitation orders (other than SPX, VIX or other volatility indexes, OEX or XEO) executed in open outcry or AIM or as a QCC or FLEX Options transaction is reasonable because other exchanges also waive equity options transaction fees for firms executing facilitation orders when the firms are trading in their own proprietary account.[25] This change is equitable and not unfairly discriminatory because it will encourage CTPHs to transact more business on the Exchange, thereby increasing volume and liquidity, which will benefit all market participants, and also because it will apply to all firms equally. The CTPH Proprietary Facilitation Waiver is limited to executions in AIM or open outcry, or as a QCC or FLEX Options transaction, because those are the only ways to execute a facilitation trade on the Exchange.

Excluding SPX, VIX or other volatility indexes, OEX or XEO from the CTPH Proprietary Facilitation Waiver is equitable and not unfairly discriminatory because all similarly-situated market participants trading in those products will be charged the same fees for such transactions, and because the Exchange expended significant resources in developing those products. The Exchange would have preferred to modify the CTPH Proprietary Facilitation Waiver to include only multiply-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (as described above). Therefore, the Exchange proposes to include the singly-listed products for qualification towards the CTPH Proprietary Facilitation Waiver along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the CTPH Proprietary Facilitation Waiver. Limiting the CTPH Proprietary Facilitation Waiver to orders executed via AIM or open outcry or as a QCC or FLEX Options transaction is equitable and not unfairly discriminatory because these limits apply to all CTPHs equally, and because these are the only manners in which facilitation trades can be effected.

Ceasing excluding AIM Contra Execution Fees from counting towards the Cap as well as ceasing excluding contracts executed in AIM that incur the AIM Contra Execution Fee from counting towards the CBOE Proprietary Products Sliding Scale is reasonable because it will allow for CTPHs to pay lower regular transaction fees than they currently do (though the AIM Contra Execution Fee will still be assessed). These changes are equitable and not unfairly discriminatory because they apply equally to all CTPHs, just as the Cap and the CBOE Proprietary Products Sliding Scale had prior to these changes. Additionally, these changes will encourage CTPHs to transact more business on the Exchange, thereby increasing volume and liquidity, which will benefit all market participants.

Removing the New Marketing Fee Options from the list of securities that are not assessed the marketing fee, and beginning to assess a $0.25 per contract marketing fee on qualifying transactions in those securities, is reasonable because it is the same amount as is charged for transactions in other ETFs. This proposed change is equitable and not unfairly discriminatory because it is designed and intended to attract additional order flow in the New Marketing Fee Options to the Exchange, which would increase liquidity and benefit all market participants, and because the same fee is assessed similar [sic] transactions in nearly all other the [sic] New Marketing Fee Options.

The SPY and QQQQ Marketing Fee Waiver is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders in that it is intended to attract more customer volume on the Exchange in SPY and QQQQ options. The SPY and QQQQ options classes are among the most active and liquid classes and trade with significant electronic trading volume. Because of their current trading profiles, CBOE believes it might be better able to attract electronic liquidity by not assessing the marketing fee on electronic SPY and QQQQ transactions and therefore proposes to make permanent the current waiver. However, CBOE believes that continuing to collect the marketing fee on open outcry transactions, as well as electronic orders submitted to AIM for price improvement, from Market-Makers that trade with customer orders from payment accepting firms would continue to attract liquidity in SPY and QQQQ to the floor and AIM mechanism, respectively. Brokers take payment for order flow (the payments received from the collection of the marketing fee) into their decision-making equations regarding AIM and open outcry when deciding where to send orders in SPY and QQQQ. Accordingly, CBOE believes making permanent the waiver is equitable and not unfairly discriminatory because it reflects the trading profiles of SPY and QQQQ and is designed and intended to attract additional order flow in SPY and QQQQ to the Exchange, which would benefit all market participants.

The Exchange believes the proposed extension of the C Waiver for Index Options is equitable and not unfairly discriminatory because it would apply uniformly to all public customers trading ETF, ETN and HOLDRs options in open outcry and AIM, and because waiving the transaction fee for such customer trades is designed to attract new order flow to the Exchange. The resulting increased volume and liquidity will benefit all market participants trading in these products. The Exchange believes the proposed extension of the C Waiver for Index Options is reasonable because it would continue to provide cost savings during the extended waiver period for public customers trading SPY and XLF options and begin to provide such savings to public customers trading all other ETF, ETN and HOLDRs. Further, the Exchange believes the proposed C Waiver for Index Options is consistent with other fees assessed by the Exchange. Specifically, the Exchange assesses manually executed broker-dealer orders a different rate ($.25 per contract) as compared to electronically executed broker-dealer orders ($.45 per contract).[26] Other exchange fee schedules also distinguish between electronically and non-electronically

[24] *See* PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7), provides for a similar $75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.

[25] *See* PHLX Fee Schedule, Section II (pages 7–8).

[26] *See* CBOE Fees Schedule, Section 1.

executed orders.[27] Finally, Arca does not charge customer transaction fees for customer transactions in ETF, ETN and HOLDRs options.[28] Adding FLEX Options to the C Waiver for Index Options is reasonable because it will allow customer FLEX Options transactions in ETF, ETN and HOLDRs options to no longer be assessed a fee, thereby saving such customers money. This addition is equitable and not unfairly discriminatory because waiving the fee for such trades is designed to attract new order flow to the Exchange. The resulting increased volume and liquidity will benefit all market participants trading in these products. Moreover, other exchanges do not charge for public customer FLEX Options transactions in ETF, ETN and HOLDRs options.[29] The C Waiver for Index Options is limited to AIM and open outcry executions in order to encourage use of these price improvement mechanisms, and QCC trades are included in the C Waiver for Index Options as well because QCC trades can only be executed via AIM and open outcry.

Increasing the FBW fee from $225 per month (per login ID) to $350 per month (per login ID) is reasonable because the Exchange is charged by the vendor that provides the FBW more than $225 per month (per login ID) (actually, more than $350 per month (per login ID)) and simply wants to reduce the extent to which the Exchange subsidizes such costs. This change is equitable and not unfairly discriminatory because all market participants who desire to use the FBW will be assessed the same fee.

Increasing the PULSe fee from $225 per month (per login ID) to $350 per month (per login ID) is reasonable because the Exchange expended significant resources developing PULSe and desires to recoup some of those costs. Moreover, the Exchange will be assessing the same amount for the FBW, which is a similar product. This change is equitable and not unfairly discriminatory because all market participants who desire to use PULSe will be assessed the same fee, and because the same amount is being assessed for use of a similar product, the FBW.

The lowered costs for Market-Maker Trading Permits is reasonable because the fees will be lower than previously, and are equitable and not unfairly discriminatory because, as before, the tiers are available to all TPHs. Lower Market-Maker Trading Permit fees encourage more Market-Makers to access the Exchange, and more Market-Makers gives market participants more trading options and increased trading activity, volume and liquidity, which benefit all market participants. Amending the date by which MMTPHs must commit to the Market-Maker Trading Permit Holder Sliding Scale is reasonable because a commitment by December 25th of the preceding year still gives MMTPHs plenty of time to determine whether or not to commit to the Market-Maker Trading Permit Holder Sliding Scale, and is equitable and not unfairly discriminatory because all MMTPHs will be subject to that same deadline.

Amending the qualification for the VIX Tier Appointment fee to state that a Market-Maker TPH that has a VIX Tier Appointment during a given month will not be assessed the VIX Tier Appointment fee unless said Market-Maker TPH trades at least 100 VIX contracts electronically while that appointment is active is reasonable because the change will prevent those that do not at least somewhat regularly trade in VIX from being assessed the VIX Tier Appointment fee. This change is equitable and not unfairly discriminatory because it ensures that the VIX Tier Appointment fee is not assessed to those Market-Makers who are not trading in VIX. The 100-contract threshold achieves this purpose because it is a sufficiently small number of contracts and yet leaves some small room for an accidental or minor VIX trade.

Increasing the VIX Tier Appointment fee is reasonable because the amount, $2,000, is within the range of other tier appointment fees assessed by the Exchange (for example, the SPX Tier Appointment fee is $3,000)[30], and because market demand will sustain such a fee. This proposed change is also equitable and not unfairly discriminatory because it will be assessed to all MMTPHs that either (a) have a VIX Tier Appointment at any time during a calendar month and trade at least 100 VIX contracts electronically while that appointment is active; or (b) trade at least 1,000 VIX options contracts in open outcry during a calendar month. Increasing the monthly fee for a Floor Broker Trading Permit Holder that executes more than 20,000 VIX contracts in a month is reasonable because this amount is equal to the amount of the VIX Tier Appointment fee (as they were equal prior to these changes), and is equitable and not unfairly discriminatory because the fee will be assessed to any and all Floor Broker Trading Permit Holders that qualify for the fee.

The proposed increase in the fee assessed for one Floor Broker Trading Permit is reasonable because lone floor brokers almost always require the Exchange to do extra work for the floor broker, while floor brokers with two or more trading permits never do, and the Exchange must recoup related costs. This increase is equitable and not unfairly discriminatory because the same amount will be assessed to all lone floor brokers. The Floor Broker Trading Permit Sliding Scale is reasonable because the amounts for Tier 1 are the same on a per permit basis as they currently are, and the amounts for Tier 2 are lower than the current amounts. The Floor Broker Trading Permit Sliding scale is equitable and not unfairly discriminatory because offering lower costs to TPHs that get more permits will encourage floor broker firms to bring more floor brokers to the Exchange, thereby bringing more business to the Exchange, resulting in greater trading volume and liquidity, which benefits all market participants.

The proposed monthly fee of $3,000 per month to any Floor Broker Trading Permit Holder that executes more than 20,000 SPX contracts during the month is reasonable because the same amount is assessed to Market-Makers for an SPX tier appointment. This fee is equitable and not unfairly discriminatory because it will equalize opportunity between Market-Makers and Floor Brokers trading in SPX options, because it reflects the opportunity provided to agents servicing customers in such a high-volume product, and because the Exchange expended considerable resources in developing SPX and desires to recoup such expenses and other administrative costs.

The lowered fee for the Packet is reasonable because the fee will be lower than previously, and is equitable and not unfairly discriminatory because, as before, the fee will be applied to all parties who desire the Packet. Lower Packet fees encourage more Market-

[27] PHLX categorizes its equity options transaction fees for Specialists, ROTs, SQTs, RSQTs and Broker-Dealers as either electronic or non-electronic. *See* PHLX Fees Schedule, Equity Options Fees. NYSE Amex, Inc. categorizes its options transaction fees for Non-NYSE Amex Options Market Makers, Broker-Dealers, Professional Customers, Non BD Customers and Firms as either electronic or manual. *See* NYSE Amex Options Fees Schedule, Trade Related Charges. Arca categorizes its options transaction fees for Customers, Firms and Broker-Dealers as either electronic or manual. *See* Arca Options Fees Schedule, Trade Related Charges.

[28] *See* Arca Options Fee Schedule, page 3.

[29] *See* NYSE Amex Options Fee Schedule, page 3, which shows Non BD Customer Manual transactions (the manner by which FLEX Options are traded on the NYSE Amex Options market) to be assessed a $0.00 transaction fee.

[30] *See* Exchange Fees Schedule, Section 10(A)(ii).

Makers to access the Exchange, and more Market-Makers gives market participants more trading options and increased trading activity, volume and liquidity, which benefit all market participants.

The proposed increases in TPH Application fees are reasonable because such increases are necessary to cover the increased costs of processing such applications and activities. The proposed increases in TPH Application fees are equitable and not unfairly discriminatory because they apply equally to all qualifying market participants.

The proposed adoption of the Initial Proprietary Registration fee and the Annual Proprietary Registration fee is reasonable because both fees are necessary to offset the costs of the Proprietary Trading Registration Program, and because the amount of the fees are minimal. The adoption of these fees is equitable and not unfairly discriminatory because they will be assessed equally to all market participants that qualify for the fees.

The proposed change to increase the Network Access Port fees is reasonable because the fees are within the same range as those assessed on other exchanges,[31] and because such increase will assist in recouping expenditures recently made by the Exchange to upgrade the CBOEdirect connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. The proposed changes to increase the fees assessed for CMI Login IDs and FIX Login IDs are also reasonable because such fees are within the same range as those assessed on other exchanges [32], and because such increases will assist in recouping expenditures recently made by the Exchange to upgrade the CBOEdirect connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users. Finally, these increases maintain the same proportionate amounts that are paid by regular users relative to Sponsored Users.

Changing the name of the Cap to more accurately reflect its nature furthers the objectives of Section 6(b)(5) [33] of the Act in particular in that it is designed to clear up any potential confusion, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [34] and subparagraph (f)(2) of Rule 19b–4 [35] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–008 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2409 Filed 2–2–12; 8:45 am]

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[31] *See* ISE Schedule of Fees, page 9.

[32] *See* ISE Schedule of Fees, page 8 *and* NOM Rule 7053.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 C.F.R. 240.19b–4(f)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66274; File No. SR–CBOE–2012–010]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 17, 2012, the Exchange made a number of amendments to its Fees Schedule, including to cease excluding AIM Execution Fees from counting towards the Clearing Trading Permit Holder (''CTPH'') Fee Cap in All Products Except SPX, VIX or other Volatility Indexes, OEX or XEO (the ''Cap'').[3] The purpose of that change was to align and improve the Exchange's competitive position in relation to other exchanges. NASDAQ OMX PHLX LLC (''PHLX'') has a similar $75,000 cap (the ''PHLX Monthly Firm Fee Cap''), but it does not apply to transactions in select high-volume securities executed through their PIXL mechanism, which, like AIM, is an electronic price improvement mechanism.[4] By including AIM Contra Execution Fees towards the Cap, the Exchange is providing a demonstrably advantageous pricing schedule for this business. As such, the Exchange determined to include all AIM transaction fees, including the AIM Execution Fees, towards reaching the Cap (when they apply) to improve our competitive position. The Exchange also desired to encourage the use of AIM, which is a price improvement mechanism.

In making the above-referenced amendment, the Exchange also intended to eliminate the requirement that CTPHs continue to pay AIM Execution Fees after reaching the Cap in a month. This change would naturally follow from the inclusion of AIM Execution Fees in counting towards the Cap; because these fees would be counted in helping a CTPH reach the monthly Cap, they would then cease to be assessed once a CTPH had reached the Cap for the month (like any other fees that are counted towards the Cap). The purpose of the Cap is to incentivize CTPHs to transact enough activity to reach the Cap, after which the CTPHs would no longer have to pay for such transactions. Requiring a CTPH to continue to pay such fees above and beyond the Cap would run counter to that purpose.

However, the Exchange in SR–CBOE–2012–008 unintentionally neglected to eliminate the requirement that CTPHs continue to pay AIM Execution Fees after reaching the Cap in a month. As such, the Exchange proposes to do so for the reasons stated above, as well as for competitive reasons. As PHLX's Monthly Firm Fee Cap does not apply to transactions in their select high-volume securities executed through their PIXL mechanism, fees for such transactions continue to be assessed to PHLX firms, regardless of whether such firms reach the PHLX Monthly Firm Fee Cap.[5] By not requiring CTPHs to pay AIM Execution Fees after reaching the Cap, the Exchange is providing a demonstrably advantageous pricing schedule for this business.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) [7] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. Eliminating the requirement that CTPHs continue to pay AIM Execution Fees after reaching the Cap in a month is reasonable because it will allow CTPHs to pay no fees where they might currently have to pay fees. This change is equitable and not unfairly discriminatory because eliminating such fees will encourage CTPHs to transact more business on the Exchange, which will provide greater trading volume and liquidity, which benefits all market participants. Further, AIM Execution Fees will be treated in the same manner as all other fees that count towards the Cap.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–CBOE–2012–008, which replaced SR–CBOE–2011–121, which was filed on December 30, 2011 and withdrawn on January 17, 2012.

[4] *See* PHLX Fee Schedule, Section I, Part C (page 5).

[5] *See* PHLX Fee Schedule, Section I, Part C (page 5).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–010 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2408 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66272; File No. SR–CHX–2012–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Relating to Individual Securities Circuit Breakers

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 2012, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to extend the pilot program relating to individual securities circuit breakers. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In June, 2010, CHX obtained Commission approval to amend Article 20, Rule 2 to create circuit breakers in individual securities on a pilot basis to end on December 10, 2010.[3] Shortly thereafter, in September, the Commission approved another amendment to Article 20, Rule 2 to add securities included in the Russell 1000® Index (''Russell 1000'') and certain specified Exchange Traded Products (''ETP'') to the pilot rule.[4] This program was subsequently extended until April 11, 2011[5] and was again extended until August 11, 2011.[6] Then, in June, 2011, the Commission approved another amendment to Article 20, Rule 2 to add all NMS stocks to the pilot rule[7] and, subsequently, the pilot was extended to January 31, 2012.[8]

The proposed rule change merely extends the duration of the pilot program to July 31, 2012. Extending the pilot in this manner will allow the Commission more time to consider the impact of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''), which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) approving SR–CHX–2010–10.

[4] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) approving SR–CHX–2010–14.

[5] *See* Securities Exchange Act Release No. 34–63498 (December 9, 2010), 75 FR 78310 (December 15, 2010) approving SR–CHX–2010–24.

[6] *See* Securities Exchange Act Release No. 64203 (April 6, 2011), 75 FR 20393 (April 12, 2011) approving SR–CHX–2011–05.

[7] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 75 FR 38243 (June 29, 2011) approving SR–CHX–2011–09.

[8] *See* Securities Exchange Act Release No. 65080 (August 9, 2011), 75 FR 50784 (August 16, 2011) approving SR–CHX–2011–23.

Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2012–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2012–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2012–03 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2407 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66275; File No. SR–NASDAQ–2012–019]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Rule 4753(c)

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2012, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to extend the pilot period of Rule 4753(c), NASDAQ's ''Volatility Guard,'' so that the pilot will now expire on the earlier of July 31,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2012 or the date on which a limit up/limit down system is adopted.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4753. Nasdaq Halt and Imbalance Crosses

(a)–(b) No change.

(c) For a pilot period ending the earlier of *July 31, 2012* [January 31, 2012] or the date on which, if approved, a limit up/limit down mechanism to address extraordinary market volatility, is approved, between 9:30 a.m. and 3:35 p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

Execution price	Threshold range away from triggering price (%)
$1.75 and under	15
Over $1.75 and up to $25	10
Over $25 and up to $50	5
Over $50	3

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

(A) maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and

(B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2)–(4) above.

(4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A)–(D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to extend the operative period of the pilot under Rule 4753(c), NASDAQ's ''Volatility Guard,'' so that it will expire the earlier of July 31, 2012 or the date on which a limit up/limit down system is adopted, yet hold the implementation of Rule 4753(c) in abeyance until a limit up/limit down system is either adopted or disapproved.

Background

On March 11, 2011, the Commission approved Rule 4753(c) (the ''Volatility Guard''), a volatility-based pause in trading in individual NASDAQ-listed securities traded on NASDAQ (''NASDAQ Securities''), as a six month pilot applied to the NASDAQ 100 Index securities.[3] The Volatility Guard automatically suspends trading in individual NASDAQ Securities that are the subject of abrupt and significant intraday price movements between 9:30 a.m. and 4 p.m. Eastern Standard Time (''EST''), which was subsequently amended to 9:45 a.m. and 3:35 p.m. EST to avoid potential interference with the opening and closing crosses.[4] Volatility Guard is triggered automatically when the execution price of a pilot security moves more than a fixed amount away from a pre-established ''triggering price'' for that security. The triggering price for each pilot security is the price of any execution by the system in that security within the previous 30 seconds. For each pilot security, the system continually compares the price of each execution in the system against the prices of all system executions in that security over the 30 seconds. Once triggered, NASDAQ institutes a formal trading halt during which time NASDAQ systems are prohibited from executing orders. Members, however, may continue to enter quotes and orders, which are queued during a 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders are executed at a single price, pursuant to NASDAQ's Halt Cross mechanism.[5]

NASDAQ determined to adopt Volatility Guard as a six month pilot in response to the unprecedented aberrant volatility witnessed on May 6, 2010, and the limited effect that NASDAQ's market collars had in dampening such volatility. NASDAQ believed that the Rule 4753(c) halt process was needed to protect its listed securities and market participants from such volatility in the future. In proposing the six month pilot, NASDAQ noted that another market had adopted a process whereby the market's listed securities each may be temporarily removed from automatic trading when the trading exceeds certain average daily volume-, price-, and volatility-based criteria. Accordingly, NASDAQ believed that adopting its own process would serve to protect its market from aberrant volatility, like that experienced on May 6, 2011.

Limit Up/Limit Down Proposal

During the time that the Volatility Guard pilot was progressing through the notice and comment process with the Commission, NASDAQ together with the other national securities exchanges and FINRA (''SROs'') and in consultation with the Commission, worked diligently to implement changes to the markets to prevent another event like May 6, 2010 from occurring. In this regard, the SROs have expanded their existing circuit breaker pilots[6] to cover

[3] Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR–NASDAQ–2010–074). Amendment 1 to SR–NASDAQ–2010–074 designated the NASDAQ 100 Index as the 100 pilot securities.

[4] Securities Exchange Act Release No. 64268 (April 8, 2011), 76 FR 20742 (April 15, 2011) (SR–NASDAQ–2011–051).

[5] The Nasdaq Halt Cross is ''the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.'' *See* Nasdaq Rule 4753(a)(3).

[6] On June 10, 2010, the Commission approved the Circuit Breaker Pilot, which instituted new circuit

Continued

all NMS stocks other than rights and warrants,[7] clarified rules concerning clearly erroneous processes,[8] and have made great strides in developing a limit up/limit down system to replace the circuit breakers currently in place. With respect to this last effort, on May 25, 2011, the SROs filed with the Commission a national market system plan to address extraordinary market volatility, which proposed a market-wide limit up/limit down system applicable to all NMS stocks (the ''Plan'').[9] The period to submit comments on the Plan ended on June 22, 2011, and the Commission had previously stated that it would determine whether to approve the Plan shortly after the expiration of the comment period.[10] The SROs have proposed implementing the Plan 120 calendar days following the publication of the Commission's order approving the proposed Plan in the **Federal Register**.

Important to the implementation of Volatility Guard, NASDAQ notes that the Commission stated that it may find exchange-specific volatility moderators inconsistent with the Act once a uniform, cross-market mechanism to address aberrant volatility is adopted. In approving Volatility Guard, the Commission emphasized:

> [T]hat it is continuing to work diligently with the exchanges and FINRA to develop an appropriate consistent cross-market mechanism to moderate excessive volatility that could be applied widely to individual exchange-listed securities and to address commenters' concerns regarding the complexity and potential confusion of exchange-specific volatility moderators. To the extent the Commission approves such a mechanism, whether it be an expanded circuit breaker with a limit up/limit down feature or otherwise, the Commission may no longer be able to find that exchange-specific volatility moderators—including both Nasdaq's Volatility Guard and the NYSE's LRPs—are consistent with the Act.[11]

NASDAQ calculated that the Plan, if approved, may be implemented by the end of 2011 or early 2012.[12] It was based on that calculation that NASDAQ determined to extend the pilot period of Volatility Guard until January 31, 2012.[13]

On September 27, 2011, the Commission provided notice that it was extending the period for Commission action on the limit up/limit down proposal.[14] Pursuant to Section 11A [15] of the Act and Rule 608 thereunder,[16] the Commission may designate up to 180 days from the date of publication of notice of filing of a national market system plan if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the sponsors consent. In extending the date by which the Commission shall approve the Plan to November 28, 2011, the Commission noted that the extension of time was appropriate because, among other things, the additional time would ensure that the Commission has sufficient time to consider and take action on the SROs' proposal in light of the comments received on the proposal.[17] On November 18, 2011, the SROs notified the Commission that they consented to a three-month extension for Commission action on the Plan.[18] Pursuant to such consent, the Commission must take action on the Plan by February 29, 2012.

Proposal

NASDAQ continues to believe that a limit up/limit down system, as proposed in the Plan, would be preferable to disparate individual market solutions to aberrant volatility. Given the progress made toward adopting a uniform limit up/limit down system and the Commission's apparent desire that exchange-specific volatility moderators be abandoned once a consistent cross-market mechanism is adopted, NASDAQ believes that implementing Volatility Guard at this time may be confusing and onerous to market participants.

NASDAQ is proposing to again extend the pilot rather than eliminate it so that NASDAQ may continue to have the option to implement Volatility Guard should the Plan not be approved by the Commission. As a primary market, NASDAQ takes seriously its responsibility to both its listed companies and the investing public. NASDAQ continues to believe that an individual solution like Volatility Guard, may be necessary in the event the Plan is rejected, much like NYSE-listed stocks may be protected by the LRP mechanism if it remains in place. NASDAQ believes that extending the Volatility Guard pilot, but holding its implementation in abeyance until such time that the Plan is approved or disapproved will best serve these groups by allowing NASDAQ to retain the ability to implement Volatility Guard if necessary, while also allowing market participants to make preparations to implement a limit up/limit down system, as proposed in the Plan. As such, market participants will not needlessly expend energy changing, and testing, their systems to account for the Volatility Guard pilot in addition to the changes required to implement the Plan.

Accordingly, NASDAQ is proposing to extend the Volatility Guard pilot to the earlier of July 31, 2012 or the date on which the Plan is approved and implemented. Should the Plan not be implemented by the expiration of the pilot, NASDAQ may consider further extension of Volatility Guard, consistent with the extension proposed herein.

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breaker rules that pause trading for five minutes in a security included in the S&P 500 Index if its price moves ten percent or more over a five-minute period. *See* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NASDAQ–2010–061, *et al.*). On September 10, 2010, the Circuit Breaker Pilot was expanded to include securities in the Russell 1000 Index and certain exchange-traded products. *See* Securities Exchange Act Release Nos. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033); 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NASDAQ–2010–079, *et al.*). The Circuit Breaker Pilot is scheduled to expire on August 11, 2011. *See e.g.,* Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR–NASDAQ–2011–042).

[7] On June 23, 2011, the Commission granted accelerated approval to SRO proposals to expand the Circuit Breaker Pilot to all NMS securities. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–NASDAQ–2011–067, *et al.*). In November 2011, the SROs filed immediately effective rule changes to exclude rights and warrants from the Circuit Breaker Pilot. *See e.g.,* Securities Exchange Act Release No. 65814 (November 23, 2011), 76 FR 74084 (November 30, 2011) (SR–NASDAQ–2011–154). The term ''NMS stocks'' is defined in Rule 600(b)(47) of Regulation NMS under the Act. *See* 17 CFR 242.600(b)(47).

[8] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NASDAQ–2010–076, *et al.*); see also Securities Exchange Act Release No. 64238 (April 7, 2011), 76 FR 20780 (April 13, 2011) (SR–NASDAQ–2011–043).

[9] Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[10] *See http://www.sec.gov/news/press/2011/2011-84.htm.* At the close of the comment period, NASDAQ understood that, given the number of comments received, the Commission would need a reasonable time to consider the comments provided. Rule 608(b) of Regulation NMS governs the effectiveness of national market system plans. *See* 17 CFR 242.608.

[11] Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699, at 14701 (March 17, 2011) (SR–NASDAQ–2010–074, as amended) (emphasis added).

[12] *Supra* note 9.

[13] Securities Exchange Act Release No. 65176 (August 19, 2011), 76 FR 53518 (August 26, 2011) (SR–NASDAQ–2011–117).

[14] Securities Exchange Act Release No. 65410 (September 27, 2011), 76 FR 61121 (October 3, 2011) (File No. 4–631).

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 242.608.

[17] At the time of the notice, the Commission had received 18 comment letters on the proposed Plan.

[18] Letter from Janet M. McGinness, Senior Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2011.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[19] in general and with Sections 6(b)(5) of the Act,[20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes that the proposed rule continues to meet these requirements in that it promotes the adoption of the Plan's uniform, cross-market limit up/limit down process to address aberrant volatility, while also allowing NASDAQ to retain an important alternative tool to deal with such volatility should approval of the Plan be delayed or disapproved.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6)(iii) thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6)[25] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[26] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2012–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2012–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2012–019 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2404 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66270; File No. SR–FINRA–2012–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of the Trading Pause Pilot

January 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to extend the effective date of the pilot, which is currently scheduled to expire on January 31, 2012, until July 31, 2012.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6121.01 to extend the effective date of the pilot by which such rule operates, which is currently scheduled to expire on January 31, 2012, until July 31, 2012.

FINRA Rule 6121.01 provides that if a primary listing market has issued an individual stock trading pause under its rules, FINRA will halt trading otherwise than on an exchange in that security until trading has resumed on the primary listing market. The pilot was developed and implemented as a market-wide initiative by FINRA and other self-regulatory organizations (''SROs'') in consultation with Commission staff, and is currently applicable to all NMS stocks (other than rights and warrants) and specified exchange-traded products covered by the trading pause pilot rules of a primary listing market.[3]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Additionally, extension of the pilot to July 31, 2012 would allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65819 (November 23, 2011), 76 FR 74105 (November 30, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2011–068).

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2012–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2012–006. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2012–006 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2403 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66279; File No. SR–FINRA–2011–059]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 3230 (Telemarketing) in the FINRA Consolidated Rulebook

January 30, 2012.

I. Introduction

On October 13, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 3230 (Telemarketing) in the FINRA Consolidated Rulebook. The proposed rule change was published for comment in the **Federal Register** on November 2, 2011.[3] The Commission received one comment letter, from the Cornell Securities Law Clinic (the ''Clinic''), in response to the proposal,[4] and a response from FINRA to the Clinic's comments.[5] The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Description of the Proposal

As described in more detail in the Notice,[6] FINRA proposed to adopt FINRA Rule 3230 (Telemarketing) based largely on NASD Rule 2212. FINRA also proposed to delete NYSE Rule 440A and its Interpretation,[7] but to include certain of their provisions in Rule 3230. These include caller identification rules based on Rule 440A(h) requiring members engaging in telemarketing to transmit caller identification information to persons they call and not to block the transmission of such information. In addition, FINRA proposed to include provisions substantially similar to those contained in rules of the Federal Trade Commission (''FTC'') that prohibit deceptive and other abusive telemarketing acts or practices. These include a provision requiring members making outbound telephone calls to maintain a record of a person's request not to receive such calls indefinitely rather than for only five years.

FINRA explained that NASD Rule 2212 and NYSE Rule 440A are similar rules that require members to maintain do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and NYSE to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[8] The Prevention Act requires the Commission to promulgate or direct any national securities exchange or registered securities association to promulgate rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[9]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established a national do-not-call registry, and, pursuant to the Prevention

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 65645 (November 2, 2011), 76 FR 67787 (November 4, 2011) (''Notice'').

[4] *See* comment letter submitted by William A. Jacobson, Associate Clinical Professor and Director, Cornell Securities Law Clinic, and Tamara Gavrilova, Cornell Law School, Class of 2013, to Elizabeth M. Murphy, Secretary, SEC, dated November 21, 2011 (''Cornell Letter'').

[5] *See* letter from Matthew E. Vitek, Counsel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated December 15, 2011 (''Response Letter'').

[6] *See* Notice, *supra* note 3.

[7] For convenience, the Notice referred to Incorporated NYSE Rules as NYSE Rules, and this order follows that convention.

[8] 15 U.S.C. 6101–6108.

[9] 15 U.S.C. 6102.

Act, the Commission requested that FINRA and NYSE amend their telemarketing rules to require that their members participate. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[10] The following year, the Commission approved amendments to NYSE Rule 440A, which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles and computer advertisements.[11]

Earlier this year, Commission staff directed FINRA to conduct a review of its telemarketing rule and propose rule amendments that provide protections at least as strong as those provided by the FTC's telemarketing rules.[12] Commission staff had expressed concerns to FINRA and the other SROs that, overall, their telemarketing rules may not have kept pace with the FTC's rules, for example by not requiring a firm-specific opt out to be honored indefinitely as under the FTC's rules, and thus may no longer meet the standards of the Prevention Act.[13] FINRA filed the proposed rule change in response to these concerns.[14]

FINRA advised that it would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval, and that the implementation date would be no later than 180 days following Commission approval.[15]

III. Summary of Comments

In its comment letter,[16] the Clinic generally supported the proposed rule on the basis that it would comply with the Prevention Act and expressed the belief that it would be ''an important step in preventing members from using deceptive and abusive practices when telemarketing.'' The Clinic did, however, make some proposed recommendations.

The Clinic recommended that the proposed rule should incorporate additional provisions in NYSE Rule 440A regarding prerecorded messages and the use of telephone facsimile or computer advertisements. The Clinic also recommended that FINRA revise its proposal to eliminate the exception from proposed Rule 3230(k), which would permit prerecorded messages the meet the conditions of the proposed ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2). In addition, the Clinic opined that its proposed amendments to the proposed rule would provide customers with additional protection against invasive and abusive telemarketing techniques.

In its Response Letter,[17] FINRA stated that it did not believe it should amend the proposed rule change to adopt the Clinic's proposed amendments. FINRA stated that at the time the NYSE adopted Rule 440A's provisions regarding prerecorded messages and the use of telephone facsimile or computer advertisements, the NYSE stated that broker-dealers were subject to the FCC's telemarketing rules, and, accordingly, the NYSE modeled NYSE Rule 440A based on applicable FCC telemarketing rules.[18] Because broker-dealers remain subject to substantially similar FCC provisions regarding prerecorded messages and the use of telephone facsimile or computer advertisements, FINRA believes that adding the additional provisions of Rule 440A to the proposed rule is unnecessary.[19] Moreover, the proposed rule, at Supplementary Material .01, includes a reminder to member firms regarding their obligation to comply with relevant federal and state laws and rules, including FCC rules.

FINRA also stated that it did not believe it should eliminate the exception from proposed Rule 3230(k), which would permit prerecorded messages the meet the conditions of the proposed ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2). FINRA stated that this exception would be substantially similar to FCC and FTC exemptions for prerecorded messages complying with a ''safe harbor'' for abandoned calls.[20] In addition, FINRA's Response Letter cited to the FTC's rationale that ''a total ban on abandoned calls would amount to a ban on predictive dialers, and would not strike the proper balance between addressing an abusive practice and allowing for a technology that reduces costs for telemarketers.''[21] Further, FINRA restated the FTC's and FCC's recognition that ''a prerecorded message that provides identification information not only mitigates consumers' fears, but also makes it easier for consumers to make a do-not-call request of a company by calling the number provided in the message.''[22]

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the Cornell Letter, and FINRA's Response Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act and the rules and regulations thereunder.[24] Section 15A(b)(6) of the Act requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is designed to prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and promote just and equitable principles of trade by strengthening protections against deceptive and other abusive telemarketing acts or practices in the securities industry. Accordingly, the Commission finds that good cause exists to approve the proposed rule change.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–FINRA–2011–059) be, and hereby is, approved.

[10] *See* Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004).

[11] *See* Exchange Act Release No. 52579 (October 7, 2005), 70 FR 60119 (October 14, 2005).

[12] *See* letter from Robert W. Cook, Director, Division of Trading and Markets, SEC, to Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA, dated May 10, 2011.

[13] *Id.*

[14] *See* Notice, *supra* note 3.

[15] *Id.*

[16] *See* Cornell Letter, *supra* note 4.

[17] *See* Response Letter, *supra* note 5.

[18] *Id.* (citing Exchange Act Release No. 52308 (August 19, 2005), 70 FR 49961, 49964 (August 25, 2005)).

[19] *Id.* (citing 47 CFR 64.1200 and 47 CFR 68.318).

[20] *Id.* (citing 16 CFR 310.4(b)(1)(v)).

[21] *Id.* (citing FTC, *Telemarketing Sales Rule,* 68 FR 4580, 4642 (January 29, 2003)).

[22] *Id.* (citing 68 FR 4580, *supra* note 23, at 4644, and FCC, *Rules and Regulations Implementing the Telephone Consumer Protection Act,* 68 FR 44144, 44164 (July 25, 2003).

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). Commenters did not raise concerns about the proposed rule's impact on efficiency, competition and capital formation.

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2396 Filed 2–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66276; File No. SR–FINRA–2011–071]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change To Increase the Trading Activity Fee Rate for Transactions in Covered Equity Securities

January 30, 2012.

I. Introduction

On December 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase FINRA's Trading Activity Fee (''TAF'') rate for transactions in covered equity securities. The proposed rule change was published for comment in the **Federal Register** on December 30, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA's proposal would amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's TAF for transactions in Covered Securities that are equity securities.[4] The rules governing the TAF also include a list of exempt transactions.[5] The TAF, along with the Personnel Assessment and the Gross Income Assessment fees, are used to fund FINRA's regulatory activities.[6]

The current TAF rate is $0.000090 per share for each sale of a covered equity security, with a maximum charge of $4.50 per trade.[7] In the Notice, FINRA stated that over 95% of TAF revenue is generated by transactions in Covered Securities that are equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets. According to FINRA, since it previously increased the TAF in July 2011, there was a momentary spike in equity securities trading volume in the month of August followed by a general decline in volumes heading into the fourth quarter of 2011. FINRA states that, as a result of declining volume, it is necessary to adjust the TAF rate for 2012 to ''stabilize revenue flows necessary to support FINRA's regulatory mission.'' [8] Under the proposal, FINRA's TAF rate for Covered Securities that are equity securities would increase by $0.000005 per share, from $0.000090 per share to $0.000095 per share, while the per-transaction cap for Covered Securities that are equity securities would increase by $0.25, from $4.50 to $4.75. FINRA stated that increasing the TAF rate on these securities by $0.000005 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations and that it intends the proposed increase to remain revenue neutral, as it did previously when it adjusted the TAF rate.[9]

FINRA stated that it intends to make the proposal effective on February 1, 2012.

III. Discussion and Commission's Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The Commission believes that the proposal is reasonably designed to secure adequate funding to support FINRA's regulatory duties.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2011–071) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2394 Filed 2–2–12; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No. 07/07–0113]

C3 Capital Partners II, L.P.; Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that C3 Capital Partners II, L.P., 4520 Main Street, Suite 1600, Kansas City, Missouri 64111–7700, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2006)). C3 Capital Partners II, L.P., proposes to provide financing to Findett LLC, P.O. Box 0960, St. Charles, MO 63302–0960. The financing is contemplated to provide working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because C3 Capital Partners, L.P., an Associate of C3 Capital Partners II, L.P., currently owns greater than 10 percent of Findett LLC, and therefore, Findett LLC, is considered an Associate of C3 Capital Partners II as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66050 (December 23, 2011), 76 FR 82334 (''Notice'')

[4] Covered Securities are defined in Section 1 of Schedule A to the FINRA By-Laws as: Exchange-registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities); OTC Equity Securities; security futures; TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction); and all municipal securities subject to Municipal Securities Rulemaking Board reporting requirements.

[5] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[6] *See* FINRA By-Laws, Schedule A, § 1(a).

[7] The current TAF rates were approved by the Commission on June 2, 2011. *See* Securities Exchange Act Release No. 64590 (June 2, 2011), 76 FR 33388 (June 8, 2011).

[8] Notice, 76 FR at 82335.

[9] *See id.*

[10] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Administration, 409 Third Street SW., Washington, DC 20416.

Sean J. Greene,

Associate Administrator for Innovation and Investment.

[FR Doc. 2012–2188 Filed 2–2–12; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 7785]

Department of State FY11 Service Contract Inventory

AGENCY: Department of State.

ACTION: Notice of the release of the Department of State FY11 Service Contract Inventory.

SUMMARY: The Department of State has publically released its Service Contract Inventory for FY11 and its analysis of the FY10 inventory. They are available here: *http://csm.state.gov/*. Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, requires Department of State, and other civilian agencies, to submit an annual inventory of service contracts. A service contract inventory is a tool to assess an agency in its ability to contract services in support of its mission and operation and whether the contractors' skills are being utilized in an appropriate manner.

DATES: The FY11 inventory and FY10 analysis is available on the Department's Web site as of Jan. 31, 2012.

FOR FURTHER INFORMATION CONTACT: Jason Passaro, Director, A/CSM, (703) 875–5114, *passaroja@state.gov*.

Dated: January 31, 2012.

Jason Passaro,

Director, A/CSM, Department of State.

[FR Doc. 2012–2467 Filed 2–2–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7786]

In the Matter of the Keystone XL Pipeline

This notice is to inform the public that the Department of State has denied the Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Construction, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be located at the United States-Canada Border, received by the Department of State on September 19, 2008, as directed by the Presidential Memorandum for the Secretary of State Implementing Provisions of the Temporary Payroll Tax Cut Continuation Act of 2011 Relating to the Keystone XL Pipeline Permit, dated January 18, 2012. The full text of the Presidential Memorandum is as follows:

Presidential Memorandum—Implementing Provisions of the Temporary Payroll Tax Cut Continuation Act of 2011 Relating to the Keystone XL Pipeline Permit

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Implementing Provisions of the Temporary Payroll Tax Cut Continuation Act of 2011 Relating to the Keystone XL Pipeline Permit

The Temporary Payroll Tax Cut Continuation Act of 2011 requires a determination, within 60 days of enactment, of whether the Keystone XL pipeline project as set forth in the permit application filed on September 19, 2008 (including amendments) (the ''Keystone XL pipeline project'') would serve the national interest. The State Department had previously explained, on November 10, 2011, that it was seeking additional information concerning whether that project served the national interest, as necessary to grant the permit. Based on its experience and in order to consider relevant environmental issues and the consequences of the project on energy security, the economy, and foreign policy, the State Department indicated that its review could be complete as early as the first quarter of 2013.

I have determined, based upon your recommendation, including the State Department's view that 60 days is an insufficient period to obtain and assess the necessary information, that the Keystone XL pipeline project, as presented and analyzed at this time, would not serve the national interest.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States including section 301 of title 3, United States Code, and in furtherance of Executive Order 13337 of April 30, 2004 to the extent compatible with this memorandum, I direct you to submit the report to the Congress as specified in section 501(b)(2) of the Temporary Payroll Tax Cut Continuation Act of 2011 and to issue a denial of the Keystone XL pipeline permit application.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

BARACK OBAMA

Issued in Washington DC on February 1, 2012.

Dated: February 1, 2012.

George Sibley,

Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, U.S. Department of State.

[FR Doc. 2012–2615 Filed 2–2–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7758]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9 a.m. on Wednesday, March 14, 2012, in Room 5–1224 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the twentieth Session of the International Maritime Organization's (IMO) Subcommittee on Flag State Implementation to be held at the IMO Headquarters, United Kingdom, March 26–30, 2012.

The primary matters to be considered include:

Adoption of the agenda;

Decisions of other IMO bodies;

Responsibilities of Governments and measures to encourage flag State compliance;

Mandatory reports under International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);

Casualty statistics and investigations;

Harmonization of port State control activities;

Port State Control (PSC) Guidelines on seafarers' hours of rest and PSC guidelines in relation to the Maritime Labour Convention, 2006;

Development of guidelines on port State control under the 2004 Ballast Water Management (BWM) Convention;

Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;

Review of the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC) and the annexes to the Code for the Implementation of Mandatory IMO Instruments;

Consideration of International Association of Classification Societies (IACS) unified interpretations;

Review of the IMO Instruments Implementation Code;

Development of a Code for Recognized Organizations;

Measures to protect the safety of persons rescued at sea;

Illegal unregulated and unreported (IUU) fishing and related matters;

Election of Chairman and Vice-Chairman for 2013.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. E.J. Terminella, by email at *emanuel.j.terminellajr@uscg.mil*, by phone at (202) 372–1239, by fax at (202) 372–1918, or in writing at Commandant (CG–543), U.S. Coast Guard, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581 not later than March 7, 2012, 7 days prior to the meeting. Requests made after March 7, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo*.

Dated: January 23, 2012.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2012–2251 Filed 2–2–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0014]

Information Collection Activity; Request for Comments

AGENCY: Office of the Secretary of Transportation (OST) DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on Friday, November 4, 2011.

DATES: Comments must be submitted on or before March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Leonardo San Roman, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, W56–312, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–1930.

SUPPLEMENTARY INFORMATION:

Title: U.S. Department of Transportation Mentor-Protégé Pilot Program Evaluation Form; and U.S. Department of Transportation Mentor Protégé Pilot Program Annual Report.

Abstract: DOT will use the data captured in the Mentor-Protégé Pilot Program Evaluation Form to measure program achievement to determine whether the intention of the program to assist small businesses to compete and perform in DOT and federal procurement programs is achieved. DOT will use this data to determine whether program changes are required to increase participation of small businesses in DOT procurement programs.

Additionally, DOT will use the data captured in the Mentor Protégé Pilot Program Annual Report to measure protégé progress against the developmental plan contained in their Mentor Protégé agreement and to report the specific actions taken by the mentor to increase the participation of the protégé as a prime or subcontractor to DOT.

A **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection was published on Friday, November 4, 2011. Only one (1) anonymous comment was received stating that more concrete language is needed to specify the protégé's ability to withdraw from the program voluntarily. Additionally, there does not appear to be any language stating whether a mentor can receive reimbursement for MP program costs; whether it is direct, or through credit against subcontracting goals. It appears that should be added as well.

Procedures for the Mentor or the Protégé to withdraw from the program voluntarily will be established by both parties in the Mentor-Protégé Agreement. The Mentor or the Protégé should provide written notice to OSDBU at least 30 days before withdrawing from the program.

As for the reimbursement part, the Program Office has determined there will be no incentives, such as reimbursements or credits toward subcontracting goals.

Type of Information Collection: Request for collection of a new information collection.

Affected Public: Prime contractors and small businesses participating in DOT's Mentor Protégé Pilot Program.

Estimated Annual Number of Respondents: Approximately 20.

Estimated Annual Number of Responses: 20.

Estimated Annual Total Burden Hours: 20.

Frequency of Collection: One time.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503, email: *oira_submission@omb.eop.gov,* fax: (202) 395–5806.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 30, 2012.

Patricia Lawton,

Departmental PRA Program Manager, Office of the Secretary.

[FR Doc. 2012–2364 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 227, Standards of Navigation Performance

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

ACTION: Notice of RTCA Special Committee 227, Standards of Navigation Performance.

SUMMARY: The FAA is issuing this notice to advise the public of the first meeting of RTCA Special Committee 227, Standards of Navigation Performance

DATES: The meeting will be held March 6–8, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

March 6–8

- Welcome, Introductions, and Administrative Remarks
- Agenda Overview
- RTCA Overview
  - Background on RTCA, MASPS/MOPS, and Process
- Standards of Navigation Performance—Background/History
  - Review of SC 181 Products and Intended Applications
  - Walk through of DO–236B and DO–283A
  - Review of Evolving NextGen Concepts Relating to Navigation Performance Leading to the Need To Update Standards
- Committee Scope and Terms of Reference Overview
- Organization of Work, Assign Tasks, and Workgroups
  - Review of Work Plan and Schedule
  - Breakout Discussions as Appropriate
  - Assignment of Responsibilities
- Any Other Business
  - Establish Agenda for Next Meeting
  - Date and Place of Next Meeting
  - Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 30, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–2487 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C151c, Terrain Awareness and Warning System (TAWS)

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and request for public comments on a second draft of Technical Standard Order (TSO)–C151c, *Terrain Awareness and Warning System.* Comments received from the initial June 2011 release, resulted in changes to the proposed document significant enough to require this public comment offering.

DATES: Comments must be received on or before March 5, 2012.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch (AIR–130), 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Attn. Ms. Charisse Green. Or you may hand deliver comments to 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Charisse Green, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–4637, fax (202) 385–4651, email to: *Charisse.Green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed revised TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

The initial public offering of the draft TSO–C151c offered the following changes:

a. Clarification of the 500 foot altitude call out requirement for Class A TAWS equipment.

b. Addition of Localizer Performance with Vertical guidance (LPV) and Global Navigation Satellite System (GNSS) Landing System (GLS) glidepath alerting to the Ground Proximity Warning System (GPWS) Mode 5 glideslope alert.

c. Elimination of the provision to adjust or modify the GPWS envelopes to minimize nuisance alerts based on Forward-Looking Terrain Avoidance (FLTA) and Premature Descent Alert (PDA) functionality without a deviation.

d. Allowances for eliminating GPWS nuisance alerts (Appendix 1, paragraph 3.4).

e. Requirement for the primary horizontal position source to be GPS, to ensure utilization of the most accurate and consistent horizontal position data.

f. Addition of velocity and vertical GPS reporting requirement to inhibit alerting when GPS position is invalid, unless a backup position source is in use.

The FAA received numerous comments on: (1) The 500 foot altitude call out; (2) the elimination of the GPWS envelope modification allowance; (3) the GPS horizontal position source requirement; and (4) the position source requirements. A summary of those public comments and the FAA's resolution are included with the second draft of TSO–C151c.

This announcement requesting comments to the revised proposed TSO–C151c, contains the following significant changes:

a. Alert suppression for Required Navigation Performance (RNP) requirements are added to Appendix 1, Paragraph 3.1.4.

b. The allowance in TSO–C151b to adjust or modify the GPWS alerting thresholds is restored in the current version of TSO–C151c. (We provide clarifying language that deviations need to be accomplished in accordance with Title 14 of the Code of Federal Regulations (14 CFR) 21.618.)

c. The requirement in the initial proposal of TSO–C151c, requiring the Class A 500 ft voice call out on all approaches is changed to the TSO–C151b requirement, for the Class A 500 ft voice call out on non-precision approaches only.

d. TSO–C151b and the first offering of the proposed TSO–C151c, both allowed for the 500 ft callout to be made based on radar altimeter height above terrain, or by a comparison of current altitude (barometric or GNSS) above the runway threshold height. This revised proposed TSO–C151c allows the 500 ft voice call out to be the current altitude (barometric or GNSS) above the runway threshold height. Note that in the current proposal, the allowance to make the voice callout based solely on a radio altimeter height above terrain is removed. The rationale is that all TAWS equipped aircraft will annunciate the altitude call referenced to the runway

threshold height, allowing for consistency in the altitude call out.

e. Clarification of TAWS position requirements (See Proposed Paragraphs 5.0 through 5.6).

f. All GPS requirements are unchanged from the TSO–C151b requirement.

How To Obtain Copies

A copy of the proposed TSO–C151c may be obtained via the information contained in the section titled **FOR FURTHER INFORMATION CONTACT**, or from the FAA Internet Web site at: *http://www.faa.gov/aircraft/draft_docs/.*

Issued in Washington, DC, on January 31, 2012.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–2464 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed transportation improvement project (Logan 200 East, minor arterial project) in Logan, Cache County in the State of Utah. These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the FHWA actions on the highway project will be barred unless the claim is filed on or before August 1, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filling such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84129; telephone (801) 955–3524; email: *Edward.Woolford@dot.gov.* The FHWA Utah Division's regular business hours are Monday through Friday, 7:30 a.m. to 4:30 p.m. MST.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits and approvals for the following highway project in the State of Utah: The Logan 200 East Minor Arterial Project, Cash County, Utah, project number HPP–LC05(29), Federal Lead Agency: Federal Highway Administration.

Project Description: The Selected Alternative (Build Alternative 2A) implements a transportation project consisting of: (1) A new signalized intersection, including one through travel lane for all approaching directions, center turn lanes, right turn lanes, and designated pedestrian crosswalks; (2) the installation of two pedestrian under crossings locations; (3) construction of a roadway, with a slope to accommodate a change in elevation between Center Street and 100 South, and retaining walls to retain roadway fills; (4) termination of Pioneer Avenue in a cul-de-sac and access for all existing uses would be maintained; (5) road resurfacing, restriping to establish uniform roadway cross-section throughout the corridor, reconstruction of curb and gutter, and installation of storm drainage facilities as needed to convey drainage; (6) reconstruction of the intersection of 200 south and 200 east and widening the southern leg to match the northern roadway width and reconfiguration of intersection controls; (7) widening, with an 11-foot center turn lane, two 11-foot travel lanes, two 11- foot parking/bike lanes, 2.5-foot curb and gutter, 8-foot park strips, 5-foot sidewalks, and 1-foot buffers behind sidewalks; and (8) construction of intersection improvements, including left-turn lanes for both east/westbound travel on 200 East, and a right-turn lane westbound.

The actions by the FHWA and other Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on January 13, 2011, in the FHWA Finding of No Significant Impact (FONSI) issued on January 12, 2012, and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record are available by contacting the FHWA at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [49 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128];

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)];

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303];

4. Wildlife: Endangered Species Act [16 U.S.C 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712];

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C.470 (f) *et seq.*];

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1); Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209];

7. Wetlands and Water Resources: Safe Drinking Water Act [42 U.S.C. 300f et seq.]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood disaster Protection Act [42 U.S.C. 4001–129].

8. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175, Consultation and Coordination with Indian and Tribal Governments; E.O. 13112, Invasive Species. Nothing in this notice creates a cause of action under these Executive Orders.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1)

Issued on: January 23, 2012.

James C. Christian,

Division Administrator, Salt Lake City.

[FR Doc. 2012–2428 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Paul S. Sarbanes Transit in Parks Program Announcement of FY 2011 and Partial 2012 Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects, funded with Fiscal Year (FY) 2011 and 2012 appropriations, and previously unallocated prior year funds, for the Paul S. Sarbanes Transit in Parks program, as authorized by Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) and its extensions, and codified in 49 U.S.C. 5320. The Paul S. Sarbanes Transit in Parks program funds capital and planning expenses for alternative transportation systems in parks and public lands. Federal land management agencies and State, tribal and local governments acting with the consent of a Federal land management agency are eligible recipients.

FOR FURTHER INFORMATION CONTACT: Project sponsors who are State, local, or tribal entities may contact the appropriate FTA regional office at *http://www.fta.dot.gov/* for grant-specific issues. Project sponsors who are a Federal land management agency or a specific unit of a Federal land management agency should work with the contact listed below at their headquarters office to coordinate the availability of funds to that unit.

- National Park Service: Mark H Hartsoe, *Mark_H_Hartsoe@nps.gov;* tel: (202) 513–7025, fax: (202) 371–6675, mail: 1849 C Street NW., (MS2420); Washington, DC 20240–0001.
- Fish and Wildlife Service: Nathan Caldwell, *Nathan_Caldwell@fws.gov,* tel: (703) 358–2205, fax: (703) 358–2517, mail: 4401 N. Fairfax Drive, Room 634; Arlington, VA 22203.
- Forest Service: Rosana Barkawi, *rosanabarkawi@fs.fed.us,* tel: (703) 605–4509, mail: 1400 Independence Avenue SW., Washington, DC 20250–1101.
- Bureau of Land Management: Victor F. Montoya, *Victor_Montoya@blm.gov,* tel: (202) 912–7041, mail: 1620 L Street, WO–854, Washington, DC 20036.

For general information about the Paul S. Sarbanes Transit in Parks program, please contact Adam Schildge, Office of Program Management, Federal Transit Administration, at *adam.schildge@dot.gov,* (202) 366–0778.

SUPPLEMENTARY INFORMATION: FTA announces the selection of projects for the Paul S. Sarbanes Transit in Parks Program for Fiscal Years 2011 and 2012. As proposed in the Notice of Funding Availability (NOFA) published on March 10, 2011, FTA is including available FY 2012 funding in this selection of projects. Once additional FY 2012 funding becomes available, FTA may select additional projects from the FY 2011 applicants; publish an additional FY 2012 NOFA; incorporate such funds into a future FY 2013 NOFA; or pursue a combination of the above.

A total of $26,844,035 was appropriated for FTA's Paul S. Sarbanes Transit in Parks program in Fiscal Year (FY) 2011. Of this amount, $26,709,535 is available for project awards and $134,500 is reserved for oversight activities. An additional $633,845 is available for project awards in FY 2011 from funds appropriated in 2006, 2008 and 2010. This includes funds previously reserved for other authorized program activities and funds returned from previously awarded projects. The total amount available for FY 2011 is $27,343,380.

The Surface and Air Transportation Programs Extension Act of 2011 provided $13,450,000 for the program for the period of October 1, 2011 through March 31, 2012, which is approximately half of the FY 2011 full-year amount. From this amount, a total of $67,530 is reserved for oversight activities in FY 2012. With the addition of $55,965 in previously unavailable FY 2011 contract authority and $26,985 in funds returned from previously awarded projects, a total of $13,465,420 is available for project awards. The combined total amount of funding for project awards in FY 2011 and 2012 at the time of this announcement is $40,808,800.

FY 2011 & FY 2012 PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

	FY 2011	FY 2012
Appropriation	$26,844,035	$13,450,000
Oversight Deduction (0.5%)	(134,500)	(67,530)
FY 2011 Contract Authority	.....	55,965
Prior Year Unobligated Funds	633,845	26,985
Available for Grants	27,343,380	13,465,420

A total of 106 applicants requested $91.1 million, which is more than three times the amount announced in FY 2011 and more than twice the total amount currently available, indicating high competition for funds. A joint review committee of the U.S. Department of Interior, the U.S. Department of Agriculture's Forest Service and DOT evaluated the project proposals based on the criteria defined in 49 U.S.C. 5320(g)(2). Final selections were made through a collaborative process.

The goals of the program are to conserve natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities, through alternative transportation projects. The projects selected to use FY 2011 and 2012 funding represent a diverse set of capital and planning projects across the country, ranging from bus purchases to installation of Intelligent Transportation Systems (ITS), and are listed in Table 1.

Applying for Funds

Recipients who are State or local government entities will be required to apply for Paul S. Sarbanes Transit in Parks program funds electronically through FTA's electronic grant award and management system, TEAM. These entities are assigned discretionary project IDs as shown in Table I and Table II of this notice. The content of these grant applications must reflect the approved proposal. (**Note:** Applications for the Paul S. Sarbanes Transit in Parks program do not require Department of Labor Certification.) Upon grant award, payments to grantees will be made by electronic transfer to the grantee's financial institution through FTA's Electronic Clearing House Operation (ECHO) system. Staff in FTA's Regional offices are available to assist applicants.

Recipients who are Federal land management agencies will be required to enter into an interagency agreement (IAA) with FTA. FTA will administer one IAA with each Federal land management agency receiving funding through the program for all of that agency's projects. Consistent with section 9.5.2a of the ''Department of Transportation Financial Management Policies Manual (October 24, 2006), funds awarded to Federal land

management agencies through interagency agreements remain available for a period of five years from execution of the agreement. Individual units of Federal land management agencies should work with the contact at their headquarters office listed above to coordinate the availability of funds to that unit.

Program Requirements

Section 5320 requires funding recipients to meet certain requirements. Requirements that reflect existing statutory and regulatory provisions can be found in the document ''Alternative Transportation in Parks and Public Lands Program: Requirements for Recipients'' available at *www.fta.dot.gov/transitinparks.* These requirements are incorporated into the grant agreements and inter-agency agreements used to fund the selected projects.

Pre-Award Authority

Pre-award authority allows an agency that will receive a grant or interagency agreement to incur certain project costs prior to receipt of the grant or interagency agreement and retain eligibility of the costs for subsequent reimbursement after the grant or agreement is approved. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility, including compliance with Federal requirements such as the National Environmental Policy Act (NEPA), SAFETEA–LU planning requirements, and provisions established in the grant contract or Interagency Agreement. This automatic pre-award spending authority, when triggered, permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Under the authority provided in 49 U.S.C. 5320(h), FTA is extending pre-award authority for FY 2011 and 2012 Paul S. Sarbanes Transit in Parks projects announced in this notice effective January 17, 2012 when the projects were publicly announced.

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds for those projects. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

b. All FTA statutory, procedural, and contractual requirements must be met. This includes adherence to Federal planning requirements for recipients of FTA grants, National Environmental Policy Act (NEPA) requirements, and Federal competitive procurement requirements.

c. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administration must make in order to approve a project.

d. Local funds expended pursuant to this pre-award authority will be eligible for reimbursement if FTA later makes a grant or interagency agreement for the project(s). Local funds expended by the grantee prior to the January 17, 2012 public announcement will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction, prior to the completion of the NEPA process, would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. When a grant for the project is subsequently awarded, the Financial Status Report in TEAM–Web must indicate the use of pre-award authority, and the pre-award item in the project information section of TEAM should be marked ''yes.''

Reporting Requirements

All recipients must submit quarterly reports to FTA containing the following information:

(1) Narrative description of project(s); and,

(2) discussion of all budget and schedule changes.

The headquarters office for each Federal land management agency should collect a quarterly report for each of the projects delineated in the interagency agreement and then send these reports by email to Adam Schildge, FTA, *mailto: adam.schildge@dot.gov.* Examples can be found on the program Web site at *http://www.fta.dot.gov/transitinparks.* State, local and tribal governments will provide this information to FTA via the TEAM–Web system for projects that are funded through FTA grants.

The quarterly reports are due to FTA on the dates noted below:

Quarter	Covering	Due date
1st Quarter Report	October 1–December 31	January 30.
2nd Quarter Report	January 1–March 31	April 30.
3rd Quarter Report	April 1–June 30	July 30.
4th Quarter Report	July 1–September 31	October 30.

In order to allow FTA to compute aggregate program performance measures FTA requires that all recipients of funding for capital projects under the Paul S. Sarbanes Transit in Parks program submit the following information as a part of their fourth quarter report:

- Annual visitation to the relevant land unit;
- Annual number of persons who use the alternative transportation system (ridership/usage);
- An estimate of the number of vehicle trips mitigated based on alternative transportation system usage and the typical number of passengers per vehicle;
- Cost per passenger; and,
- A note of any special services offered for those systems with higher costs per passenger but more amenities.

Oversight

Recipients of FY 2011 and FY 2012 Paul S. Sarbanes Transit in Parks program funds will be required to certify that they will comply with all applicable Federal and FTA programmatic requirements. FTA direct grantees will complete this certification as part of the annual Certification and Assurances package, and Federal Land Management Agency recipients will complete the certification by signing the interagency agreement. This certification is the basis for oversight reviews conducted by FTA.

The Secretary of Transportation and FTA have elected not to apply the triennial review requirements of 49 U.S.C. 5307(h)(2) to Paul S. Sarbanes Transit in Parks program recipients that are other Federal agencies. Instead, working with the existing oversight systems at the Federal Land Management Agencies, FTA will perform periodic reviews of specific projects funded by the Paul S. Sarbanes Transit in Parks program. These reviews

will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by this notice and the certification. To the extent possible, these reviews will be coordinated with other reviews of the project. FTA direct grantees of Paul S. Sarbanes Transit in Parks program funds (State, local and tribal government entities) will be subject to all applicable triennial, State management, civil rights, and other reviews.

Issued in Washington, DC, January 27, 2012.

Peter Rogoff,

Administrator.

BILLING CODE 4910–57–P

Table I

FTA FY 2011 Paul S. Sarbanes Transit in Parks Discretionary Program Funding Recipients

State	Federal Land Management Agency	Federal Land Unit (Sponsor)	Local Funding Funding Recipient (If Applicable)	Project Name	Discretionary Award (Earmark) ID	Final Amount
AZ	U.S. Forest Service	Coconino National Forest, Red Rock Ranger District	Northern Arizona Intergovernmental Public Transportation Authority	Sedona Alternative Transportation Implementation Plan	D2011-ATPL-001	$ 150,000
CA	Bureau of Land Management	Bureau of Land Management, Redding Field Office	California Department of Transportation	Shasta State Historic Park Bike Lane Project	D2011-ATPL-002	$ 800,000
CA	National Park Service	Sequoia and Kings Canyon National Parks	City of Visalia, CA	San Joaquin Valley/Sequoia National Park Gateway Shuttle Link	D2011-ATPL-003	$ 250,000
CA	Multiple Agencies	Inyo National Forest; Devils Postpile National Monument	Eastern Sierra Transit Authority (ESTA)	Sustainable Transit in Reds Meadow and Devils Postpile National Monument	D2011-ATPL-004	$ 400,000
CA	National Park Service	Golden Gate National Recreation Area		Initial phase of improvements to California Coastal Bike/Ped Trail section in the Presidio		$ 1,000,000
CA	National Park Service	Golden Gate National Recreation Area	Marin County Transit District	Purchase Five 35 foot XHF Vehicles	D2011-ATPL-005	$ 1,100,000
CA	National Park Service	Sequoia and Kings Canyon National Parks		Lease Shuttle Buses for the Giant Forest Shuttle System in Sequoia National Park		$ 270,000

CA	U.S. Forest Service	Southern California National Forest Subregion		Connecting Southern California National Forests and the Los Angeles Basin through Alternative Transportation		$ 296,500
CA	U.S. Forest Service	Inyo National Forest	Town of Mammoth Lakes, CA	Lakes Basin Intermodal Transportation Enhancements – Trolley, Bicycle, Pedestrian	D2011-ATPL-006	$ 1,244,874
CA	National Park Service	Yosemite National Park		Complete Planning for Visitor Transit, Staging, and Pedestrian Routes for the Mariposa Grove of Giant Sequoias		$ 890,000
CO	National Park Service	Rocky Mountain National Park	Town of Estes Park, CO	Construct Transportation Hub at the Estes Park Visitor Center	D2011-ATPL-007	$ 3,000,000
DC	National Park Service	National Mall and Memorial Parks		The National Mall Tour Bus Planning Study		$ 356,923
FL	National Park Service	Castillo de San Marcos National Monument	City of St. Augustine, FL	Castillo de San Marcos National Monument - Fort-to-Downtown Core Pedestrian Connections	D2011-ATPL-008	$ 753,000
FL	U.S. Fish & Wildlife Service	Egmont Key National Wildlife Refuge	Pinellas County, FL	Bay Pier/Dock - Egmont Key National Wildlife Refuge Ferry	D2011-ATPL-009	$ 1,000,000

MA	National Park Service	Cape Cod National Seashore		Route 6 Multiuse Path Master Planning and Conceptual Project Design		$ 381,680
MA	National Park Service	Cape Cod National Seashore		Nauset Bike Trail – Phase I		$ 1,345,000
MA	National Park Service	Lowell National Historical Park	City of Lowell, MA	Lowell Trolley Expansion – Gallagher Extension and Father Morissette Engineering	D2011-ATPL-010	$ 1,592,292
MA	U.S. Fish & Wildlife Service	Monomoy National Wildlife Refuge		Biodiesel-fueled shuttle service from satellite parking to Monomoy National Wildlife		$ 400,000
ME	National Park Service	Acadia National Park		Construct Improvements at Bus Stops to Eliminate Public Hazards		$ 1,324,518
MI	National Park Service	Sleeping Bear Dunes National Lakeshore	Michigan Department of Transportation	Sleeping Bear Dunes National Lakeshore Multi-use Path Phase 1 Completion	D2011-ATPL-011	$ 1,337,000
MN	U.S. Fish & Wildlife Service	Minnesota Valley National Wildlife Refuge	City of Bloomington, MN	Minnesota River Crossing at the Old Cedar Avenue Bridge Project	D2011-ATPL-012	$ 2,000,000
MN	National Park Service	Mississippi National River and Recreation Area		Implement Partnership Multi-Modal Alternative Transportation Project		$ 843,140

NH	U.S. Forest Service	White Mountain National Forest		Appalachian Mountain Hike Shuttle Vehicle Acquisition		$ 62,627
NY	National Park Service	Gateway National Recreation Area		Alternative Route for Jamaica Bay Greenway through Spring Creek Park		$ 250,000
NY	National Park Service	Gateway National Recreation Area		Riis Landing Basin Final Planning, Environmental Assessment and Permitting		$ 400,000
NY	National Park Service	Gateway National Recreation Area	New York City Department of Transportation	Jamaica Bay Greenway non-motorized and multimodal connection improvements	D2011-ATPL-013	$ 594,378
OH	National Park Service	Cuyahoga Valley National Park		Rebuild Locomotive with Green Technology		$ 994,000
OH	National Park Service	Cuyahoga Valley National Park		Rehabilitate Baggage Car for Bicycle Transport.		$ 136,620
OH	National Park Service	Cuyahoga Valley National Park		Rehabilitate Accessible Car #727		$ 144,670
OK	U.S. Fish & Wildlife Service	Wichita Mountains National Wildlife Refuge		Wichita Mountains Wildlife Refuge Comprehensive Alternative Transportation Plan		$ 200,000

PA	U.S. Fish & Wildlife Service	John Heinz National Wildlife Refuge	Delaware Valley Regional Planning Commission	Trail and Transit Access to John Heinz National Wildlife Refuge Planning Study	D2011-ATPL-014	$ 446,758
TX	National Park Service	San Antonio Missions National Historical Park	City of San Antonio, TX	Mission Reach B-Cycle Bike Share Expansion	D2011-ATPL-015	$ 324,000
UT	Multiple Agencies	Arches National Park; BLM Moab Field Office	Grand County, UT	North Moab Recreation Areas Alternative Transportation System - Colorado Riverway	D2011-ATPL-016	$ 2,500,000
VA	U.S. Fish & Wildlife Service	Back Bay National Wildlife Refuge	City of Virginia Beach, VA	Back Bay National Wildlife Refuge Alternative Transportation Study	D2011-ATPL-017	$ 449,000
WA	National Park Service	Mount Rainier National Park		Lease Paradise Area Shuttle Service Vehicles		$ 106,400
					Total	$ 27,343,380

Table II
FTA FY 2012 Paul S. Sarbanes Transit in Parks Discretionary Program Funding Recipients

State	Federal Land Management Agency	Federal Land Unit (Sponsor)	Local Funding Funding Recipient (If Applicable)	Project Name	Discretionary Award (Earmark) ID	Final Amount
AK	National Park Service	Denali National Park and Preserve		Denali Hybrid Bus Project		$ 275,000
CA	U.S. Forest Service	Inyo National Forest	Town of Mammoth Lakes, CA	Lake Mary Loop Road Alternative Analysis – Pedestrians vs. motor vehicles	D2012-ATPL-001	$ 153,175
CO	Bureau of Land Mgmt	Bureau of Land Management - Grandview Ridge	City of Durango, CO	Durango Area SMART 160 Multi-Use Trail	D2012-ATPL-002	$ 400,000
FL	National Park Service	Castillo de San Marcos National Monument	City of St. Augustine, FL	City of St. Augustine 450th Commemoration Alternative Transit & Pedestrian Connections	D2012-ATPL-003	$ 150,000
FL	National Park Service	NPS Rivers, Trails and Conservation Assistance Program		River of Grass Greenway East Planning Project		$ 500,000
HI	National Park Service	WWII Valor in the Pacific National Monument, USS Arizona Memorial		Replace Deficient USS Arizona Memorial Dock		$ 2,012,500

ID	U.S. Forest Service	Sawtooth National Forest		Study Alternative Transportation between Stanley, Idaho, and the Redfish Lake Recreation Complex		$ 150,000
IL	U.S. Forest Service	Midewin National Tallgrass Prairie		Multi-Use North-South Connector Trail Implementation		$ 291,576
IN	Army Corps of Engineers	U.S. Army Corps of Engineers, Cecil M. Hardin Lake	Indiana Department of Natural Resources	Raccoon State Rec Area - Design and construction of bike trail from campground to beach/boat ramp	D2012-ATPL-004	$ 779,376
IN	National Park Service	Lincoln Boyhood National Memorial	Town of Santa Claus, IN	Lincoln Boyhood-Santa Claus Discovery Trail	D2012-ATPL-005	$ 340,000
MA	National Park Service	Cape Cod National Seashore		Safe Crossings		$ 532,000
MA	National Park Service	Cape Cod National Seashore		Race Point/MacMillan Pier Bicycle Improvements		$ 119,600
MA	National Park Service	Lowell National Historical Park		Construct Phase 1 Improvements to Enhance Operational Efficiency of the Lowell Park Trolley		$ 1,525,217
MD	National Park Service	Assateague Island National Seashore		Assateague Island National Seashore - Resurface Sinepuxent District Trails		$ 450,000

MI	National Park Service	Pictured Rocks National Lakeshore	ALTRAN Public Transit, MI	Purchase Backpacker Bus in Pictured Rocks National Lakeshore	D2012-ATPL-006	$ 175,000
OH	National Park Service	Cuyahoga Valley National Park		Install Pedestrian Bridge		$ 1,356,976
OH	National Park Service	Cuyahoga Valley National Park		Replace Railroad Power Car		$ 575,000
OR	U.S. Forest Service	Columbia River Gorge National Scenic Area Management Unit		Historic Columbia River Highway NEPA Compliance		$ 400,000
PA	National Park Service	Delaware Water Gap National Recreation Area		Visitor Shuttle Study - Pilot Operation		$ 530,000
PA	National Park Service	Johnstown Flood National Memorial		Acquire Accessible Vehicle		$ 175,000
PA	National Park Service	Gettysburg National Military Park	Pennsylvania Department of Transportation	Gettysburg National Military Park Intelligent Transit Program	D2012-ATPL-007	$ 875,000
VA	U.S. Fish & Wildlife Service	Chincoteague National Wildlife Refuge		Chincoteague Park and Ride Facility		$ 1,500,000
WA	U.S. Fish & Wildlife Service	Ridgefield National Wildlife Refuge		Alternative Transportation Planning Study for Pedestrian Access		$ 200,000
					Total	$ 13,465,420

[FR Doc. 2012–2260 Filed 2–2–12; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 21, 2011, and comments were due by January 20, 2012. No comments were received.

DATES: Comments must be submitted on or before March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas Christensen, Maritime Administration, Office of Emergency Preparedness, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5909 or email: *Thomas.Christensen@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Effective U.S. Control (EUSC)/Parent Company.

OMB Control Number: 2133–0511.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who owns foreign-registered vessels.

Forms: None.

Abstract: The Effective U.S. Control (EUSC) Parent Company collection consists of an inventory of foreign registered vessels owned by U.S. citizens. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency, and is essential to the logistical support planning operations conducted by MARAD officials. The information is used in contingency planning and provides data related to potential sealift capacity to support movement of fuel and military equipment to crisis zones.

Annual Estimated Burden Hours: 30 hours.

Addressees: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention Maritime Administration Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on January 31, 2012.

Julie Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–2520 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0003]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BIG GAME; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 5, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0003. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel BIG GAME is:

Intended Commercial Use of Vessel: ''Fishing charter boat.''

Geographic Region: ''Rhode Island, Massachusetts, Connecticut.''

The complete application is given in DOT docket MARAD–2012–0003 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 30, 2012.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2012–2405 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0002]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEVEN SEAS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 5, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0002. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel SEVEN SEAS is:

Intended Commercial Use of Vessel: ''Passenger day charters. Maybe an overnight or two to Catalina Island.''

Geographic Region: ''California.''

The complete application is given in DOT docket MARAD–2012–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 20, 2012.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2012–2410 Filed 2–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35589]

Dakota, Minnesota & Eastern Railroad Corporation—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company

Pursuant to a written trackage rights agreement, Chicago, Central & Pacific Railroad Company (CCP) has agreed to grant limited overhead trackage rights to Dakota, Minnesota & Eastern Railroad Corporation (DM&E) [1] over approximately 1.1 miles of rail line between milepost 85.6± (Rockford Junction) and CCP's connection with DM&E at or near milepost 86.7± in Rockford (CCP/DM&E Connection), in Winnebago County, Ill.[2]

DM&E presently operates between Davis Junction, Ill. and Rockford pursuant to a trackage rights agreement with Illinois Railway, Inc. (IR). A segment of the trackage is currently out of service in Rockford as a result of track realignment. CCP has agreed to grant DM&E trackage rights for the movement of freight between the CCP/DM&E Connection and the connecting track between CCP and IR at Rockford Junction.

The transaction is scheduled to be consummated on February 19, 2012 the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to provide an alternative to DM&E's operating rights over IR trackage in Rockford that is currently out of service.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed by February 10, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35589, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on W. Karl Hansen, 150 South Fifth St., Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 27, 2012.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–2267 Filed 2–2–12; 8:45 am]

BILLING CODE 4915–01–P

[1] DM&E is an indirect subsidiary of Canadian Pacific Railway Company and CCP is an indirect subsidiary of Canadian National Railway Company.

[2] A redacted trackage rights agreement between DM&E and CCP was filed with the notice of exemption. The unredacted version was filed under seal along with a motion for protective order, which will be addressed in a separate decision.

FEDERAL REGISTER

Vol. 77 Friday,

No. 23 February 3, 2012

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB08

Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under the Employee Retirement Income Security Act of 1974 (ERISA or the Act) requiring that certain service providers to pension plans disclose information about the service providers' compensation and potential conflicts of interest. These disclosure requirements are established as part of a statutory exemption from ERISA's prohibited transaction provisions. This regulation will affect pension plan sponsors and fiduciaries and certain service providers to such plans.

DATES: *Effective Date:* The final rule is effective on July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Fil Williams or Allison Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

1. General

In recent years, the Department has undertaken a series of regulatory initiatives to ensure that employee benefit plan fiduciaries, as well as plan participants and beneficiaries, obtain comprehensive information about the services that are provided to employee benefit plans, and the cost of those services.[1] Today, the Department is publishing in the **Federal Register** a final rule concerning the disclosures that must be furnished to plan fiduciaries in order for a contract or arrangement for plan services to be ''reasonable,'' as required by ERISA section 408(b)(2). A proposed rule was published in December 2007 (72 FR 70988).[2] Following review of public comments on the proposal and testimony presented at the Department's 2008 public hearing,[3] the Department published an interim final rule in the **Federal Register** on July 16, 2010 (75 FR 41600). Both the proposal and the interim final rule required that reasonable contracts or arrangements between employee pension benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services. The Department believes that plan fiduciaries need this information, when selecting and monitoring service providers, to satisfy their fiduciary obligations under ERISA section 404(a)(1) to act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan.

2. Public Comments on Interim Final Regulation

Commenters on the December 2007 proposed regulation raised a number of technical issues, which persuaded the Department to make significant changes to the regulation. Because of these changes, the Department published the regulation in July 2010 as an interim final rule and invited comments from interested persons on all aspects of the rule. In response to this invitation, the Department received 45 written comments from a variety of persons, including plan sponsors, fiduciaries, service providers, financial institutions, and industry representatives of employee benefit plans and participants. These comments are available for review under ''Public Comments'' on the ''Laws and Regulations'' page of the Department's Employee Benefits Security Administration Web site at *http://www.dol.gov/ebsa*.

Set forth below is an overview of the final regulation and the public comments received on the Department's interim final regulation.

B. Overview of Final Regulation and Public Comments

The Department's final regulation retains the basic structure of the proposal and interim final rule by requiring that covered service providers satisfy certain disclosure requirements in order to qualify for the statutory exemption for services under ERISA section 408(b)(2).

The furnishing of goods, services, or facilities between a plan and a party in interest to the plan generally is prohibited under section 406(a)(1)(C) of ERISA. As a result, a service relationship between a plan and a service provider would constitute a prohibited transaction, because any person providing services to the plan is defined by ERISA to be a ''party in interest'' to the plan. However, section 408(b)(2) of ERISA exempts certain arrangements between plans and service providers that otherwise would be prohibited transactions under section 406 of ERISA. Specifically, section 408(b)(2) provides relief from ERISA's prohibited transaction rules for service contracts or arrangements between a plan and a party in interest if the contract or arrangement is reasonable, the services are necessary for the establishment or operation of the plan, and no more than reasonable compensation is paid for the services. Regulations issued by the Department clarify each of these conditions to the exemption.[4]

The interim final rule, as modified in this final rule, amends the regulation at 29 CFR 2550.408b–2(c) to add new conditions to the meaning of a ''reasonable'' contract or arrangement for covered plans. Previously, this paragraph stated only that a contract or arrangement is not reasonable unless it permits the plan to terminate without penalty on reasonably short notice. In publishing the July 2010 interim final rule, the Department added a requirement that, in order for certain contracts or arrangements for services to be reasonable, the covered service provider must disclose specified information to a ''responsible plan

[1] The ''408(b)(2)'' regulation finalized by the Department in this Notice addresses disclosures that must be furnished before plan fiduciaries enter into, extend or renew contracts or arrangements for services to certain pension plans. The Department also implemented changes to the information that must be reported concerning service provider compensation as part of the Form 5500 Annual Report. These changes to Schedule C of the Form 5500 complement this final rule by assuring that plan fiduciaries have the information they need to monitor service providers consistent with their duties under ERISA section 404(a)(1). *See* 72 FR 64731; *see also* frequently asked questions on Schedule C, available on the Department's Web site at *http://www.dol.gov/ebsa*. Finally, the Department published a final rule in October 2010 requiring the disclosure of specified plan and investment-related information, including fee and expense information, to participants and beneficiaries of participant-directed individual account plans. *See* 75 FR 64910.

[2] A notice of proposed rulemaking was published in the **Federal Register** (72 FR 70988) on December 13, 2007. On the same day, the Department also published, separately, a proposed class exemption from the restrictions of ERISA section 406(a)(1)(C) in the **Federal Register** (72 FR 70893). For ease of reference, the exemptive relief for fiduciaries was incorporated into the interim final rule; the final rule continues to incorporate the class exemption.

[3] Public comments on the proposed regulation, as well as supplemental materials submitted in connection with the Department's March 31 and April 1, 2008, public hearing, are available on the Department's Web site at *http://www.dol.gov/ebsa*.

[4] *See* 29 CFR 2550.408b–2.

fiduciary.'' The regulation defines this term as a fiduciary with authority to cause the plan to enter into, or extend or renew, a contract or arrangement for the provision of services to the plan.

The final rule published today reflects several modifications to the interim final rule. For example, as discussed in detail below, the final rule conforms the investment-related disclosure requirements to the Department's recently finalized participant-level disclosure regulation, at 29 CFR 2550.404a–5 (75 FR 64910, Oct. 20, 2010) (the ''participant-level disclosure regulation''), and requires more specific information concerning ''indirect'' compensation that will be received by a covered service provider. The Department has retained most of the disclosures required by the interim final rule, subject to minor technical modifications, explained below. A comprehensive analysis of these disclosures, and how they differ from those contained in the Department's December 2007 proposed rule, is included in the Supplementary Information published with the interim final rule.[5] The discussion below focuses on the final rule and how it has been modified in response to comments on the interim final rule.

As required by Executive Order 12866, the Department evaluated the benefits and costs of this final rule. The Department believes that mandatory proactive disclosure will reduce plan sponsor information costs, discourage harmful conflicts, and enhance service value. Additional benefits will flow from the Department's enhanced ability to redress abuse. Although the benefits are difficult to quantify, the Department is confident they more than justify the cost. The Department estimated costs for the rule over a ten-year time frame for purposes of this analysis and used information from the quantitative characterization of the service provider market presented below as a basis for these cost estimates. This characterization did not account for all service providers, but it does provide information on the segments of the service provider industry that are likely to be most affected by the rule (*i.e.,* those with contracts listed on the Form 5500). In addition to the costs to service providers, the Department also considered, and discusses below, the potential costs to plans.

In accordance with OMB Circular A–4,[6] Table 2 below depicts an accounting statement showing the Department's assessment of the benefits and costs associated with the final rule. The estimates vary from those in the interim final rule by updating the analysis to reflect 2008 Form 5500 data (the latest available data) and 2011 labor rates.

TABLE 1—ACCOUNTING TABLE

Category	Primary estimate	Year dollar	Discount rate	Period covered
Benefits:				
Qualitative: The final regulation will increase the amount of information that service providers disclose to plan fiduciaries. Non-quantified benefits include information cost savings, discouraging harmful conflicts of interest, service value improvements through improved decisions and value, better enforcement tools to redress abuse, and harmonization with other EBSA rules and programs.				
The Department believes that the non-quantified benefits are substantial and exceed the quantified costs of the rule. A detailed analysis of the non-quantified benefits exceeding the quantified costs is contained in the impact analysis of the July 16, 2010 interim final regulation. The Department is confident that the benefits of the final rule exceed the costs.				
Costs:				
Annualized Monetized ($millions/year)	$63.7	2011	7%	2012–2021
	58.9	2011	3%	2012–2021
Note: Quantified costs include costs for service providers to perform compliance review and implementation, for disclosure of general, investment-related, and additional requested information, for responsible plan fiduciaries to request additional information from service providers to comply with the exemption and to prepare notices to the Department if the service provider fails to comply with the request.				
Transfers	Not Applicable			

1. General

The final regulation amends paragraph (c) of § 2550.408b–2 by moving, without change, the original provisions of paragraph (c) to a newly designated paragraph (c)(3) and adding new paragraphs (c)(1) and (c)(2) to address the disclosure requirements applicable to a ''reasonable contract or arrangement.'' Paragraph (c)(1) describes the disclosure requirements for pension plans. Paragraph (c)(2) is reserved for future guidance concerning the disclosure requirements for welfare plans.[7]

Paragraph (c)(1)(i) has not changed from the interim final rule. It provides that no contract or arrangement for services between a covered plan and a covered service provider, nor any extension or renewal, is reasonable within the meaning of ERISA section 408(b)(2) and this regulation unless the requirements of the regulation are satisfied. The terms ''covered plan'' and ''covered service provider'' are defined in paragraph (c)(1)(ii) and (iii), respectively.

The Department notes that some contracts or arrangements will fall outside the scope of the final regulation because they do not involve a ''covered plan'' and a ''covered service provider.'' ERISA nonetheless requires such contracts or arrangements to be ''reasonable'' in order to satisfy the ERISA section 408(b)(2) statutory exemption. ERISA section 404(a) also obligates plan fiduciaries to obtain and carefully consider information necessary to assess the services to be provided to the plan, the reasonableness of the compensation being paid for such services, and potential conflicts of interest that might affect the quality of the provided services.[8]

[5] *See* 75 FR 41600.

[6] Available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

[7] This separate initiative, including the Department's December 2010 public hearing, is discussed below.

[8] *See, e.g.,* Field Assistance Bulletin 2002–3 (Nov. 5, 2002), Advisory Opinion 97–15A (May 22, 1997), Advisory Opinion 97–16A (May 22, 1997), Understanding Retirement Plans Fees and Expenses, (*http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html*), and Selection and Monitoring Pension Consultants—Tips for Plan Fiduciaries, (*http://www.dol.gov/ebsa/newsroom/fs053105.html*).

The general paragraph in section (c)(1)(i) of the final rule goes on to provide, as in the interim final rule, that the rule's disclosure requirements are independent of a fiduciary's obligations under ERISA section 404.[9] A few commenters on the interim final rule requested that the Department more directly address the treatment, for ERISA section 404 purposes, of information that is requested by the responsible plan fiduciary, but that is not specifically required from the covered service provider under the final rule. These commenters are concerned that responsible plan fiduciaries may believe that they need additional information, which a service provider is not willing to furnish, to satisfy their obligations under ERISA section 404 to prudently select and monitor plan service providers. It is the view of the Department that if a plan fiduciary needs particular information to make an informed decision when selecting or monitoring a plan service provider, then ERISA section 404's duty of prudence requires that fiduciary to request such information. If the service provider fails or refuses to furnish the requested information, then ERISA section 404 may preclude the plan fiduciary from entering into (or continuing) the service contract or arrangement. The disclosure requirements of the final rule are independent of a fiduciary's obligations under ERISA section 404.

Moreover, the final rule's disclosure requirements should be construed broadly to ensure that responsible plan fiduciaries base their review of a service contract or arrangement on comprehensive information.

2. Scope—Covered Plans

Paragraph (c)(1)(ii) defines a ''covered plan'' to mean, with certain exceptions, an employee pension benefit plan or a pension plan within the meaning of ERISA section 3(2)(A) (and not described in ERISA section 4(b)). A ''covered plan'' shall not include a ''simplified employee pension'' described in section 408(k) of the Internal Revenue Code of 1986 (the Code), a ''simple retirement account'' described in section 408(p) of the Code, an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code. For purposes of the final rule, paragraph (c)(1)(ii) includes an additional exclusion from the definition of ''covered plan.'' The Department was persuaded by commenters on the interim final rule to exclude all or that part of a Code section 403(b) plan (hereafter ''403(b) plan'') that consists exclusively of ''frozen'' contracts or accounts, as described in the Department's Field Assistance Bulletins addressing the limited application of the annual reporting requirements to such contracts or accounts.[10] Plan sponsors and fiduciaries likely would be unable to comply with this rule because they often have no dealings with the relevant plan service providers and are unable to obtain information about these contracts and accounts. Accordingly, paragraph (c)(1)(ii) of the final rule now provides that, in the case of a Code section 403(b) plan subject to Title I of ERISA, the ''covered plan'' would not include annuity contracts and custodial accounts described in section 403(b) of the Code with respect to which the plan sponsor ceased to have any obligation to make contributions (including employee salary reduction contributions) and in fact ceased making contributions to such contracts or accounts for periods before January 1, 2009. Further, the contract or account has to have been issued to a current or former employee before January 1, 2009; all the rights and benefits under the contract or account have to be legally enforceable against the insurer or custodian by the individual owner of the contract or account without any involvement by the employer; and such individual owner has to be fully vested in the contract or account.

One commenter requested that the Department clarify that health savings accounts are not ''covered plans.'' The Department notes that health savings accounts are not pension plans within the meaning of ERISA section 3(2)(A) and generally are not employee benefit plans within the meaning of ERISA section 3(3), when employer involvement with the accounts is limited. Therefore, a health savings account would not be a ''covered plan'' for purposes of the final rule. See the Department's discussion of health savings accounts and ERISA section 3(2)(A) in Field Assistance Bulletins 2004–1 and 2006–02.[11]

Another commenter asked whether the definition of a covered plan would include a plan that provides benefits only to a business owner and his or her spouse, such as a Keogh or ''HR–10'' plan. The final rule describes a ''covered plan'' as a pension plan within the meaning of ERISA section 3(2)(A), which is an ''employee benefit plan'' under section 3(3) subject to Title I. The Department's existing regulations at 29 CFR 2510.3–3 clarify the definition of ''employee benefit plan'' in section 3(3) for purposes of Title I coverage.[12] Under such regulations, the term ''employee benefit plan'' does not include any plan, including a pension plan, under which no employees are participants in the plan (referred to therein as ''common law employees''). Section 2510.3–3(c) provides that an individual and his or her spouse are not ''employees'' with respect to a trade or business, incorporated or unincorporated, which is wholly owned by the individual and his or her spouse. Nor does ''employee'' include a partner in a partnership and his or her spouse with respect to the partnership. For example, a ''Keogh'' or ''H.R. 10'' plan under which only partners or only a sole proprietor are plan participants is not an ''employee benefit plan'' subject to Title I. Thus, under the final rule, a pension plan without ''employees'' who are participants in the plan, as defined in § 2510.3–3(c), would not be a ''covered plan.''

3. Scope—Covered Service Provider

The final rule, in paragraph (c)(1)(iii)(A), (B), and (C), covers the same categories of service providers as the interim final rule. A ''covered service provider'' is a service provider that enters into a contract or arrangement with the covered plan and reasonably expects $1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of the final rule.[13] A service provider will

[9] Two commenters on the interim final rule suggested that the final rule should explicitly state that compliance does not provide relief from fiduciary obligations under ERISA section 404. Such a provision was already included in the interim final rule, and has not been removed or revised for purposes of the final rule.

[10] *See* Field Assistance Bulletins 2010–01 (Feb. 17, 2010) and 2009–02 (July 20, 2009).

[11] *See* Field Assistance Bulletins 2004–1 (April 7, 2004) and 2006–02 (Oct. 27, 2006).

[12] *See also Raymond B. Yates, M.D., P.C. Profit Sharing Plan* v. *Hendon,* 541 U.S. 1 (2004).

[13] Some commenters on the interim final rule suggested that $1,000 is not an appropriate threshold for covered service providers. Some believe that $1,000 is too low, because it will subject relatively insignificant arrangements to the required disclosures, and suggested that $2,500 or $5,000 would be more appropriate. Others, however, argued that $1,000 is too high and will adversely affect small plans, many of which are likely to have smaller service arrangements (for less than $1,000) and less sophistication and bargaining power to obtain detailed information about such arrangements. Some commenters argued that the standard should be tied to a percentage of plan assets, subject to a cost-of-living adjustment, or conformed to Form 5500 Schedule C standards. The Department was not persuaded to revise this provision and believes that $1,000 strikes an appropriate balance between these competing concerns. Some commenters asked the Department to more specifically delineate the time period over

be covered even if some or all of the services provided pursuant to the contract or arrangement are performed (or some or all of the compensation for such services is received) by affiliates of the covered service provider or subcontractors. The limitation contained in paragraph (c)(1)(iii)(D)(*1*) ensures that services providers do not themselves, separately, become ''covered service providers'' solely as a result of services that they perform in their capacity as an affiliate of the covered service provider or a subcontractor.

The first category of covered service providers, described in paragraph (c)(1)(iii)(A), includes those providing services as an ERISA fiduciary or as an investment adviser registered under either the Investment Advisers Act of 1940 (Advisers Act) or any State law. This category is split into three subsections, as in the interim final rule: Paragraph (*1*) includes ERISA fiduciary services provided directly to the covered plan; paragraph (*2*) includes ERISA fiduciary services provided to an investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment (a direct equity investment does not include investments made by the investment contract, product, or entity in which the covered plan invests); and paragraph (*3*) includes services provided directly to the covered plan as an investment adviser registered under either the Advisers Act or State law.

The second category of covered service providers, described in paragraph (c)(1)(iii)(B), includes providers of recordkeeping services or brokerage services to a covered plan that is an ERISA section 3(34) individual account plan that permits participants and beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available (*e.g.,* through a platform or similar mechanism) in connection with such recordkeeping services or brokerage services.

The third category of covered service providers, described in paragraph (c)(1)(iii)(C), includes those providing specified services to the covered plan when the covered service provider (or an affiliate or subcontractor) reasonably expects to receive ''indirect'' compensation or certain payments from related parties. As discussed below, the final rule defines the terms ''affiliate,'' ''indirect compensation,'' and ''subcontractor'' in paragraph (c)(1)(viii). The services set forth in this category, which have not changed from the interim final rule, are accounting, auditing, actuarial, appraisal, banking, consulting (*i.e.,* consulting related to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), custodial, insurance,[14] investment advisory (for plan or participants), legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services provided to the covered plan.

Paragraph (c)(1)(iii)(D) of the final regulation clarifies that, notwithstanding the preceding categories of ''covered service providers,'' no person or entity is a ''covered service provider'' solely by providing services (*1*) as an affiliate or a subcontractor that is performing one or more of the services to be provided under the contract or arrangement with the covered plan (see paragraph (c)(1)(iii)(D)(*1*)), or (*2*) to an investment contract, product, or entity in which the covered plan invests, regardless of whether or not the investment contract, product, or entity holds assets of the covered plan, other than services as a fiduciary described in paragraph (c)(1)(iii)(A)(*2*) (see paragraph (c)(1)(iii)(D)(*2*)).

Paragraph (c)(1)(iii)(D) clarifies the disclosure obligations of multiple parties within an arrangement for plan services. The party entering into the contract or arrangement with the covered plan is the covered service provider responsible for making the rule's disclosures, even if other parties perform some of the services.[15] For example, in cases when a ''bundled'' arrangement of multiple services is offered to the covered plan, only one service provider would need to furnish the required disclosures for the bundled services. For example, a recordkeeper (Recordkeeper) who enters into a contract with a covered plan to furnish specified recordkeeping services and to make available a platform of investments may outsource some of the recordkeeping and plan administration services, and pay transaction-based compensation, to an affiliated third party administrator (TPA). The TPA does not have any separate contract or arrangement with the covered plan. Although both the Recordkeeper and the TPA provide services that are described in the categories of covered service providers under the final rule (the Recordkeeper under paragraph (c)(1)(iii)(B) and the TPA under paragraph (c)(1)(iii)(C)), only the Recordkeeper is the covered service provider. The Recordkeeper is the ''covered'' service provider because he or she is the party entering into the service contract or arrangement with the covered plan.

Multiple service providers that furnish services pursuant to a single contract or arrangement with a covered plan may agree among themselves who will enter into the contract or arrangement with the covered plan and be the covered service provider. The other service providers may be affiliates of or subcontractors to the covered service provider; and covered service providers' disclosures would reflect their status in accordance with the final rule.

4. Initial Disclosure Requirements

The final rule continues to require that covered service providers furnish specified disclosures to responsible plan fiduciaries in writing.[16] As discussed in detail below, these disclosures generally must be furnished reasonably in advance of entering into, or extending or renewing, the contract or arrangement for services. The disclosed information will assist plan fiduciaries in understanding the services and in

which the $1,000 must be measured, for example, over a calendar or plan year or during the term of the contract. The Department notes that the focus is on whether $1,000 is expected to be received in connection with providing the services specified in the contract, regardless of whether compensation is expected to be received in a particular year or during the stated term of the contract. Some compensation, for example, trailing commissions, may be received after the services have been furnished, but still be ''in connection with'' those services. In response to some expressed concerns, the Department cautions parties against attempting to structure contracts for ongoing services specifically to avoid the $1,000 threshold. In determining compliance with the threshold, the Department will look to the substance, rather than form, of the contract or arrangement between the plan and service provider(s).

[14] One commenter on the interim final rule requested clarification that insurance brokerage services were included in this category; the commenter explained, for example, that insurance brokers often are involved in selling pension plan arrangements, especially to small plans. The Department does intend that such insurance services are included in this category of covered service providers.

[15] The final rule should not be interpreted, however, as requiring that any services which otherwise would be provided separately must be packaged together pursuant to one contract or arrangement. In many cases, more than one service provider will enter into a contract or arrangement with a covered plan, and, in that case, there may be more than one ''covered'' service provider, whose separate contract or arrangement with the covered plan must comply with the final rule.

[16] Consistent with the Department's position in the interim final rule, although required information must be disclosed ''in writing,'' the final rule does not require that a formal contract or arrangement itself be in writing or that any representations concerning the obligations of the covered service provider be included in such written contract or arrangement.

assessing the reasonableness of the compensation, direct and indirect, that the service provider will receive.

a. Description of Services

Paragraph (c)(1)(iv)(A) of the final rule requires that the covered service provider describe the services to be provided to the covered plan pursuant to the contract or arrangement (but not including certain non-fiduciary services to an investment product, contract, or entity in which the covered plan invests, as described in paragraph (c)(1)(iii)(A)(*2*) of the final rule). This paragraph has not changed from the interim final rule.

The description of services should be clear and understandable to the responsible plan fiduciary. In the preamble to the interim final rule, the Department explained that a detailed description of the services may not be necessary when the parties to the contract or arrangement already understand the nature of the services. Some commenters on the interim final rule pointed out that they do not believe all plan fiduciaries have a basic understanding of plan services. They recommended that the final rule explicitly define the level of detail necessary for a description of services and perhaps require ''plain English'' disclosures, model language, or a ''check the box'' format. The Department has not included additional standards for the description of services. As noted earlier, and consistent with the Department's position in the interim final rule, responsible plan fiduciaries have a duty to carefully review the information they receive when entering into a contract or arrangement for plan services. This regulation requires that responsible plan fiduciaries receive the basic information needed to make informed decisions about service costs and potential conflicts of interest. If responsible plan fiduciaries need assistance in understanding any information furnished by the service provider, as a matter of prudence, they should request assistance, either from the service provider or elsewhere.

A few commenters on the interim final rule asked whether a covered service provider must disclose only the services that make the service provider a ''covered'' service provider. The final rule provides that a covered service provider must describe all services that will be provided to the covered plan ''pursuant to the contract or arrangement[.]'' This includes services that will be performed by its affiliates and subcontractors pursuant to the contract or arrangement. Thus, a covered service provider may need to disclose services beyond those that make it a ''covered'' service provider.

b. Status of Covered Service Providers, Affiliates, and Subcontractors

Paragraph (c)(1)(iv)(B) of the final rule requires, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan (or to an investment vehicle that holds plan assets and in which the covered plan has a direct equity investment) as a fiduciary (within the meaning of section 3(21) of ERISA); and, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan as an investment adviser registered under either the Advisers Act or any State law. If a service provider will, or reasonably expects to, provide services both as a fiduciary and a registered investment adviser, the statement must reflect both of these roles. This paragraph has not changed from the interim final rule except that, for clarification purposes, the parenthetical ''within the meaning of section 3(21) of the Act'' was added to modify use of the term ''fiduciary'' for this purpose.

Two commenters on the interim final rule suggested that covered service providers should be required to state affirmatively whether or not they will be providing services as an ERISA fiduciary or a registered investment adviser. The Department declined to accept this suggestion, because statements explaining that a service provider will not be providing services as an ERISA fiduciary or as a registered investment adviser may be more confusing than helpful to responsible plan fiduciaries. Another commenter requested that the Department affirm that formal agreements stating whether a person is an ERISA fiduciary are not dispositive of whether the person actually is a fiduciary by virtue of a factual analysis of the functions performed. The Department agrees that a formal agreement that a person is not a fiduciary is not dispositive. The definition of ''fiduciary'' in ERISA, as set forth in section 3(21), is based on a person's actual functions, authority and responsibility.[17]

c. Disclosure of Compensation

Paragraph (c)(1)(iv)(C) of the final rule requires the covered service provider to disclose comprehensive information about the compensation that will be received in connection with the services provided pursuant to the contract or arrangement. This paragraph, including paragraphs (*1*) through (*4*), is structured the same as in the interim final rule. One substantive change, discussed below, has been made to the disclosures required for the receipt of ''indirect'' compensation. Also, cross references have been modified as necessary to reflect the reordering of paragraphs (c)(1)(iv)(E) through (G). Otherwise, the final rule retains the same concepts as the interim final rule with respect to what types of compensation have to be disclosed for purposes of a reasonable contract or arrangement.

Paragraph (c)(1)(iv)(C)(*1*) requires a description of all direct compensation, either in the aggregate or by service, that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described in paragraph (c)(1)(iv)(A). For purposes of the final rule, ''direct'' compensation is compensation received directly from the covered plan. See paragraph (c)(1)(viii)(B)(*1*) of the final rule. This paragraph has not changed from the interim final rule. In response to comments raised on the interim final rule, the Department notes that ''direct'' compensation includes compensation that initially is paid by the plan sponsor, but who then is reimbursed from the plan.[18] Parties cannot avoid this disclosure requirement by creating intermediary payments and arguing that, as a technical matter, such payments do not constitute ''compensation'' for purposes of the final rule. The Department also confirms, as requested by a commenter,

[17] The Department issued a proposed amendment to the regulation on fiduciary investment advice at 29 CFR 2510.3–21. Among the parties treated by the proposal as ERISA fiduciaries are persons who provide investment advice (as defined in the proposal) for a fee, and who represent or acknowledge that they are acting as an ERISA fiduciary with respect to providing such advice. See 75 FR 65263 (Oct. 22, 2010). See also 29 CFR 2509.75–8. The Department recently announced its decision to re-propose this amendment as a response, in part, to requests from the public, including members of Congress, that the agency allow an opportunity for additional input (Sept. 19, 2011).

[18] The Department notes that such reimbursement could be appropriate if there was a clear understanding or agreement, as a result of plan language or otherwise, on or before the time the services were performed, that the plan would reimburse the reasonable expenses paid for by the plan sponsor. However, once the obligation to reimburse arises but is not fulfilled, the monies then outstanding may become an extension of credit to the plan by the sponsor. Prohibited Transaction Exemption 80–26 (45 FR 28545; April 29, 1980; amended at 71 FR 17917; April 7, 2006) may provide relief for such an extension of credit, depending upon the facts and circumstances.

that ''direct'' compensation, described in the final rule as coming from the covered plan, includes compensation that is paid directly from participants' and beneficiaries' accounts.

Paragraph (c)(1)(iv)(C)(*2*) requires a description of all indirect compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described in paragraph (c)(1)(iv)(A). For purposes of the final rule, ''indirect'' compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, or an affiliate. Compensation received from a subcontractor is indirect compensation, unless it is received in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F). A non-substantive revision to this definition, in paragraph (c)(1)(viii)(B)(*2*) of the final rule, is discussed below.

The covered service provider also must identify the services for which the indirect compensation will be received, and the payer of the indirect compensation. In addition, this paragraph has been modified from the interim final rule to include one more requirement: the covered service provider must identify not only the payer of the indirect compensation, but also describe the arrangement between the payer and the covered service provider, an affiliate, or a subcontractor, as applicable, pursuant to which such indirect compensation is paid.

This new requirement will illustrate for the responsible plan fiduciary potential conflicts of interest on the part of the covered service provider (or an affiliate or subcontractor) resulting from the receipt of indirect compensation. The covered service provider must describe its arrangement with the payer of indirect compensation so that the responsible plan fiduciary can analyze why the payer, generally an unrelated third party, is compensating the covered service provider in connection with the covered service provider's contract or arrangement with the covered plan. The proposed rule, published in December 2007, contained a series of specific conflict of interest disclosure provisions. These provisions were eliminated in the interim final rule, which relied instead on fuller disclosure of the circumstances under which the covered service provider will be receiving compensation from parties other than the plan (or plan sponsor). For instance, the interim final rule required identification of such parties, in addition to the compensation expected to be received. Although one commenter on the interim final rule suggested that the Department should reinstate the conflict of interest disclosures from the proposal, the Department continues to believe, for the reasons stated in the preamble to the interim final rule, that the scope of the proposed conflict of interest requirements, especially as to ''potential'' conflicts of interest, was inappropriately broad in the context of this regulation. The Department determined that the most effective way to achieve disclosure of conflicts of interest for purposes of the final rule is to inform plan fiduciaries of what compensation will be received and from whom. However, the Department also is persuaded that a responsible plan fiduciary would benefit from an explanation of the arrangement between the parties that gives rise to the indirect compensation paid in connection with the covered plan's service contract or arrangement, and, accordingly, has provided for such a disclosure in the final rule.

The Department intends that the concept of compensation to be received by a covered service provider, or its affiliates or subcontractors, ''in connection with'' a particular contract or arrangement for services be construed broadly. To the extent a covered service provider reasonably expects that compensation will be received, which is based in whole or in part on its service contract or arrangement with the covered plan, the compensation will be considered ''in connection with'' such contract or arrangement. For example, a recent report pertaining to conflicts of interest prepared by the Department's Office of Inspector General [19] identified a fact pattern in which a service provider had not disclosed that certain financial institutions subsidized the cost of attendance at a conference that the service provider offered for its clients. Specifically, to help defray the costs of the conference, plan sponsor attendees paid a registration fee of $850, while the financial institution paid a subsidy fee of $20,000. In this regard, it is the Department's view that, when a covered service provider is engaged to provide consulting services to a covered plan (or plans) and receives subsidies or other remuneration from financial institutions or other parties with respect to whom the service provider may be making recommendations to attending plan sponsors or representatives, such subsidies or remuneration would be compensation received ''in connection with'' the service provider's contract or arrangement with the covered plan.

With respect to the requirement to describe arrangements between a covered service provider and a payer of indirect compensation, the Department notes that certain commenters expressed concerns about the ability of a broker-dealer to properly identify the payer of such compensation in advance of service arrangements involving securities purchased through brokerage windows, self-directed brokerage accounts, or similar arrangements. The Department understands these concerns and believes that descriptions of indirect compensation for this purpose may be expressed in general terms, provided that the description contains information that is sufficient to permit a responsible plan fiduciary to evaluate the reasonableness of such compensation in advance of the service arrangement. Therefore, to the extent that such information is unknown at the time the disclosures are made, the description need not identify the specific payer in advance of the service arrangement. Instead, the description may provide information that would allow the responsible plan fiduciary to compare the expected compensation with compensation that would be received by competing broker-dealers for similar investment services.

Paragraph (c)(1)(iv)(C)(*3*) requires a description of any compensation that will be paid among the covered service provider, an affiliate, or a subcontractor, in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of the final rule if it is set on a transaction basis (*e.g.,* commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained) or is charged directly against the covered plan's investment and reflected in the net value of the investment (*e.g.,* Rule 12b-1 fees). The covered service provider also must identify the services for which such compensation will be paid and identify the payers and recipients of such compensation (including the status of a payer or recipient as an affiliate or a subcontractor). Compensation must be disclosed pursuant to this paragraph regardless of whether such compensation also is disclosed pursuant to paragraph (c)(1)(iv)(C)(*1*) or (*2*) (direct or indirect compensation) or (c)(1)(iv)(E) or (c)(1)(iv)(F) (investment disclosure) of the final rule. The final rule further clarifies that this paragraph (c)(1)(iv)(C)(*3*) shall not apply to compensation received by an employee

[19] *See* ''EBSA Needs To Do More To Protect Retirement Plan Assets From Conflicts Of Interest'' (U.S. Department of Labor, Office of Inspector General, Office of Audit, Sept. 30, 2010).

from his or her employer on account of work performed by the employee. This paragraph has not changed from the interim final rule.

Finally, paragraph (c)(1)(iv)(C)(*4*) requires a description of any compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination. This paragraph has not changed from the interim final rule, except to the extent cross references to other sections of the final rule have been updated.

d. Disclosures Regarding Recordkeeping Services

Paragraph (c)(1)(iv)(D) of the final rule requires disclosure concerning the cost to the covered plan of recordkeeping services, to the extent such services will be provided to the covered plan. This disclosure must be provided without regard to the disclosure of compensation pursuant to paragraph (c)(1)(iv)(C), (c)(1)(iv)(E), or (c)(1)(iv)(F) of the final rule. Specifically, if recordkeeping services, as defined in paragraph (c)(1)(viii)(D), will be provided to the covered plan, paragraph (*1*) requires a description of all direct and indirect compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with such recordkeeping services. Paragraph (*2*) also requires that, if the covered service provider reasonably expects recordkeeping services to be provided, in whole or in part, without explicit compensation for such recordkeeping services, or when compensation for recordkeeping services is offset or rebated based on other compensation received by the covered service provider, an affiliate, or a subcontractor, the covered service provider must furnish a reasonable and good faith estimate of the cost to the covered plan of such recordkeeping services, including an explanation of the methodology and assumptions used to prepare the estimate and a detailed explanation of the recordkeeping services that will be provided to the covered plan. The estimate shall take into account, as applicable, the rates that the covered service provider, an affiliate, or a subcontractor would charge to, or be paid by, third parties, or the prevailing market rates charged, for similar recordkeeping services for a similar plan with a similar number of covered participants and beneficiaries.

This provision was added to the interim final rule to reflect the Department's belief that information relating to recordkeeping services and the costs to covered plans of those services should be disclosed to responsible plan fiduciaries in a meaningful way. The Department believes that, especially in the context of complicated service arrangements when a variety of services (including recordkeeping services) are provided to a covered plan, separate disclosure is necessary for fiduciaries to make informed evaluations of a covered plan's recordkeeping costs. Commenters on the interim final rule generally supported this requirement. Some commenters argued that this disclosure element would provide little value to responsible plan fiduciaries, especially to the extent it might appear to create a ''cost'' for something that does not really have a cost. One commenter argued that it is insufficient to require only the separate disclosure of the cost of recordkeeping services, and that investment management and administrative services also should be separately disclosed. In consideration of the Department's rationale for including this provision, discussed in more detail in the preamble to the interim final rule, the Department was not persuaded by these commenters that the requirement should be eliminated or revised. Accordingly, this paragraph has not changed from the interim final rule, except to the extent that cross references have been updated as necessary.

Commenters also requested a few clarifications concerning this requirement. For example, a couple of commenters are concerned that the definition of ''recordkeeping services'' (paragraph (c)(1)(viii)(D) of the final rule) is so broad that it will be difficult for responsible plan fiduciaries to make meaningful comparisons, especially to the extent the data provided will be in some cases mere estimates of the cost of recordkeeping services. The Department believes that this provision has been constructed to manage these concerns. First, the definition of ''recordkeeping services'' in the final rule is designed to be broad and provide a basic parameter for ensuring that providers of recordkeeping services understand when they will be covered service providers under paragraph (c)(1)(iii)(B) of the final rule. The Department does not want service providers to avoid this responsibility by narrowly defining the services that they provide. However, the Department understands that the breadth of this definition could create difficulty for responsible plan fiduciaries when comparing the recordkeeping services of different providers. Thus, the final rule (as in the interim final rule) requires as part of this paragraph (c)(1)(iv)(D) that the covered service provider include ''a detailed explanation of the recordkeeping services that will be provided to the covered plan.'' This detailed explanation will better enable the responsible plan fiduciary to understand precisely what is included in a particular service provider's ''recordkeeping services'' such that comparisons among service providers' offers can be made. Second, by requiring ''an explanation of the methodology and assumptions used to prepare the estimate[,]'' this provision enhances the ability of responsible plan fiduciaries to analyze and compare estimates. A responsible plan fiduciary who understands why, and how, a particular service provider prepared an estimate will be better able to compare that estimate to other service providers' disclosures concerning the cost of recordkeeping services.

Finally, a few commenters asked the Department to take definitive positions on whether certain specified services constitute ''recordkeeping services'' for purposes of this provision. Although the Department declines to make general pronouncements concerning these highly contextual and fact-specific questions, the Department again notes that the final rule broadly defines ''recordkeeping services.'' Regardless of how a service arrangement is structured or funded, plan fiduciaries need to know when such administrative services are being provided and how much they contribute to the total cost of plan services.

e. Investment Disclosure—Fiduciary Services

Paragraph (c)(1)(iv)(E) of the final rule (previously paragraph (c)(1)(iv)(F) in the interim final rule) requires additional investment disclosures from covered service providers described in paragraph (c)(1)(iii)(A)(*2*) (providers of fiduciary services to an investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment). The information set forth in paragraphs (c)(1)(iv)(E)(*1*) through (*3*) must be furnished for each investment contract, product, or entity for which fiduciary services will be provided pursuant to the contract or arrangement with the covered plan, unless such information is disclosed to the responsible plan fiduciary by a covered service provider providing recordkeeping services or

brokerage services (as described in paragraph (c)(1)(iii)(B)).[20]

The interim final rule required the disclosure of three categories of compensation information concerning such plan investments, as applicable: (1) A description of any compensation that will be charged directly against the amount invested in connection with the acquisition, sale, transfer of, or withdrawal from the investment contract, product, or entity (*e.g.,* sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees); (2) a description of the annual operating expenses (*e.g.,* expense ratio) if the return is not fixed; and (3) a description of any ongoing expenses in addition to annual operating expenses (*e.g.,* wrap fees, mortality and expense fees). These categories of investment-related information have been modified from the interim final rule, as discussed below, to better conform this provision of the final rule to the investment-related information required pursuant to the Department's participant-level disclosure regulation and to enhance the ability of the responsible plan fiduciary or covered plan administrator to comply with the participant-level disclosure regulation.

Paragraph (c)(1)(iv)(E)(*1*) requires a description of any compensation that will be charged directly against an investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, accounts fees, and purchase fees; and that is not included in the annual operating expenses of the investment contract, product, or entity. Although this language has been modified from that used in paragraph (c)(1)(iv)(F)(*1*) of the interim final rule, the provision is intended to capture the same information; the Department merely revised the language to conform to the language used in a comparable provision of the participant-level disclosure regulation. Accordingly, the substance of the information required to be disclosed pursuant to this paragraph has not changed from the interim final rule.

Paragraph (c)(1)(iv)(E)(*2*) requires a description of the annual operating expenses (*e.g.,* expense ratio) if the return is not fixed[21] and any ongoing expenses in addition to annual operating expenses (*e.g.,* wrap fees, mortality and expense fees), or, for an investment contract, product, or entity that is a designated investment alternative, the total annual operating expenses expressed as a percentage and calculated in accordance with 29 CFR 2550.404a–5(h)(5). This first part of the requirement combines paragraphs (c)(1)(iv)(F)(*2*) and (*3*) from the interim final rule, requiring a description of both the annual operating expenses and, if applicable, any additional ongoing expenses. However, the latter part of this requirement is intended to provide consistency for parties that also are required to comply with the Department's participant-level disclosure regulation for designated investment alternatives in a participant-directed individual account plan. If an investment contract, product, or entity subject to this paragraph is a ''designated investment alternative'' (as defined in paragraph (c)(1)(viii)(C) of the final rule), then the covered service provider must disclose the total annual operating expenses for the designated investment alternative, calculated in accordance with 29 CFR 2550.404a–5(h)(5), rather than rely on the interim final rule's more general standards. This will ensure consistent disclosure and prevent confusion to the extent a covered service provider under this final rule otherwise may have had to disclose expense information for the same investment differently under the participant-level disclosure regulation. For investment contracts, products, or entities that are not designated investment alternatives, a covered service provider may continue to disclose annual operating expenses and any additional ongoing expenses, in accordance with the standards first introduced in the interim final rule. To avoid creating unnecessary cost and burden for disclosure with respect to investments that are not designated investment alternatives in a participant-directed individual account plan, a covered service provider will not be required to calculate total annual operating expenses for such investments according to the participant-level disclosure regulation's definition.

Paragraph (c)(1)(iv)(E)(*3*) also requires, for an investment contract, product, or entity that is a designated investment alternative, any other information or data about the designated investment alternative that is within the control of, or reasonably available to, the covered service provider and that is required for the covered plan administrator to comply with the disclosure obligations described in 29 CFR 2550.404a–5(d)(1) (the participant-level disclosure regulation). Although this information was not explicitly required in the interim final rule, the Department does not anticipate that it will create an undue burden on covered service providers, because the requirement applies only to designated investment alternatives, for which the same disclosures otherwise will have to be made by plan administrators pursuant to the participant-level disclosure regulation. The Department believes that this requirement will enhance compliance with the participant-level disclosure regulation by ensuring that a responsible plan fiduciary and, therefore, the covered plan's administrator, will obtain the investment-related information concerning designated investment alternatives that must be furnished to participants and beneficiaries. The Department does not intend to create a new or increased burden on a covered service provider, or require the covered service provider to obtain or prepare information that otherwise is not within the covered service provider's control or reasonably available to the covered service provider. For example, in the case of a recordkeeper that offers a platform of designated investment alternatives consisting of mutual funds, the recordkeeper could satisfy its obligations under this provision by passing through to the covered plan the prospectuses for such funds, in view of the fact that such disclosures would contain much of the required information and be reasonably available to the recordkeeper (the covered service provider).

This provision does not require a covered service provider to furnish information from the plan sponsor, from

[20] Several commenters on the interim final rule requested clarification concerning the meaning of ''unless such information is disclosed to the responsible plan fiduciary by a covered service provider providing recordkeeping services or brokerage services[.]'' Specifically, commenters were confused as to whether this language implies an affirmative obligation on the part of recordkeepers and brokers to provide this information, or whether duplicative disclosure is intended. The Department confirms that the ERISA fiduciary service provider to a plan asset vehicle has the obligation to furnish this investment information. This language is intended to avoid duplicative disclosure if, for some reason, the information already is disclosed to the responsible plan fiduciary by a recordkeeper or a broker. For instance, a recordkeeper or broker, separately, may agree with the ERISA fiduciary to furnish such information. In that case, the ERISA plan asset fiduciary would not also have to furnish the same information.

[21] A few commenters requested further guidance on how to determine if an investment's return is fixed. This determination should be made in the same manner as under the participant-level disclosure regulation. The preamble to the participant-level disclosure regulation provides that designated investment alternatives with fixed returns are those that provide a fixed or stated rate of return to the participant, for a stated duration, and with respect to which investment risks are borne by an entity other than the participant (*e.g.,* insurance company). 75 FR 64910 (Oct. 20, 2010).

another unrelated service provider to the plan, or from the issuer of a designated investment alternative, unless it is reasonably available to the covered service provider. Accordingly, this requirement is limited to information or data that is within the control of, or reasonably available to, the covered service provider.

Paragraph (c)(1)(iv)(E)(*3*), to the extent applicable, requires disclosure of information that the plan administrator will need in order to comply with its own disclosure obligations to participants under 29 CFR 2550.404a–5. This includes the following additional investment information about a designated investment alternative (an ''alternative''): identifying information such as the name and type or category of the alternative (29 CFR 2550.404a–5(d)(1)(i)); performance data (29 CFR 2550.404a–5(d)(1)(ii)); benchmarks (29 CFR 2550.404a–5(d)(1)(iii)); and fee and expense information for alternatives with respect to which the return is fixed (29 CFR 2550.404a–5(d)(1)(iv)(B)). The covered service provider already is required to disclose the fee and expense information described in 29 CFR 2550.404a–5(d)(1)(iv)(A)(*1*) and (*2*) pursuant to paragraphs (c)(1)(iv)(E)(*1*) and (*2*) of the final rule.

Although the requirement in 29 CFR 2550.404a–5(d)(1)(v) to furnish an Internet Web site address falls on the covered plan's administrator, the covered service provider may have within its control, or reasonably available to it, some of the data that must be provided at the Web site address, such as the name of the investment alternative's issuer (29 CFR 2550.404a–5(d)(1)(v)(A)); the alternative's objectives or goals (29 CFR 2550.404a–5(d)(1)(v)(B)); the alternative's principal strategies and principal risks (29 CFR 2550.404a–5(d)(1)(v)(C)); and the alternative's portfolio turnover rate (29 CFR 2550.404a–5(d)(1)(v)(D)). The covered service provider would not be responsible for preparing the glossary required by 29 CFR 2550.404a–5(d)(1)(vi), as that is not specific information about a particular designated investment alternative.

If the covered service provider has information about designated investment alternatives that fall within the participant-level disclosure regulation's special rules, contained in 29 CFR 2550.404a–5(i), the covered service provider may have to furnish information necessary for the covered plan administrator to comply with such regulation's requirements for annuity options (29 CFR 2550.404a–5(d)(1)(vii) and 29 CFR § 2550.404a–5(i)(2)); employer securities (29 CFR 2550.404a–5(i)(1)); fixed-return investments (29 CFR 2550.404a–5(i)(3)); and target date or similar funds (29 CFR 2550.404a–5(i)(4)). As set forth above, in each case, the covered service provider is responsible only for specific data about designated investment alternatives that is within the provider's control or reasonably available. Some of the information required pursuant to 29 CFR 2550.404a–5 pertains to information that, although relevant to an investing participant or beneficiary, is not specific data about a particular designated investment alternative. Thus, for example, the covered service provider is not responsible for furnishing an Internet Web site address or for preparing cautionary statements designed to inform a plan's participant and beneficiaries. The covered service provider does not, by virtue of paragraph (c)(1)(iv)(E)(*3*), assume responsibility for obligations of the covered plan administrator, who continues to bear legal responsibility for the requirements of the participant-level disclosure regulation.[22]

f. Investment Disclosure—Recordkeeping and Brokerage Services

Paragraph (c)(1)(iv)(F) of the final rule requires the same investment disclosure, discussed above, from covered service providers described in paragraph (c)(1)(iii)(B) (providers of recordkeeping services or brokerage services to an individual account plan that permits participants and beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available in connection with such recordkeeping services or brokerage services). Paragraph (*1*) requires that such covered service providers furnish the additional information described in paragraph (c)(1)(iv)(E)(*1*) through (*3*) with respect to each designated investment alternative for which recordkeeping services or brokerage services will be provided pursuant to the contract or arrangement with the covered plan. Apart from updating cross references as necessary, paragraph (*1*) has not changed from the interim final rule.

Several commenters on the interim final rule questioned statements in the preamble to the interim final rule and asked whether recordkeepers who make available a platform of investments must furnish the investment information for designated investment alternatives that are not on their platform. The commenters explained that sometimes a recordkeeper will administer and provide some level of recordkeeping services for off-platform investments as a concession to pension plan clients. These commenters argued that the direct relationship that exists between the responsible plan fiduciary and the issuer of these off-platform investments (which are separately selected by the plan fiduciary) is a more appropriate basis for requiring the provision of investment information from such issuer. The Department explained, in the preamble to the interim final rule, its view that this category of covered service providers encompasses service providers who provide recordkeeping or brokerage services that include designated investment alternatives independently selected by the responsible plan fiduciary. These ''off-platform'' investment alternatives may be included in the covered plan's investment options when the responsible plan fiduciary enters into a contract or arrangement with the recordkeeper or broker, or they may later be added. The Department continues to believe that these covered service providers are in the best position to furnish the required investment information. To the extent the covered service provider is not affiliated with the issuer of the designated investment alternative, the covered service provider may benefit from compliance with paragraph (*2*) of this paragraph (c)(1)(iv)(F).

Paragraph (*2*) provides that a covered service provider may comply with this paragraph (c)(1)(iv)(F) by providing current disclosure materials of the issuer of the designated investment alternative, or information replicated from such materials, that include the information described in such paragraph, provided that three conditions are satisfied. First (paragraph (*i*)), the issuer cannot be an affiliate[23] of the covered service provider. Second

[22] Of course, as is recognized in the participant-level disclosure regulation, the covered plan administrator is permitted to retain a service provider to fulfill the plan administrator's obligations under the participant-level disclosure regulation.

[23] A few commenters on the interim final rule requested clarification that, even though the relief provided by this paragraph is available only for non-affiliated issuers, covered service providers still can pass through disclosure materials from affiliated issuers. These commenters believed that the provision could be read to imply that covered service providers must create separate, potentially different, disclosure materials for investments of affiliated issuers. The Department confirms that covered service providers may pass through disclosure materials from affiliated issuers; this provision was not intended to limit the ability of covered service providers to do so. However, covered service providers will be responsible for the content of the affiliated materials pursuant to this paragraph of the final rule.

(paragraph (*ii*)), the issuer must be a registered investment company, an insurance company qualified to do business in any State, an issuer of a publicly traded security, or a financial institution supervised by a State or federal agency. Finally, third (paragraph (*iii*)), the covered service provider must act in good faith and not know that the materials are incomplete or inaccurate, and furnish the responsible plan fiduciary with a statement that the covered service provider is making no representations as to the completeness or accuracy of such materials. The Department included this provision in recognition that recordkeepers and brokers, unlike fiduciaries to investment vehicles holding plan assets, are not directly involved in the day-to-day management of the investment vehicles that they represent; rather, they generally serve merely as intermediaries between plans and the issuers of the investment vehicles for purposes of furnishing such information. The final rule, like the interim final rule, enables them to comply with the regulation without having to vouch for the completeness and accuracy of such information.

This paragraph has been modified from the interim final rule, which previously required that the disclosure materials must be regulated by a State or federal agency. The Department was persuaded by commenters that the ''pass through'' relief was too narrow when applied to only regulated disclosure materials. Commenters explained that disclosure materials for many common investments offered in pension plans, such as collective trusts, insurance general accounts, and guaranteed investment contracts, are not ''regulated'' as required by the interim final rule. Retaining this standard, commenters argued, might dissuade recordkeepers and brokers from offering these products on their platforms. Commenters also are concerned that responsible plan fiduciaries would expend considerable resources to find other recordkeepers or brokers willing to offer the products. Accordingly, the Department revised this provision of the final rule. Rather than focusing on the disclosure materials, paragraph (*ii*) now requires that the issuer of the designated investment alternative be regulated. Specifically, the issuer must be a registered investment company (*i.e.,* by filing a registration statement with the Securities and Exchange Commission as required by the Investment Advisers Act of 1940), an insurance company qualified to do business in any State, an issuer of a publicly traded security, or a financial institution supervised by a State or federal agency. This provision focuses the requirement more narrowly on entities that are ''regulated'' in connection with their issuance of investment products, and allows the covered service provider to satisfy paragraph (c)(1)(iv)(F) by passing through these issuers' disclosure materials. Paragraph (*iii*) provides ''pass through'' relief solely for purposes of determining whether or not a contract or arrangement with a covered service provider falls within ERISA section 408(b)(2). The ''pass through'' provision does not provide relief from any other legal obligations or liabilities under ERISA or other applicable law.

Paragraph (*iii*) also requires that the covered service provider furnish the responsible plan fiduciary with a statement that the covered service provider is making no representations as to the completeness or accuracy of such materials. This will ensure that the responsible plan fiduciary understands that these materials are merely being passed through and that the covered service provider is not, therefore, vouching for their completeness or accuracy. The Department does not intend that the covered service provider must furnish a separate statement for each item of investment disclosure material. Rather, the covered service provider could, for example, include the statement once in the service contract or arrangement, along with a description of the investment disclosure material(s) to which the statement applies.

Other commenters requested that this provision be expanded to cover information from such regulated issuers that is consolidated or summarized into a user-friendly format. Otherwise, these commenters maintain, covered service providers will be more likely to pass through lengthy, technical disclosure documents, for example multiple Securities and Exchange Commission prospectus documents. The Department agrees that covered service providers should not be discouraged from presenting the required information in a more user-friendly format for responsible plan fiduciaries. Accordingly, covered service providers may rely on this provision if they merely are replicating information received from a regulated, unaffiliated issuer that the covered service provider does not know to be inaccurate or incomplete.

g. Manner of Receipt of Compensation

Paragraph (c)(1)(iv)(G) of the final rule requires a description of the manner in which the compensation described in paragraph (c)(1)(iv)(C) through (F) of the final rule, as applicable, will be received, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan's account(s) or investments. This provision has not substantively changed from the interim final rule. However, this provision has been moved from paragraph (c)(1)(iv)(E) of the interim final rule to paragraph (c)(1)(iv)(G) of the final rule, and cross references have been updated throughout the final rule as necessary, to ensure that the manner of receipt of all compensation (including compensation received in connection with plan investments in paragraphs (c)(1)(iv)(E) and (F) of the final rule) is described.

h. Summary or Guide to Initial Disclosures; Format and Delivery

In the preamble to the interim final rule, the Department requested comment on the format of disclosures required under the rule. Neither the proposal nor the interim final rule required covered service providers to disclose information in any particular format. Further, the preamble to the proposal specifically noted that covered service providers could use different documents from separate sources, as long as all of the documents, collectively, contained the required information. Commenters on the proposal disagreed as to whether this would lead to a cost-effective and meaningful presentation of the required information to responsible plan fiduciaries. In the preamble to the interim final rule, the Department explained that it had not determined whether it was feasible to provide specific and meaningful formatting standards. Accordingly, the Department requested comment on whether to revise the final rule to require a summary of, or guide to, the mandated disclosures, or to include other formatting requirements.

Commenters on the interim final rule, as on the proposed rule, continued to disagree about the utility of, and feasibility of, requiring a summary or guide, or otherwise mandating any particular format for the required disclosures. Many commenters argued that the Department should retain the position taken in the proposal and the interim final rule, giving covered service providers flexibility to determine the format of their disclosures. These commenters expressed concern that a ''one-size-fits-all'' approach could not accommodate the tremendous variety of current pension plan service arrangements and likely changes in the future. They also believed that the costs

to pension plans, and the participants and beneficiaries of such plans, of such an approach will be significant. The commenters expressed concern that responsible plan fiduciaries would rely solely, and thus improperly, on the summary, rather than reviewing the fuller and more detailed disclosures required by the rule. These commenters also were concerned that requiring the comprehensive disclosures and a summary would simply result in unnecessarily duplicative disclosures. In addition, in the case of discrepancies between the two, questions may arise over which disclosures would govern. These commenters preferred that the Department retain the flexible position taken in the proposal and interim final rule or, at most, require covered service providers to furnish an index or ''roadmap'' to the disclosures. Commenters also suggested that any summary or other formatting requirement the Department may adopt be flexible and not mandate any particular language, formatting, or page limits.[24]

Other commenters, however, supported the addition of a summary disclosure, guide, or similar requirement. They argued that plan fiduciaries, especially those for small and medium-sized plans, often are overwhelmed by highly technical disclosures from separate sources, especially concerning plan investments. These commenters suggested placing the burden of organizing this information on covered service providers, who can do so more effectively and at less cost. Further, these commenters believe that the costs should not be overstated and are likely to be minimal following an initial transition to compliance with any new summary or other formatting requirement. These costs, they argued, would be greatly outweighed by the benefit of increased clarity to responsible plan fiduciaries. One commenter, for example, pointed out that fuller disclosure will not result in increased transparency if the information continues to be obscured in lengthy, technical documents. A few of these commenters suggested information that should be contained in a separate, summary disclosure requirement.[25]

Following a careful review and analysis of the comments on this issue, the Department has decided to reserve paragraph (c)(1)(iv)(H) of the final rule and intends ultimately to publish in a separate proposal a guide or similar requirement with respect to the initial disclosures (in paragraph (c)(1)(iv) of the final rule) that covered service providers may be required to furnish to responsible plan fiduciaries. Given the lack of specific suggestions or data on how best to structure such a requirement and what the real costs of such a requirement would be, the Department is not prepared at this time to implement a guide or similar requirement as part of the final rule. Rather, given the policy and economic considerations presented by commenters, the Department has decided not to include such a requirement in this final rule without providing separately for public review and comment.

Accordingly, in the near future, the Department intends to publish in the **Federal Register** a Notice of Proposed Rulemaking, under which covered service providers may be required to furnish a guide or similar tool along with the rule's initial disclosures. For example, a proposed provision could require that, in addition to the information that must be disclosed pursuant to paragraph (c)(1)(iv)(A) through (G) of the final rule (the initial disclosures), the covered service provider must separately furnish to the responsible plan fiduciary a guide that specifically identifies the document, section and page number where specified information, as applicable to the contract or arrangement, is located. Furnishing the guide as a separate document would ensure that the responsible plan fiduciary is aware of such document and can use it effectively in his or her review of the required disclosures. Alternatively, a regulatory provision could require some or all of the required disclosures to be included in a chart or similar summary format. In any event, by separately proposing such a requirement as a new provision in paragraph (c)(1)(iv)(H) of the final rule, the Department will ensure that all interested parties can fully review the regulatory provision and provide feedback to the Department.

In the meantime, the Department understands that many service providers already are moving in this direction. For example, service providers have represented to the Department that, as a best practice, they currently furnish their plan clients with a guide or index to the service providers' disclosures, a summary of certain key disclosures, or, in some cases, both. The Department strongly supports such innovation, because these tools will assist responsible plan fiduciaries, especially fiduciaries to small and medium-sized plans, in managing and analyzing the potentially complex disclosure documents that are provided to them or if disclosures are located in multiple documents. Further, the Department believes that covered service providers are in the best position to construct these tools, given their increased familiarity with and access to the various and potentially lengthy and technical documents that they may use to disclose information.

To further encourage service providers to assist plan fiduciaries in this manner, the Department is including a ''sample guide'' to initial disclosures as an appendix to the final rule. Several commenters on the interim final rule suggested that if the Department were to adopt a summary or other formatting requirement in the final rule, it should provide an illustration of how a covered service provider may comply with such requirement to encourage consistency and to enable lower-cost compliance. Although the Department is not adopting such a requirement at this time, the sample guide published today may be useful, on a voluntary basis, to covered service providers as a format to assist responsible plan fiduciaries with the required disclosures. Similarly, to the extent a responsible plan fiduciary experiences difficulty finding and reviewing the required disclosures in lengthy, technical, or multiple disclosure documents received from a covered service provider pursuant to the requirements of the final rule, the fiduciary should consider requesting assistance from the covered service provider, for example, discussing with the covered service provider the feasibility and cost of using the attached sample guide.

The sample guide has been included because the Department believes, at this time, that such a guide may strike an appropriate balance between the need to facilitate a responsible plan fiduciary's review of information important to a

[24] A few commenters on the interim final rule discussed, and disagreed on, whether a ''single document'' rule should be adopted, requiring that all disclosures be furnished in one document. The Department was convinced neither that such a requirement would be feasible and cost-effective for all service arrangements, nor that it would necessarily result in the most meaningful delivery of required information to responsible plan fiduciaries. The Department therefore declined to adopt such a requirement.

[25] Commenters generally suggested, for example, that the Department focus on a summary of the rule's compensation information and information concerning designated investment alternatives, while cross referencing to assist fiduciaries in locating the primary information contained in other disclosures. One commenter cautioned that a summary should focus on total cost, not just one component of the cost, such as recordkeeping.

prudent decision-making process, and the costs and burdens attendant to the preparation of a new disclosure document. A guide would provide a basic framework for responsible plan fiduciaries concerning the disclosures they receive, and where to find such disclosures, while avoiding the uncertainty and burdens inherent in attempting to construct a ''summary'' of existing documents and provisions. Of course, the Department will continue to review these issues, and interested persons are encouraged to submit their views on the relative benefits and costs of a guide requirement, versus a summary or other formatting requirement, in response to the Department's forthcoming Notice of Proposed Rulemaking.

Finally, in addition to providing their views on a formatting requirement in the final rule, commenters on the interim final rule requested further guidance on how required information may be delivered to responsible plan fiduciaries. Specifically, several commenters asked the Department to affirm that covered service providers could furnish the required disclosures electronically, including by making information available on a secure Web site if responsible plan fiduciaries are notified as to how to access such information. These commenters argued that electronic delivery enables more cost-effective compliance, permits easy confirmation of delivery, and enables service providers to create and use tools that can enhance the review of information by responsible plan fiduciaries. Consistent with the views expressed in the 2007 proposed rule,[26] there is nothing in the regulation that limits the ability of covered service providers to furnish information required by the regulation to responsible plan fiduciaries via electronic media.[27] However, unless the covered service provider's disclosure information on a Web site is readily accessible to responsible plan fiduciaries, and fiduciaries have clear notification on how to gain such access, the information on the Web site may not be regarded as furnished within the meaning of the regulation.

5. Timing of Initial Disclosures; Changes

Paragraph (c)(1)(v) of the final rule addresses the timing requirements for the initial disclosures described in paragraph (c)(1)(iv), as well as the requirements for when a covered service provider must disclose changes to the initial disclosures in compliance with the final rule. Paragraph (c)(1)(v)(A) of the final rule, concerning the timing of initial disclosures, has not changed from the interim final rule. A covered service provider must disclose the information required by paragraph (c)(1)(iv) of the final rule to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, and extended or renewed. A few commenters requested clarification on the meaning of ''the date the contract or arrangement is entered into.'' The Department was not persuaded to adopt the alternative dates that were proposed, such as the date the written contract is signed, the date that compensation is first received, or the date the contract is legally binding. The Department does not believe that these standards are clearer or more appropriate than the standard used in the final rule. Commenters on the proposal argued that service arrangements often go into effect without a signature by a plan fiduciary. In addition, delaying disclosure of compensation until it is received would result in piecemeal disclosures during the term of a service arrangement and would undercut an important purpose of the disclosure, which is to assist fiduciaries in selecting service providers. Tying disclosures to a determination of when a contract or arrangement becomes legally binding is not practicable because such determinations may depend on many facts and circumstances, as well as different State laws. The final rule gives plan fiduciaries and service providers some flexibility to determine when an arrangement is entered into. However, to ensure that the responsible plan fiduciary can review, analyze, and consider the disclosures in compliance with his or her ERISA fiduciary obligations, the covered service provider must furnish the disclosures ''reasonably in advance'' of the date that the parties enter into the contract or arrangement. The Department is confident that the parties to a service contract or arrangement will be able to determine what is ''reasonable'' in this context.

The final rule contains two exceptions to this ''reasonably in advance'' timing requirement. The first exception, contained in paragraph (c)(1)(v)(A)(*1*), has not changed from the interim final rule. When an investment contract, product, or entity is determined not to hold plan assets upon the covered plan's direct equity investment, but subsequently is determined to hold plan assets while the covered plan's investment continues, the information required by paragraph (c)(1)(iv) of the final rule must be disclosed as soon as practicable, but not later than 30 days from the date on which the covered service provider knows that such investment contract, product, or entity holds plan assets. The second exception, contained in paragraph (c)(1)(v)(A)(*2*), has not changed substantively. The investment information described in paragraph (c)(1)(iv)(F) of the final rule relating to any investment alternative that is not designated at the time the contract or arrangement is entered into must be disclosed as soon as practicable, but not later than the date the investment alternative is designated by the covered plan.[28] The cross reference to paragraph (c)(1)(iv)(F) was updated to reflect minor restructuring in the final rule, discussed above, and the reference to investment alternatives designated by the ''covered plan'' conforms to the final rule's slightly modified definition of ''designated investment alternative,'' discussed below.

Paragraph (c)(1)(v)(B) of the final rule, concerning when a covered service provider must disclose changes to the initial information previously disclosed, has been modified in response to comments received on the interim final rule. Specifically, this paragraph has been divided into two paragraphs (*1*) and (*2*). Paragraph (*1*) continues to provide that a covered service provider must disclose a change to required information as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable. However, this 60-day standard has been limited to the information required by paragraphs (c)(1)(iv)(A) through (D), and (G) of the final rule (*e.g.,* information concerning the services to be provided; the status of the covered service provider, an affiliate, or a subcontractor as an ERISA fiduciary or registered investment adviser; the compensation to

[26] *See* 72 FR 70988.

[27] The Department's regulations at 29 CFR 2520.104b–1 apply solely for purposes of disclosures from plans to participants and beneficiaries and do not extend to disclosures from third parties to plan fiduciaries.

[28] One commenter on the interim final rule suggested that the exceptions to the ''reasonably in advance'' requirement should be expanded for circumstances when a responsible plan fiduciary changes a designated investment alternative during the term of the service contract or arrangement; the Department believes that this situation would be addressed as a ''change'' to the initial disclosures and a covered service provider should comply with the provisions regarding such changes contained in paragraph (c)(1)(v)(B).

be received in connection with the contract or arrangement; the cost of recordkeeping services (if applicable); and the manner of receipt of compensation).

Some commenters suggested that the 60-day period should be expanded to, for example, 90 days or 60 days following the later of the date the service provider is informed of the change or the effective date of the change. The Department was not persuaded to revise the 60-day period and believes that it gives covered service providers enough time to make the disclosure while ensuring that responsible plan fiduciaries receive prompt notice of changes. A few commenters suggested that the Department reintroduce the ''materiality'' standard used in the proposed rule to avoid requiring disclosure of de minimis and meaningless changes. The Department did not adopt this suggestion. For the reasons stated in the preamble to the interim final rule, the Department continues to believe that a materiality standard, in this context, would be ineffective. 72 FR 70988.

Paragraph (c)(1)(v)(B)(*2*) contains a new requirement applicable to the revised investment disclosures required by paragraph (c)(1)(iv)(E) and (F). Several commenters on the interim final rule argued that the ongoing, or ''rolling,'' requirement to disclose changes to previously furnished information within 60 days would result in a highly burdensome process with respect to investment information. For example, commenters explained that for a covered plan offering a large number of designated investment alternatives, minor modifications to the investment information concerning those alternatives might occur continuously and a covered service provider would have to inundate responsible plan fiduciaries with frequent notifications about what are often nominal changes. The commenters argued that responsible plan fiduciaries may eventually ignore the notices. Further, covered service providers constantly would have to monitor all of the investment alternatives on their platform for changes. These commenters suggested, as an alternative standard, that covered service providers should have to periodically update the investment disclosures; this approach would be more consistent with current industry practice and more likely to focus the responsible plan fiduciary's attention on the information at specified intervals.

The Department agrees that the need to constantly furnish notices of even minor changes to investment information could be burdensome, especially for plans offering a large number of investment alternatives. The Department also agrees that a non-stop stream of such notifications is inconsistent with the goal of ensuring that responsible plan fiduciaries receive useful and meaningful disclosures. Accordingly, the final rule has been modified to provide an alternate timing standard for changes to investment information. Rather than furnishing notification of each such change within 60 days, paragraph (*2*) requires that a covered service provider must, at least annually, disclose any changes to the investment information required by paragraph (c)(1)(iv)(E) and (F).

6. Reporting and Disclosure Information

Paragraph (c)(1)(vi)(A) of the final rule requires a covered service provider to furnish, upon request of the responsible plan fiduciary or covered plan administrator, any other information relating to the compensation received in connection with the contract or arrangement that the covered plan needs in order to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder. The substantive requirement, in paragraph (c)(1)(vi)(A), has not changed from the interim final rule, except that the language has been modified to refer to ''the written'' request of the responsible plan fiduciary or covered plan administrator.[29] The timing requirement, in paragraph (c)(1)(vi)(B), however, has been modified.

The interim final rule required, in paragraph (c)(1)(vi)(B), that the covered service provider disclose the information required by paragraph (c)(1)(vi)(A) not later than 30 days following receipt of a written request from the responsible plan fiduciary or covered plan administrator, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable. A number of commenters on the interim final rule requested that the Department better align this timing requirement with existing reporting and disclosure standards. For example, service providers currently must furnish information necessary to complete the Form 5500 Annual Report no later than 120 days after the end of the plan year. The Department is persuaded that the timing requirement for this reporting and disclosure information should be based on the reporting or disclosure requirements in question, rather than on the time that a responsible plan fiduciary chooses to request the information. Accordingly, paragraph (c)(1)(vi)(B) now requires that such information be furnished reasonably in advance of the date upon which such responsible plan fiduciary or covered plan administrator states that it must comply with the applicable reporting or disclosure requirement, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable. The Department believes that this modification will address commenters' concerns.[30]

7. Disclosure Errors

Paragraph (c)(1)(vii) of the final rule addresses inadvertent disclosure errors and omissions. Specifically, the rule provides that no contract or arrangement will fail to be reasonable solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required by the rule. The covered service provider must disclose the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of such error or omission.[31] This provision includes one change from the interim final rule. The Department revised the paragraph to clarify that it covers errors and omissions made when covered service providers disclose changes to the initially required information, which must be disclosed pursuant to paragraph (c)(1)(v)(B) of the

[29] The timing requirement contained in paragraph (c)(1)(vi)(B) of the interim final rule previously referred to the responsible plan fiduciary's or covered plan administrator's ''written'' request. Because paragraph (c)(1)(vi)(B) was modified for purposes of the final rule, the concept of the ''written'' request was incorporated into paragraph (c)(1)(vi)(A) of the final rule.

[30] The final rule is not intended to alter any otherwise applicable obligation to provide information to plan fiduciaries. *See, e.g.,* ERISA section 103(a)(2) (information certification requirements for insurance carriers or other organizations which provide benefits under the plan or hold plan assets, banks or similar institutions which hold plan assets, and plan sponsors).

[31] The class exemption, included in paragraph (c)(1)(ix) of the final rule, addresses situations in which a responsible plan fiduciary discovers an error or other deficiency in the disclosure. Paragraph (c)(1)(vii) is meant to provide the parties an opportunity to avoid a prohibited transaction by addressing errors up front. Once a prohibited transaction has occurred, the responsible plan fiduciary will need to rely on the relief provided by the class exemption.

rule. Otherwise, this provision has not changed from the interim final rule.

One commenter on the interim final rule requested that the Department extend the turn-around time to 90 days. The Department did not accept this request. Although it is important to provide a correction mechanism for inadvertent errors or omissions, which inevitably will occur as suggested by commenters on the proposal, it is the Department's view that errors and omissions must be communicated promptly to responsible plan fiduciaries. Another commenter argued that this provision is insufficient to protect covered service providers and that the class exemption should be extended to protect covered service providers. The Department also declined to accept this suggestion, as discussed in the context of the class exemption (paragraph (c)(1)(ix) of the final rule), below.

A number of commenters asked whether this provision would be available to covered service providers (*e.g.,* recordkeepers) who provide the investment disclosures described in paragraphs (c)(1)(iv)(E)(*1*)–(*3*) or (c)(1)(iv)(F)(*1*) of the final rule by using data obtained from a central digital database maintained by a third party. These commenters state, for instance, that instead of providing the plan fiduciary with paper or electronic versions of the issuer's current disclosure materials for each of the plan's designated investment alternatives, as permitted by paragraph (c)(1)(iv)(F)(*2*), it may be more efficient for the recordkeeper to prepare a summary disclosure document, tailored to the requirements of the final rule, using third party information technology (IT) systems that collect and provide access to the necessary investment disclosure information. The commenters maintain that third party IT systems can receive investment related information directly from mutual funds and other investment funds or from their investment advisers, or pull such information from regulated filings made by the issuers with the Securities and Exchange Commission or other State or federal agencies. These systems may, or may be modified to, allow recordkeepers and others to access the data and incorporate it into summary disclosure documents designed to meet the final rule.

In the Department's view, a covered service provider's use of a reputable and reliable third party commercial database as a source of the investment information described in paragraphs (c)(1)(iv)(E)(*1*)–(*3*) or (c)(1)(iv)(F)(*1*) of the final rule would ordinarily constitute disclosure made ''in good faith and with reasonable diligence'' under paragraph (c)(1)(vii) of the final rule. An important element in demonstrating reliability would be a contractual provision that makes the third-party provider responsible for ensuring that the information obtained from the central database is passed on accurately to the covered service provider. Of course, if the covered service provider subsequently becomes aware of an error or omission in the data, it would need to disclose the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days after the covered service provider knows of the error or omission.

8. Definitions

Paragraph (c)(1)(viii) of the final rule defines the terms ''affiliate,'' ''compensation,'' ''designated investment alternative,'' ''recordkeeping services,'' ''responsible plan fiduciary,'' and ''subcontractor.'' Several minor modifications from the interim final rule have been made to this definitional paragraph. Paragraph (c)(1)(viii)(B)(*3*), concerning how a description of compensation may be expressed, has been modified to apply to a description of ''compensation or cost,'' rather than only to ''compensation.'' A commenter on the interim final rule pointed out that paragraph (c)(1)(iv)(D)(*2*) may require a covered service provider to disclose the ''cost'' of recordkeeping services, rather than the compensation received from recordkeeping services. The Department agrees that the flexibility provided in paragraph (c)(1)(viii)(B)(*3*) should extend to how such costs may be expressed and revised this paragraph. Paragraph (c)(1)(viii)(B)(*3*) also was modified to clarify that the use of estimates is not limited to recordkeeping costs. The paragraph now provides that a description of compensation or cost may be expressed as a monetary amount, formula, percentage of the covered plan's assets, or a per capita charge for each participant or beneficiary or, if the compensation or cost cannot reasonably be expressed in such terms, by any other reasonable method. The description may include a reasonable and good faith estimate if the covered service provider cannot otherwise readily describe compensation or cost and the covered service provider explains the methodology and assumptions used to prepare such estimate. This modification is intended to make it clear that all covered service providers, not just those providing recordkeeping services, may provide estimates of monetary amounts, provided that the other requirements of the regulation are satisfied. Paragraph (c)(1)(viii)(B)(*3*) also provides that any description, including any estimate of recordkeeping cost under paragraph (c)(1)(iv)(D), must contain sufficient information to permit evaluation of the reasonableness of the compensation or cost.

A few commenters also asked whether compensation or costs may be disclosed in ranges, for example by a range of possible basis points. The Department believes that disclosure of expected compensation in the form of known ranges can be a ''reasonable'' method for purposes of the final rule. However, such ranges must be reasonable under the circumstances surrounding the service and compensation arrangement at issue. To ensure that covered service providers communicate meaningful and understandable compensation information to responsible plan fiduciaries whenever possible, the Department cautions that more specific, rather than less specific, compensation information is preferred whenever it can be furnished without undue burden.

A minor, non-substantive modification was made to the definition of ''designated investment alternative'' in paragraph (c)(1)(viii)(C). The modified definition, which now refers to designation of investment alternatives by the ''covered plan,'' merely conforms this definition to other Departmental regulatory guidance, such as the participant-level disclosure regulation (75 FR 64910). For purposes of the final rule, a ''designated investment alternative'' is any investment alternative designated by the covered plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term does not include brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the covered plan.

In light of this exclusion, some commenters requested clarification on what information would have to be disclosed concerning brokerage windows and similar arrangements. Because brokerage windows and similar arrangements are not designated investment alternatives subject to paragraph (c)(1)(iv)(E) and (F), a covered service provider need not furnish the investment-specific information required in these paragraphs concerning each possible investment available through the brokerage window. However, the covered service provider must disclose all applicable information

concerning the brokerage window that is required by the other provisions of the final rule. For example, a covered service provider must describe the services that will be available to participants who elect to take advantage of the brokerage window; any fees or charges that may be paid ''directly'' from the plan (or from a participant's or beneficiary's account); and any compensation that may be received ''indirectly'' or from related parties in connection with the brokerage window. In the case of indirect compensation, the covered service provider would have to identify the party from whom such compensation will be received and otherwise comply with the requirements of the applicable provisions of the final rule. The Department understands that some of the required information (for example with respect to compensation to be received) may depend on investments ultimately selected by participants through the brokerage window. The Department is confident nonetheless that the final rule provides sufficient flexibility for how compensation may be disclosed, in paragraph (c)(1)(viii)(B)(*3*), to enable the covered service provider to communicate meaningful information to the responsible plan fiduciary about the compensation the covered service provider, affiliates, and subcontractors expect to receive in connection with offering a brokerage window to the covered plan.

A minor, non-substantive modification also was made to the definition of ''indirect'' compensation in paragraph (c)(1)(viii)(B)(*2*). The interim final rule defined ''indirect'' compensation as compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor (if the subcontractor receives such compensation in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F) of this section). To more clearly describe when compensation received by a subcontractor is ''indirect'' compensation for purposes of the final rule, the concept contained in the parenthetical to paragraph (c)(1)(viii)(B)(*2*) of the interim final rule has been moved to a separate sentence. This modification is not intended to substantively alter the definition. Accordingly, this paragraph now describes ''indirect'' compensation as compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, or an affiliate. Compensation received from a subcontractor is indirect compensation, unless it is received in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F) of the final rule.

The other definitions contained in paragraph (c)(1)(viii) have not changed from the interim final rule. A person or entity's ''affiliate'' (paragraph (c)(1)(viii)(A)) directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity. As in the interim final rule, unless otherwise specified, an ''affiliate'' refers to an affiliate of the covered service provider. ''Compensation'' (paragraph (c)(1)(viii)(B)) is anything of monetary value (for example, money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement.[32] ''Direct'' compensation (paragraph (c)(1)(viii)(B)(*1*)) is compensation received directly from the covered plan. The definition of ''indirect'' compensation (paragraph (c)(1)(viii)(B)(*2*)) is modified as described above. Paragraph (c)(1)(viii)(B)(*3*), concerning how compensation may be expressed, also is modified as discussed above.

''Recordkeeping services'' (paragraph (c)(1)(viii)(D)) include services related to plan administration and monitoring of plan and participant and beneficiary transactions (*e.g.,* enrollment, payroll deductions and contributions, offering designated investment alternatives and other covered plan investments, loans, withdrawals and distributions); and the maintenance of covered plan and participant and beneficiary accounts, records, and statements. A ''responsible plan fiduciary'' (paragraph (c)(1)(viii)(E)) is a fiduciary with authority to cause the covered plan to enter into, or extend or renew, the contract or arrangement. Finally, a ''subcontractor'' (paragraph (c)(1)(viii)(F)) is any person or entity (or an affiliate of such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more services described pursuant to paragraph (c)(1)(iii)(A) through (C) of the final rule provided for by the contract or arrangement with the covered plan. Additional background information concerning these definitions can be found in the preamble to the interim final rule (75 FR 41600).

9. Exemption for Responsible Plan Fiduciary

Paragraph (c)(1)(ix) of the final rule permits a responsible plan fiduciary to avoid engaging in a prohibited transaction when a covered service provider fails to disclose required information.[33] Specifically, the final class exemption exempts a responsible plan fiduciary from the restrictions of ERISA section 406(a)(1)(C) and (D) if, among other things, the fiduciary did not know that the covered service provider failed to make required disclosures and ''reasonably believed'' that such disclosures were made.[34] Upon discovery of a disclosure failure, the responsible plan fiduciary must take certain specified steps within designated timeframes, as described in paragraph (c)(1)(ix), including notifying the Department of any disclosure failures that are not corrected.

This paragraph continues to set forth the specific conditions applicable to covered transactions. These conditions require, among other things, a responsible plan fiduciary to notify the Department under certain circumstances of a covered service provider's failure to comply with its disclosure obligations. The conditions also set forth the timing, content and other requirements

[32] Some commenters on the interim final rule argued that the $250 threshold for non-monetary compensation should be revised so that the amount would be measured on a calendar- or plan-year basis, rather than over the term of the contract or arrangement. The Department declined to accept this suggestion. Commenters also requested further guidance regarding accounting for and allocating non-monetary compensation. The Department notes that, for purposes of the final rule, covered service providers may look to the guidance and methodologies concerning non-monetary compensation that have been approved for purposes of the Form 5500 Annual Report. *See* Form 5500 Instructions, available on the Department's Web site at *http://www.dol.gov/ebsa/forms.html; see also* Frequently Asked Questions concerning the Form 5500 Schedule C, at *http://www.dol.gov/ebsa/faqs/faq_scheduleC.html* and *http://www.dol.gov/ebsa/faqs/faq-sch-C-supplement.html.*

[33] When the Department proposed this rule in 2007, the prohibited transaction class exemption was proposed separately; for ease of reference, the class exemption was included as paragraph (c)(1)(ix) of the interim final rule and continues to be part of the final regulation.

[34] The Department notes that the fact that the service transaction, for the responsible plan fiduciary, is the subject of an exemption will not relieve the covered service provider, as the other party in interest to the transaction, from ERISA's prohibited transaction provisions. Thus, regardless of the relief available to the responsible plan fiduciary pursuant to this paragraph (c)(1)(ix), a disclosure failure will nonetheless result in a prohibited transaction, and resulting excise taxes, on the part of the covered service provider.

applicable to the notice required to be filed with the Department by the responsible plan fiduciary. The Department notes that parties seeking to avail themselves of the relief provided by the exemption have the burden of demonstrating compliance with the conditions of the exemption.

The exemption provides relief from the restrictions of ERISA section 406(a)(1)(C) and (D) to a responsible plan fiduciary, notwithstanding any failure by a covered service provider to comply with its disclosure obligations, provided that the conditions set forth in paragraph (c)(1)(ix)(A) through (G) are met.

Paragraph (c)(1)(ix)(A) of the regulation requires that the responsible plan fiduciary did not know that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the information required by the final rule. This condition is intended to reinforce the principle that the plan fiduciary must have entered into, and thereafter continued, an arrangement for services with a reasonable belief that the covered service provider met, and would continue to meet, the requirements of the final rule and without knowing of the covered service provider's disclosure failure.

Paragraph (c)(1)(ix)(B) of the regulation requires that, upon discovering that the covered service provider failed to disclose the required information, the responsible plan fiduciary must request in writing that the covered service provider furnish such information. If the covered service provider fails to comply with the responsible plan fiduciary's written request within 90 days, paragraph (c)(1)(ix)(C) requires that the responsible plan fiduciary notify the Department. The Department believes that this condition, along with a covered service provider's exposure to excise tax liability under the Code, will provide covered service providers with a sufficient incentive to address disclosure failures within a reasonable time. The notice requirement does not relieve a plan administrator of the obligation to report a prohibited transaction in accordance with the instructions to the Annual Report Form 5500 Series, without regard to whether the covered service provider furnishes information in response to the fiduciary's request.

Paragraph (c)(1)(ix)(D) through (F) of the regulation sets forth the content, timing, and other requirements applicable to notifying the Department of a covered service provider's failure to meet its disclosure obligations. Paragraph (c)(1)(ix)(D) states that the notice to the Department must contain the following information: (1) The name of the covered plan; (2) the plan number used for the covered plan's Annual Report; (3) the plan sponsor's name, address, and EIN; (4) the name, address and telephone number of the responsible plan fiduciary; (5) the name, address, phone number, and, if known, EIN of the covered service provider; (6) a description of the services provided to the covered plan; (7) a description of the information that the covered service provider failed to disclose; (8) the date on which such information was requested in writing from the covered service provider; and (9) a statement as to whether the covered service provider continues to provide services to the covered plan.

Paragraph (c)(1)(ix)(E) provides that the responsible plan fiduciary shall file a notice with the Department not later than 30 days following the earlier of: (1) The covered service provider's refusal to furnish the requested information; or (2) the date which is 90 days after the date the written request referred to in paragraph (c)(1)(ix)(B)(*1*) is made. In this context, a covered service provider's refusal to provide information to the responsible plan fiduciary, following such fiduciary's written request, would constitute a covered service provider's failure to meet its disclosure obligations prior to the end of the 90-day period.

Paragraph (c)(1)(ix)(F) provides that the notice should be sent to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave., NW., Suite 600, Washington, DC 20210. Such a notice also may be sent electronically to: *OE–DelinquentSPnotice@dol.gov.* The Department has developed a sample notice that will facilitate compliance with the notification requirement; this sample notice will be available on the Department's Web site at: *http://www.dol.gov/ebsa/DelinquentServiceProviderDisclosureNotice.doc.*

Finally, paragraph (c)(1)(ix)(G) of the final rule requires the responsible plan fiduciary, following the discovery of a failure to disclose, to determine the extent to which the contract or arrangement at issue can be continued consistent with the fiduciary's duty of prudence under ERISA section 404. The final rule, like the interim final rule, assumes that plan fiduciaries will take into account certain factors in making such determinations, such as the nature of the failure and the availability and costs of a replacement service provider. Although this paragraph is intended to afford to the responsible plan fiduciary some flexibility in securing replacement services, this paragraph is not intended to permit fiduciaries to continue contracts or arrangements indefinitely when there has been an unresolved disclosure failure. In this regard, the final rule has been modified to emphasize that determinations in this area are governed by the prudence provisions of ERISA section 404. Thus, the final rule requires that if the requested information relates to future services (*i.e.,* services that will be performed after the end of the 90-day period referred to in paragraph (c)(1)(ix)(C)) and is not disclosed promptly after the end of such 90-day period, then the responsible plan fiduciary shall terminate the contract or arrangement as expeditiously as possible, consistent with the duty of prudence.

The Department received four comments on the class exemption as part of the public comments received on the interim final rule. Three commenters generally supported the class exemption, noting its importance to an otherwise ''innocent'' plan fiduciary. These commenters stated that since a plan's service provider is often the only party with all information about a service arrangement, particularly indirect compensation, the class exemption rightly imposes the compliance burden for disclosure on the covered service provider. However, two commenters were concerned about requiring the responsible plan fiduciary to have ''reasonably believed'' that service providers disclosed the requisite information. These commenters noted that availability of the exemption should not be determined based upon whether a responsible plan fiduciary can recognize disclosure omissions or errors. Thus, the exemption should be available, they say, if the fiduciary merely did not ''know or have reason to know'' that the covered service provider failed to make required disclosures.

The Department has considered these comments, but has chosen not to modify the requirements of the class exemption based upon these concerns. The Department does not believe that responsible plan fiduciaries should be entitled to relief provided by the class exemption absent a reasonable belief that disclosures required to be provided to the covered plan are complete. To this end, responsible plan fiduciaries should appropriately review the disclosures made by covered service providers. Fiduciaries should be able to, at a minimum, compare the disclosures they receive from a covered service

provider to the requirements of the regulation and form a reasonable belief that the required disclosures have been made.

Another commenter expressed concern about the requirement in paragraph (c)(1)(ix)(G) that a responsible plan fiduciary determine whether to terminate or continue a service contract after discovering that information remains undisclosed. This requirement, the commenters stated, means that any unresolved disclosure failures that continue will result in a non-exempt prohibited transaction in which case the covered plan has no choice but to discontinue the existing service arrangement. In such instances, the commenter believes that contractual requirements for a covered plan to compensate the covered service provider for losses or expenses relating to termination should be null and void. The Department does not believe that the class exemption should require that parties to an otherwise appropriately negotiated and approved service contract or arrangement simply disregard all agreed-upon contractual provisions designed to reasonably compensate a covered service provider for losses or expenses relating to a contract's termination. The requirements and obligations of parties to service contracts or arrangements pursuant to paragraph (c)(3) of the final rule remain unchanged, including arrangements between covered plans and covered service providers under this final rule.

Finally, a commenter was concerned about the Department's failure to expand relief to covered service providers who may become liable for excise taxes despite their inability to obtain, through no fault of their own, information from other parties. Thus, the commenter would have the class exemption also cover an otherwise ''innocent'' covered service provider. The Department believes that the final rule's mechanisms for correcting inadvertent errors and omissions, and for updating changes in disclosures, partially address this concern. However, the Department maintains that the covered service provider dealing directly with the covered plan bears ultimate responsibility for disclosing the information required by the final rule, including information from its affiliates or subcontractors. Therefore, the Department has not modified the class exemption as requested by the commenter.

10. Preemption of State Law

Paragraph (c)(1)(x) of the final rule states that the regulation does not supersede any State law that governs disclosures by parties that provide services to covered plans, except to the extent that such law prevents application of the regulation. The Department understands that the service provider relationship with the plan may be subject to various State laws, including those relating to contract, tax, and consumer protection. The Department's regulation does not supersede these State laws, which may require disclosures by parties that provide services described in the final rule, except to the extent that compliance with such State law would make compliance with this regulation impossible or would otherwise conflict with one of the regulation's protections. This provision has not changed from the interim final rule.[35]

Paragraph (c)(1)(x) of the final rule addresses only the preemptive effect of the regulation itself, and does not speak to any preemptive effect that ERISA Title I generally, or ERISA section 514 specifically, may have on State laws that regulate parties that provide services to employee benefit plans. A State law that requires disclosure in connection with services or service provider contracts or arrangements, regardless of whether the services are provided directly to an ERISA plan or other entity, generally would not be viewed by the Department as ''relating to'' employee benefit plans within the meaning of ERISA section 514 or as otherwise preempted by Title I of ERISA.

11. Application of Section 4975 of the Internal Revenue Code

Code section 4975(d)(2) contains a provision that is parallel to ERISA section 408(b)(2). The interim final rule included a new provision in paragraph (c)(1)(xi) to clarify that compliance with the Department's regulation will be required for a covered service provider to avoid the excise taxes imposed by Code section 4975. The final rule includes the same provision, without modification from the interim final rule. Specifically, paragraph (c)(1)(xi) provides that in accordance with the transfer of authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor, pursuant to section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.), which was effective December 31, 1978, under the final regulation, all references to section 408(b)(2) of ERISA and the regulations thereunder should be read to include references to the parallel provisions of section 4975(d)(2) of the Code and the regulations thereunder at 26 CFR 54.4975–6.

If a covered service provider fails to disclose the information required by the final rule, then the contract or arrangement will not be ''reasonable'' unless the failure satisfies the rule's cure provision for inadvertent disclosure errors and omissions. The service contract or arrangement will not qualify for the relief from ERISA's prohibited transaction rules provided by section 408(b)(2). The resulting prohibited transaction will have consequences for both the responsible plan fiduciary and the covered service provider. The responsible plan fiduciary, by causing the transaction, will have violated ERISA section 406(a)(1)(C) and (D). The covered service provider, as a ''disqualified person'' under the Code's prohibited transaction rules, will be subject to the excise taxes that result from the service provider's participation in a prohibited transaction under Code section 4975.[36] Section 4975(a) of the Code provides that the rate of the excise tax is fifteen percent of the ''amount involved'' with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The Code goes on to provide in section 4975(b) that if the prohibited transaction is not corrected within the taxable period, the rate of the excise tax increases to 100 percent of the ''amount involved.''

The Department continues to believe that the application of the excise tax will provide incentives for all parties to service contracts or arrangements to cooperate in exchanging the disclosures required by the final regulation. As noted above, however, the Department does not believe that an otherwise diligent responsible plan fiduciary should be penalized as a result of a failure on the part of a covered service provider to make the required disclosures. Accordingly, the final rule continues to include the exemptive relief described above (see paragraph (c)(1)(ix) of the final rule). But, as required as a condition of that exemptive relief and more generally under ERISA section 404, following the responsible plan fiduciary's discovery

[35] Two commenters on the interim final rule believe that such rule was not an appropriate place for a preemption provision and that the provision must be proposed. The Department is not persuaded by these commenters and views this provision as a logical outgrowth of the proposed rule. In addition, the interim final rule itself provided notice to affected parties and the opportunity for comment. Therefore, the final rule retains the preemption provision.

[36] The Code also includes definitions related to plans subject to the prohibited transaction and excise tax provisions in Code section 4975. *See* Code section 4975(e)(1) and (g).

that the covered service provider failed to disclose required information, the fiduciary must consider what steps should be taken in response to the covered service provider's nondisclosure, and may in certain circumstances have to terminate the contract or arrangement with the service provider.

Several commenters asked how to determine the ''amount involved'' and what would be required to ''correct'' the prohibited transaction that results from a failure to satisfy the disclosure requirements in the final rule. Under Reorganization Plan No. 4 described above, the Secretary of the Treasury retained interpretive and regulatory authority over the provisions in Code section 4975(a) and (b) regarding calculation of excise taxes and correction of prohibited transactions.[37] Accordingly, those issues are beyond the scope of this regulation.

12. Effective Date

Commenters on the interim final rule continued to express concern with the effective date for the final regulation and class exemption, which was July 16, 2011 (one year following publication of the interim final rule in the **Federal Register**).[38] Both new and existing contracts and arrangements between covered plans and covered service providers must be in compliance as of and following the rule's effective date. The Department extended the 90-day proposed effective date to a one-year effective date in the interim final rule in order to accommodate concerns as to the cost and burden associated with transitioning current and future service contracts or arrangements to satisfy the rule's requirements.

Some commenters on the interim final rule asserted that even one year is not enough time, suggesting that the Department delay the regulation's effectiveness, for example, for another year. A few commenters also requested that the Department modify the effective date for existing contracts or arrangements, giving affected parties more time to bring them into compliance with the regulation. However, most of the commenters on this issue primarily were concerned that if significant modifications are made from the interim final to the final rule, then the Department should consider extending the effective date to ensure that parties have sufficient time to revise necessary systems and comply with such modifications.

The Department continues to believe that both existing contracts and arrangements, as well as those entered into on or after the final regulation's effective date, must comply with the final rule. However, given commenters' concerns about the burden associated with updating all existing contracts and arrangements, and the fact that the final rule does reflect some substantive modifications from the interim final rule, the Department was persuaded that the effective date should be delayed. Further, the final rule conforms to the Department's final participant-level disclosure regulation, which applies for plan years beginning on or after November 1, 2011 (so, for calendar year plans, the plan year beginning on January 1, 2012). The Department believes that all parties, including covered service providers, responsible plan fiduciaries (and their plan administrators), and plan participants and beneficiaries, would benefit from closer alignment in the application of these two disclosure initiatives. Accordingly, the Department previously published a notice in the **Federal Register** extending the effective date for the interim final rule to April 1, 2012.[39] The final rule published in this notice, however, includes a new effective date of July 1, 2012. The Department decided to further extend the effective date due to delays in the publication of this final rule. Given the date of this notice, the Department determined that July 1, 2012 would be a more appropriate effective date to ensure that covered service providers and other parties have sufficient time to prepare for compliance with the final rule. Thus, contracts or arrangements between a covered service provider and a covered plan that are entered into on or after July 1, 2012 must comply with the final rule, and contracts or arrangements in existence prior to July 1, 2012 also must be brought into compliance as of such date.

C. Welfare Plan Disclosure—Reserved

As explained in the Supplementary Information for the interim final rule, the Department reserved paragraph (c)(2) of the final rule for a comprehensive disclosure framework applicable to ''reasonable'' contracts or arrangements for welfare plans to be developed by the Department. The Department believes that fiduciaries and service providers to welfare benefit plans would benefit from regulatory guidance in this area for the same reasons that apply to defined contribution and defined benefit plans. The Department is persuaded that there are significant differences between service and compensation arrangements of welfare plans and those involving pension plans and that the Department should develop separate, more specifically tailored, disclosure requirements under ERISA section 408(b)(2) for welfare benefit plans. Although one commenter on the interim final rule argued that fee transparency guidance, as a general matter, is unnecessary in the welfare plan context, most of the commenters on this issue supported the Department's decision to separately address welfare plans. To further this distinct regulatory initiative, the Department held a public hearing on December 7, 2010, to explore operational, disclosure, and fee transparency issues concerning welfare benefit plans. Testimony and other materials submitted to the Department in connection with this hearing are available on the Department's Web site.

[37] The Reorganization Plan at Section 102 provides: ''Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor: (a) Regulations, rulings, opinions, and exemptions under section 4975 of the Code * * * EXCEPT for (i) subsections 4975(a), (b), (c)(3), P(d)(3), (e)(1), and (e)(7) of the Code.'' Section 105 of the Reorganization Plan further details the scope of the Secretary of the Treasury's authority relating to section 4975(a) & (b): ''The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code, to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA, or to exercise the authority set forth in Title III of ERISA, including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority * * *. However, in enforcing such excise taxes and, to the extent applicable, in disqualifying such plans the Secretary of the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor. * * *[.]''

[38] One commenter on the interim final rule strongly supported the July 16, 2011, effective date, arguing that the industry dialogue concerning fee transparency has been going on for years and that service providers have been adequately forewarned that increased transparency will be required.

[39] 76 FR 42539 (July 19, 2011). The Department also made corresponding changes to the transition rule for the participant-level disclosure regulation, which are discussed in the Supplementary Information contained in such **Federal Register** notice. The revised effective date and transition rule published at that time reflected the Department's review of public comments received in response to its proposal to extend these dates, published on June 1, 2011. 76 FR 31544. These comments similarly influenced the Department's decision to further extend the effective date herein. These public comments are available on the Department's Web site at *http://www.dol.gov/ebsa/regs/cmt-1210-AB08a.html.*

D. Existing Requirement Concerning Termination of Contract or Arrangement

The interim final rule contained no amendments to the existing requirements addressing termination of contracts or arrangements for purposes of section 408(b)(2). Although one commenter on the interim final rule generally requested additional guidance on this requirement, no specific suggestions or problems were identified. No further comments or recommendations were received. Accordingly, the Department has not revised this provision and adopted the paragraph, without change, in paragraph (c)(3) of the final rule.

E. Effect on Other Statutory and Administrative Exemptions

A few commenters on the interim final rule asked the Department to clarify the effect of the final rule on the availability of previously issued exemptions. The Department is reviewing a number of pertinent class exemptions involving service provider arrangements, and we anticipate providing guidance in this regard in the near future.

F. Regulatory Impact Analysis

1. 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. OMB has determined that this action is ''economically significant'' within the meaning of 3(f)(1) of the executive order because it is likely to have an effect on the economy of $100 million or more in any one year. Accordingly, the rule has been reviewed by OMB.

2. The Need for Regulatory Action

As documented in the regulatory impact analysis of the July 16, 2010 interim final regulation, compensation arrangements in retirement plan services market are complex. Payments from third parties and among service providers can create conflicts of interest between service providers and their clients. For example, a 401(k) plan vendor may receive ''revenue sharing'' from a mutual fund that it makes available to its clients, and a consultant may receive a ''finder's fee'' from an investment adviser it recommends to its clients.

Such compensation arrangements and the conflicts they can create are myriad and in the past have been largely hidden from view. Their opacity has sometimes prevented plan fiduciaries from assessing the reasonableness of the costs for plan services and allowed harmful conflicts to persist in the market.

In evaluating the reasonableness of contracts or arrangements for services, responsible plan fiduciaries have a duty to consider compensation that will be received by a covered service provider from all sources in connection with the services it provides to a covered plan pursuant to the service provider's contract or arrangement. However, many plans, especially small plans, lack the knowledge and bargaining power to require service providers to disclose the compensation that they expect to receive from third parties as a result of the service provider's arrangement with the plan. To the extent that plan fiduciaries are unable to obtain relevant compensation information, or unable to use it to choose among service providers in a manner that upholds their fiduciary duty, a failure exists in the market for services for employee benefit plans. This final rule will improve the transparency of service arrangements by requiring specific disclosures of service provider compensation before a service contract or arrangement can be considered reasonable under ERISA Section 408(b)(2).

3. Summary of Impacts

As further discussed below, the Department is confident that this final rule will provide substantial benefits by reducing search time and costs for fiduciaries to identify the relevant fee and compensation information that they need to fulfill their fiduciary responsibility under ERISA. The final rule will also discourage harmful conflicts, reduce information gaps, improve fiduciary decision-making about plan services, enhance value for plan participants, and increase the Department's ability to redress abuses committed by service providers. Covered service providers will incur compliance and implementation costs to create and provide disclosures that satisfy the requirements of the final rule, but the Department is confident that the benefits of the final regulation will exceed its costs.

The final regulation retains the structure of the interim final rule by requiring covered service providers to provide certain disclosures to responsible plan fiduciaries in order to qualify for the statutory exemption under ERISA section 408(b)(2). Generally, the Department has retained most of the disclosure concepts and requirements from the interim final rule. The modifications in this final rule do not significantly affect the costs and benefits of the interim final rule.

In accordance with OMB Circular A–4,[40] Table 2 below depicts an accounting statement showing the Department's assessment of the benefits and costs associated with the final rule. The estimates vary from those in the interim final rule by updating the analysis to reflect 2008 Form 5500 data (the latest available data) and 2011 labor rates.

TABLE 2—ACCOUNTING TABLE (TOTAL IMPACT OF THE FINAL RULE)

Category	Primary estimate	Year dollar	Discount rate	Period covered
Benefits:				
Qualitative: The final regulation will increase the amount of information that service providers disclose to plan fiduciaries. Non-quantified benefits include information cost savings, discouraging harmful conflicts of interest, service value improvements through improved decisions and value, better enforcement tools to redress abuse, and harmonization with other EBSA rules and programs.				
The Department believes that the non-quantified benefits are substantial and exceed the quantified costs of the rule. A detailed analysis of the non-quantified benefits exceeding the quantified costs is contained in the impact analysis of the July 16, 2010 interim final regulation. The Department is confident that the benefits of the final rule exceed the costs.				

[40] Available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

TABLE 2—ACCOUNTING TABLE (TOTAL IMPACT OF THE FINAL RULE)—Continued

Category	Primary estimate	Year dollar	Discount rate	Period covered
Costs:.				
Annualized Monetized ($millions/year)	$63.7	2011	7%	2012–2021
	58.9	2011	3%	2012–2021
Note: Quantified costs include costs for service providers to perform compliance review and implementation, for disclosure of general, investment-related, and additional requested information, for responsible plan fiduciaries to request additional information from service providers to comply with the exemption and to prepare notices to the Department if the service provider fails to comply with the request.				
Transfers	Not Applicable.			

4. Affected Entities and Other Assumptions

This final rule will affect about 48,000 defined benefit pension plans with over 42 million participants and almost 669,000 defined contribution pension plans with approximately 83 million participants. Out of these pension plans, about 38,000 are small defined benefit plans and 597,000 small individual account plans.[41] Most of the defined contribution pension plans, approximately 498,000, are participant-directed individual account plans.

The final regulation applies to contracts or arrangements between covered plans and covered service providers. In order to estimate the number of covered service providers and the number of service provider-plan arrangements, the Department has used data from plan year 2008 submissions of the Form 5500 and its Schedule C.

In general, only plans with 100 or more participants that have made payments to a service provider of at least $5,000 are required to file the Form 5500 Schedule C. These plans are also required to report the type of services provided by each service provider. The Department counted the service providers most likely to provide the services described in paragraph (c)(1)(iii) of the final rule, which defines which service providers are ''covered.''[42] In total, there were nearly 9,500 unique covered service providers reported in the Form 5500 Schedule C data, almost 1,000 of which were reported to have received in aggregate $1 million or more in direct and indirect compensation.

The Department acknowledges that this estimate may be imprecise. On the one hand, some of the service providers counted here may not be covered service providers, but the Department is unable to further refine this group due to the limitations of the Schedule C data. On the other hand, because small plans generally do not file Schedule C, the number of covered service providers will be understated if a substantial number of them service only small plans. However, the Department believes that most small plans use the same service providers as large plans; therefore, the estimate based on the Schedule C filings by large plans is reasonable.[43]

Schedule C data was also used to count the number of covered plan-service provider arrangements. On average, defined benefit plans employ more covered service providers per plan than defined contribution plans, and large plans use more covered service providers per plan than small plans. In total, the Department estimates that defined benefit plans have over 120,000 arrangements with covered service providers, while defined contribution plans have over 836,000 arrangements.

In the interim final rule, the Department assumed that 50 percent of disclosures would be delivered electronically. The Department did not receive any comments regarding this assumption; therefore, the Department continues to assume that about 50 percent of disclosures between covered service providers and responsible plan fiduciaries are delivered only in electronic format.

5. Benefits

As explained in the regulatory impact analysis for the interim final rule, mandatory proactive disclosure will reduce the plan's information costs, discourage harmful conflicts, and enhance service value. Additional benefits will flow from the Department's enhanced ability to redress abuse. Although the benefits and costs are difficult to quantify, the Department is confident that the benefits more than justify the costs.

6. Costs

This section summarizes the total costs of the final regulation. The Department estimated costs for the rule over a ten-year time frame for purposes of this analysis. In addition to the costs to service providers, the Department also considered the potential costs to plans.

These costs include the following: Cost incurred for compliance review and implementation; costs to make initial and investment disclosures and to disclose additional information on request; costs for responsible plan fiduciaries to request additional information from service providers to comply with the class exemption and to prepare notices to the Department if the covered service provider fails to comply with the request, and costs to prepare the guide. These costs are identical to the estimates in the interim final regulation except they have been updated to reflect more recent Form 5500 data and 2011 labor rates.

As shown in Table 3 below, total costs for covered service providers and covered plans total approximately $164 million for the year 2012.

[41] Estimates of the number of plans and participants are taken from the EBSA's 2008 Pension Research File, *http://www.dol.gov/ebsa/publications/form5500dataresearch.html#plan bulletins*. Small pension plans are plans with generally less than 100 participants, as specified in the Form 5500 instructions.

[42] In order to provide a reasonable estimate, service providers with reported type codes corresponding to contract administrator, administration, brokerage (real estate), brokerage (stocks, bonds, commodities), consulting (general), custodial (securities), insurance agents and brokers, investment management, recordkeeping, trustee (individual), trustee (corporate) and investment evaluations were assumed to be covered service providers.

[43] While in general small plans are not required to file a Schedule C, some voluntarily file. Looking at Schedule C filings by small plans, the Department verified that most small plans reporting data on Schedule C used the same group of service providers as larger plans.

TABLE 3—TOTAL DISCOUNTED COSTS RULE (SHOWN WITH 7 PERCENT DISCOUNT RATE)

Year	Cost of legal review (A)	Cost of general information disclosure (B)	Cost of investment information disclosure (C)	Cost of qualifying for exemption (D)	Total costs A + B + C + D
2012	$64,061,000	$82,842,000	$14,584,000	$2,588,000	$164,076,000
2013	7,248,000	23,690,000	8,471,000	1,209,000	40,619,000
2014	6,774,000	22,140,000	7,917,000	1,130,000	37,962,000
2015	6,331,000	20,692,000	7,399,000	1,056,000	35,478,000
2016	5,917,000	19,338,000	6,915,000	987,000	33,157,000
2017	5,530,000	18,073,000	6,463,000	923,000	30,988,000
2018	5,168,000	16,891,000	6,040,000	862,000	28,961,000
2019	4,830,000	15,786,000	5,645,000	806,000	27,066,000
2020	4,514,000	14,753,000	5,275,000	753,000	25,296,000
2021	4,219,000	13,788,000	4,930,000	704,000	23,641,000
Total with 7% Discounting					447,244,000
Total with 3% Discounting					502,475,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

7. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have such an impact, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis (FRFA) describing the rule's impact on small entities and explaining how the agency made its decisions with respect to the application of the rule to small entities. Small entities include small businesses, organizations and governmental jurisdictions.

a. Need for and Objectives of the Rule

Service providers to pension plans increasingly have complex compensation arrangements that may present conflicts of interest. Thus, small plan fiduciaries face increasing difficulty in carrying out their duty to assess whether the compensation paid to their service providers is reasonable. This rule is necessary to help both large and small plan fiduciaries get the information they need to negotiate with and select service providers who offer high quality services at reasonable rates and to comply with their fiduciary duties. The Department's requirement for covered service providers to provide disclosures to responsible plan fiduciaries will be especially helpful to small plan fiduciaries.

b. Affected Small Entities

The Department estimates that the final rule will apply to approximately 9,300 small service providers (generally, those with revenue less than $7.0 million per year). These service providers generally consist of professional service enterprises that provide a wide range of services to plans, such as investment management or advisory services for plans or plan participants, and accounting, auditing, actuarial, appraisal, banking, consulting, custodial, insurance, legal, recordkeeping, brokerage, third party administration, or valuation services. Many of these service providers have special education, training, and/or formal credentials in fields such as ERISA and benefits administration, employee compensation, taxation, actuarial science, law, accounting, or finance.

c. Compliance Requirements

The classes of small service providers subject to the final rule include service providers who are ERISA fiduciaries (for example, because they manage plan investments or are fiduciaries to investment vehicles holding plan assets), who provide services as registered investment advisers to plans, who receive indirect compensation (or certain compensation from related parties) in connection with provision of specified services (namely, accounting, auditing, actuarial, appraisal, banking, certain consulting, custodial, insurance, participant investment advisory, legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services) or who provide recordkeeping or brokerage services involving an investment platform of investment options for participant-directed individual account plans.

These small covered service providers will be required to disclose certain written information to responsible plan fiduciaries in connection with their covered service arrangements. Such information will include a description of the services that will be included in the arrangement and what direct and indirect compensation the covered service provider will receive, or that will be paid among related parties, in connection with the arrangement. Service providers whose arrangements include making investment products available to plans additionally must disclose specified investment-related information about such products. The required disclosures must be provided to the responsible plan fiduciary reasonably in advance of the parties entering into the contract or arrangement for covered services. Preparing compliant disclosures often will require one or more professional skills such as financial or legal expertise, and knowledge of financial products and services and related compensation and revenue sharing arrangements.

d. Agency Steps To Minimize Negative Impacts

The Department took a number of steps to minimize any negative impact of the interim final rule on small service providers. These include clarifying the scope of the rule's application to include only those categories of service providers likely to be involved in undisclosed or indirect compensation arrangements, excepting from the rule's requirements contracts or arrangements for which compensation or fees are less

than $1,000, omitting from the rule a requirement that all arrangements be maintained under formal contracts, and not requiring covered service providers to disclose information in any particular format. Moreover, the disclosure requirements included in the final rule are necessary to ensure that plan fiduciaries can efficiently and effectively carry out their duties in purchasing services for plans.

The policy justification for these requirements includes benefits to fiduciaries, who will realize savings in the form of reduced search costs more than commensurate to the compliance costs shouldered by service providers. Small plan fiduciaries are likely to benefit most—lacking economies of scale and negotiating power, they would otherwise face the greatest potential cost to obtain and consider the information necessary to the performance of their fiduciary duty. Small service providers, while shouldering the cost of providing disclosure, will likely often pass these costs to their plan clients, who in turn will reap a net benefit on average that will more than offset this shifted compliance cost.

The Department rejected as unnecessarily costly approaches that would have applied disclosure requirements to arrangements involving compensation or fees of less than $1,000, or to a broader scope of service providers, or that would have required a formal, written contract. The Department also rejected these approaches as inadequate to achieve a central policy and legal goal—namely, enabling responsible plan fiduciaries, including especially small plan fiduciaries, to efficiently and effectively carry out their duty to assess information needed to purchase of plan services at a reasonable rate.

8. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the interim final regulation, for OMB's review. OMB approved the ICR under OMB Control Number 1210–0133 on May 20, 2010, which will expire on May 31, 2013.

Although no public comments were received that specifically addressed the paperwork burden analysis of the information collections at the interim final rule stage, the comments that were submitted and described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. The Department took into account such public comments in connection with making changes to the final rule and in developing the revised paperwork burden analysis summarized below.

In connection with publication of this final rule, the Department submitted a revised ICR to OMB for approval. The Department intends to publish a notice announcing OMB's decision regarding the revised ICR upon completion of OMB review. 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.

A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.* PRA Addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

The information collection requirements of the final rule are contained in paragraph (c)(1)(iv), which requires service providers to disclose, in writing, specific information to responsible plan fiduciaries related to the compensation to be received under the contract or arrangement. Generally, the information must be disclosed reasonably in advance of the date the contract or arrangement is entered into, or extended or renewed. These disclosure requirements are discussed fully in Section B of this **SUPPLEMENTARY INFORMATION**.

Annual Hour Burden

In order to estimate the potential costs of the disclosure provisions of the final rule, the Department estimated the number of service providers, plans, and arrangements covered by the rule. Based on information from the 2008 Form 5500, the Department estimates that approximately 48,000 defined benefit pension plans (DB plans) covering more than 42 million participants and approximately 669,000 defined contribution plans (DC plans) covering almost 83 million participants are covered by the rule.[44]

The Department also estimates that based on data from the 2008 Form 5500 Annual Return/Report and Schedule C that there are about 9,500 covered service providers. The 2008 Form 5500 Schedule C data was also used to count the number of covered plan-covered service provider arrangements. On average, DB plans employ more covered service providers per plan than DC plans, and large plans use more covered service providers per plan than small plans. In total, the Department estimates that DB plans have approximately 120,000 arrangements with covered service providers, while DC plans have an estimated 836,000 arrangements. For purposes of this analysis, the Department assumes that about 50 percent of disclosures between covered service providers and responsible plan fiduciaries are made only electronically.

The final regulation retains the basic structure of the interim final rule by requiring covered service providers to provide certain disclosures to responsible plan fiduciaries in order to qualify for the statutory exemption under ERISA section 408(b)(2). Generally, the Department has retained most of the disclosure concepts and requirements from the interim final rule. As noted above, the Department estimates that there are approximately 9,500 covered service providers and 960,000 arrangements with covered plans that are affected by this rule.

Summary

Table 4 shows the total hour burden of the information collection and Table 5 shows the total equivalent cost. The total three-year average hour burden for covered service providers and covered plans is estimated to be 1.6 million hours with an equivalent cost of $134.7 million.

TABLE 4—HOUR BURDEN

	Year 1	Year 2	Year 3	Average
Service Providers	2,315,000	813,000	813,000	1,313,000

[44] Out of these pension plans, about 38,000 are small DB plans and 597,000 small DC plans. Small plans generally are those with less than 100 participants.

TABLE 4—HOUR BURDEN—Continued

	Year 1	Year 2	Year 3	Average
Plans	758,000	117,000	117,000	331,000
Total	3,072,000	930,000	930,000	1,644,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

TABLE 5—EQUIVALENT COST

	Year 1	Year 2	Year 3	Average
Service Providers	$202,623,000	$68,769,000	$68,769,000	$113,387,000
Plans	48,912,000	7,563,000	7,563,000	21,346,000
Total	251,535,000	76,332,000	76,332,000	134,733,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

Annual Cost Burden

Table 6 reports the estimated printing and postage costs associated with each required disclosures and notices. The Department assumes that 50 percent of the disclosures will be sent electronically at no cost, and that the cost of printing and paper for the remaining 50 percent of documents will be 5 cents per page. The Department estimates that the total cost burden of the rule in 2012 will be $9.5 million, and $1.5 million in subsequent years. The three-year average cost burden is estimated to be more than $4.2 million.

TABLE 6—COST BURDEN

	Year 1	Year 2	Year 3	Average
Initial Disclosure	$401,000	$54,000	$54,000	$170,000
Update Initial Disclosure	0	107,000	107,000	71,000
Information Upon Request	45,000	45,000	45,000	45,000
General Information Total	446,000	206,000	206,000	286,000
Investment Disclosure	8,929,000	1,210,000	1,210,000	3,783,000
Update Investment Disclosure	116,000	116,000	116,000	116,000
Investment Disclosure Total	9,045,000	1,326,000	1,326,000	3,899,000
Request for Additional Information for Exemption	19,000	10,000	10,000	13,000
Notice to the Department	2,000	1,000	1,000	1,000
Total	9,513,000	1,543,000	1,543,000	4,200,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals

These paperwork burden estimates are summarized as follows:

Type of Review: Revision of existing collection

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure.

OMB Control Number: 1210–0133.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 81,000 (first year); 57,000 (three-year average).

Estimated Number of Responses: 1,628,000 (first year); 1,274,000 (three-year average).

Frequency of Response: Annually; occasionally.

Estimated Annual Burden Hours: 3,072,000 (first year); 1,644,000 (three-year average).

Estimated Annual Burden Cost: $9,513,000 (first year); $4,200,000 (three-year average).

Congressional Review Act

The final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is likely to result in an annual effect on the economy of $100 million or more.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and, as such, have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, the Department of Labor is amending chapter XXV, subchapter F, part 2550 of title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135 and Secretary of Labor's Order No. 6–2009, 74 FR § 21524 (May 7, 2009). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Section 2550.408b–2(c) is revised to read as follows:

§ 2550.408b–2 General statutory exemption for services or office space.

* * * * *

(c) *Reasonable contract or arrangement*—

(1) *Pension plan disclosure.*

(i) *General.* No contract or arrangement for services between a covered plan and a covered service provider, nor any extension or renewal, is reasonable within the meaning of section 408(b)(2) of the Act and paragraph (a)(2) of this section unless the requirements of this paragraph (c)(1) are satisfied. The requirements of this paragraph (c)(1) are independent of fiduciary obligations under section 404 of the Act.

(ii) *Covered plan.* For purposes of this paragraph (c)(1), a ''covered plan'' is an ''employee pension benefit plan'' or a ''pension plan'' within the meaning of section 3(2)(A) (and not described in section 4(b)) of the Act, except that the term ''covered plan'' shall not include a ''simplified employee pension'' described in section 408(k) of the Internal Revenue Code of 1986 (the Code); a ''simple retirement account'' described in section 408(p) of the Code; an individual retirement account described in section 408(a) of the Code; an individual retirement annuity described in section 408(b) of the Code; or annuity contracts and custodial accounts described in section 403(b) of the Code issued to a current or former employee before January 1, 2009, for which the employer ceased to have any obligation to make contributions (including employee salary reduction contributions), and in fact ceased making contributions to the contract or account for periods before January 1, 2009, and for which all of the rights and benefits under the contract or account are legally enforceable against the insurer or custodian by the individual owner of the contract or account without any involvement by the employer, and for which such individual owner is fully vested in the contract or account.

(iii) *Covered service provider.* For purposes of this paragraph (c)(1), a ''covered service provider'' is a service provider that enters into a contract or arrangement with the covered plan and reasonably expects $1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of this section pursuant to the contract or arrangement, regardless of whether such services will be performed, or such compensation received, by the covered service provider, an affiliate, or a subcontractor.

(A) *Services as a fiduciary or registered investment adviser.*

(*1*) Services provided directly to the covered plan as a fiduciary (unless otherwise specified, a ''fiduciary'' in this paragraph (c)(1) is a fiduciary within the meaning of section 3(21) of the Act);

(*2*) Services provided as a fiduciary to an investment contract, product, or entity that holds plan assets (as determined pursuant to sections 3(42) and 401 of the Act and 29 CFR 2510.3–101) and in which the covered plan has a direct equity investment (a direct equity investment does not include investments made by the investment contract, product, or entity in which the covered plan invests); or

(*3*) Services provided directly to the covered plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law.

(B) *Certain recordkeeping or brokerage services.* Recordkeeping services or brokerage services provided to a covered plan that is an individual account plan, as defined in section 3(34) of the Act, and that permits participants or beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available (*e.g.,* through a platform or similar mechanism) in connection with such recordkeeping services or brokerage services.

(C) *Other services for indirect compensation.* Accounting, auditing, actuarial, appraisal, banking, consulting (*i.e.,* consulting related to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), custodial, insurance, investment advisory (for plan or participants), legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services provided to the covered plan, for which the covered service provider, an affiliate, or a subcontractor reasonably expects to receive indirect compensation (as defined in paragraph (c)(1)(viii)(B)(*2*) of this section or compensation described in paragraph (c)(1)(iv)(C)(*3*) of this section).

(D) *Limitations.* Notwithstanding paragraphs (c)(1)(iii)(A), (B), or (C) of this section, no person or entity is a ''covered service provider'' solely by providing services—

(*1*) As an affiliate or a subcontractor that is performing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of this section under the contract or arrangement with the covered plan; or

(*2*) To an investment contract, product, or entity in which the covered plan invests, regardless of whether or not the investment contract, product, or entity holds assets of the covered plan, other than services as a fiduciary described in paragraph (c)(1)(iii)(A)(*2*) of this section.

(iv) *Initial disclosure requirements.* The covered service provider must disclose the following information to a responsible plan fiduciary, in writing—

(A) *Services.* A description of the services to be provided to the covered

plan pursuant to the contract or arrangement (but not including non-fiduciary services described in paragraph (c)(1)(iii)(D)(*2*) of this section).

(B) *Status.* If applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan (or to an investment contract, product or entity that holds plan assets and in which the covered plan has a direct equity investment) as a fiduciary (within the meaning of section 3(21) of the Act); and, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law.

(C) *Compensation*—(*1*) *Direct compensation.* A description of all direct compensation (as defined in paragraph (c)(1)(viii)(B)(*1*) of this section), either in the aggregate or by service, that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of this section.

(*2*) *Indirect compensation.* A description of all indirect compensation (as defined in paragraph (c)(1)(viii)(B)(*2*) of this section) that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of this section; including identification of the services for which the indirect compensation will be received, identification of the payer of the indirect compensation, and a description of the arrangement between the payer and the covered service provider, an affiliate, or a subcontractor, as applicable, pursuant to which such indirect compensation is paid.

(*3*) *Compensation paid among related parties.* A description of any compensation that will be paid among the covered service provider, an affiliate, or a subcontractor, in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of this section if it is set on a transaction basis (*e.g.,* commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained) or is charged directly against the covered plan's investment and reflected in the net value of the investment (*e.g.,* Rule 12b–1 fees); including identification of the services for which such compensation will be paid and identification of the payers and recipients of such compensation (including the status of a payer or recipient as an affiliate or a subcontractor). Compensation must be disclosed pursuant to this paragraph (c)(1)(iv)(C)(*3*) regardless of whether such compensation also is disclosed pursuant to paragraph (c)(1)(iv)(C)(*1*) or (*2*), (c)(1)(iv)(E), or (c)(1)(iv)(F) of this section. This paragraph (c)(1)(iv)(C)(*3*) shall not apply to compensation received by an employee from his or her employer on account of work performed by the employee.

(*4*) *Compensation for termination of contract or arrangement.* A description of any compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination.

(D) *Recordkeeping services.* Without regard to the disclosure of compensation pursuant to paragraph (c)(1)(iv)(C), (c)(1)(iv)(E), or (c)(1)(iv)(F) of this section, if recordkeeping services will be provided to the covered plan—

(*1*) A description of all direct and indirect compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with such recordkeeping services; and

(*2*) If the covered service provider reasonably expects recordkeeping services to be provided, in whole or in part, without explicit compensation for such recordkeeping services, or when compensation for recordkeeping services is offset or rebated based on other compensation received by the covered service provider, an affiliate, or a subcontractor, a reasonable and good faith estimate of the cost to the covered plan of such recordkeeping services, including an explanation of the methodology and assumptions used to prepare the estimate and a detailed explanation of the recordkeeping services that will be provided to the covered plan. The estimate shall take into account, as applicable, the rates that the covered service provider, an affiliate, or a subcontractor would charge to, or be paid by, third parties, or the prevailing market rates charged, for similar recordkeeping services for a similar plan with a similar number of covered participants and beneficiaries.

(E) *Investment disclosure—fiduciary services.* In the case of a covered service provider described in paragraph (c)(1)(iii)(A)(*2*) of this section, the following additional information with respect to each investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment, and for which fiduciary services will be provided pursuant to the contract or arrangement with the covered plan, unless such information is disclosed to the responsible plan fiduciary by a covered service provider providing recordkeeping services or brokerage services as described in paragraph (c)(1)(iii)(B) of this section—

(*1*) A description of any compensation that will be charged directly against an investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees; and that is not included in the annual operating expenses of the investment contract, product, or entity;

(*2*) A description of the annual operating expenses (*e.g.,* expense ratio) if the return is not fixed and any ongoing expenses in addition to annual operating expenses (*e.g.,* wrap fees, mortality and expense fees), or, for an investment contract, product, or entity that is a designated investment alternative, the total annual operating expenses expressed as a percentage and calculated in accordance with 29 CFR 2550.404a–5(h)(5); and

(*3*) For an investment contract, product, or entity that is a designated investment alternative, any other information or data about the designated investment alternative that is within the control of, or reasonably available to, the covered service provider and that is required for the covered plan administrator to comply with the disclosure obligations described in 29 CFR 2550.404a–5(d)(1).

(F) *Investment disclosure—recordkeeping and brokerage services.*

(*1*) In the case of a covered service provider described in paragraph (c)(1)(iii)(B) of this section, the additional information described in paragraph (c)(1)(iv)(E)(*1*) through (*3*) of this section with respect to each designated investment alternative for which recordkeeping services or brokerage services as described in paragraph (c)(1)(iii)(B) of this section will be provided pursuant to the contract or arrangement with the covered plan.

(*2*) A covered service provider may comply with this paragraph (c)(1)(iv)(F) by providing current disclosure materials of the issuer of the designated investment alternative, or information replicated from such materials, that include the information described in such paragraph, provided that:

(*i*) The issuer is not an affiliate;

(*ii*) The issuer is a registered investment company, an insurance company qualified to do business in any State, an issuer of a publicly traded security, or a financial institution supervised by a State or federal agency; and

(*iii*) The covered service provider acts in good faith and does not know that the materials are incomplete or inaccurate, and furnishes the responsible plan fiduciary with a statement that the covered service provider is making no representations as to the completeness or accuracy of such materials.

(G) *Manner of receipt.* A description of the manner in which the compensation described in paragraph (c)(1)(iv)(C) through (F) of this section, as applicable, will be received, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan's account(s) or investments.

(H) *Guide to initial disclosures.* [Reserved]

(v) *Timing of initial disclosure requirements; changes.*

(A) A covered service provider must disclose the information required by paragraph (c)(1)(iv) of this section to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, and extended or renewed, except that—

(*1*) When an investment contract, product, or entity is determined not to hold plan assets upon the covered plan's direct equity investment, but subsequently is determined to hold plan assets while the covered plan's investment continues, the information required by paragraph (c)(1)(iv) of this section must be disclosed as soon as practicable, but not later than 30 days from the date on which the covered service provider knows that such investment contract, product, or entity holds plan assets; and

(*2*) The information described in paragraph (c)(1)(iv)(F) of this section relating to any investment alternative that is not designated at the time the contract or arrangement is entered into must be disclosed as soon as practicable, but not later than the date the investment alternative is designated by the covered plan.

(B) (*1*) A covered service provider must disclose a change to the information required by paragraph (c)(1)(iv)(A) through (D), and (G) of this section as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable.

(*2*) A covered service provider must, at least annually, disclose any changes to the information required by paragraph (c)(1)(iv)(E) and (F) of this section.

(vi) *Reporting and disclosure information; timing.*

(A) Upon the written request of the responsible plan fiduciary or covered plan administrator, the covered service provider must furnish any other information relating to the compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of the Act and the regulations, forms and schedules issued thereunder.

(B) The covered service provider must disclose the information required by paragraph (c)(1)(vi)(A) of this section reasonably in advance of the date upon which such responsible plan fiduciary or covered plan administrator states that it must comply with the applicable reporting or disclosure requirement, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable.

(vii) *Disclosure errors.* No contract or arrangement will fail to be reasonable under this paragraph (c)(1) solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required pursuant to paragraph (c)(1)(iv) of this section (or a change to such information disclosed pursuant to paragraph (c)(1)(v)(B) of this section) or paragraph (c)(1)(vi) of this section, provided that the covered service provider discloses the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of such error or omission.

(viii) *Definitions.* For purposes of paragraph (c)(1) of this section:

(A) *Affiliate.* A person's or entity's ''affiliate'' directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity. Unless otherwise specified, an ''affiliate'' in this paragraph (c)(1) refers to an affiliate of the covered service provider.

(B) *Compensation.* Compensation is anything of monetary value (for example, money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement.

(*1*) ''Direct'' compensation is compensation received directly from the covered plan.

(*2*) ''Indirect'' compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, or an affiliate. Compensation received from a subcontractor is indirect compensation, unless it is received in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F) of this section.

(*3*) A description of compensation or cost may be expressed as a monetary amount, formula, percentage of the covered plan's assets, or a per capita charge for each participant or beneficiary or, if the compensation or cost cannot reasonably be expressed in such terms, by any other reasonable method. The description may include a reasonable and good faith estimate if the covered service provider cannot otherwise readily describe compensation or cost and the covered service provider explains the methodology and assumptions used to prepare such estimate. Any description, including any estimate of recordkeeping cost under paragraph (c)(1)(iv)(D), must contain sufficient information to permit evaluation of the reasonableness of the compensation or cost.

(C) *Designated investment alternative.* A ''designated investment alternative'' is any investment alternative designated by the covered plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment alternative'' shall not include brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the covered plan.

(D) *Recordkeeping services.* ''Recordkeeping services'' include services related to plan administration and monitoring of plan and participant and beneficiary transactions (*e.g.,* enrollment, payroll deductions and contributions, offering designated investment alternatives and other covered plan investments, loans, withdrawals and distributions); and the maintenance of covered plan and participant and beneficiary accounts, records, and statements.

(E) *Responsible plan fiduciary.* A ''responsible plan fiduciary'' is a

fiduciary with authority to cause the covered plan to enter into, or extend or renew, the contract or arrangement.

(F) *Subcontractor.* A ''subcontractor'' is any person or entity (or an affiliate of such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more services described pursuant to paragraph (c)(1)(iii)(A) through (C) of this section provided for by the contract or arrangement with the covered plan.

(ix) *Exemption for responsible plan fiduciary.* Pursuant to section 408(a) of the Act, the restrictions of section 406(a)(1)(C) and (D) of the Act shall not apply to a responsible plan fiduciary, notwithstanding any failure by a covered service provider to disclose information required by paragraph (c)(1)(iv) or (vi) of this section, if the following conditions are met:

(A) The responsible plan fiduciary did not know that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the information required by paragraph (c)(1)(iv) or (vi) of this section;

(B) The responsible plan fiduciary, upon discovering that the covered service provider failed to disclose the required information, requests in writing that the covered service provider furnish such information;

(C) If the covered service provider fails to comply with such written request within 90 days of the request, then the responsible plan fiduciary notifies the Department of Labor of the covered service provider's failure, in accordance with paragraph (c)(1)(ix)(E) of this section;

(D) The notice shall contain the following information—

(*1*) The name of the covered plan;

(*2*) The plan number used for the covered plan's Annual Report;

(*3*) The plan sponsor's name, address, and EIN;

(*4*) The name, address, and telephone number of the responsible plan fiduciary;

(*5*) The name, address, phone number, and, if known, EIN of the covered service provider;

(*6*) A description of the services provided to the covered plan;

(*7*) A description of the information that the covered service provider failed to disclose;

(*8*) The date on which such information was requested in writing from the covered service provider; and

(*9*) A statement as to whether the covered service provider continues to provide services to the plan;

(E) The notice shall be filed with the Department not later than 30 days following the earlier of—

(*1*) The covered service provider's refusal to furnish the information requested by the written request described in paragraph (c)(1)(ix)(B) of this section; or

(*2*) 90 days after the written request referred to in paragraph (c)(1)(ix)(B) of this section is made;

(F) The notice required by paragraph (c)(1)(ix)(C) of this section shall be sent to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave. NW., Suite 600, Washington, DC 20210; or may be sent electronically to *OE-DelinquentSPnotice@dol.gov;* and

(G) If the covered service provider fails to comply with the written request referred to in paragraph (c)(1)(ix)(C) of this section within 90 days of such request, the responsible plan fiduciary shall determine whether to terminate or continue the contract or arrangement consistent with its duty of prudence under section 404 of the Act. If the requested information relates to future services and is not disclosed promptly after the end of the 90-day period, then the responsible plan fiduciary shall terminate the contract or arrangement as expeditiously as possible, consistent with such duty of prudence.

(x) *Preemption of State law.* Nothing in this section shall be construed to supersede any provision of State law that governs disclosures by parties that provide the services described in this section, except to the extent that such law prevents the application of a requirement of this section.

(xi) *Internal Revenue Code.* Section 4975(d)(2) of the Code contains provisions parallel to section 408(b)(2) of the Act. Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.), transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. All references herein to section 408(b)(2) of the Act and the regulations thereunder should be read to include reference to the parallel provisions of section 4975(d)(2) of the Code and regulations thereunder at 26 CFR 54.4975–6.

(xii) *Effective date.* Paragraph (c) of this section shall be effective on July 1, 2012. Paragraph (c)(1) of this section shall apply to contracts or arrangements between covered plans and covered service providers as of the effective date, without regard to whether the contract or arrangement was entered into prior to such date; for contracts or arrangements entered into prior to the effective date, the information required to be disclosed pursuant to paragraph (c)(1)(iv) of this section must be furnished no later than the effective date.

(2) *Welfare plan disclosure.* [Reserved]

(3) *Termination of contract or arrangement.* No contract or arrangement is reasonable within the meaning of section 408(b)(2) of the Act and paragraph (a)(2) of this section if it does not permit termination by the plan without penalty to the plan on reasonably short notice under the circumstances to prevent the plan from becoming locked into an arrangement that has become disadvantageous. A long-term lease which may be terminated prior to its expiration (without penalty to the plan) on reasonably short notice under the circumstances is not generally an unreasonable arrangement merely because of its long term. A provision in a contract or other arrangement which reasonably compensates the service provider or lessor for loss upon early termination of the contract, arrangement, or lease is not a penalty. For example, a minimal fee in a service contract which is charged to allow recoupment of reasonable start-up costs is not a penalty. Similarly, a provision in a lease for a termination fee that covers reasonably foreseeable expenses related to the vacancy and reletting of the office space upon early termination of the lease is not a penalty. Such a provision does not reasonably compensate for loss if it provides for payment in excess of actual loss or if it fails to require mitigation of damages.

* * * * *

Signed at Washington, DC, this 25th day of January 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Sample Guide to Initial Disclosures

ABC Service Provider, Inc. (ABC)

Guide to Services and Compensation

Prepared for the XYZ 401(k) Plan

The following is a guide to important information that you should consider in connection with the services to be provided by ABC to the XYZ 401(k) Plan.

Should you have any questions concerning this guide or the information provided to you

concerning our services or compensation, please do not hesitate to contact [enter name of person and/or office] at [enter phone number and/or email address].

BILLING CODE 4510–29–P

Required Information	Location(s)
Description of the services that ABC will provide to your Plan.	Master Service Agreement § 2.4, p. 1
A statement concerning the services that ABC will provide as [*an ERISA fiduciary*][*a registered investment adviser*].	Master Service Agreement § 2.6, p. 2
Compensation ABC will receive from your Plan ("direct" compensation).	Master Service Agreement § 3.2, p. 4
Compensation ABC will receive from other parties that are not related to ABC ("indirect" compensation").	Master Service Agreement § 3.3, p. 4 Stable Value Offering Agmt § 3.1, p. 4
Compensation that will be paid among ABC and related parties.	Master Service Agreement § 3.5, p. 6
Compensation ABC will receive if you terminate this service agreement.	Master Service Agreement § 9.2, p. 11
The cost to your Plan of recordkeeping services.	Master Service Agreement § 3.4, p. 5
Fees and Expenses relating to your Plan's investment options. *Total Annual Operating Expenses	(1) Capital and Income Fund Trans. Fees: InvestCo Prospectus, Fund Summary, p. 2 TAOE:* InvestCo Prospectus, Fund Summary, p. 2 (2) International Stock Fund Trans. Fees: www.weblink/ABCProspInv2/trans.com TAOE: www.weblink/ABCProspInv2/taoe.com (3) Small Cap Fund Trans. Fees: www.ABCweblink/ProspInv3/trans.com TAOE: www.weblink/ABCProspInv3/taoe.com (4) Bond Market Index Fund Trans. Fees: www.weblink/ABCProspInv4/trans.com TAOE: www.weblink/ABCProspInv4/taoe.com (5) Stable Value Fund Trans. Fees: Stable Value Offering Agmt, § 2.4, p. 3 TAOE: Stable Value Offering Agmt, § 2.3, p. 3 (6) Money Market Fund Trans. Fees: www.weblink/ABCProspInv6/trans.com TAOE: www.weblink/ABCProspInv6/taoe.com

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Part III

Department of Housing and Urban Development

24 CFR Parts 5, 200, 203, *et al.*
Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982

[Docket No. FR 5359–F–02]

RIN 2501–AD49

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. This rule follows a January 24, 2011, proposed rule, which noted evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private sector. Such information was of special concern to HUD, which, as the Nation's housing agency, has the unique charge to promote the federal goal of providing decent housing and a suitable living environment for all. It is important not only that HUD ensure that its own programs do not involve discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Carroll, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5206, Washington, DC 20410–8000; telephone number (202) 708–2333 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—the January 24, 2011, Proposed Rule

HUD published a proposed rule on January 24, 2011 (76 FR 4194), which advised of evidence suggesting that LGBT individuals and families do not have equal access to housing. Such information concerned HUD because HUD is charged with promoting the federal goal of providing decent housing and a suitable living environment for all.[1] In the January 24, 2011, proposed rule, HUD noted that many state and local governments share the concern over equal housing opportunity for LGBT individuals and families. Twenty states, the District of Columbia, and over 200 localities have enacted laws prohibiting discrimination in housing on the basis of sexual orientation or gender identity.[2]

As the Nation's housing agency, it is important not only that HUD ensure that its own programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity. In July 2010, HUD issued guidance to assist LGBT individuals and families facing housing discrimination. (See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination*.) In addition to the guidance, HUD initiated this rulemaking in January 2011 in an effort to ensure that HUD's rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation, gender identity, or marital status.

HUD's January 24, 2011, rule proposed to amend 24 CFR 5.100 to include definitions of ''sexual orientation'' and ''gender identity'' among the definitions generally applicable to HUD programs. Under the proposed rule, 24 CFR 5.100 would define ''sexual orientation'' as ''homosexuality, heterosexuality, or bisexuality,'' a definition that the Office of Personnel Management (OPM) uses in the context of the federal workforce in its publication ''Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.'' (See *www.opm.gov/er/address.pdf* at page 4.) The January 24, 2011, rule proposed to define ''gender identity'' as ''actual or perceived gender-related characteristics,'' consistent with the definition of ''gender identity'' in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Public Law 111–84, Division E, Section 4707(c)(4) (18 U.S.C. 249(c)(4)).

To promote equal access to HUD's housing programs without regard to sexual orientation or gender identity, in the January 2011 rule, HUD proposed to prohibit inquiries regarding sexual orientation or gender identity. As proposed, the prohibition precludes owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied. In the January 2011 rule, HUD proposed to institute this policy in its rental assistance and homeownership programs, which include HUD's Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.[3] While the January 2011 rule proposed to prohibit inquiries regarding sexual orientation or gender identity, nothing in the rule proposed to prohibit any individual from voluntarily self-identifying his or her own sexual orientation or gender identity. Additionally, the January 2011 rule did not propose to prohibit otherwise lawful inquiries of an applicant or occupant's sex where the housing involves the sharing of sleeping areas or bathrooms. This prohibition of inquiries regarding sexual orientation or gender identity was proposed to be provided in a new paragraph (a)(2) to 24 CFR 5.105.

Additionally, the January 24, 2011, proposed rule clarified in the regulations governing HUD's housing programs that all otherwise eligible families, regardless of sexual orientation, gender identity, or marital status have the opportunity to participate in HUD programs. As noted in the January 2011 proposed rule, the majority of HUD's rental housing and homeownership programs already interpret the term ''family'' broadly. The proposed rule clarified that families, who are otherwise eligible for HUD programs, may not be excluded because one or more members of the family may be LGBT or perceived to be LGBT.

Finally, the rule proposed to revise 24 CFR 203.33(b), by adding sexual orientation and gender identity to the characteristics that an FHA lender may not take into consideration in determining the adequacy of a mortgagor's income. Marital status is already a prohibited consideration under the current version of 24 CFR 203.33(b).

[1] This goal is rooted in section 2 of the Housing Act of 1949, 42 U.S.C. 1441.

[2] See, *e.g.,* Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity, Institute of Real Estate Management (IREM) Legislative Staff, July 2007, which is available at *www.irem.org/pdfs/publicpolicy/Anti-discrimination.pdf*; see also *http://www.hrc.org/files/assets/resources/Housing_Laws_and_Policies.pdf*.

[3] Institution of this policy in HUD's Native American programs will be undertaken by separate rulemaking.

II. Changes Made at the Final Rule Stage

In response to public comment and upon further consideration by HUD of the issues presented in this rulemaking, HUD makes the following changes at this final rule stage:

- New § 5.105(a)(2) is revised to make explicit that eligibility determinations for HUD-assisted or -insured housing must be made without regard to actual or perceived sexual orientation, gender identity, or marital status. Also, new § 5.105(a)(2) is revised by dividing this paragraph into two sections. Section 5.105(a)(2)(i) will affirmatively state that housing assisted or insured by HUD must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. New § 5.105(a)(2)(ii) includes the prohibition of inquiries regarding sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available and further allows inquiries related to an applicant or occupant's sex for the limited purpose of determining placement in temporary, emergency shelters with shared bedrooms or bathrooms, or for determining the number of bedrooms to which a household may be entitled.
- The term ''family'' in § 5.403 is slightly reorganized in the opening clause to read as follows: ''Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *.'' This reorganization makes explicit that perceived, as well as actual, sexual orientation, gender identity, and marital status cannot be factors for determining eligibility for HUD-assisted housing or FHA-insured housing.
- The term ''family'' in 24 CFR 574.3 of the program regulations for the Housing Opportunities for Persons With AIDS (HOPWA) program is slightly revised to reinsert a clause in the definition of ''family'' in the codified HOPWA regulations that was inadvertently omitted at the proposed rule stage. As stated below in the discussion of public comments, the insertion of this clause serves to combine the original meaning of ''family'' as provided in the HOPWA regulations with the meaning given the term ''family'' in 24 CFR 5.403, as revised by this rule.
- The regulations for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs are revised to provide a cross-reference to ''family'' in 24 CFR 5.403, as revised by this rule.

There is one issue of significant comment for which HUD is not making a change at the final rule stage. This pertains to development and implementation of a national system that reports the sexual orientation and gender identity of beneficiaries of HUD housing programs, to allow HUD to better understand the extent to which HUD programs are serving LGBT persons. HUD is not making the requested change to the rule because HUD needs more time to consider the feasibility of such a system and the issues it raises; foremost among them being maintaining the privacy rights of the individual who would be the subject of such reporting. However, in response to comments highlighting the beneficial uses of data on LGBT individuals seeking assistance under HUD programs, and in deference to other government agencies that do collect such data, HUD is clarifying that the prohibition on inquiries is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity solely for compliance with data collection requirements of state or local governments or other federal assistance programs.

With respect to permissible inquiries as to sex where the accommodations provided to an individual involve shared sleeping or bathing areas, HUD clarifies that the lawful inquiries as to sex would be permitted primarily for emergency shelters and like facilities. This temporary housing, unlike other HUD subsidized housing and unlike housing insured by the FHA, involves no application process to obtain housing, but rather involves immediate provision of temporary, short-term shelter for homeless individuals.

III. Public Comments Submitted on Proposed Rule and HUD's Responses

A. Overview of Public Comments

The public comment period for the proposed rule closed on March 25, 2011. At the close of the public comment period, approximately 376 public comments were received from a variety of commenters, including individuals, advocacy groups, legal aid offices, tenant and fair housing organizations, realtors and their representatives, law school clinics, public housing authorities, local government officials, and members of Congress. The overwhelming majority of comments were supportive of the rule. Some commenters, while supporting the rule, suggested modifications, and a minority of the commenters opposed the rule.

Commenters supporting the rule stated that it was long overdue and noted that HUD, as the Nation's housing agency, should lead the efforts to prevent discrimination against LGBT persons in housing. The commenters supportive of the rule all pointed to the importance of equal housing opportunity for LGBT persons.

Commenters opposing the rule stated that of the many important topics that should be addressed in the housing area, this is not one of them. One commenter viewed the rule as excessive government regulation. Other commenters opined that the rule will cause owners of multifamily housing to decline to participate in the Housing Choice Voucher program. A minority of commenters opposing the rule expressed concern that HUD's proposal will create an unsuitable housing environment.

In proceeding with this final rule, HUD expresses its disagreement with the commenters opposing the rule. HUD believes that the concerns they have voiced will not be realized in practice.

B. Significant Public Comments and HUD's Responses

This section presents significant issues raised by commenters and HUD's responses to these comments.

Terminology Changes

Several commenters recommended some changes to the terms proposed to be included in 24 CFR part 5, including for ''family,'' ''gender identity,'' and ''sexual orientation.'' Commenters also proposed adding definitions of ''child,'' ''marital status,'' and ''sex.''

Family. For the convenience of the reader and the discussion to follow, the term ''family'' proposed to be included in 24 CFR 5.403 is restated below:

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(a) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(b) An elderly family;

(c) A near-elderly family;

(d) A disabled family;

(e) A displaced family; and

(f) The remaining member of a tenant family.

Comment: One commenter proposed expanding the definition of ''family'' to include any person or persons, regardless of their sex or relationship to one another, with the only restriction being to allow at least one, but no more than two, persons per bedroom.

Response: HUD believes the term ''family,'' as presented in 24 CFR 5.403, addresses the concern of the commenter. With respect to bedroom size, the existing occupancy requirements of HUD's public and assisted housing programs already address the number of persons who may occupy one bedroom.

Comment: Other commenters suggested that it is important that the term ''family'' in HUD's rule prevent from exclusion family members who may identify as LGBT individuals or who have LGBT relationships, or who may be perceived as such.

Response: HUD submits that the term ''family,'' as provided in 24 CFR 5.403, and as proposed to be slightly revised by this final rule, prevents such arbitrary exclusion.

Comment: Commenters suggested that the rule include in 24 CFR 982.201(c), a Public and Indian Housing program regulation permitting public housing agencies (PHAs) to determine who qualifies as a family, an explicit statement that PHAs do not have discretion to define family groupings in a way that excludes LGBT persons, and that a PHA's discretion cannot conflict with 24 CFR 5.403. To accomplish this, a commenter recommended adding to 24 CFR 982.201(c) the phrase ''regardless of marital status, sexual orientation, or gender identity.''

Response: HUD maintains that amendment of 24 CFR 982.201(c) is not required. The rule already proposes an amendment to 24 CFR 982.4 requiring that PHA determinations regarding family be consistent with 24 CFR 5.403. PHAs submit administrative plans to HUD. These administrative plans must include family definitions that are at least as inclusive as HUD's definition. This requirement has generally proven an effective means of ensuring compliance with HUD eligibility requirements for beneficiaries of its public housing programs. If this approach is not effective following implementation of this rule, HUD will revisit the issue.

Comment: A commenter requested that HUD ensure that the term ''family'' as presented in 24 CFR 5.403 not have an adverse impact on Housing Opportunities for Persons With AIDS (HOPWA) recipients. The commenter stated that HOPWA regulations are intended to ensure that AIDS patients can structure their living situations broadly, according to their health needs.

Response: At this final rule stage, HUD makes a slight change to the definition of the term ''family'' in 24 CFR 574.3, the definition section of the HOPWA program regulations, to reinsert in the definition of ''family'' the clause ''who are determined to be important to their care or well-being.'' This clause was inadvertently omitted in the proposed rule. Through insertion of this clause, the final rule combines the definition of family in the proposed 24 CFR 5.403 with the other elements of the original term ''family'' in 24 CFR 574.3.

Comment: Commenters stated that the definition for disabled households may be read to exclude same-sex couples. They suggested that HUD amend the definition of disabled households to add an additional cross-reference to the term ''family'' in 24 CFR 5.403 to capture ''regardless of marital status, sexual orientation, or gender identity.''

Response: HUD's regulations for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs, codified in 24 CFR part 891, include broad definitions of ''elderly family'' and ''disabled household.'' Nevertheless, similar to the approach that HUD took with the HOPWA definition of the term ''family,'' HUD is adding to the regulations in 24 CFR part 891 a cross-reference to the term ''family'' in 24 CFR 5.403. The cross-reference to ''family'' in 24 CFR 5.403 will supplement the meanings already provided to ''family'' in 24 CFR part 891.

Comment: Commenters suggested that the term ''family'' could be made more inclusive by moving the phrase ''actual or perceived'' to explicitly include marital status, and clarifying who qualifies as a ''child,'' as many LGBT parents lack the ability to create legal relationships with their children.

Response: In response to the commenters' concern and as noted in Section II of this preamble, the final rule restates the term ''family'' to provide in relevant part, as follows: ''Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *.'' However, with respect to the second request, who qualifies as a child has not arisen as an issue in determining eligibility for housing. Accordingly, HUD will not add a definition of ''child'' to the final rule.

Comment: A commenter asked whether a family can be one individual.

Response: Yes, in accordance with section 3(b)(3)(A) of the U.S. Housing Act of 1937, HUD's longstanding definition of ''family'' has always included a single person.

Comment: A commenter stated that the term ''family'' as provided in 24 CFR 5.403 of the proposed rule fails to give a ''definite meaning to family'' and leaves the door open for program abuse by allowing any group that wants to live together to call itself a family. Another commenter stated that the proposed regulation, with its expansion of the term ''family,'' could potentially allow any combination of persons to qualify as a family without the requirement of a legally recognized relationship. Another commenter stated that the term ''family'' as proposed in the January 2011 rule will make it impossible for the PHA to determine the family composition, the family income, or who is on the lease, as families could change on a weekly basis. The commenter submitted that the proposed change will take away the security and stability of the family, as well as the PHA's power to determine if a tenant is suitable or whether the tenant's behavior would have an adverse effect on other residents.

Response: As discussed in this rulemaking, in both the proposed and final rules, ''family'' in HUD programs had broad meaning long before these regulatory amendments. By way of this rule, HUD is merely affirming that an eligible family may not be excluded because of actual or perceived sexual orientation, gender identity, or marital status. This rule's clarification of the term ''family'' has no impact on other program eligibility requirements, such as income qualification, annual certification, or the requirement that all family members are named on the household lease. The rule in no way precludes a PHA from consistently applying its otherwise lawful policies to a family consisting of LGBT members, just as it would a family with no LGBT members.

Gender Identity. For the convenience of the reader and the discussion to follow, the term ''gender identity'' in proposed 24 CFR 5.403 is restated below:

Gender identity means actual or perceived gender-related characteristics.

Comment: One commenter stated that the term ''gender-related characteristics'' is ambiguous and that this ambiguity could result in discriminatory application of the rule. The commenter called for a more precise definition for ''gender identity,'' but did not offer suggested language.

Another commenter was concerned that it would be very difficult to predict how the term ''gender identity,'' as defined in the statute, would actually be applied. Another commenter expressed similar concern that the rule does not address how ''actual or perceived gender-related characteristics'' would be interpreted in a given case, and recommended incorporation of an express reasonableness standard. The commenter stated that a reasonableness standard ''will require claimants to meet a strenuous standard for relief, without placing them in the dubious position of having to produce proof that is most readily available to potential defendants.''

A commenter suggested replacing the term ''gender identity'' with the more comprehensive ''gender identity or expression.'' Another commenter also stated that the definition of ''gender identity'' should include gender-related expression, to better protect transgender individuals from discrimination.

Another commenter stated that ''without more, 'actual or perceived gender-related characteristics' could be interpreted to be limited to those characteristics traditionally associated with the individual's sex at birth.'' The commenter further stated, ''To pre-empt any suggestion that HUD condones this view,'' HUD should amend the language to read: ''Gender identity means actual or perceived gender related characteristics, whether or not those characteristics are stereotypically associated with the person's designated sex at birth.'' This commenter stated that the definition mirrors language currently adopted by a number of states and municipalities. Another commenter endorsed the definition suggested by the preceding commenter.

Response: HUD appreciates the suggested revisions to the definition of ''gender identity'' offered by the commenters, and will consider these suggested revisions further. However, HUD declines to make changes to this term at this final rule stage. The number of suggested revisions to the definition highlights the differing views among the commenters regarding the meaning of this term. Given this, HUD believes that any changes to the definition should be the subject of further public comment before HUD submits the term as the established definition under which HUD programs will operate. The definition of ''gender identity'' that is being established by this rule is based on the definition of ''gender identity'' in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. 249(c)(4). This federal statute was enacted in 2009 to protect LGBT individuals from targeted violence. Passage of the law resulted from the ongoing efforts of individuals personally impacted by hate crime violence, together with nearly 300 civil rights and religious organizations, education groups, and civic associations committed to gaining legal protections for members of the LGBT community. In addition, the bill received support from many major law enforcement organizations, including the International Association of Chiefs of Police, the National District Attorneys Association, the National Sheriffs Association, the Police Executive Research Forum, and 31 state Attorneys General. Congress considered the issue over multiple sessions through public hearings, reports, and floor debates. The purpose of HUD's rule, as with the Hate Crimes Prevention Act, is to provide greater protection for LGBT persons. Accordingly, HUD believes it appropriate to use the same definition of ''gender identity'' as applies in the Hate Crimes Prevention Act. HUD seeks to experience how this term works in its programs before determining what, if any, changes are needed for its effective application in the housing context. Commenters should note, however, that since the definition is intended to cover actual or perceived gender-related characteristics of all persons, including transgender persons, HUD will interpret it to include those gender-related characteristics not stereotypically associated with a person's designated sex at birth.

Sexual Orientation. For the convenience of the reader and the discussion to follow, the term ''sexual orientation'' in proposed 24 CFR 5.403 is restated below:

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

Comment: A commenter claimed that defining sexual orientation as ''homosexuality, heterosexuality, or bisexuality'' alone excludes many people. Another commenter stated that HUD should ''broaden the definition of ''sexual orientation'' to ''homosexuality, heterosexuality, bisexuality, or *sexuality as defined by the individual''* [emphasis added by commenter].

Other commenters stated that HUD could add the word ''including'' prior to the list in the proposed definition of ''sexual orientation'' to clarify that the list is not exhaustive. The commenters stated that, as written, the definition ''excludes transgender individuals who self-identify as multi-gendered or between genders.'' Still other commenters stated that the fluidity of the term sexual orientation must be considered in light of transgender individuals. One of the commenters stated that the term sexual orientation should specifically include transgender individuals, due to uncertainty about whether general ''sexual orientation'' language would protect such individuals and in light of the historical treatment of such individuals.

Another commenter stated that the rule should broaden protections for ''sexual orientation'' to include persons who self-identify as heterosexuals but who have histories of same-sex relationships. Such histories could be an issue in small communities, in particular. The commenter states that protection for persons who identify as bisexuals would not be sufficient to cover this situation.

Response: As with commenters' suggested revisions to the definition of ''gender identity,'' HUD appreciates the suggested revisions to the definition of ''sexual orientation'' offered by commenters, but for the same reasons as provided in the preceding response, HUD declines to make changes at this final rule stage. The definition of ''sexual orientation,'' which HUD provided in the proposed rule, is based in federal policy—the Office of Personnel Management (OPM) ''Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.'' (See *http://www.opm.gov/er/address.pdf* at page 4.) The purpose of the OPM publication is to implement the Federal Government's commitment to equal employment opportunity for LGBT individuals in the federal civil service. The OPM publication serves a goal analogous to the one served by HUD's proposed rule, and, as with the definition of ''gender identity,'' HUD seeks to experience how this term will work in practice before making changes to a definition currently established in federal policy.

HUD notes that its rule covers actual or perceived sexual orientation, as well as gender identity. As such, the rule covers most of the situations presented by the commenters, such as identifying as transgender; being perceived as transgender, multi-gendered, or between genders; or having a history of same-sex relationships. No one definition in the rule need cover every situation.

Marital Status.

Comment: One commenter recommended adding a definition of ''marital status'' that would define this term as ''the state of being unmarried, married, or separated, as defined by applicable state law. The term 'unmarried' includes persons who are single, divorced, or widowed.''

Response: The term ''marital status'' is not currently defined in HUD regulations and HUD does not find that the focus of this rule calls for a definition of ''marital status.''

Sex.

Comment: One commenter stated that to foreclose the possibility of using the allowed inquiry into sex in 24 CFR 5.105(a)(2) against transgender individuals, the rule should either: (a) Define ''sex'' broadly as ''the state of being or becoming male or female or transsexual;'' or (b) substitute the more inclusive term ''gender'' for ''sex,'' and define ''gender'' as ''sex, including a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.''

Response: HUD declines to define ''sex'' or to substitute ''gender identity'' for ''sex'' in HUD programs. HUD recognizes the difficulty that transgender persons have faced in finding adequate emergency shelter. HUD does not, however, believe that it is necessary to define ''sex'' as the commenter suggests. The rule makes clear that housing must be available without regard to actual or perceived gender identity and prohibits inquiries concerning such. Inquiries as to sex are permitted only when determining eligibility for a temporary, emergency shelter that is limited to one sex because it has shared sleeping areas and/or bathrooms, or to determine the number of bedrooms to which a household may be entitled. Such inquiries are not permitted in any other homeless shelter or housing. In light of the narrow breadth of the exception and the regulation's overall purpose, HUD anticipates that transgender individuals will have greater access to shelters and other housing and will monitor its programs so as to ascertain whether additional guidance may be necessary.

Rule Should More Directly Prohibit Discrimination

Several commenters requested that HUD more directly prohibit discrimination. One commenter stated that ''a different section of the proposed regulation completely prohibits a mortgagee from taking into account the sexual orientation or gender identity of an individual in determining whether to provide a mortgage to that person. Amending the proposed regulation to completely ban housing discrimination towards individuals based on their sexual orientation or gender identity * * * would (1) be more consistent with the complete prohibition on using sexual orientation or gender identity in determining an individual's adequacy for a mortgage and would (2) provide greater protection to LGBT individuals from housing discrimination.''

Other commenters agreed, stating that the rule could provide stronger protection by completely prohibiting ''discrimination based on sexual orientation or gender identity toward occupants of or applicants for HUD-assisted housing (or housing with financing insured by HUD),'' rather than by prohibiting certain inquiries. The commenters stated that there are ways other than direct inquiry that LGBT individuals could be identified or discriminated against.

Still other commenters expressed concern that people who are gender-nonconforming may be perceived as gay or lesbian without any inquiry into their sexual orientation and that most discrimination against LGBT persons occurs not because a person answered an inquiry about sexual orientation or gender identity, but because of assumptions about a person's gender identity or sexual orientation. Those commenters proposed adding language that clearly prevents discrimination on the basis of real or perceived sexual orientation or gender identity.

One commenter suggested that proposed 24 CFR 5.105(a) be revised to cite 18 U.S.C. 249, the Hate Crimes Prevention Act, ''for the inference that Congress intends to discourage animus against others based on their sexual orientation, and therefore HUD will similarly disallow animus against others based on their sexual orientation.'' Another commenter also referenced the Hate Crimes Prevention Act, stating that HUD's rule falls short of the goals of that Act. The commenter stated that a rule prohibiting inquiries will have little effect on those who discriminate based on their unverified perceptions.

Response: HUD believes that the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters' concern.

Interpret the Fair Housing Act To Cover Discrimination Based on Sexual Orientation or Gender Identity

One commenter suggested that HUD interpret ''discriminatory practice'' in the Fair Housing Act to include discrimination against persons on the basis of sexual orientation or gender identity.

Response: In order to ensure equal access for all eligible families to HUD programs, this rule requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status. These additional program requirements do not, however, create additional protected classes in existing civil rights laws such as the federal Fair Housing Act. The Fair Housing Act prohibits discrimination based on race, color, national origin, religion, sex, disability, and familial status. Sexual orientation and gender identity are not identified as protected classes in the Fair Housing Act. As discussed in the following section, however, the Fair Housing Act's prohibition of discrimination on the basis of sex prohibits discrimination against LGBT persons in certain circumstances, such as those involving nonconformity with gender stereotypes.

Interpret Sex Discrimination Under the Fair Housing Act To Reach Discrimination and Harassment of LGBT Persons

A commenter stated that proposed 24 CFR 5.403, prohibiting inquiries of ''actual or perceived sexual orientation,'' could be revised to prohibit inquiries of ''actual or perceived sex.'' The commenter stated that sex is already a protected class under the Civil Rights Act of 1964 and could be used to reach discrimination against LGBT persons.

Response: HUD declines to revise the proposed rule to prohibit inquiries of sex, but notes that certain complaints from LGBT persons would be covered by the Fair Housing Act. If an LGBT person experiences any of the forms of discrimination enumerated in the Fair Housing Act, such as race or sex discrimination, that person can invoke the protections of the Fair Housing Act to remedy that discrimination. Discrimination based on sex under the Fair Housing Act includes discrimination because of nonconformity with gender stereotypes. For example, if a PHA denies a voucher to a person because the person does not conform to gender stereotypes, that person may file a Fair Housing Act complaint with HUD alleging sex discrimination.

HUD may also have jurisdiction to process a complaint filed under the Fair Housing Act if an LGBT person obtains housing but then experiences discrimination in the form of sexual harassment. Sexual harassment is illegal under the Fair Housing Act if the conduct is motivated by sex and is either so severe or pervasive that it creates a hostile environment or the provision of housing or its benefits is conditioned on the receipt of sexual favors (for example, as a *quid pro quo*). Harassment may be motivated by sex if, for example, it is due to the landlord's view that the tenant's appearance or

mannerisms fail to conform with stereotypical expectations of how a man or woman should look or act. Housing owners or operators may be liable for their own actions or the actions of their employees or other residents.

If HUD determines that it does not have jurisdiction to investigate a complaint from an LGBT person, the person may still be protected under state and local laws that include sexual orientation or gender identity as protected classes.

Expand the Rule's Protection To Cover Discrimination Beyond Refusal To Rent

A commenter recommended expanding the proposed rule to prohibit harassment and disparate treatment on the basis of sexual orientation or gender identity. The commenter explained that in order for the proposed rule to maximize its effectiveness, owners and operators of HUD-assisted housing or housing whose financing is insured by HUD should be precluded from negative decisionmaking based on these protected categories. HUD should be clear about its power to enforce nondiscrimination and the remedies available to individuals who have been discriminated against.

Another commenter suggested that the prohibition on inquiries be strengthened so that no information about a person's sexual orientation or gender identity can be used to deny a tenancy, harass a tenant, evict a tenant, or terminate a voucher.

Yet other commenters recognized the intent behind prohibiting inquiries regarding sexual orientation or gender identity, but submitted that the prohibition will not adequately protect LGBT persons from harassment in housing, as much housing discrimination occurs when a housing provider infers a person's sexual orientation or gender identity based on stereotypes, appearances, mannerisms, or information from a third party. The commenters urged HUD to adopt a final rule that prohibits discrimination based on sexual orientation and gender identity in all HUD-assisted and HUD-insured housing.

Response: HUD believes the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters' concern. In order to ensure equal access for all eligible families to HUD programs, § 5.105(a)(2) requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status.

Prohibition on Inquiries

Several commenters suggested changes to the prohibition on inquiries in proposed 24 CFR 5.105(a)(2). The proposed rule provided as follows:

> No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation, or gender identity of an applicant for, or occupant of, a HUD-assisted dwelling or a dwelling whose financing is insured by HUD, whether renter- or owner-occupied. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying the individual's sexual orientation or gender identity.

Comment: A commenter stated that the prohibition on inquiries may discourage open dialogue when determining appropriate placement of families applying for HUD programs. Inquiries regarding sexual orientation or gender identity may be appropriate where the safety of the individual or family being placed is of concern. There also may be other nondiscriminatory reasons for a person responsible for program placement to inquire about an individual's sexual orientation or gender identity. This commenter states that ''the language [should] be changed to simply include 'actual and perceived sexual orientation and gender identity' in the section for nondiscrimination; or that the prohibition on inquiries [should be] limited to discriminatory purposes.''

Response: Revised § 5.105(a)(2) addresses the commenters' nondiscrimination concerns. In addition, the prohibition on inquiries regarding sexual orientation or gender identity does not prevent individuals from volunteering to identify their sexual orientation or gender identity. They may choose to do so to address any safety concerns or for other placement-related issues, for example. Also, the commenter's concern is one that prompted HUD to include in the proposed rule its language on the permissibility of lawful inquiries as to sex, which is discussed below. However, as noted in the discussion of Section II of this preamble, and addressed in revised § 5.105(a)(2), the inquiries permissible in determining program eligibility are contemplated generally only where temporary, emergency shelter is provided to homeless individuals that involves the sharing of sleeping areas or bathrooms, or for a determination of the number of bedrooms to which a household may be entitled.

Lawful Inquiries of Sex

Several commenters requested clarification of the rule's lawful inquiry provision or expressed concern that the provision would allow for discrimination. The lawful inquiry provision provided by the proposed rule stated as follows:

> [The] prohibition on inquiries regarding sexual orientation or gender identity does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

Comment: A commenter stated that the lawful inquiry exception for the sharing of sleeping areas or bathrooms may exacerbate extant stereotypes about gays and lesbians living in close quarters with heterosexuals. The commenter stated that numerous scenarios come to mind where landlords abuse this exception to refuse to rent to homosexuals, purportedly because heterosexuals feel uncomfortable ''sharing bathrooms or living space'' with homosexuals. The only legitimate purpose of such an exception, the commenter stated, would be in single-sex housing situations. But even there, the commenter stated, the inquiry is ''entirely irrelevant and inappropriate'' as to transgender status, because the person would have already acquired a new gender.

A commenter stated that the assumption that one person's sexual orientation might disturb the rights of another person in a setting where bathrooms and bedrooms would be shared reinforces stereotypes and biases, rather than countering them. Another commenter made a similar comment, stating that the proposal continues to promote negative stereotypes and violence against LGBT persons. A commenter speculated that while such language was placed in the proposal with the intention of ensuring that other tenants remain comfortable and safe, there are several issues with that goal, the first of which is whether ''leaving so much up to the discretion of the landlord will lead to greater potential risk of danger for these tenants.''

Another commenter stated that this provision creates numerous problems in application. The commenter states that asking someone who identifies with the so-called ''opposite'' gender to identify their sex implies that their identification is not ''real'' or ''genuine,'' and that reinforces the very problems the regulation seeks to resolve. This commenter stated that as with sexual orientation, it is difficult to imagine how one's gender identity, even in a shared situation, would be a problem for

any other person, as few programs require individuals to share bedrooms with strangers.

Another commenter also expressed concern about the practical effect of allowing inquiries into the applicant's or occupant's sexual orientation or gender identity. The commenter stated that it is not clear from the proposed rule whether this language provides an exhaustive or merely illustrative list of scenarios under which it is appropriate to inquire about an individual's gender. The commenter claimed that if the language is merely illustrative, a housing provider will likely be authorized to make broad inquiries into an applicant's gender identity when any shared living space is anticipated. A commenter stated that this ''lawful inquiry'' into sex could be used to indirectly reach gender identity, for instance in the case of a transgender individual, and this allowed inquiry could be used to accomplish the kind of discrimination the rule is meant to prevent. Another commenter expressed concern about the impact unrestricted inquiries would have on low-income transgender people who cannot afford to access legal gender change petitions.

Response: The allowance of lawful inquiries of sex for housing that provides shared bathrooms or sleeping arrangements is not a license to exclude LGBT persons from HUD-assisted housing. HUD programs must be open and available to persons regardless of sexual orientation or gender identity. The allowance of the limited inquiry of sex provided in the proposed rule is intended to apply primarily in emergency shelters for homeless persons, to ensure privacy if the shelter consists of shared sleeping or bathing areas. HUD addressed the harassment issue earlier in this preamble.

Comment: A commenter noted that HUD had not proposed a definition of what is meant by the term ''housing provided * * * to the individual (that) involves the sharing of sleeping areas or bathrooms.'' The commenter stated that ''[t]here was presumably no intention to permit inquiry of any person applying to any development that had bathrooms in common space. Additionally, by not providing that the ''sharing'' reference applies only to persons who are not part of the same household,'' it would open the door to inquiries of all applicants for all housing that permits households of more than one individual.

Response: HUD believes that revised § 5.105(a)(2), in this final rule, expressly provides that LGBT status cannot be a basis for denying participation in a program funded or insured by HUD. Moreover, the inquiry permitted by the rule is not unrestricted. As provided in this final rule, HUD believes it is appropriate to make inquiries as to sex in temporary, emergency shelters that have shared bedrooms or bathrooms. This housing, unlike other HUD subsidized housing and housing insured by FHA, necessitates immediate provision of temporary shelter for homeless individuals.

Comment: Another commenter expressed concern that the proposed prohibition on inquiries concerning gender identity may adversely affect the assignment of households to appropriately sized housing. The commenter explained that many local programs determine housing size in part based on the gender of household members, because household members of different genders other than spouses are not required to share a bedroom. According to the commenter, sponsors may assign households to housing that is too small or too large based on members' genders, consuming unnecessary housing assistance resources. A commenter suggested that HUD clarify the existing exception or add another exception to the blanket prohibition against inquiries to permit the assignment of households to properly sized housing.

Response: With the clarification provided in this final rule that HUD intended to allow lawful inquiries to a limited sector of HUD-assisted programs, HUD does not believe the commenter's concerns will be realized.

Comment: A commenter expressed concern about the lawful inquiries provision in the rule because the commenter believed the provision would allow housing providers to inquire about someone's human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) status, and explained that gay men are often discriminated against when they are considered to have HIV/AIDS.

Response: Nothing in the lawful inquiries provision of this rule and no provision in HUD's existing regulations for its housing programs allows a housing provider to inquire about someone's HIV status, except where providing HIV/AIDS-related housing assistance and supportive services (*e.g.* activities under the HOPWA program (24 CFR part 574)), and subject to confidentiality requirements. Moreover, the federal Fair Housing Act, which HUD enforces and administers, prohibits discrimination against someone who has or is regarded as having a disability, including HIV/AIDS. (See 42 U.S.C. 3602(h)(3) and 3604(f)(1).)

Comment: Several commenters expressed concern that inquiries as to a person's ''sex'' in situations involving shared sleeping areas and bathrooms is not sufficiently clear to guard against discrimination based on gender identity and asked HUD to provide further guidance. One commenter stated that this exception for lawful inquiries ''leaves landlords with significant discretion to deny housing on illegitimate grounds.'' This same commenter stated that HUD ''should add language to more clearly confine this exception to its legitimate ends.'' Another commenter requested that HUD clarify what type of inquiries are acceptable and in what specific circumstances, so as not to allow this exception to become a pretext for discrimination based on gender identity.

Several commenters stated that the allowed inquiry into sex provided could be used to identify and target transgender individuals, in particular, because the term ''sex'' used in the rule is vague and because the ''lawful inquiries'' exception is too broadly defined, leaving landlords ''significant discretion to deny housing on illegitimate grounds.'' Some of these commenters thought the exception should be more narrowly defined.

One commenter stated that the proposed rule does not provide sufficient guidance to clarify for housing providers the limits of permissible inquiry into the applicant's sex, thus placing housing administrators in the position of arbiter of the transgender individual's sex for the purpose of their housing applications, and exposing transgender persons to harm and discrimination because of varying interpretations. Another commenter similarly stated that ''the exception for inquiries about sex for determining eligibility for single sex-dormitories or housing with single-sex shared-bathrooms might create opportunities for discrimination against transgender persons.'' The commenter asked HUD ''to establish strict limitations on when these questions are appropriate.''

A commenter stated that opponents of the rule will likely focus on the ''niche issue of the placement of transgender individuals (or those that are pretending to be transgender) in single sex facilities.'' The commenter stated that HUD, in the interest of addressing these critics and for clarity overall, ''should fully analyze this question instead of merely stating that the rule is 'not intended to prohibit otherwise lawful inquiries''' of sex, which is vague. The commenter asked, as an example, ''[c]an a battered women's shelter still receive funding from HUD if it denies shelter to

a man, who perceives himself to be a woman? What would be the adjudicatory process in such an event? Is this event a realistic scenario? HUD should further analyze issues such as these both to undercut critics' arguments that the proposed rule would be unworkable and to better guide its local program coordinators in proper practices. The overarching goal of this proposed rule change is too important for it to be scrapped because of this rare and currently murky legal scenario.''

Another commenter stated that a transgender person's actual sex may be at odds with his or her appearance, and questioned the meaning of this provision for such a person. A commenter asked if transgender persons may be excluded from shared housing or gay men excluded from sharing housing with other men. If so, would other accommodations be made for excluded groups? Other commenters urged HUD to clarify the rule to state that a housing provider may only inquire about individuals' gender identity for the purpose of placing them in gender-specific accommodations, but cannot inquire about a person's birth sex, anatomy, or medical history.

Response: In Section II of this preamble, HUD has already addressed several of the concerns raised by the commenters. HUD is committed to further review of this issue and, as necessary, will issue guidance that, through examples, elaborates on how the prohibition of inquiries on sexual orientation and gender identity, and the allowance for lawful inquiries as to sex, will work in practice.

Comment: Several commenters suggested that HUD-funded programs should accept an individual's gender identity, as opposed to ''sex'' in determining housing placement in sex-segregated housing programs. One commenter stated that lawful inquiries of a consumer's ''sex'' where housing involves the sharing of sleeping areas and bathrooms leave transgender individuals, who may need the most protection, particularly vulnerable to discrimination. Another commenter stated that even inquiries of individuals who have obtained legal gender change documents would lead to harassment and discrimination. For this reason, the commenter suggested that inquiries about sex for sex-specific housing should be made in reference to an individual's gender identity.

Another commenter stated that if applicants are not allowed to report their gender identity rather than their sex as legally defined by their state government, the considerable differences among states as to how persons may change their sex would lead to a considerable lack of uniformity across HUD programs. The commenter further stated that transgender persons may be arbitrarily excluded from HUD programs if they are forced to report their sex as defined by their state government, instead of being permitted to report a gender identity that more accurately describes them. Several commenters expressing similar concerns recommended that the rule be revised so that a person is required only to disclose the gender they identify as regardless of sex assigned at birth and not be asked to provide proof of that identity.

Other commenters stated that the rule should allow for voluntary self-reporting where sex designations are required. In such cases, the commenter stated that ''HUD could allow applicants to list the sex designation they would like to have rather than their biological or as yet medically un-reassigned sex.'' The commenter stated that this would help to avoid the problem of using allowed inquiries regarding sex to get to issues of gender identity. Another commenter stated that it is important to ensure that persons are able to self-select their sex in order to protect the access of transgender persons to housing facilities. Another commenter, after querying how the ''lawful inquiries'' regarding sex will apply to transgender individuals, stated that ''in these instances, self-identification is probably the best way to go; however, this may be an area best left with some discretion.''

Response: HUD recognizes the serious problem of housing instability among transgender persons. The housing discrimination, harassment, and homelessness that transgender persons face are part of what precipitated HUD's rulemaking in this area. These issues also contributed to HUD's recent recognition that housing discrimination because of nonconformity with gender stereotypes may constitute sex discrimination under the Fair Housing Act. HUD is aware of the significant challenges that transgender persons face when attempting to access shelters. By way of this rule, however, HUD is not mandating a national policy related to appropriate placement of transgender persons in shelters limited to one sex. HUD needs additional time to review this issue and determine whether setting national policy is appropriate.

Comment: A commenter expressed concern about being required to identify the sex of tenants on the Form HUD–50059, given that the applicant/tenant is not asked to self-identify sex but rather the information is assigned by a third party based on observation. Form HUD–50059 is used to determine the number of bedrooms a family may need, based on the age and sex of the children. The commenter submitted that requiring information on sex to be reported on Form 50059 conflicts with the proposed rule prohibiting inquiries about sex, and suggested that individuals should self-identify their gender and sex.

Response: HUD will further examine this form, to determine whether a change is needed. The form is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which requires notice and comment when changes are made. Accordingly, any changes made to this form will provide the public the opportunity to comment, and such comment will not only be helpful in addressing the specific issues raised about this form, but may inform HUD on changes that may be needed to other forms.

Collect Data To Protect LGBT Community

Several commenters suggested that HUD establish a confidential data collection system to identify LGBT beneficiaries of HUD housing programs to ensure that their housing needs are met and that they are protected from discrimination.

Comment: Several commenters proposed that HUD provide a mechanism by which applicants and tenants of HUD-assisted housing or HUD-insured housing can voluntarily report their sexual orientation and gender identity. Such data would be collected for informational purposes only, and in a manner to protect the confidentiality of the responder.

Commenters identified varying need for such data. One commenter explained that data on the sexual orientation and gender identity of HUD program participants is crucial to demonstrate the need for affirmative outreach, assess its effect, and attract resources to address problems in this area. Other commenters stated that the data would be of substantial value for the development of appropriate programs and policies. One commenter specified that information on program participants' sexual orientation and gender identity can be useful to determine whether appropriate servicers are being delivered and to assess whether progress is being made in meeting the housing needs of LGBT youth and adults. Other commenters stated that data should be collected only to assess whether the rule is achieving its goals.

Commenters provided specific suggestions for safeguarding confidentiality. One commenter

proposed that inquiries should not be permitted until after admission decisions have been made, and another stated that only staff involved in the collection and analysis of the data should have access to it. Other commenters urged HUD to continue to work with fair housing organizations and the housing community to collect demographic information on the LGBT community in a way that cannot be used to discriminate, by including appropriate restrictions on the acquisition, retention, and use of the information to protect the privacy of those whose data is being collected. Several commenters discussed the effect of the proposed prohibition on inquiries on data collection. One commenter stated there are a myriad of potential mechanisms for achieving the dual goals of protection against discrimination while gathering sufficient data to monitor LGBT housing discrimination. The commenter proposed a voluntary reporting system that would allow persons who wish to self-identify to bypass housing providers and PHAs and submit demographic information directly to HUD. The commenter suggested that language be added to existing forms that would direct all applicants and occupants of HUD-assisted housing wishing to provide such information to a Web site and mailing address for HUD's Office of Fair Housing and Equal Opportunity. The commenter stated that this could enable the person to submit the information anonymously, while providing HUD with sufficient demographic information to monitor discrimination.

Another commenter also viewed voluntary disclosure as the appropriate balancing of the right to privacy ''against the rule's purpose in ensuring equal access to housing.'' But according to the commenter, ''[w]hile the rule proposal notes that the inquiry prohibition does nothing to limit voluntary disclosure, it also does nothing to channel such disclosures in a way that promotes the rule's underlying goal.''

One commenter recommended that HUD conform its data collection systems related to the sex of household members to the proposed prohibition of inquiries concerning gender identity. Another commenter stated that the prohibition on inquiries regarding gender identity could result in the inadvertent housing of dangerous individuals because, in the commenter's view, gender identity is an important component of the applicant information collected to gather accurate criminal background information. The commenter supported the establishment of a database containing gender identity information of applicants.

Response: For the reasons discussed in Section II of the preamble, HUD declines to include in this regulation a national reporting system of sexual orientation and gender identity. HUD understands the concerns of the commenters, but believes that further consideration must be given to this proposal. This final rule is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements of state and local governments or other federal assistance programs, but only after determining the individual's or family's eligibility for HUD assistance.

Comment: Commenters urged HUD to look for ways to collect and maintain data to help identify and combat LGBT housing discrimination, while protecting and preserving privacy and safety, and preventing further discrimination or retaliation so that additional policy efforts can be further developed. The commenters stated that because discrimination against LGBT individuals is substantially underreported, the final rule should contain language requiring covered housing providers and grantees to provide accessible information about these protections, as well as necessary information on how people can submit complaints when they believe their rights have been violated.

One commenter urged HUD to work with the LGBT community and fair housing organizations to collect demographic data on sexual orientation and gender identity to better enable the LGBT community to advocate for increased funding for geographic and programmatic areas where LGBT persons remain vulnerable. Another commenter stated that because sexual orientation and gender identity are still not identified in the Fair Housing Act as prohibited bases for discrimination, data must be collected to reflect the number of LGBT individuals and families seeking access to HUD programs and services to help advocate for necessary policy changes and to identify areas where LGBT persons remain particularly vulnerable to discrimination.

Response: HUD appreciates all the proposals submitted by the commenters. As discussed in Section II of the preamble, HUD declines to add a data collection mechanism to the rule. HUD notes, however, that it has existing mechanisms for collecting and reporting on discrimination claims filed with its Office of Fair Housing and Equal Opportunity. (See *http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination.*)

Enforcement Procedures

Comment: Several commenters noted that the proposed rule was not explicit as to how HUD plans to enforce the rule. One commenter stated that there must be a mechanism by which claims of discrimination in HUD programs can be voiced by the LGBT community. Another commenter echoed that concern, stating that if sexual orientation or gender identity discrimination does occur, it must be clear to the landlords and future tenants that these matters will be addressed in a fair and timely manner.

A commenter suggested that HUD include in the final rule a clear procedure for submitting complaints, holding hearings, and making determinations of violations of HUD program rules. Another commenter suggested including an appeals process. One commenter suggested that HUD create a centralized complaint system through which persons can submit information about discrimination under the rule. That commenter proposed that HUD establish a telephone number for complaints based on violations of the proposed rule, and that HUD designate a coordinator to direct complaints to the appropriate persons in the program offices. The commenter proposed that HUD create a complaint intake form similar to the existing Form HUD–903 that persons use to file complaints under the Fair Housing Act. The commenter stated that creating a centralized intake system would have the benefit of facilitating the filing of reports of discrimination, as well as providing more information about the occurrence of discrimination in HUD programs. The commenter stated that ''[p]ractical mechanisms for enforcement will allow LGBT families and advocates to fully utilize these changes to access housing.''

One commenter questioned whether HUD anticipates an expansion of its Investigations Division to support the proposed rule, and if so, what if any training the existing staff would undergo to adequately prepare for this type of investigation. Another commenter simply suggested that HUD consider expanding its investigative units to respond to the likely increase in complaints.

A commenter inquired whether the regulations create a new right for aggrieved parties. The commenter explained that while an aggrieved party can file a complaint alleging discrimination on grounds expressly

forbidden in the Fair Housing Act, the proposed rule does not seem to give victims of discrimination based on sexual orientation or gender identity the same right. The commenter requested clarification regarding what method of enforcement HUD will implement if it does not explicitly extend this right to victims of discrimination based on sexual orientation or gender identity. The commenter concluded that without zealous and informed enforcement, these regulations will provide only lip service to the broader goals of promoting access to HUD programs for all eligible families.

Response: As noted in response to an earlier comment, this rule creates additional program requirements to ensure equal access to HUD programs for all eligible families. Therefore, a violation of the program requirements established by this rule will be handled in the same manner that violations of other program requirements are handled. Each HUD program has in place mechanisms for addressing violations of program requirements. If a participant in HUD-assisted or HUD-insured housing programs believes that the housing provider is not complying with program requirements, the individual may complain to the appropriate HUD office that administers the program (*e.g.,* the Office of Public and Indian Housing, the Office of Community Planning and Development). In addition, as also noted in the earlier response to a comment, certain complaints would be covered by the Fair Housing Act. A claim of discrimination based on nonconformity with gender stereotypes may be investigated and enforced under the Fair Housing Act as sex discrimination. HUD recently published guidance on this. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination*. Such claims would be filed through HUD's Office of Fair Housing and Equal Opportunity at the Web site noted earlier in this preamble: *http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination* or 1–(800) 669–9777. Many states and localities have laws prohibiting discrimination based on one's LGBT status. HUD's guidance, referenced above, contains a list of such states. As noted below, HUD will develop training materials to educate recipients of HUD funding of their rights and responsibilities under this rule.

Remedies

Other commenters recommended that HUD clearly explain its authority to provide remedies under the rule, whether it is to sanction, suspend, debar, or seek civil penalties against those individuals or entities who deny individuals and families safe, clean, affordable housing because of their gender identity or sexual orientation. The commenters believe that ''setting the rules in stone'' would deter housing providers from violating the terms of the rule.

Response: Whenever a participant in a HUD program fails or refuses to comply with regulatory requirements, such failure or refusal shall constitute a violation of the requirements under the program in which the participant is operating and the participant will be subject to all sanctions and penalties for violation of program requirements, as provided for under the applicable program, including the withholding of HUD assistance. In addition, as is discussed in the prior response, HUD may pursue an enforcement action when the Fair Housing Act is implicated. A housing provider who is found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties, and attorney's fees.

Education, Outreach, and Guidance

A commenter stated that HUD should add education requirements. The commenter stated that within 9 months after this regulation goes into effect, entities that participate in HUD programs should educate their relevant staff on the rule. An Internet-based training program could be efficiently used. This requirement could be waived in rural areas that currently lack Internet access, or an alternative means of satisfying the requirement could be created, such as participation via telephone. This commenter also stated that within 9 months, HUD should require participating entities to begin providing individuals with updated information regarding their rights to be free from discrimination. This commenter stated that given limited resources, HUD should focus its efforts on areas with large LGBT populations and in jurisdictions that do not currently possess anti-discrimination statutes that cover sexual orientation or gender identity.

Another commenter stated that whether this policy has its desired effect will greatly depend on outside factors. The anti-discrimination policies in place should be brought to the attention of applicants for HUD housing through HUD application forms, interviews, and Web site pages. HUD employees should be instructed as to the reasons for these policies and should be sanctioned for any behavior or comment that discriminates against individuals covered under HUD's policies. Employees who are sensitive to LGBT issues should be enlisted to provide information to assist LGBT individuals and their families in making decisions as to the most comfortable and safe housing. Another of the commenters stated that in order to ensure compliance with the proposed rule, it will be necessary to educate the affected agencies and programs on the meaning of ''*actual or perceived gender-related characteristics,*'' a definition cited in the rule and drawn from the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009.

Another commenter recommended that HUD develop comprehensive outreach goals and advertise in the LGBT media. The commenter recommended that forms HUD–935.2(a) or (b) be amended for this purpose to include categories for gender identity and sexual orientation as target groups, and that such forms be available for all HUD-assisted programs. The commenter also suggested that PHAs affirmatively market to underrepresented populations as they are required to affirmatively market housing under the Fair Housing Act. Other commenters recommended that HUD-assisted housing providers be required to affirmatively market to the LGBT population through community centers and other outreach groups. One of these commenters stated that HUD program staff, PHAs, subsidized housing providers, and housing-related service providers will need education on the final rule to ensure that they are in compliance.

A commenter recommended that HUD conduct a public relations campaign that explains the new regulation and welcomes LGBT families. The commenter suggested that owners and operators of HUD-assisted housing and FHA-insured housing be aware of the proposed rule and its impact on their day-to-day dealings with tenants and mortgagors, while also suggesting that HUD create literature, posters, and other materials directed at LGBT families. The commenter stated that these advertisements should advise LGBT families that HUD wants to ensure their equal access to its core rental assistance and homeownership programs, while the media campaign should convey that HUD is committed to taking actions necessary to ensure that LGBT families are not excluded on the basis of their sexual orientation, gender identity, or other criteria irrelevant to the purpose of HUD.

Another commenter stated that if LGBT individuals do not know about

the proposed regulation, it will be much less effective. If enforcement of the proposed regulation largely depends on litigation by those who have been discriminated against, then those individuals must know that the discrimination that they faced was actually illegal. HUD should work with prominent LGBT organizations, as well as with nonprofits that deal with fair housing and with state and local governments to disseminate these proposed rules in a simple and easy-to-understand way.

A commenter specifically inquired about whether HUD's Fair Housing Enforcement Office would provide training on the implementation of the rule. Another commenter states that, in particular, HUD should: (1) Publicize the new regulation, (2) develop know-your-rights materials for LGBT individuals to promote the reporting of violations, and (3) provide mandatory trainings to owners and operators of HUD-assisted housing programs to encourage compliance.

Another commenter recommended that HUD issue clear guidelines that will ensure that LGBT tenants of single-sex housing will not be singled out for harassment or disparate treatment on the basis of their sexual orientation or gender identity. The commenter suggested that HUD owners and operators be given instructions on how to provide reasonable accommodations for LGBT families, including, where possible, mechanisms that provide privacy in public showers. The commenter stated that HUD staff, as well as HUD owners and operators, should be trained on the importance of safe housing for persons who self-identify as transgender.

Response: Without question, HUD plans to engage in education and outreach about this rule, and will consider many of the proposals offered by the commenters on how such education and outreach may be conducted.

Rule Should Wait for Completion of Study

Comment: A commenter expressed concern that HUD's proposed rule was published before HUD completed its study on housing discrimination based on sexual orientation and gender identity. The commenter suggested that HUD complete its study and consider the study's evidence in revising and finalizing the proposed rule rather than developing the regulation and conducting the study simultaneously.

Response: The study to which the commenter refers concerns the private sector and not HUD's programs. Accordingly, HUD does not find it necessary to wait for the completion of the study. It is HUD's desire to proactively address the possibility of discrimination against LGBT individuals and families in HUD's housing programs.

Rule Did Not Properly Address Federalism Concerns

Comment: A commenter stated that this rule fails to properly address federalism concerns because protecting LGBT persons from discrimination is a matter of state law, and while some states have chosen to enact such protections, other states have declined to do so. Another commenter stated that HUD is overstepping its authority by defining family in the proposed regulation. The commenter thought this could be construed as an infringement on states' rights because the Federal Government has primarily left it to the states to make determinations regarding the definition of family. Another commenter stated that HUD is violating Executive Order 13132 on federalism by regulating marriage and housing. According to the commenter, these are states' rights issues, as regulation of marriage and housing occur at a state level, notwithstanding that the Federal Government provides funding for housing.

Response: HUD's rule is not in violation of the executive order on federalism, Executive Order 13132, nor is it regulating marriage. HUD's rule only pertains to HUD's housing programs. There is no requirement for any multifamily housing owner to participate in HUD's programs or for any lender to become an FHA-approved lender. However, if these individuals or entities choose to participate, then they must abide by the program requirements established by HUD.

Rule Exceeds HUD's Legal Authority

Comment: A few commenters stated that this rule exceeds HUD's legal authority. The commenters stated that making ''sexual orientation'' and ''gender identity'' protected classifications for purposes of federal housing programs has no support in any act of Congress, and that forbidding such discrimination undermines the Defense of Marriage Act. The commenters stated that HUD should not create new protected classifications where there is no statutory policy undergirding it.

Response: The rule creates additional program requirements to ensure equal access of all eligible families to HUD programs, which is well within the scope of HUD's authority. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This includes LGBT persons, who have faced difficulty in seeking housing. Excluding any eligible person from HUD-funded or HUD-insured housing because of that person's sexual orientation or gender identity contravenes HUD's responsibility under the Department of Housing and Urban Development Act to work to address ''the needs and interests of the Nation's communities and of the people who live and work in them.'' (See 42 U.S.C. 3531.) Congress has repeatedly charged the Department with serving the existing housing needs of all Americans, including in section 2 of the Housing Act of 1949, 42 U.S.C. 1441 (''The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require * * * the realization as soon as feasible the goal of a decent home and a suitable living environment for every American family * * *''); section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701t (''The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of 'a decent home and a suitable living environment for every American family'''); sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701–702 (''The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment. * * * The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able * * * to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness * * * [and] to improve housing opportunities for all residents of the United States''); and section 2(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 note (''The purpose of this Act, therefore, is—(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.'')

Congress has given HUD broad authority to fulfill this mission and implement its responsibilities through rulemaking. Section 7(d) of the Department of Housing and Urban Development Act specifically states that

the Secretary ''may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.''

HUD does not agree that the Defense of Marriage Act, which relates to the definition of marriage, overrides the Department's responsibility to ensure that its programs are carried out free from discrimination. This rule does not define or otherwise regulate marriage. Rather, it seeks to make housing available to LGBT persons who might otherwise be denied access to HUD-funded or assisted housing.

Rule Creates Conflict With Religious Freedom

Comment: A commenter stated that the rule may force faith-based and other organizations, as a condition of participating in HUD programs and in contravention of their religious beliefs, to support shared housing arrangements between persons who are not joined in what the commenter referred to as ''the legal union of one man and woman.'' Another commenter explained that, while not insisting that any person should be denied housing, faith-based and other organizations should retain the freedom to make housing placements in a manner consistent with their religious beliefs. The commenter further stated that the rule, by infringing on religious freedom, may have the ultimate effect of driving away faith-based organizations with a long and successful track record in meeting housing needs. The commenter concluded that given their large role in serving unmet housing needs, it is imperative that such faith-based organizations not be required to compromise or violate their religious beliefs as a condition of participating in HUD-assisted housing programs and receiving government funds to carry out needed services.

Other commenters stated that protecting sexual orientation and gender identity without provisions for protecting rights of conscience and belief results in governmental discrimination favoring one version of morality and belief over another. The commenters stated that there are many individuals and faith-based organizations who have already been penalized for adherence to religious beliefs that will not permit them to support same-sex relationships.

Response: Faith-based organizations have long been involved in HUD programs and provide valuable services to low-income populations served by HUD. It is HUD's hope that faith-based organizations will continue to actively participate in HUD programs. However, the exclusion of an individual or family from HUD housing for no reason other than that the individual is LGBT or the family has one or more LGBT members is inconsistent with HUD's mission to ensure decent housing and a suitable living environment for all. Accordingly, it is incumbent on HUD to ensure that the regulations governing its housing programs make clear that such arbitrary exclusion will not be tolerated.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. A determination was made that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the rule is to ensure open access to HUD's core programs, regardless of sexual orientation or gender identity. In this rule, HUD affirms the broad meaning of ''family'' that is already provided for in HUD programs by statute. The only clarification that HUD makes is that a family is a family as currently provided in statute and regulation, regardless of marital status, sexual orientation, or gender identity. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development,

Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR parts 5, 200, 203, 236, 291, 570, 574, and 982, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

■ 2. The heading of subpart A is revised to read as follows:

Subpart A—Generally Applicable Definitions and Requirements; Waivers

* * * * *

■ 3. In § 5.100, definitions for ''family,'' ''gender identity,'' and ''sexual orientation'' are added to read as follows:

§ 5.100 Definitions.

* * * * *

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

* * * * *

Gender identity means actual or perceived gender-related characteristics.

* * * * *

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

* * * * *

■ 4. In § 5.105, revise the introductory text, redesignate paragraph (a) as paragraph (a)(1), and add paragraph (a)(2) to read as follows:

§ 5.105 Other Federal Requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a) * * *

(2) *Equal access to HUD-assisted or insured housing.* (i) *Eligibility for HUD-assisted or insured housing.* A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

(ii) *Prohibition of inquiries on sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

* * * * *

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

■ 5. In § 5.403, the definitions of ''disabled family'', ''elderly family'', ''family'', and ''near elderly family'' are revised to read as follows:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster

care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

* * * * *

Near-elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 6. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 7. In § 200.3, paragraph (a) is revised to read as follows:

§ 200.3 Definitions.

(a) The definitions ''department'', ''elderly person'', ''family'', ''HUD'', and ''Secretary'', as used in this subpart A, shall have the meanings given these terms in 24 CFR part 5.

* * * * *

■ 8. Section 200.300 is revised to read as follows:

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5, including the prohibition on inquiries regarding sexual orientation or gender identity set forth in 24 CFR 5.105(a)(2); and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 9. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

■ 10. In § 203.33, paragraph (b) is revised to read as follows:

§ 203.33 Relationship of income to mortgage payments.

* * * * *

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the mortgagor, or location of the property.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

■ 11. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

■ 12. Section 236.1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* * * * The definition of ''family'' in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured under section 236, or to financing pursuant to section 236(j)(3) of the purchase, by a cooperative or nonprofit corporation or association of a project assisted under section 236.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 13. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d), and 5301–5320.

Subpart A—General Provisions

■ 14. In § 570.3, the definitions of ''family'' and ''household'' are revised to read as follows:

§ 570.3 Definitions.

* * * * *

Family refers to the definition of ''family'' in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 15. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 16. In § 574.3, the definition of ''family'' is revised to read as follows:

§ 574.3 Definitions.

* * * * *

Family is defined in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of actual or perceived sexual orientation, gender identity, or marital status, who are determined to be important to the eligible person or person's care or well-being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 17. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 18. In § 891.105, the definition of ''family'' is added to read as follows:

§ 891.105 Definitions.

* * * * *

Family is defined in 24 CFR 5.403.

* * * * *

PART 982—SECTION 8 TENANT–BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 19. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 20. In § 982.4, remove the colon at the end of paragraph (a) subject heading and add a period in its place, revise paragraph (a)(1), remove paragraph (a)(2), and redesignate paragraph (a)(3) as paragraph (a)(2); and revise the definition of ''family'' in paragraph (b) to read as follows:

§ 982.4 Definitions.

(a) *Definitions found elsewhere*—(1) *General definitions.* The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing, Section 8, and violent criminal activity.

* * * * *

(b) * * *

Family. A person or group of persons, as determined by the PHA consistent

with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See ''family composition'' at § 982.201(c).

* * * * *

■ 21. In § 982.201, paragraph (c) is revised to read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(c) *Family composition.* See definition of ''family'' in 24 CFR 5.403.

* * * * *

Dated: January 27, 2012.

Shaun Donovan,

Secretary.

[FR Doc. 2012–2343 Filed 2–2–12; 8:45 am]

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FEDERAL REGISTER

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No. 23 February 3, 2012

Part IV

The President

Memorandum of January 18, 2012—Implementing Provisions of the Temporary Payroll Tax Cut Continuation Act of 2011 Relating to the Keystone XL Pipeline Permit

Federal Register
Vol. 77, No. 23
Friday, February 3, 2012

Presidential Documents

Title 3—

The President

Memorandum of January 18, 2012

Implementing Provisions of the Temporary Payroll Tax Cut Continuation Act of 2011 Relating to the Keystone XL Pipeline Permit

Memorandum for the Secretary of State

The Temporary Payroll Tax Cut Continuation Act of 2011 requires a determination, within 60 days of enactment, of whether the Keystone XL pipeline project as set forth in the permit application filed on September 19, 2008 (including amendments) (the ''Keystone XL pipeline project'') would serve the national interest. The State Department had previously explained, on November 10, 2011, that it was seeking additional information concerning whether that project served the national interest, as necessary to grant the permit. Based on its experience and in order to consider relevant environmental issues and the consequences of the project on energy security, the economy, and foreign policy, the State Department indicated that its review could be complete as early as the first quarter of 2013.

I have determined, based upon your recommendation, including the State Department's view that 60 days is an insufficient period to obtain and assess the necessary information, that the Keystone XL pipeline project, as presented and analyzed at this time, would not serve the national interest.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States including section 301 of title 3, United States Code, and in furtherance of Executive Order 13337 of April 30, 2004 to the extent compatible with this memorandum, I direct you to submit the report to the Congress as specified in section 501(b)(2) of the Temporary Payroll Tax Cut Continuation Act of 2011 and to issue a denial of the Keystone XL pipeline permit application.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 18, 2012

[FR Doc. 2012–2673
Filed 2–2–12; 11:15 am]
Billing code 4710–10–P

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